

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

IN RE:

EMERGENCY AUTHORIZATION FOR
REPAIRS, REPLACEMENT,
RESTORATION, AND CERTAIN
OTHER MEASURES MADE NECESSARY
BY TROPICAL STORM IDALIA

FIRST AMENDED EMERGENCY ORDER NO. SWF 23-034

Under the authority of Sections 120.569(2)(n), 252.36, 252.46, and 373.119(2), Florida Statutes (“F.S.”), and upon consideration of State of Florida Executive Order Nos. 23-171, 23-172, 23-174, and 23-175 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 Tropical Storm Idalia (hereinafter, “the Storm”):

FINDINGS OF FACT

1. The District is an agency charged with the responsibility to conserve, protect, manage, and control the water resources within all or part of sixteen (16) counties designated in its geographic boundaries, including Charlotte, Citrus, DeSoto, Hardee, Hernando, Hillsborough, Lake, Levy, Manatee, Marion, Pasco, Pinellas, Polk, Sarasota, and Sumter counties (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. By State of Florida Executive Order Nos. 23-171, 23-172, 23-174, and 23-175 (collectively, “the Executive Order”), the Governor declared that a state of emergency exists throughout the Emergency Area, based upon the serious threat to the public health, safety, and welfare posed by the Storm.

3. The Executive Order recognizes 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 Order, 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 the Storm.

4. Section 373.119(2), F.S., provides that whenever the District’s 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 Storm will create 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 Storm.

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 Storm poses an immediate danger to the public health, safety, or welfare and requires an immediate order of the District.

9. Under the Executive Order, 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 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, 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 Storm 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 retroactively to August 26, 2023 and expire upon the expiration or rescission of the Executive Order, as modified or extended.

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 and provide for continuity of operation, the Executive Director hereby suspends, to the extent necessary, the effect of any statute, rule, or order that provides for the District's ability to procure necessary supplies, commodities, services, temporary premises, and other resources, to include, without limiting the generality of the foregoing, any and all statutes, rules, and orders that affect budgeting, leasing, printing, purchasing, travel, the conditions of employment, and the compensation of employees. The Executive Director hereby delegates the authority to implement the emergency functions in this paragraph to the Business and IT Services Division Director.

CONSUMPTIVE USES OF WATER

19. **General Conditions**

All activities authorized under this Section are subject to 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 Storm:

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 authorize 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 copies 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 No. 23-1348, as amended, 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 Hernando County, Florida, on August 31, 2023.

Approved as to legal form and content

Chris Tumminia, General Counsel

**SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT**

By: 
Brian J. Armstrong, Executive Director

Filed this 31st day of
August 2023.


Deputy Agency Clerk

[SEAL]

