

BEFORE THE GOVERNING BOARD OF THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

SFWMD No.: 2015-060-DAO-WU

In re:

FINAL ORDER MODIFYING ORDER
NO.: 2015-034-DAO-WU, MODIFYING
THE START/STOP PUMP TIMES IN THE
OPERATIONAL PROTOCOL GOVERNING
FLORIDA POWER & LIGHT'S SURFACE
WATER WITHDRAWALS FROM THE
L-31E CANAL

RECEIVED
OPERATIONS OFFICE
AUG 14 2015 2:45 PM
SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

ORDER

The Governing Board of the South Florida Water Management District (District), pursuant to Sections 120.569, 373.083, and 373.119(2), Florida Statutes (Fla. Stat.), after considering the recommendations of District staff and being otherwise fully appraised of the matter, issues the following Order containing Findings of Fact, Ultimate Facts and Conclusions of Law:

FINDINGS OF FACT

1. Florida Power & Light (FPL) submitted a request to change the start and stop time for the temporary pumps which withdraw surface water from the L-31E Canal for the purpose of providing water to reduce the temperature and salinity of the cooling canal system ("CCS") located at its Turkey Point Plant.
2. FPL states a midnight start time makes it difficult to mobilize its resources and coordinate with water managers at the District.
3. The CCS is not part of the certified site permitted under State License PA-03-45 pursuant to Section 403.501, Fla. Stat., *et seq.*

4. The District is a public corporation of the State of Florida, existing pursuant to Chapter 25270, Laws of Florida, 1949, and operating pursuant to Chapter 373, Fla. Stat., and Title 40E, Florida Administrative Code (Fla. Admin. Code), as a multi-purpose water management district with its principal office at 3301 Gun Club Road, West Palm Beach, Florida. The District has the power and duty to protect Florida's water resources and to administer and enforce the provisions of Chapter 373, Fla. Stat., and the rules promulgated thereunder, Title 40E, Fla. Admin. Code. The District has jurisdiction over the matters addressed in this Emergency Final Order.

5. On May 19, 2015, the District's Executive Director issued Order No. 2015-034-DAO-WU, titled "Emergency Final Order authorizing Florida Power and Light to withdraw water along and from the L-31E Canal System; Miami-Dade County, Florida." The Governing Board concurred with the Executive Director's action at its June 11, 2015 meeting.

6. Order No. 2015-034-DAO-WU authorized FPL's diversion of water that would otherwise be released to Biscayne Bay and tide via the S-20F, S-20G and S-21A structures above the volume of water reserved for Nearshore Central Biscayne Bay in Rule 40E-10.061, Fla. Admin. Code.

7. The District has been the designated local sponsor of the Central and Southern Florida Flood Control Project ("C&SF Project") pursuant to Section 373.1501, Fla. Stat. As local sponsor, the District operates C&SF Project components, including the L-31E Canal System and the surface water flow to tide from the associated basins consistent with the guidance provided in the United States Army Corps of Engineers Master Water Control Manual, East Coast Canals, Volume 5 ("Water Control Manual").

8. The L-31E Canal System is part of the C&SF Project. More specifically, it is a borrow canal and levee system that stretches north – south intercepting water as it flows eastward to tide in southeast Dade County and providing storm surge protection. The L-31E Canal runs parallel to the South Central Biscayne Bay and across several drainage basins, six of which are named for the associated major east-west canals: Canal 100 (C-100), C-1, C-102, C-103, North Canal and Florida City Canal. This canal network and coastal levee system is operated in a manner consistent with several C&SF Project purposes, including reducing flood and storm surge damage, as well as limiting saline water intrusion. Water from the L-31E Canal System is discharged to Biscayne Bay at several coastal structures.

9. Operation of the C&SF Project coastal structure gates in this canal network controls the quantity and timing of water discharged into this portion of Biscayne Bay. Operation of the Structures S-20F, S-20G, and S-21A are performed consistent with guidance from the United States Army Corps of Engineers regulation schedule and Master Water Control Manual. Under normal operating conditions for April 30 – October 15, the S-20F, S-20G, and S-21A structures are operated in the “high range,” meaning discharges to tide are conditionally made when stages upstream of the structure, including stages within the L-31E Canal, are 2.2 ft. National Geodetic Vertical Datum (“NGVD”) or higher. The structure gates close when headwater stages drop to 1.8 ft. NGVD. During the agriculture drawdown season (October 15th through April 30th), S-21A, S-20G, and S-20F are set to operate with open and close ranges (Open/Close) of 1.4/1.0, 2.2/1.8, and 1.4/1.0 feet NGVD, respectively.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

10. The District is authorized, in summary, to regulate connections and use of the District's rights of way, use of water, construction of new diversion facilities, initiation of new water uses, diversion and withdrawal facilities pursuant to a variety of statutes. See e.g., §§ 373.083, 373.085, 373.086, 373.1501, 373.171, 373.219, Fla. Stat. (2014).

11. The Governing Board may "[i]ssue orders to implement or enforce any provisions of th[e] chapter or regulations." § 373.083(2), Fla. Stat. (2014).

12. The Governing Board is authorized to issue orders affecting the use of water, as conditions warrant, and forbidding the construction of new diversion facilities or wells, the initiation of new water uses, or the modification of any existing uses, diversion facilities, or storage facilities within the affected area. § 373.171(1), Fla. Stat. (2014).

13. Pursuant to Sections 373.085, 373.086 and 373.1501, Fla. Stat., the District is authorized to act as local sponsor and operate the C&SF Project, including those structures that are part of the L-31E Canal System and relevant to the subject reservation.

14. The L-31E Canal System is part of the C&SF Project for which the District is the designated local sponsor pursuant to Section 373.1501, Fla. Stat. Pursuant to Sections 373.085 and 373.086, Fla. Stat., the District is authorized to operate the C&SF Project, including the S-20 Structure and the L-31E Canal system.

15. Rule 40E-10.061, Fla. Admin. Code, reserves water for protection of fish and wildlife in the Nearshore Central Biscayne Bay. Seasonal target flows are stated in this rule. Operation of the C&SF Project frequently involves discharge of water from the subject structures to Biscayne Bay and tide in excess of those reserved such that water is periodically available for use.

16. Considering the above findings of fact, it is appropriate to enter this Order modifying the withdrawal pump start and stop times stated in Order No. 2015-034-DAO-WU.

ORDER

Based upon the Findings of Fact, Ultimate Facts and Conclusions of Law, the Governing Board orders that Order No.: 2015-034-DAO-WU is modified as stated herein:

17. Paragraph 53.c of Order No.: 2015-034-DAO-WU is hereby modified to state: Step 2 - Withdrawal of Excess Water from the L-31E Canal System: If the Calendar Constraint (Step 1) is met, the following procedure shall be used to identify when FPL can withdraw water from the L-31E Canal System:

i. Part 1 – All pumps start each day off. A day shall begin at 12:00 p.m. (noon) and end at 11:59 a.m. the following day.

ii. Part 2 – All pumps remain off until the combined discharge from S-21A, S-20G, and S-20F equals or exceeds 504 acre-feet. FPL shall monitor a data feed (i.e., web page) maintained by the District that provides real time estimates of the discharges from S-21A, S-20G, and S-20F. The data populating this site will be collected by the District SCADA system and communication in the normal time frames (e.g., updates ranging in frequency from 15 minutes to an hour).

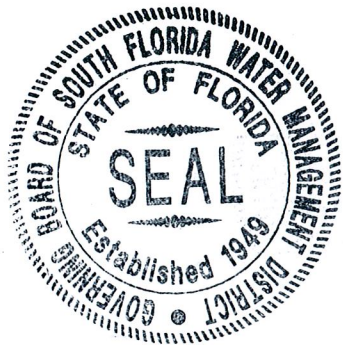
iii. Part 3 – Once the data feed confirms that the combined discharge from S-21A, S-20G, and S20F equals or exceeds 504 acre-feet, FPL may withdraw water from the L-31E Canal System for the remainder of the day at up to the maximum capacity provided that the Criterion to Prevent Over-Withdrawal or Hydraulic Slope Impact is met.

iv. Part 4 – End of the Day. By the end of the day (11:59 a.m. the following day on a 24-hour clock), FPL shall turn off all pumps. Once the pumps are secured for the day, FPL shall record the daily flow totalizer for each pump.

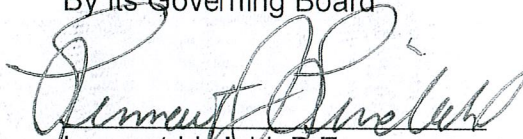
18. Paragraph 56.c is modified to state: FPL shall prepare a weekly report which summarizes the daily reports for the preceding week (Monday at noon through Sunday at 11:59 a.m.) and includes the following additional information:

19. A Notice of Rights is attached hereto as Exhibit A.


DONE AND SO ORDERED in West Palm Beach, Florida, on this 14th day of August, 2015.



SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Governing Board


Lennart Lindahl, P.E.
Executive Director's Designee

Attested:


District Clerk/Assistant Secretary
August 14, 2015

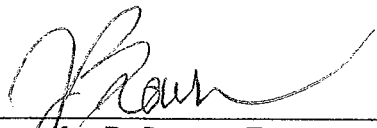
Legal Form Approved:


Jennifer D. Brown, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via electronic mail to Matthew J. Raffenberg, FPL, Matthew.Raffenberg@fpl.com; Phil

Coram, Florida Department of Environmental Protection, Phil.Coram@dep.state.fl.us; Paula Cobb, Florida Department of Environmental Protection, paula.cobb@dep.state.fl.us; Matthew Haber, Esq., City of Miami, mshaber@miamigov.com; Kerri L. McNulty, Esq., City of Miami, klmcnulty@miamigov.com; Julie Dick, Esq., Everglades Law Center, julie@evergladeslaw.org; Lee Hefty, Miami-Dade County, HeftyL@miamidade.gov; Brian Carlstrom, Biscayne National Park, brian_carlstrom@nps.gov; Joan Lawrence, U.S. Department of the Interior, lawrence@sfirestore.org; Steven Walker, Esq., Atlantic Civil, Inc., Lewis, Longman, & Walker, P.A., swalker@llw-law.com; Alfred Malefatto, Esq., Atlantic Civil, Inc., Lewis, Longman, & Walker, P.A., amalefatto@llw-law.com; James M. Porter, Esq., James M. Porter, P.A., Tropical Audubon Society, Jim@JamesMPorterPA.com; Carolyn Maclaughlin, National Parks Conservation Association, suncoast@npca.org; and Laura Reynolds, Tropical Audubon Society; on this 14th day of August, 2015.



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NOTICE OF RIGHTS

As required by Sections 120.569 and 120.60(3), Fla. Stat., the following is notice of the opportunities which may be available for administrative hearing or judicial review when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Not all of the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

RIGHT TO REQUEST ADMINISTRATIVE HEARING

A person whose substantial interests are or may be affected by the South Florida Water Management District's (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Fla. Stat. Persons seeking a hearing on a SFWMD decision which affects or may affect their substantial interests shall file a petition for hearing with the Office of the District Clerk of the SFWMD, in accordance with the filing instructions set forth herein, within 21 days of receipt of written notice of the decision, unless one of the following shorter time periods apply: (1) within 14 days of the notice of consolidated intent to grant or deny concurrently reviewed applications for environmental resource permits and use of sovereign submerged lands pursuant to Section 373.427, Fla. Stat.; or (2) within 14 days of service of an Administrative Order pursuant to Section 373.119(1), Fla. Stat. "Receipt of written notice of agency decision" means receipt of written notice through mail, electronic mail, or posting that the SFWMD has or intends to take final agency action, or publication of notice that the SFWMD has or intends to take final agency action. Any person who receives written notice of a SFWMD decision and fails to file a written request for hearing within the timeframe described above waives the right to request a hearing on that decision.

If the District takes final agency action which materially differs from the noticed intended agency decision, persons who may be substantially affected shall, unless otherwise provided by law, have an additional Rule 28-106.111, Fla. Admin. Code, point of entry.

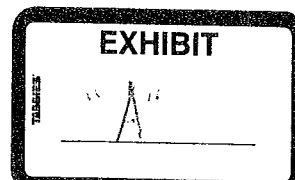
Any person to whom an emergency order is directed pursuant to Section 373.119(2), Fla. Stat., shall comply therewith immediately, but on petition to the board shall be afforded a hearing as soon as possible.

A person may file a request for an extension of time for filing a petition. The SFWMD may, for good cause, grant the request. Requests for extension of time must be filed with the SFWMD prior to the deadline for filing a petition for hearing. Such requests for extension shall contain a certificate that the moving party has consulted with all other parties concerning the extension and that the SFWMD and any other parties agree to or oppose the extension. A timely request for an extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

FILING INSTRUCTIONS

A petition for administrative hearing must be filed with the Office of the District Clerk of the SFWMD. Filings with the Office of the District Clerk may be made by mail, hand-delivery, or e-mail. Filings by facsimile will not be accepted. A petition for administrative hearing or other document is deemed filed upon receipt during normal business hours by the Office of the District Clerk at SFWMD headquarters in West Palm Beach, Florida. The District's normal business hours are 8:00 a.m. – 5:00 p.m., excluding weekends and District holidays. Any document received by the Office of the District Clerk after 5:00 p.m. shall be deemed filed as of 8:00 a.m. on the next regular business day. Additional filing instructions are as follows:

- Filings by mail must be addressed to the Office of the District Clerk, P.O. Box 24680, West Palm Beach, Florida 33416.



- Filings by hand-delivery must be delivered to the Office of the District Clerk. Delivery of a petition to the SFWMD's security desk does not constitute filing. It will be necessary to request that the SFWMD's security officer contact the Office of the District Clerk. An employee of the SFWMD's Clerk's office will receive and file the petition.
- Filings by e-mail must be transmitted to the Office of the District Clerk at clerk@sfwmd.gov. The filing date for a document transmitted by electronic mail shall be the date the Office of the District Clerk receives the complete document. A party who files a document by e-mail shall (1) represent that the original physically signed document will be retained by that party for the duration of the proceeding and of any subsequent appeal or subsequent proceeding in that cause and that the party shall produce it upon the request of other parties; and (2) be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed.

INITIATION OF AN ADMINISTRATIVE HEARING

Pursuant to Sections 120.54(5)(b)4. and 120.569(2)(c), Fla. Stat., and Rules 28-106.201 and 28-106.301, Fla. Admin. Code, initiation of an administrative hearing shall be made by written petition to the SFWMD in legible form and on 8 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, SFWMD file number or any other SFWMD identification number, if known.
2. The name, address, any email address, any facsimile number, and telephone number of the petitioner and petitioner's representative, if any.
3. An explanation of how the petitioner's substantial interests will be affected by the agency determination.
4. A statement of when and how the petitioner received notice of the SFWMD's decision.
5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
6. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the SFWMD's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the SFWMD's proposed action.
8. If disputed issues of material fact exist, the statement must also include an explanation of how the alleged facts relate to the specific rules or statutes.
9. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the SFWMD to take with respect to the SFWMD's proposed action.

MEDIATION

The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401-405, Fla. Admin. Code. The SFWMD is not proposing mediation for this agency action under Section 120.573, Fla. Stat., at this time.

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to Section 120.68, Fla. Stat., and in accordance with Florida Rule of Appellate Procedure 9.110, a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal with the Office of the District Clerk of the SFWMD in accordance with the filing instructions set forth herein within 30 days of rendition of the order to be reviewed, and by filing a copy of the notice with the clerk of the appropriate district court of appeal.