

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re:

EMERGENCY MEASURES –
HIGH WATER SCENARIOS

OGC NO. 16-0286

ORDER

Under Section 373.439, F.S., of the Florida Statutes (“F.S.”), the State of Florida Department of Environmental Protection (“Department”) enters this Order in response to imminent floods that threaten the safety of certain stormwater management systems, dams, reservoirs, impoundments, appurtenant work, or works, resulting from forecasted high water scenarios due to the upcoming wet season.

FINDINGS OF FACT

1. As a direct result of an unusually strong El Nino weather pattern in the Eastern Pacific Ocean, the State of Florida experienced and faced an increased risk of severe weather and heavy rainfall during the winter and spring months of 2015-2016.
2. Governor Rick Scott signed Executive Order 16-59 on February 26, 2016, declaring a state of emergency in Lee, Martin and St. Lucie counties and the Department issued an Emergency Final Order on February 11, 2016.
3. In its February 11, 2016 Emergency Final Order, the Department authorized the South Florida Water Management District to implement projects that include operational and structural changes to existing system infrastructure that will help mitigate the Lake Okechobee discharges to the St. Lucie and Caloosahatchee estuaries and high water stages in the Water Conservation Areas (WCAs) by moving excess water south.

4. The El Nino weather pattern will continue through the wet season that occurs during the months of May through November, coinciding with the Atlantic hurricane season, posing an imminent flooding threat to the safety of the works of the district.

5. To alleviate stress resulting from such imminent floods on the works of the district and construction activities previously authorized in the Department's Emergency Final Order dated February 11, 2016, as well as permitted activities for the Modified Water Deliveries Project, C-111 South Dade Project, and C-111 Spreader Canal Project, action as specifically set forth in paragraph 8 below is necessary and consistent with the authorization in the Department's Emergency Final Order dated February 11, 2016.

6. Moving significant volumes of water out of the WCAs through Shark River Slough, would act to alleviate stresses caused by excessive rainfalls that have frequently resulted in high water stages in the WCAs and harmful Lake Okeechobee discharges to the St. Lucie and Caloosahatchee estuaries.

7. Ancillary benefits to the ecosystem may also be achieved by alleviating the aforementioned stresses. Sustained flooding in the WCAs threatens valuable natural and cultural resources. According to the Florida Fish and Wildlife Commission, there are 69 identified imperiled species of wildlife within the south Florida ecosystem, much of which depend on habitat in the WCAs. Specifically, sustained flooding of natural habitat, especially tree islands, will seriously impact and reduce population levels of many of these species and cultural resources. Moving water south, through Shark River Slough and Taylor Slough, will also have the added ecological benefit of improving salinity conditions of Florida Bay.

8. The completion of the following projects previously authorized by the Department's Emergency Final Order dated February 11, 2016, is imperative to remediate the aforementioned stresses. These projects include:

- a. Installation of temporary pumps at the S-355 structures to alleviate high water stages in WCA – 3B and raise stage elevations in the L-29 Canal in order to increase water deliveries to Everglades National Park – Northeast Shark River Slough;
- b. Operations of the WCA-3 Decompartmentalization and Sheetflow Enhancement Physical Model Project, including the S-152 water control structure;
- c. Modified Water Deliveries to the Everglades National Park Project Operations including the S-357N water control structure to maintain normal water stages within the 8.5 Square Mile Area near Everglades National Park;
- d. Degradation of 250 feet of the S-327 weir within the S-332D detention basin, associated with the C-111 South Dade Project; and
- e. Backfilling and grading of six 150 linear foot earthen plugs within the southern extent of the L-28 borrow canal and the operation of the S-344 water control structure which will redirect water from WCA – 3A to Big Cypress National Preserve.

CONCLUSIONS OF LAW

9. Based on the findings of fact above, it is hereby concluded that passing or imminent floods threaten the safety of stormwater management systems, dams, reservoirs, impoundments, appurtenant work or works and the Department must immediately employ any remedial means to protect life and property.

10. Under 373.439, F.S., the Secretary of the Department is authorized to take such steps as may be essential to safeguard life and property.¹

11. Suspension of certain permit conditions, statutes and rules, to the extent required to comply with this order, is necessary so as to not prevent, hinder, or delay necessary action in coping with the threat of flooding.

THEREFORE, IT IS ORDERED:

12. In order to take such steps as may be essential to safeguard life and property, the Department is hereby granting the South Florida Water Management District and U.S. Army Corps authority to:

- a. complete the construction of all projects specifically referenced in paragraph 8 above.
- b. continue to operate those structures specifically referenced in the Department's Emergency Final Order dated February 11, 2016, in the same manner as authorized by that order or in accordance with existing permits.

13. This Order shall remain in effect through November 30, 2016.

14. The Department issues this Order solely to address the issues raised in this Order. This Order shall not be construed to authorize any activity within the jurisdiction of the Department except in accordance with the express terms of this Order.

NOTICE OF RIGHTS

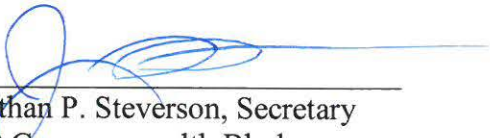
Pursuant to Section 120.569(2)(n) of the Florida Statutes, any party adversely affected by this Order has the right to seek an injunction of this Order or any authorization issued hereunder in circuit court or judicial review of it under Section 120.68 of the Florida Statutes. Judicial review

¹ It should be noted that sections 373.119(2) and 403.061(8), Florida Statutes, provide additional support and authority for issuing this Order.

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 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 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 Department.

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

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION



Jonathan P. Steverson, Secretary
3900 Commonwealth Blvd.
Tallahassee, FL 32399

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



Clerk

Date: 5-11-16