

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re:

**EMERGENCY MEASURES
DUE TO HIGHWATER CONDITIONS
IN SOUTH FLORIDA REGION**

OGC No.: 17-0867

SECOND AMENDED EMERGENCY FINAL ORDER

Under Sections 120.569(2)(n), 252.46, 373.119(2), and 373.439, Florida Statutes, and upon consideration of the following findings of fact, the State of Florida Department of Environmental Protection (Department) enters this Second Amended Emergency Final Order (Order) extending Emergency Final Order 17-0867 issued on June 23, 2017 and amended on August 4, 2017, including the Findings of Fact and Conclusions of Law, in response to the effects of Tropical Storms Emily and Philippe, Hurricane Irma and high rainfall and flooding in the South Florida Region, specifically the Everglades Protection Area, that threatens certain stormwater management systems, works and impoundments and also poses an imminent or immediate danger to valuable natural resources, the public health, safety or welfare.

FINDINGS OF FACT

1. In June 2017, high rainfall events occurred across the South Florida Region causing high water conditions and flooding in the Everglades Protection Area, especially in Water Conservation Area 3A.
2. In July 2017, Tropical Storm Emily impacted the South Florida Region with widespread rainfall which exacerbated already uncommonly high water levels in Water Conservation Area 3A.

3. In September 2017, Hurricane Irma made landfall in southwest Florida as a Category 3 with maximum sustained winds of approximately 130 mph and widespread rainfall which exacerbated already uncommonly high water levels in Water Conservation Area 3A.

4. In October 2017, Tropical Storm Philippe impacted the South Florida Region with widespread rainfall which exacerbated already uncommonly high water levels in Water Conservation Area 3A.

5. These massive rainfall events, named storms and flooding have resulted in water levels in Water Conservation Area 3A which have exceeded the regulation schedule for more than 175 days. High water levels inundate tree islands and other wildlife habitats, and when sustained, cause stress and loss of life particularly for birds and mammals. The Florida Fish and Wildlife Conservation Commission (FWC) issued Order No. EO 17-24 on June 13, 2017 and Order No. EO 17-48 on October 18, 2017 establishing special regulations regarding wildlife in the Everglades Protection Area. This also poses an immediate threat and impact to valuable natural resources that underpin local economies that surround the Everglades Protection Area. Loss of natural resources will lead to losses in outdoor recreation opportunities, as well as ecotourism and related economic benefits.

6. The Department finds that the rainfall and subsequent high-water events described above has created a state of emergency threatening valuable natural resources, as well as, the public health, safety, welfare, and property in the South Florida Region. As a result of the emergency, continued operational management of the effected system is necessary.

7. The Department has issued permits to the South Florida Water Management District (District) for the following projects: Lake Okeechobee Protection Permit (Permit No.

0174552-011) for the operation and control of 35 water control structures discharging into or from Lake Okeechobee; 8.5 Square Mile Area and S-356 Pump Station Phases of the Modified Water Deliveries to the Everglades National Park Project (File No. 0317442-004); C-111 Spreader Canal Project (Permit No. 0293559) , including the S-199 and S-200 Pump Stations, and the S-737 and S-18C water control structures; Non-Everglades Construction Project Discharge Structures Project (Permit No. 0237803), including the S-344 and S-343 water control structures; S-197 Control Structure Project (Permit No. 0306639), including the S-197 water control structure; Everglades Construction Project (Permit Nos. 0311207 and FL0778451)

8. The Department has issued permits to the U.S. 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; C-111 South Dade and Modified Water Deliveries to the Everglades National Park Projects (File No. 0246512-013); 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).

9. 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.

10. Under the current emergency conditions, it is appropriate to temporarily modify operations of the projects and immediately employ any remedial means, including but not limited to constructing temporary features, deemed necessary to redress the

emergency.

11. 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 associated with state water quality standards and the 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 evaluate the effects on wildlife, water supply and flood protection in the C&SF project.

12. 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 associated with state water quality standards and the 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 evaluate the effects on wildlife, water supply and flood protection in the C&SF project.

CONCLUSIONS OF LAW

13. Based on the findings of fact above, it is hereby concluded that the emergency caused by the high rainfall events and flooding pose an immediate danger to the public health, safety, or welfare and requires an immediate order of the Department.

14. Under Sections 120.569(2)(n), 252.46, 373.119(2), and 373.439, Florida Statutes, the Secretary of the Department, or designee, is authorized to issue this Order.

15. Suspension of statutes and rules as noted within this order is required so as to not prevent, hinder, or delay necessary action that the Department, the District or the Corps

may need to take in coping with the emergency.

THEREFORE, IT IS ORDERED:

16. Based upon the above Findings of Fact and Conclusions of Law, and pursuant to the above cited laws, I hereby order that:

- A. The Corps and the District are hereby authorized to make temporary operational changes in order to minimize detrimental impacts (including harmful flooding and degradation of water quality) to the environment, to the public, to adjacent properties, and to downstream receiving water to the greatest extent practicable.
- B. Permits described in the Findings of Facts are temporarily modified to authorize relief from the operations permit conditions. All other permit conditions shall remain in full force and effect.
- C. The District and Corps are authorized to conduct construction activities necessary to alleviate the emergency conditions. Prior to, or concurrent with, commencing construction activities the District or the Corps shall contact the Office of Ecosystem Projects. Within 30 days of completion of construction, the District or the Corps shall apply to the Office of Ecosystem Projects for the necessary authorizations.
- D. General Conditions:
 - a. The Corps and District shall implement the emergency operation activities 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, 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, Florida Statutes) and the Florida Bay Restoration Act (Section 373.4593, Florida Statutes). 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, respectively.

- b. All activities authorized by this 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 condition at all locations until construction is completed, and disturbed areas are stabilized. 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.

- c. If, for any reason, the Corps and/or the District does not comply with any condition or limitation specified in this Order, the Corps and/or the District shall immediately provide the Department's Office of Ecosystem Projects 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 address:

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

- d. This Order does not authorize any entrance upon or activities on property that is not owned or controlled by the Corps and/or the District.
- e. The Corps and the District specifically agree 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 Order; to have access to and copy any records that must be kept under conditions of the Order; to inspect the facility, equipment, practices, or operations regulated or required under this Order; and to sample or monitor any substances or parameters at any location

reasonably necessary to assure compliance with this Order.

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

E. 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-I97 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. Activities shall 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 (Report) as soon as practicable after cessation of all emergency operations to the addresses listed 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

F. 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, Florida Statutes, and rules adopted thereunder.
- b. Notice requirements of Sections 253.115, and 373.413, 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, Florida Statutes, and Rules 18-21, and 62-4 of the Florida Administrative Code.

17. 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.

18. 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 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 Order, the Department reserves the right to immediately revoke or modify this authorization upon written notice.

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

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

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


22. This Order shall take effect immediately upon execution by the Secretary of the Department, or designee, and shall expire on March 30, 2018, unless rescinded, modified or extended by further order of the Department.

NOTICE OF RIGHTS

Any person to whom this Order is directed may petition the Department for a hearing in accordance with Section 373.119, Florida Statutes. 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 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 30th day of November 2017, in Tallahassee, Florida.

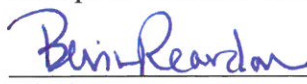
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Noah Valenstein, Secretary

3900 Commonwealth Blvd.
Tallahassee, Florida 32399-3000

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



Clerk

11/30/17
Date


Deputy