

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

IN RE:

DECLARATION OF EMERGENCY RELATING
TO PROVISION OF WATER FROM THE CITY OF
NORTH PORT'S WATER UTILITY SYSTEM
IN RESPONSE TO HURRICANE CHARLEY

EXECUTIVE DIRECTOR ORDER NO. SWF 04-069

David L. Moore, Executive Director of the Southwest Florida Water Management District (District), at District Headquarters, 2379 Broad Street, Brooksville, Florida, received evidence and information from District staff and representatives of the City of North Port and the Peace River Manasota Regional Water Supply Authority regarding water quality effects on the City's water utility system from Hurricane Charley.

FINDINGS OF FACT

1. Governor Jeb Bush issued Executive Order No. 04-182 declaring a state of emergency for the State of Florida in anticipation of Storm Bonnie and Hurricane Charley striking various parts of the State.
2. On Friday, August 13, 2004, Hurricane Charley, a Category 4 hurricane made landfall on the Southwest Coast of Florida, at Sanibel Island, heading inland over the mainland, causing widespread damage to public infrastructure, including water utility systems, and dwellings, and other public and private structures in areas including Charlotte and Desoto Counties.
3. The Peace River Manasota Regional Water Supply Authority's ("Authority") regional water storage and distribution system was damaged by the Hurricane. Public and private water supply systems within DeSoto and Charlotte Counties have also been damaged. Due to the damage, the Authority's supply is being supplemented by the City to maintain adequate pressure within the public supply system to provide water to Charlotte County. Damage to other public and private water supply systems has left large segments of the population in Charlotte and DeSoto Counties without a water supply.
4. In 1995, the District issued the City of North Port (the "City") Water Use Permit No. 2002923.009 authorizing the City to withdraw a specified quantity of

water from Myakkahatchee Creek and the Cocoplum Waterway upon certain terms and conditions (the "Permit").

5. The City, as authorized by the Permit, is interconnected with the Authority's system to obtain water from the Authority when the City is unable to use water from the Myakkahatchee Creek due to its water quality or inadequate flow from the Myakkahatchee Creek.

6. The City has the water treatment plant capacity and the ability to use the interconnect(s) with the Authority/Charlotte County to supply water that would normally be supplied by the Authority to provide water to residents of Charlotte County.

7. The City has water treatment plant capacity to provide water to Desoto County via truck and to allow the use of certain fire hydrants for water supply for residents in Charlotte County.

CONCLUSIONS OF LAW

8. The Executive Director of the District is duly authorized by section 373.119(2), Florida Statutes to declare that an emergency exists requiring immediate action to protect the public health, safety or welfare and authorizing such action as the executive director deems necessary to meet the emergency.

ORDER

9. An emergency is declared for Charlotte and DeSoto County due to risk to the health, safety and welfare of the residents in those Counties from water supply systems and sources impacted by Hurricane Charley.

10. The City is authorized to use such quantity of water from those sources authorized by the Permit as is necessary to provide water to Charlotte and DeSoto Counties as the Authority and other governmental entities may request for public use, to maintain system pressure and restore water supply systems to normal operation.

11. The City shall continue to meter, and report to the District the quantity of water withdrawn from the sources authorized under the Permit indicating the starting and ending dates of emergency operations and return to normal operations. Reports should be submitted every 30 days, as feasible, prior to return to normal operations.

12. Quantities withdrawn pursuant to paragraph 10. shall not be included in calculations to determine the 12-month running average compliance or peak month compliance with the withdrawal quantity limitations in the Permit.

13. No adverse impacts prohibited by 40D-2.301, F.A.C. are anticipated to result from the withdrawals authorized by this Order. In the event that adverse impacts do occur, the City shall coordinate with the District to address those impacts.

14. Except as provided in paragraph 10. and 11. above, all other terms and conditions of the Permit shall remain in full force and effect.

15. This Order shall remain in effect until public health, safety and welfare are restored including, but not limited to, restoration of normal operation of the City's water utility system.

DONE AND ORDERED in Hernando County, Florida, as of August 14, 2004.

Filed this 18th day
of August, 2004.

Cardyn L. Stout

Southwest Florida Water
Management District

By:

Gene [Signature] for
David L. Moore
Executive Director

(SEAL)

NOTICE OF RIGHTS

Persons to whom this Executive Director Order is directed, or whose substantial interests are affected, may request pursuant to Section 373.119(3), Florida Statutes, to petition for an administrative hearing in accordance with Sections 120.569 and 120.57, Florida Statutes, and Chapter 28-106, F.A.C. A request for a hearing must:(1) explain how the petitioner's or other person's substantial interests will be affected by the District's action; (2) state all material facts disputed by the petitioner or other person, or state that there are no disputed facts; and (3) otherwise comply with Chapter 28-106, F.A.C.

A request for hearing must be filed with and received by the Agency Clerk of the District at the District's Brooksville address, 2379 Broad Street, Brooksville, FL 34604-6899 within 21 days of receipt of this notice. Receipt is deemed to be the fifth day after the date on which this notice is deposited in the United States mail. Failure to file a request for hearing within this time period shall constitute a waiver of any right you or any other person may have to request a hearing under Sections 120.569 and 120.57, Florida Statutes.

Mediation pursuant to Section 120.573, Florida Statutes and Rule 28-106.111, F.A.C. to settle an administrative dispute regarding the District's action in this matter is not available prior to the filing of a request for hearing.

In accordance with Section 120.569(1), Florida Statutes, the following additional administrative or judicial review may be available.

A party who is adversely affected by final agency action may seek review of the action in the appropriate District Court of Appeal pursuant to Section 120.68, Florida Statutes, by filing a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, within thirty (30) days after the rendering of the final action by the District.

PURSUANT TO SECTION 373.119(3), F.S., AND NOTWITHSTANDING ANY OTHER PROVISION UNDER CHAPTER 120, FLORIDA STATUTES, PERSONS TO WHOM THE ORDER IS DIRECTED SHALL COMPLY THEREWITH IMMEDIATELY, AND THE TIMELY FILING OF A PETITION SHALL NOT STAY SUCH PERSON'S OBLIGATION TO MAINTAIN SUCH COMPLIANCE DURING THE PENDENCY OF ANY ADMINISTRATIVE PROCEEDING.