SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

IN RE:

EMERGENCY AUTHORIZATION FOR
REPAIRS, REPLACEMENT,
RESTORATION, AND CERTAIN
OTHER MEASURES MADE NECESSARY
BY HURRICANE DORIAN

EMERGENCY ORDER NO. SWF 19-024

Under the authority of Sections 120.569(2)(n), 252.36, 252.46, and 373.119(2), Florida Statutes ("F.S."), and State of Florida Executive Order No. 19-198 and 19-190, and the following findings of fact, the Southwest Florida Water Management District ("District") enters this Emergency Order ("Order"), including Findings of Fact and Conclusions of Law, in response to the imminent or immediate danger to the public health, safety, and welfare of the citizens residing within the District caused by Hurricane Dorian (hereinafter, "the Hurricane"):

FINDINGS OF FACT

1. The District is the administrative agency charged with the responsibility to conserve, protect, manage, and control the water resources within the sixteen (16) counties designated within its geographic boundaries (hereinafter referred to as the "Emergency Area"), and to administer and enforce Chapter 373, F.S., and the rules adopted thereunder as Chapters 18-20, 18-21, 40D, and 62, Florida Administrative Code ("F.A.C."). The District issues authorizations for use of sovereign submerged lands pursuant to Chapters 253 and 373, F.S., and permits in accordance with the various procedures and deadlines set forth in Chapters 120, 373, and 403, F.S., and rules promulgated thereunder as Chapters 18-20, 18-21, 28, 40D, and 62, F.A.C.
2. On Wednesday August 28, 2019, the Governor of Florida issued Executive Order No. 19-198 and 19-190 (hereinafter, "the Executive Orders") declaring a state of emergency for the entire State of Florida based upon the serious threat to the public health, safety, and welfare posed by the Hurricane. Additionally, on August 29, 2019, the Florida Department of Environmental Protection entered an Emergency Final Order authorizing emergency actions and suspending certain statutes and rules during the emergency and recovery.

3. The Executive Orders recognize that special duties and responsibilities resting upon state, regional, and local agencies and other governmental bodies in responding to the emergency may require waiver or deviation from the statutes, rules, ordinances, and orders those agencies and bodies administer. Pursuant to the Executive Orders, each state agency may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the order or rules of that agency, if strict compliance with the provisions of any such statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the effects of Hurricane Dorian.

4. Section 373.119(2), F.S., provides that whenever the executive director, with the concurrence and advice of the governing board, finds that an emergency exists requiring immediate action to protect the public health, safety, or welfare of the citizens of the State of Florida, the executive director may, without prior notice, issue an order reciting the existence of such an emergency and require that such action be taken as the executive director deems necessary to meet the emergency.
5. The District finds that effects of the Hurricane created an ongoing state of emergency threatening the public health, safety, welfare, and property throughout the Emergency Area. As a result of the emergency, immediate action by Florida's citizens and government may be necessary to repair, replace, and restore structures, equipment, surface water management systems, works, and other systems damaged by the Hurricane.

6. The District finds that an emergency authorization is required to address the need for immediate action because the normal procedures for obtaining the necessary authorizations would not result in sufficiently timely action to address the emergency.

7. The District finds that immediate, strict compliance with the provisions of the statutes, rules, or orders noted within this Order would prevent, hinder, or delay necessary action in coping with the emergency, and that the actions authorized under this order are narrowly tailored to address the immediate need for action and are procedurally appropriate under the circumstances.

CONCLUSIONS OF LAW

8. Based on the findings recited above, it is hereby concluded that the emergency caused by the Hurricane poses an immediate danger to the public health, safety, or welfare and requires an immediate order of the District.

9. Under the Executive Orders, and Sections 120.569(2)(n), 252.36, and 252.46, and 373.119(2), F.S., the District's Executive Director, or designee, is authorized to issue this Final Order.

10. Suspension of statutes and rules as noted within this Order is required so as not to prevent, hinder, or delay necessary action in coping with the emergency.
THEREFORE, it is hereby ORDERED that within the Emergency Area, the following provisions apply:

GENERAL PROVISIONS

11. **Authorized Representatives**

   The Executive Director hereby appoints the following representatives and delegates to them the authority to issue authorizations, permits, and execute any emergency functions in accordance with this Order: The Assistant Executive Director, Director of Regulation and Assistant Director of Regulation Production, Director of Operations Lands & Resource Monitoring, Director of Resource Management, and the Regulation Bureau Chiefs.

12. **Limitations**

   The District issues this Emergency Order solely to address the emergency created by the Hurricane within the Emergency Area, as described herein. This Emergency Order shall not be construed to authorize any activity within the jurisdiction of the District except in accordance with the express terms of this Emergency Order. Under no circumstances shall anything contained in this Order be construed to authorize the repair, replacement, or reconstruction of any type of unauthorized or illegal structure, habitable or otherwise. This Order does not convey any property rights or any rights or privileges other than those specified in this Order.

13. **Expiration Date**

   This Emergency Order shall take effect immediately upon execution by the Executive Director, or designee, and expire 35 days thereafter, unless otherwise extended or terminated by further order.

14. **Other Authorizations Required**
Nothing in this Emergency Order shall eliminate the necessity for obtaining any other federal, state, or local permits, or other authorizations that may be required.

15. **Extension of Time to Comply with Specified Deadlines**

For facilities and activities regulated by the District within the Emergency Area, this Order extends by thirty days the time to comply with the following specified deadlines that occur between the date of issuance of this Order and the expiration of this Order:

a. The time deadlines to conduct or report periodic monitoring or any other similar monitoring that is required by a permit, lease, easement, consent of use, letter of consent, consent order, consent agreement, administrative order, or other authorization under Chapters 161, 253, 258, 373, 376, or 403, F.S., and rules adopted thereunder;

b. The time deadlines to file an application for an extension of permit duration or renewal of an existing permit, lease, easement, consent of use, letter of consent, or other authorization under Chapters 161, 253, 258, 373, 376, or 403, F.S., and rules adopted thereunder;

c. The time deadlines to file an application for an operation permit under Chapters 161, 253, 258, 373, 376 or 403, F.S, and rules adopted thereunder;

d. The expiration date for an existing permit, lease, consent of use, or other authorization under Chapters 161, 253, 258, 373, 376 or 403, F.S., and rules adopted thereunder; and

e. The time deadlines to obtain a permit for and commence construction of the initial phase of a system for which a conceptual permit was issued pursuant to Part IV of Chapter 373, F.S., and rules adopted thereunder.
f. The extension of time to comply with specified deadlines set forth in this Section does not apply to the following:

i. The time deadlines for filing a petition for administrative hearing pursuant to Chapter 120, F.S.;

ii. The time deadlines for providing notice of the intent to exercise the tolling and extension granted under Section 252.363(1)(a), F.S.; or

iii. The time or expiration of any other deadline not specifically set forth in this Order.

16. **Deadlines for Agency Actions**

   Any deadlines specified in statutes, rules, agreements, or District orders, under which the District is required by law to take action within a specified time period, and under which failure by the District to timely take such action could result in any type of default binding on the District (including the time to request additional information on permit applications), are hereby suspended and tolled for a period of 30 days, provided such deadline had not expired as of the effective date this Order.

17. **Suspension of Fees**

   a. All application fee requirements set forth in Chapter 373, F.S., and the rules adopted thereunder, shall be suspended for the duration of this Order, and shall recommence on the date immediately following the expiration of this Order set forth in Paragraph 13 herein, unless this Order is extended or terminated by further order.

   b. All lease fee and easement fee requirements set forth in Chapter 373, F.S., and the rules adopted thereunder, shall be suspended for the duration of this Order, except that lease fee and easement fee requirements shall be suspended only in proportion to the
percentage loss of functionality of the total are under lease or easement. All lease fee and
easement fee requirements shall recommence on the date immediately following the
expiration of this Order set forth in Paragraph 13 herein, unless this Order is extended or
terminated by further order. However, the duration of the suspension of lease and easement
fees may be extended beyond the duration of this Order (including subsequent extensions
thereof) or beyond the date specified in a field authorization issued pursuant to this Order,
upon a written request by the lessee to extend the suspension of the lease or easement
fees. Such request must be received by the District before the expiration of this Order (or
extensions thereof) or before the date specified in the field authorization (whichever date it
later).

18. **Procurement**

To ensure the District is able to meet emergency response functions, the Executive
Director hereby suspends, to the extent necessary, the effect of any statute, rule, or order
to procure any and all necessary supplies, commodities, services, temporary premises, and
other resources including, but not limited to, the foregoing:

a. Any and all statutes, rules, and orders that affect budgeting to the extent
necessary to cope with the Emergency and, under the authority of Section 373.536(4)(d),
F.S., authorize the continued expenditure of funds available for the Emergency, or as may
be procured for such purpose, in the event that the Emergency temporarily prevents the
adoption of a budget.

b. Any and all statutes, rules, and orders that affect the leasing, printing,
purchasing, travel, conditions of employment, and the compensation of employees,
necessary to cope with the Emergency.
CONSUMPTIVE USES OF WATER

19. **General Conditions**

All activities authorized under this Section shall be conducted in accordance with the following conditions:

a. All activities shall be performed in a manner that minimizes adverse water quality and water quantity impacts. This includes properly installed and maintained erosion and turbidity control devices to prevent erosions and shoaling and to control turbidity, nutrient loading, and sedimentation in off-site receiving waters.

b. Entities operating under this Order shall immediately correct any erosion, shoaling, or water quality problems that result from the activities authorized under this order.

c. This Order is temporary in nature and shall not relieve the any obligation to obtain necessary federal, state, local, or District permits or approvals.

d. This Order does not convey any property rights or any rights or privileges other than those specified in this Order.

e. This Order only serves as relief for the duration of the Order from the regulatory requirements of the District only and does not provide relief from the requirements of other federal, state, water management districts, and local agencies. This Order therefore does not negate the need to obtain any other required permits or authorizations, nor does it negate the need to comply with all the requirements of those agencies.

20. **Authorized Temporary Consumptive Uses**

a. The following temporary consumptive uses of water—including pumping or diverting water—are hereby authorized to address emergency conditions created by the Hurricane:
i. **On-Site Discharge – No Notice Required**

The internal movement of water from flooded areas within a project site to other areas within the same project site by the same owner. This authorization does not permit pumping or discharging water to off-site property, canals, or water bodies not completely on-site other than through permitted facilities.

ii. **Off-Site Discharge by Governmental Entity – No Notice Required**

The movement of water from a flooded area by a state, regional, or local government agency, regardless of whether water is discharged on or off-site, provided that the movement of water is limited to measures necessary to address the emergency.

iii. **Off-Site Discharge by Private Landowner – Notice Required**

The movement of water from a flooded area by a private landowner to an off-site location, provided the following:

A. The private landowner must provide notice of the activity to the District prior to the movement of water;

B. An Authorized Representative, as set forth in paragraph 11 herein, authorizes the activity; and

C. The activity is conducted in accordance with the conditions of the District’s authorization.

21. **Permit Condition Deferral**

An Authorized Representative, as set forth in paragraph 11 herein, may authorize a permittee to defer compliance with any of the terms and conditions of a water use permit for such time as is necessary to address the emergency. The deferment may be conditioned
as appropriate to protect public health, safety, and welfare, both during the emergency and for a period of time once normal operations under the permit resume.

22. **Permit Modifications**

An Authorized Representative, as set forth in paragraph 11 herein, may authorization a modification of any of the terms and conditions of a water use permit as necessary to address the emergency. The modification may be conditioned as appropriate to protect public health, safety, and welfare, both during the emergency and for a period of time once normal operations under the permit resume.

23. **Field Authorizations**

All District personnel are hereby authorized to issue temporary field authorizations for consumptive uses. A temporary field authorization may only be issued following a site inspection, and all District personnel are required to transmit the temporary field authorization to an Authorized Representative for final approval. An Authorized Representative may approve, modify, condition, or withdraw a temporary field authorization. District personnel must create and maintain all approvals, and provide copy to the permittee.

**ENVIRONMENTAL RESOURCE, DREDGE AND FILL, AND SURFACE WATER MANAGEMENT ACTIVITIES**

24. **Terms and Conditions**

The terms and conditions of the Florida Department of Environmental Protection’s Emergency Final Order shall apply to any activity located in uplands and waters of the state, including wetlands, undertaken in response to the Emergency.

**NOTICE OF RIGHTS**

Pursuant to Section 120.569(2)(n), Florida Statutes, any party adversely affected by this Order has the right to seek an injunction of this Order in circuit court or judicial review of
it under Section 120.68, Florida Statutes. Judicial review must be sought by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure, with the Clerk of the District at 7601 U.S. Highway 301 North, Tampa, Florida 33637-6759, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this Order is filed with the Clerk of the District.

DONE AND ORDERED in Hillsborough County, Florida, on this 28 day of August, 2019.

Attest:

Lori Manuel

Signature

Lori Manuel

Print Name

8/28/19

Date

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By:

Brian Armstrong, Executive Director

Date: 8/28/19

Filed this 30 day of August, 2019.

Jean Phillips
Deputy Agency Clerk