

OGC Case Nos.: 00-0889

EMERGENCY AUTHORIZATION)
FOR TEMPORARY OPERATIONAL)
CHANGES TO ADDRESS HIGH)
WATER CONDITONS IN THE SOUTH FLORIDA REGION)

Under Sections 120.569 and 373.119(2) of the Florida Statutes, the State of Florida Department of Environmental Protection (Department) enters this Emergency Final Order in response to the imminent or immediate threats to valuable natural resources and severe economic losses resulting from sustained high water levels in the South Florida region.

1. The highest rainfall on record has occurred within the South Florida Ecosystem during the month of January causing severe impacts to natural resources. All areas of South Florida are inundated with water restricting the ability to safely move water to mitigate the effects of flooding.

2. The Water Conservation Areas are flooding in a manner that inundates tree islands and other wildlife habitat, and if sustained will cause serious stress and loss of life particularly for birds and mammals dependent on that habitat including eliminating nesting opportunities that can inhibit recovery of imperiled bird species. Imperiled bird species include the Snail Kite, Limpkin, and Wood Stork to name a few. Tree Islands themselves can be lost. Because the Water Conservation Areas are flooded, water cannot be released from Lake

Okeechobee to the south. Due to Herbert Hoover Dike integrity concerns, large volumes of water are being released into the Caloosahatchee Estuary, St. Lucie Estuary, and Indian River Lagoon contributing to severe impacts to the ecology of their estuaries.

3. As a result, there are immediate threats and impacts to valuable natural resources that underpin local economies that surround the Everglades Protection Area, Lake Okeechobee, the Caloosahatchee Estuary, the St. Lucie Estuary, and Indian River Lagoon. Loss of natural resources directly affects fisheries and fishing, seafood harvesting, and ecotourism which leads to significant economic losses. Immediate action that addresses this condition is necessary.

4. Discharges to the estuaries are contributing to impacts to the natural resources of those estuarine ecosystems. Those estuaries provide fishing, boating, sightseeing, seafood harvesting, and other important tourist related economic benefits. In a recent resolution by the Martin County Commission, water-related economic benefits to Martin and St. Lucie County alone were estimated to total more than \$840 million annually, with an additional \$588 million in property value benefits.

5. Sustained flooding in the Water Conservation Areas presents an immediate threat to valuable natural resources. According to the Florida Fish and Wildlife Commission, there are 69 identified species of wildlife within the South Florida ecosystem, much of which depend on habitat in the Water Conservation Areas. Specifically, sustained flooding of natural habitat, especially tree islands, will seriously impact and reduce population levels of many of these species, particularly white-tailed deer, nesting birds and wading birds. These species support and encourage substantial outdoor recreational opportunities in this region. Loss of those species and associated recreation due to flooding will lead to significant economic losses and impacts on local businesses. Also, loss of the tree islands themselves will impact cultural resources, At the

South Florida Water Management District's Water Resources Advisory Committee meeting, specifically the Miccosukee Tribe's stated that losing tree islands impacts their ability to carry out its culturally important green corn ceremonies.

6. Immediate action is necessary to deviate from permitted water management practices in order to move significant volumes of flood water out of the Water Conservation Areas through Shark River Slough, and subsequently provide opportunities to move more water south out of Lake Okeechobee relieving pressure on the Caloosahatchee and St. Lucie Estuaries. Moving water south, through Shark River Slough, will also have the added ecological benefit of improving salinity conditions of Florida Bay.

7. The Department has issued permits to the Army Corps of Engineers (Corps) for the following projects: WCA 3 Decompartmentalization and Sheetflow Enhancement Physical Model Project (Permit No. 0304879), including the S-152 water control structure; Modified Water Deliveries to the Everglades National Park Project (Permit No. 0246512), including the S-355A and S-355B water control structures; Ninth Amended Emergency Final Order to Operate the S-332B, S-332C, S-332D Pump Stations and Appurtenant Structures (OGC Case Nos. 00-0889 and 99-2242).

8. The Department has issued permits to the South Florida Water Management District (District) for the following projects: C-111 Spreader Canal Project (Permit No. 0293559), including the S-199 and S-200 Pump Stations, and the S-18C water control structures; Non-Everglades Construction Project Discharge Structures Project (File No. 0237803), including the S-334 water control structure; S-197 Control Structure Project (File No. 0306639), including the S-197 water control structure.

9. Under the current emergency conditions, it is appropriate to temporarily modify operations of the projects and immediately employ any remedial means deemed necessary to redress the emergency.

10. The Corps shall continue water quality and hydrologic monitoring of the existing permitted Corps project features, to identify and evaluate water quality and hydrologic conditions. The monitoring work provides water quality data to evaluate compliance with state water quality standards and long-term phosphorus concentration limits contained within the Settlement Agreement to the Federal Everglades lawsuit (Case No. 88-1886), and hydrologic data necessary for the adaptive operation of the pump stations to meet the requirements of the Biological Opinion while minimizing impacts to the water supply and flood protection purposes of the C&SF project.

11. The District shall continue water quality and hydrologic monitoring of the existing permitted District project features, to identify and evaluate water quality and hydrologic conditions. The monitoring work provides water quality data to evaluate compliance with state water quality standards and long-term phosphorus concentration limits contained within the Settlement Agreement to the Federal Everglades lawsuit (Case No. 88-1886), and hydrologic data necessary for the adaptive operation of the pump stations to meet the requirements of the Biological Opinion while minimizing impacts to the water supply and flood protection purposes of the C&SF project.

12. Operational changes that will help mitigate the current emergency are set forth in the document entitled, "Protective Operational Criteria to Compensate for Sustained L-29 Stage of 8.5 feet NGVD," attached hereto as Exhibit A.

CONCLUSIONS OF LAW

13. Sections 120.569 and 373.119 of the Florida Statutes gives the Department the authority to issue an Emergency Final Order if, as agency head, I find that an emergency exists requiring immediate action to protect the public health, safety, or welfare; the health of animals, fish or aquatic life; a public water supply; or recreational, commercial, industrial, agricultural or other reasonable uses; and the order recites with particularity the facts underlying that conclusion.

14. Based on the above findings, I hereby conclude that temporary operations in accordance with the Protective Operational Criteria to Compensate for Sustained L-29 Stage of 8.5 feet NGVD are necessary to protect the public health, safety, and welfare; the health of animals, fish or aquatic life; and recreational, commercial, industrial, agricultural and other reasonable uses.

15. Suspension of certain permit conditions, statutes and rules, is required to prevent any hindrance or delay of necessary action in coping with the emergency.

THEREFORE, IT IS ORDERED:

16. Description of Authorized Project

The Corps and the District are hereby authorized to make temporary operational changes in order to implement operation criteria to compensate for sustained L-29 Stages of about 8.5 feet NGVD as described in Exhibit A.

17. General Conditions

(a) The Corps and District shall implement the emergency operation activities as described in Exhibit A and in a manner that will minimize detrimental impacts (including

harmful flooding and degradation of water quality) to the environment, to the public, to adjacent properties, and to downstream receiving waters to the greatest extent practicable, pursuant to federal law and Sections 373.413 and 373.414 of the Florida Statutes. The Corps and District shall implement the emergency operation activities in a manner that will maximize beneficial impacts to the environment to the greatest extent practicable consistent with the hydrological and biological restoration goals of the Everglades Forever Act (Section 373.4592, F.S.) and the Florida Bay Restoration Act (Section 373.4593, F.S.). Should any adverse impacts occur from conducting the emergency activities, the Corps and District shall be liable for damages to the extent applicable under federal and state law.

(b) All activities authorized by this Emergency Final Order shall be performed using appropriate best management practices. For activities conducted in or discharging to wetlands or other surface waters, best management practices shall include properly installed and maintained erosion and turbidity control devices, to prevent erosion and shoaling and to control turbidity. These turbidity/erosion controls shall be installed prior to any clearing, excavation or placement of fill material and shall be maintained in an effective conditions at all locations until construction is completed, disturbed areas are stabilized, and turbidity levels have fallen to less than 29 NTUs above background for flows to Class III Waters and to background levels for flows to OFW. The Corps and the District shall be responsible for ensuring that erosion control devices/procedures are inspected/maintained during all phases of construction authorized by this Order. Additional activities, as described in the document entitled, "The Florida Development Manual - A Guide to Sound Land and Water Management" (revised February 1993), shall be conducted as needed to prevent degradation of adjacent wetlands and surface waters, to prevent violations of state water quality standards.

(d) If, for any reason, the Corps and/or the District does not comply with any condition or limitation specified in this Emergency Final Order, the Corps and/or the District shall immediately provide the Department's Office of Ecosystem Projects, Water Quality Standards and Special Projects Program, and Southeast District Office with a written report containing the following information: a description and cause of noncompliance; the period of noncompliance, including dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue; and steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance. Reports shall be provided to the above-referenced Department offices at the following addresses:

Florida Department of Environmental Protection
Office of Ecosystem Projects
3900 Commonwealth Boulevard, MS 45
Tallahassee, Florida 32399-3000
Telephone (850) 245-2228

(e) This Emergency Final Order conveys no title to land or water, does not constitute State recognition or acknowledgment of title, and does not constitute authority for the use of sovereignty land of Florida seaward of the mean high-water line, or, if established, the erosion control line, unless herein provided and the necessary title, lease, easement, or other form of consent authorizing the proposed use has been obtained from the Board of Trustees of the Internal Improvement Trust Fund.

(f) This Emergency Final Order does not convey to the Corps and/or the District or create in the Corps and/or the District any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property that is not owned or controlled by the Corps and/or the District. The issuance of this Emergency Final Order does not convey any vested rights or any exclusive privileges.

(g) The Corps and the District specifically agrees to allow authorized Department personnel access to the premises where the authorized activity is located or conducted for the purpose of ascertaining compliance with the terms of the Emergency Final Order; to have access to and copy any records that must be kept under conditions of the Emergency Final Order; to inspect the facility, equipment, practices, or operations regulated or required under this Emergency Final Order; and to sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this Emergency Final Order.

(h) The Corps and the District are responsible for coordinating the emergency operations with stakeholders including the Department of Interior, the Florida Department of Agriculture and Consumer Services, the Florida Fish and Wildlife Conservation Commission (FWC), and the Miccosukee Tribe of Indians of Florida. Prior to commencement of the emergency operations, the District shall provide information to the Department that documents that this coordination has taken place and that there are no major objections.

(i) The Corps and the District shall coordinate with the U.S. Fish and Wildlife Service and the FWC to ensure that there will be no adverse impacts to endangered or threatened species as a result of the proposed operations.

18. Specific Conditions

(a) Monitoring shall be in accordance with all applicable permits and monitoring plans on file with the Department. Monitoring results shall include salinity and ecological monitoring at the S-197 water control structure in accordance with the Appendix C – G-3273 Constraint Relaxation/S-356 Field Test and S-357N Operational Strategy Monitoring Plan. Seepage monitoring results shall include seepage monitoring along the C-111 Canal between the S-176 water control structure and the S-199 Pump Station. All reports and data generated as a

result of this monitoring shall be submitted to the Office of Ecosystem Projects (at the address listed above) upon receipt by the Corps and/or the District and within a timely manner.

(b) Exhibit A requires that the system be closely monitored to maximize intended benefit and avoid unintended consequences. Close coordination with the Department and stakeholders shall be maintained to address any potential water quality, flood protection, and environmental resource issues in a timely fashion. To this end, the Corps and the District will submit an Emergency Operations After Action Report as soon as practicable after cessation of all emergency operations to the addresses listed in General Condition 17(d) above. The report shall include details of operation activities, pumping dates and times, volume of water pumped, gauge readings, flow measurements, flow direction and other visual observations, seepage monitoring results, water quality monitoring results (including provisional data), and a comparison with previous years' data and results.

19. Suspension of Statutes and Rules

The following provisions of permits, statutes and rules are hereby suspended for the activities authorized by this Order for the duration of this Order:

(a) For those activities noted above, subject to the limitations, duration and other provisions of this Order, all requirements for permits, leases, consents of use or other authorizations under Chapters 253, 373, 376 and 403 of the Florida Statutes, and rules adopted thereunder.

(b) Notice requirements of sections 253.115, and 373.413 of the Florida Statutes and rules 18-21, 62-4, and 62-312 of the Florida Administrative Code; and,

(c) Application fee, lease fee, and easement fee requirements of sections 373.109 of the Florida Statutes and Rules 18-21, and 62-4 of the Florida Administrative Code.

20. Other Authorizations Required

Nothing in this Emergency Final Order shall eliminate the necessity for obtaining any other federal, state, water management district, or local permits or other authorizations that may be required.

21. Adverse Off-Site Impacts

(a) The Corps and the District shall ensure that adverse off-site water resource related impacts do not occur as a result of this Emergency Final Order and shall fully monitor conditions related to the activities authorized by this order.

(b) The correction of any erosion, shoaling, water quality, or flooding problems that result from the operation of the structures authorized by this order shall be the sole responsibility of the Corps and the District. In addition, the Corps and the District shall immediately resolve such problems to the Department's satisfaction.

(c) If any adverse water quality, water quantity, or other negative environmental impacts occur as a result of this Emergency Final Order, the Department reserves the right to immediately revoke or modify this authorization upon written notice.

22. Immunity from Liability

The Department's immunity from liability under Section 373.443 of the Florida Statutes for any damages that might result from the activities authorized by this Emergency Final Order shall not be diminished by the terms of this order or any activities taken pursuant to this order.

23. Water Quality Certification

The Department waives water quality certification for those activities authorized by this Emergency Final Order.

24. Violation of Conditions of Emergency Final Order

Failure to comply with the conditions set forth in this Emergency Final Order shall constitute a violation of a Department Final Order under chapters 373, 376, and 403 of the Florida Statutes, and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

25. Expiration Date

The Department finds that this state of emergency is expected to continue for up to 90 days. Therefore, this Emergency Final Order shall remain in effect until 90 days from effective date, unless rescinded, modified or extended by further order of the Department.

26. Effective Date

This Emergency Final Order shall be effective as of February 11, 2016.


NOTICE OF RIGHTS

Any person to whom this emergency order is directed may petition the Department for a hearing before the agency head in accordance with section 373.119 of the Florida Statutes.

Any party substantially affected by this order has the right to seek judicial review of it under Section 120.68 of the Florida Statutes, by filing a notice of appeal under Rule 9.110 and 9.190 of the Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and by filing a copy of the notice 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 Department.

DONE AND ORDERED on this 11th day of February 2016 in Tallahassee, Florida.

STATE OF FLORIDA, DEPARTMENT
OF ENVIRONMENTAL PROTECTION



JONATHAN P. STEVERSON
Secretary
3900 Commonwealth Boulevard
Tallahassee, FL 32399-3000

FILING AND ACKNOWLEDGMENT

FILED, on this date under Section 120.52 of the Florida
Statutes, with the designated Department Clerk, receipt of
which is hereby acknowledged.

 2-11-16

Clerk Date

CERTIFICATE OF SERVICE

I, Lea Crandall, HEREBY CERTIFY that a true and correct copy
of this Emergency Final Order was sent electronically to the following persons on this 11th day
of February 2016:

Exhibit A - Protective Operational Criteria to Compensate for Sustained L-29 Stage of 8.5 feet NGVD

The following criteria are protective and implementable operation criteria to compensate for sustained L-29 Stages of about 8.5 feet NGVD.

These operations described below are expected to be of a relatively short duration (90 days or less).

S-335 closed with western Reaches (S-336 to G-119 and G-119 to S-380) of the C-4 Canal lowered to the extent practical.

S-334 flows maximized to the extent the following constraints allow. However, if the L-31N stage rises above the operation ranges prescribed below then S-334 discharges will be reduced to 250 cfs or less until the canal daily average stage returns to within the prescribed ranges.

S-338 discharge maximized (e.g. 250 to 300 cfs) to the extent that downstream conditions allow. Includes operating S-148 with an open/close of 3.0/2.5 for S-148 flows of less than 700 cfs and with an open/close of 3.5/3.0 (lower half of the low range) for S-148 flow greater than 700 cfs.

G-211 discharging to the extent practical to convey S-334 discharges and to maintain the L-31N with the 5.7/5.3 stage range prescribed by Column 2 operations.

S-331 pumping ranges lower by 0.2 feet with the remaining criteria unchanged.

S-332B and S-332C operated to maintain the L-31N's average daily stage between 4.6 and 4.3; which is 0.2 feet lower than the Column 2 ranges of 4.8 and 4.5 feet NGVD.

Operate S-332D to discharge up to 250 cfs to S-332D's detention area and up to 325 cfs to the Southern Detention Area (SDA) through S-332DX1 to maintain the L-31N's average daily stage between 4.6 and 4.3 feet NGVD.

Discharge to tide through the C-102 Canal will be maximized to the extent that downstream conditions allow. The SFWMD will continue to have full operational flexibility to operate S-165 within the low range of 3.0 to 1.9 feet NGVD. It is acknowledged that without remote control of S-194 (manually operated structure) that changes to S-194 will occur less frequently.

Discharge to tide through the C-103 Canal will be maximized to the extent that downstream conditions allow. The SFWMD will continue to have full operational flexibility to operate S-167 and S-179 within their low ranges of 3.0 to 1.9 feet NGVD and 3.1 to 2.7 feet NGVD. It is acknowledged that without remote control of S-196 (manually operated structure) that changes to S-196 will occur less frequently.

S-176 will be operated to discharge up to the larger of the average daily/24-hour or instantaneous discharge from S-331 minus the flow to the east through S-194 and S-196. It may discharge more than this amount if necessary to maintain the L-31N average daily stage within the operational range.

S-199 will be operate with all available capacity until March 1, 2016 at which time the availability of the pumps will require compliance with the criteria for the Cape Cable Seaside Sparrow Critical Habitat Unit 3 (formerly known as Sub-Population D) ; stage at EVER4 below 2.36 feet NGVD.

S-200 will be operate with all available capacity until March 1, 2016 at which time the availability of the pumps will require compliance with the criteria for the Cape Cable Seaside Sparrow Critical Habitat Unit 3 (formerly known as Sub-Population D) ; stage at R3110 below 4.95 feet NGVD.

S-177 will be operated to discharge up to the larger of the average daily/24-hour or instantaneous discharge from S-176 minus the flow through S-199. It may discharge more than this amount if necessary to maintain an average stage below 3.6 in the upstream reach of the C-111 Canal

S-18C will be fully open (gates out of the water).

S-197 will be operate to maintain the S-18C's Daily Average HW between 2.6 and 2.4 feet NGVD with a daily discharge limit which does not exceed the smaller of 1) the previous day's average pumping at S-331, 2) the previous day's average discharge through S-176, 3) the previous days average discharge through S-177, and 4) 400 cfs (half of the typical flow for a one third opening of S-197. This will result in discharges larger than those prescribed by the ERTF Increment 1 when WCA-3A is above the High Water Action Line (Case 3).