

NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT

IN RE:

EMERGENCY FINAL ORDER
RELATING TO PERMITTING
OF ACTIVITIES UNDER
CHAPTERS 373, 403, AND 120,
FLORIDA STATUTES, AND
CERTAIN OTHER MEASURES
IN RESPONSE TO HURRICANE
SALLY

**THIRD AMENDED AND RESTATED
EMERGENCY ORDER NO. NFWFMD 20-062**

Under the authority of State of Florida Executive Order No. 20-224, as amended by State of Florida Executive Orders No. 20-225, 20-248, 20-279, and 21-10, and Sections 120.569(2)(n), 252.32(1)(b), 252.36, 252.363, 252.46, 373.439, and 373.119(2), Florida Statutes (“F.S.”), Brett Cyphers, Executive Director of the Northwest Florida Water Management District (“District”), enters this Emergency Order (“Order”) in response to the imminent or immediate danger to the public health, safety, and welfare of residents within the District resulting from the devastation wrought by Hurricane Sally. The Executive Director finds and determines:

FINDINGS OF FACT

1. The District is the political subdivision charged with the responsibility to conserve, protect, manage, and control the water resources within the sixteen (16) counties designated within its geographic boundaries, and to administer and enforce Chapter 373, F.S., and the rules promulgated thereunder as Chapters 40A and 62, Florida Administrative Code (“F.A.C.”). The District issues permits and authorizations in accordance with the various procedures and deadlines set forth in Chapters 120, 373, and 403, F.S., and rules promulgated thereunder as Chapters 40A and 62, F.A.C.

2. On September 14, 2020, the Governor of Florida issued Executive Order No. 20-224 (“Executive Order 20-224”) declaring a state of emergency for Escambia and Santa Rosa counties in Florida in anticipation of Hurricane Sally. On September 15, 2020, the Governor of Florida issued Executive Order No. 20-225 (“Executive Order 20-225”) extending the state of emergency to include Escambia, Santa Rosa, Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Walton, and Washington counties (“the Emergency Area”). On October 1, 2020, the Governor of Florida issued Executive Order No. 20-248 (“Executive Order 20-248”), adding Jefferson County to the Emergency Area. Through Executive Orders Nos. 20-279 and 21-10, Governor DeSantis extended Executive Order 20-224 until March 12, 2021.

3. Executive Order 20-224, as amended as stated above, recognizes that special duties and responsibilities resting upon state, regional, and local agencies and other governmental bodies in responding to the emergency may require waiver or deviation from the statutes, rules, ordinances, and orders those agencies and bodies administer. Pursuant to Executive Order 20-224, as amended as stated above, each state agency may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the order or rules of that agency, if strict compliance with the provisions of any such statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the effect of Hurricane Sally. Moreover, Executive Order 20-224, as amended as stated above, provides that each political subdivision within the State of Florida may waive certain provisions and formalities to allow for the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the community.

4. Section 373.119(2), F.S., provides that whenever the Executive Director, with the concurrence and advice of the Governing Board, finds that an emergency exists requiring immediate action to protect the public health, safety, or welfare, the Executive Director may,

without prior notice, issue an order reciting the existence of such an emergency and require that such action be taken as the Executive Director deems necessary to meet the emergency.

5. Given the magnitude of the effects of Hurricane Sally within the Emergency Area, District staff expects to continue to spend extensive time addressing permitting and regulatory matters resulting from the Hurricane. District emergency activities in response to Hurricane Sally have included, and will continue to include, assignment of staff to emergency operations, issuing authorizations, and work approval necessary to address the impacts of Hurricane Sally expected within the Emergency Area. Additionally, District office operations have been slowed, and will continue to be slowed, by the Hurricane, and District employees may be given administrative leave depending upon the extent of the devastation wrought by the Hurricane. Consequently, District staff may not be able to effectively address all Hurricane-related impacts while at the same time adequately addressing all existing and new permit or variance application review timelines for projects not related to the Hurricane, as required by Chapters 120, 373 and 403, F.S., and District rules.

6. A state of emergency declared by the Governor of Florida exists, requiring immediate action by the District's Executive Director, as duly authorized by Executive Orders 20-224, as amended as stated above, and Sections 120.569(2)(n), 252.32(1)(b), 252.36, 252.363, 252.46, 373.439, and 373.119(2), F.S.

7. Based on the foregoing Findings of Fact, the District's Executive Director concludes that immediate, strict compliance with the provisions listed in or promulgated under the authority of the statutes, rules, or orders set forth in Paragraph 1 herein continues to prevent, hinder, or delay necessary action in coping with the effect of Hurricane Sally within the Emergency Area,

and that the exercise of emergency powers to suspend such statutes, rules, and orders is necessary to protect the public health, safety, and welfare.

CONCLUSIONS OF LAW

8. Based on the findings recited above, it is hereby concluded that the emergency caused by Hurricane Sally continues to pose danger to the public health, safety, or welfare and requires an immediate order of the District.

9. Under Executive Order 20-224, as amended by Executive Orders 20-225, 20-248, 20-279, and 21-10, and Sections 120.569(2)(n), 252.32(1)(b), 252.36, 252.363, 252.46, 373.439, and 373.119(2), F.S., the Executive Director of the District is authorized to issue this Order.

10. Suspension of statutes and rules as noted within this Order is required so as not to prevent, hinder or delay necessary action in coping with the emergency.

ORDER

THEREFORE, IT IS ORDERED:

11. The staff and equipment of the District remains mobilized on emergency standby to assist any federal, state, county, municipal, or local government in managing any emergency resulting from Hurricane Sally.

12. An emergency is declared within the Emergency Area. For those entities requiring emergency action due to the effects of Hurricane Sally, permitting activities pursuant to Chapters 40A and 62, F.A.C., shall be undertaken in accordance with the procedures set forth herein to facilitate and expedite hurricane recovery activities.

ENVIRONMENTAL RESOURCE AND SURFACE WATER MANAGEMENT ACTIVITIES

13. Definitions

a. For the purposes of provisions contained in this part, the term “structures” includes:

i. utility infrastructure, including water and wastewater treatment plants, substations, lift stations, solid and hazardous waste facilities, utility lines (including transmission and distribution), poles, towers, support structures, cables, conduits, outfalls, intake structures, chillers, and pipelines;

ii. any dam, impoundment, reservoir, appurtenant work, or works associated with agricultural or forestry projects;

iii. roads, bridges, culverts, driveways, sidewalks, bike paths, and other similar public and private infrastructure;

iv. public, private, and commercial habitable and non-habitable buildings, and structures ancillary to these buildings, such as garages, cabanas, storage sheds, bath houses, pools, and decks; and

v. fences, signs, and billboards.

b. For purposes of provisions contained in this part, the term “drainage system” includes ditches, canals, ponds, swales, and other surface water conveyances; dams, weirs, dikes, and levees; and underdrains, outfalls, and associated water control structures. Any damage to structures or drainage systems authorized by the District and built to permitted design specifications may be authorized to be repaired to the design that was originally authorized by the District. Minor deviations to upgrade structures or drainage systems to current standards also are authorized.

14. Authorizations. The activities set forth in Paragraphs 15 through 17 herein may be undertaken to repair, restore, or replace structures, drainage systems, land, and submerged contours to the authorized or otherwise legally existing configuration and condition, subject to the

limitations in this Order. This Order does not authorize the construction of structures that did not exist prior to the effective date of this Order, unless specifically authorized below.

15. No Notice Required Landward of the Coastal Construction Control Line. The following activities may be conducted without notification to the District:

a. Temporary and permanent repair or restoration of structures and drainage systems that are still intact (i.e., not completely destroyed or eliminated) to the condition, dimensions, and configurations that were authorized or otherwise legally existing immediately prior to Hurricane Sally, provided the repair and restoration activities do not result in any expansion, addition, or relocation of the existing structure or systems. However, this shall not preclude the use of different construction materials consistent with current accepted permitting standards to allow upgrades to current structural and design standards.

b. The restoration (regrading, dredging, or filling) by local, regional, and state governments of surface (upland), wetland, and submerged land contours to the condition and configurations that were authorized or otherwise legally existing immediately prior to Hurricane Sally, provided the restoration does not result in any expansion or addition of land or deepening of waters beyond that which existed immediately prior to Hurricane Sally, subject to the following limits:

i. In the case of dredging, all excavated materials shall be deposited on uplands that are diked or otherwise sloped or designed to prevent any discharge into wetlands or other surface waters to the conditions existing immediately prior to the Hurricane.

ii. This shall not constitute authorization to fill submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund before Hurricane Sally;

iii. Removal of debris, including sunken vessels, vegetation, and structural remains that have washed into waters, wetlands, or uplands by Hurricane Sally is authorized, provided all removed debris are deposited on the uplands or otherwise deposited in accordance with other provisions of this Order;

iv. Activities authorized under this Paragraph must be commenced before the expiration of this Order or at such time as directed by an Authorized Representative listed in paragraph 21 herein; and

v. This Paragraph does not authorize the construction of structures that existed illegally or without authorization or did not exist prior to the emergency.

16. Authorizations Required:

a. For the items listed below, authorizations may be issued by an Authorized Representative listed in Paragraph 21 herein:

i. Activities including the replacement or repair of structures that are no longer intact;

ii. Restoration (regrading, dredging, or filling) of the contours of uplands, wetlands, and submerged bottoms, by parties other than local, regional, or state governments;

iii. Construction of temporary improvements by governmental agencies to provide temporary housing, medical, legal, sanitation, nutrition, or other facilities necessary for public, health, safety, and welfare;

iv. Other activities determined by District personnel as having the potential to result in only minimal adverse individual or cumulative impact on water resources and water quality.

b. Except as to Paragraph 13.a.iii. herein, authorizations by an Authorized Representative may be issued only to restore or repair structures and property to authorized or otherwise legally existing conditions that existed immediately prior to Hurricane Sally, or to a more environmentally compatible design than existed immediately prior to Hurricane Sally. Authorizations may be requested by providing notice to the local office of the District containing a description of the work requested, the location of the work, documentation (such as photos) of the condition of the structures or lands as they existed prior to initiating any activities, and the name, address, and telephone number of the owner or representative of the owner who may be contacted concerning the work. An authorization may be modified or conditioned by an Authorized Representative. Written authorizations shall be created and maintained by District staff with a copy provided to the property owner.

c. Other activities not described in this Order shall be regulated in accordance with Parts I and IV of chapter 373, F.S., and the rules promulgated thereunder as Chapters 40A and 62, F.A.C.

d. Activities authorized under this Paragraph must be commenced before the expiration of this Order unless otherwise provided in the authorization. The deadline for commencement under any authorization issued under this Order may be extended on a showing that contractors or supplies are not available to commence the work, or if additional time is needed to obtain any required authorization from the U.S. Army Corps of Engineers.

17. General Conditions for Environmental Resource Permitting and Surface Water Management Activities:

a. All activities conducted under the provisions in this part shall be performed using appropriate best management practices. For activities conducted in or discharging to wetlands or other surface waters, best management practices include properly installed and

maintained erosion and turbidity control devices to prevent erosion and shoaling, to control turbidity, and to prevent violations of state water quality standards.

b. The authorizations of the provisions in this part, except as provided in Paragraph 13.a.iii. herein, shall not apply to structures and associated activities in the Emergency Area that were not properly authorized by all applicable agencies before the passage of Hurricane Sally.

c. Environmental resource, surface water management, dredge and fill and storm water permits shall be required following provisions of the applicable statutes and rules for other activities not authorized herein that do not otherwise qualify as an exempt activity under the applicable statute or rule.

d. All activities shall be accomplished so as not to disturb marked marine turtle nests or known nest locations or damage existing native salt-tolerant or submerged vegetation, threatened and endangered species, or historical and archeological resources.

e. This Order does not convey any property rights or any rights or privileges other than those specified in this Order.

f. This Order only serves as an alternative emergency process under the statutes and rules implemented by the District for the duration of this Order and does not have any effect upon the requirements of other federal, state, and local agencies. This Order therefore does not negate the need for the property owner to obtain any other required permits or authorizations of any other local, state, or federal agency, or the need to comply with all the requirements of those agencies.

g. All the structures that are rebuilt shall be rebuilt in accordance with all applicable local, state, and federal building standards and requirements of the Federal Emergency Management Act (“FEMA”).

WATER USE AND WELL PERMITTING

18. Existing Permits

a. Compliance: The Authorized Representatives set forth in Paragraph 21 herein may defer compliance with any of the terms and conditions of a water use permit or a well permit for such time as is necessary to address the emergency. The deferment may be conditioned as appropriate to protect public health, safety, and welfare, both during the emergency and for a period of time once normal operations under the permit resume.

b. Modifications. The Authorized Representatives may issue authorizations modifying any of the terms and conditions of a water use permit or a well permit as necessary to address the emergency; however, these wells and water use authorizations shall be limited to temporary use of the following: public water supply, limited use public water supply, domestic, agricultural, institutional, commercial and industrial uses. Temporary uses must obtain a permit under Chapter 40A-2, F.A.C., Regulation of Consumptive Uses of Water, prior to the expiration of this Order to become a permanent use. Increases in allocations to serve emergency response areas shall expire at the end of this Order unless a permit under Chapter 40A-2, F.A.C., Regulation of Consumptive Uses of Water, is obtained prior to the expiration of this Order. By way of example, the Authorized Representatives may allow new or replacement wells or sources to be used permanently under the permit. The modification shall meet or exceed the design specifications outlined in rule and may be conditioned as appropriate to protect public health,

safety, and welfare, both during the emergency and for a period of time once normal operations under the permit resume.

c. Approvals. For the authorizations and deferments set forth in this Paragraph, authorizations may be issued by an Authorized Representative. Authorizations may be requested by providing notice to the local office of the District containing a description of the work requested, the location of the work, documentation (such as photos) of the condition of the structures or lands as they existed prior to initiating any activities, and the name, address, and telephone number of the owner or representative of the owner who may be contacted concerning the work. Authorizations may be modified or conditioned by an Authorized Representative. All work on water wells shall be completed by a licensed water well contractor except where exempt by rule and shall submit a completion report for any work completed before the expiration of this Order. The completion report form can be found in section 40A-3.411, F.A.C. All authorizations shall be created and maintained by District staff, with a copy to the entity authorized to undertake the activity.

19. Activities Requiring Permits

a. An Authorized Representative may allow activities that require a permit to be undertaken without a permit on an emergency basis as necessary to address the emergency; however, these wells and water use activities shall be limited to temporary use of the following: public water supply, limited use public water supply, domestic, agricultural, institutional, commercial, and industrial uses. Temporary uses must obtain a permit under Chapter 40A-2, F.A.C., Regulation of Consumptive Uses of Water, prior to the expiration of this Order to become a permanent use. By way of example, repairing, abandoning, constructing a well or commencing withdrawals that have not been previously authorized to provide necessary water for public or

private use. The emergency authorization shall meet or exceed the design specifications outlined in rule and may be conditioned as appropriate to protect public health, safety, and welfare both during the emergency and once normal conditions return.

b. The authorizations set forth in this Paragraph may be issued by an Authorized Representative. Authorizations may be requested by providing notice to the local office of the District containing a description of the work requested, the location of the work, documentation (such as photos) of the condition of the structures or lands as they existed prior to initiating any activities, and the name, address, and telephone number of the owner or representative of the owner who may be contacted concerning the work. Authorizations may be modified or conditioned by an Authorized Representative. All work on water wells shall be completed by a licensed water well contractor, except where exempt by rule, and shall submit a completion report prior to the expiration of this Order for any work completed. The completion report form can be found in section 40A-3.411, F.A.C. All authorizations shall be created and maintained by District staff, with a copy to the entity authorized to undertake the activity.

c. Other activities not described in this Order shall be regulated in accordance with Parts II and III of chapter 373, F.S., and the rules promulgated thereunder as Chapters 40A and 62, F.A.C.

20. General Conditions for Water Use and Well Permitting

a. This Order does not convey any property rights or any rights or privileges other than those specified in this Order.

b. This Order only serves as an alternative emergency process under the statutes and rules implemented by the District for the duration of this Order and does not have any effect upon the requirements of other federal, state, and local agencies. This Order therefore does

not negate the need for the property owner to obtain any other required permits or authorizations of any other local, state, or federal agency, or the need to comply with all the requirements of those agencies.

c. All the structures shall be built in accordance with all applicable local, state, water management, and federal building standards and requirements of the Federal Emergency Management Act (“FEMA”).

GENERAL PROVISIONS

21. Authorized Representative. The persons authorized to represent the Executive Director and issue authorizations and permits under this Order, in addition to the Executive Director, are the Chief of Staff, Director of Regulatory Services, Bureau Chiefs within the Division of Regulatory Services, and Program Managers within the Division of Regulatory Services.

22. Applications. Submittal of an application for a water use permit authorized by this Order, or for an application for restoration, repair, and rebuilding authorized by this Order that otherwise require a permit, as well as the required application fees, are deferred until March 12, 2021.

23. Expiration Dates. The expiration of all permits pursuant to Chapters 40A and 62, F.A.C., where applications for renewal or extension have not already been filed with the District within the Emergency Area and that will expire between the date of the Governor’s Executive Order and the date of this Order, are hereby extended through March 12, 2021..

24. Deferral of Existing Permit Conditions. Permit conditions relating to monitoring, reporting, and as-built plan submittals are not required to be submitted until March 12, 2021., for

those entities in need of emergency relief from those requirements due to the effects on them from Hurricane Sally.

25. Notices and Deadlines. Notice of non-compliance with permits, consent orders, and all other notices requiring action by a public or private entity under Chapters 40A and 62, F.A.C., are deferred until March 12, 2021, for those entities in need of emergency relief from those requirements due to the effects on them from Hurricane Sally. All deadlines imposed by any statutes or rules governing permitting are tolled from the date of the Governor's Executive Order until March 12, 2021.

26. General Limitations. This Order is issued solely to address the emergency created by Hurricane Sally within the Emergency Areas for those entities affected by the Hurricane. This Order shall not be construed to authorize any activity within the jurisdiction of the District except in accordance with the express terms of this Order. Under no circumstances shall anything contained in this Order be construed to authorize the repair, replacement, or reconstruction of any type of unauthorized or illegal structure, habitable or otherwise.

27. Other Authorizations Required. Nothing in this Order shall eliminate the necessity for obtaining any other federal, state, or local permits, or other authorizations that may be required.

28. Commencement and Completion of Authorized Activities. All activities authorized under this Order must be commenced before the expiration of this Order unless otherwise provided in a field authorization or permit. The deadline for commencement under any field authorization or permit issued under this Order may be extended on a showing that contractors or supplies are not available to commence the work or if additional time is needed to obtain any required authorization form the U.S. Army Corps of Engineers. Any permit issued pursuant to Chapters 40A and 62, F.A.C., that require an Authorized Representative's authorization must be completed

by the expiration date as included in the approval of the Authorized Representative. Activities not completed by that expiration date are subject to the regulatory and proprietary authorizations required prior to the execution of this Order.

29. Expiration Date. This Order shall continue in effect in accordance with its terms until March 12, 2021, unless modified or extended by further order.

30. Violation of Conditions of Emergency Final Order. Failure to comply with any condition set forth in this Order shall constitute a violation of a District final order under Chapters 120, 161, 253, 373, 376, and 403, F.S., and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

31. Notice of Rights. Any person, who is not a party to this Order, whose substantial interests are affected by the District's action in this Order may request an administrative hearing in accordance with Sections 120.569 and 120.57, F.S., and Chapter 28-106, F.A.C. A request for hearing that disputes the material facts on which the District's action is based must contain all elements required by Rule 28-106.201(2), F.A.C., including but not limited to: (1) an explanation of how the substantial interests of each person requesting the hearing will be affected by the District's action; (2) a statement of all disputed issues of material fact; (3) the Order number; (4) the name, address and telephone number of the person requesting the hearing and, if applicable, of the person's representative; (5) a statement of when and how the person requesting the hearing received notice of the District's action; (6) a concise statement of the ultimate facts alleged, including the specific facts warranting reversal or modification of the District's action; and (7) the relief sought, including precisely what action the requestor wishes the agency to take. A request for hearing that does not dispute the material facts on which the District's action is based shall state that no material facts are in dispute, contain the same information set forth above (with the

exception of item (2)), and otherwise comply with Rule 28-106.301(2), F.A.C. A request for hearing must be filed with (received by) the Agency Clerk of the District at the District's Headquarters, 81 Water Management Drive, Havana, FL 32333 within twenty-one (21) days of receipt of this notice. Any person who is not a party to this Order whose substantial interests will be affected by any such final action of the District has the right to request a hearing in accordance with the requirements set forth above. Further pursuant to Section 120.569(n), F.S., any party adversely affected by this Order has the right to seek an injunction of this Order in circuit court or judicial review pursuant to Section 120.68, F.S., in appellate court by filing a notice of appeal under Florida Rule of Appellate Procedure 9.110, within thirty (30) days after the effective date of this Order. Failure to file a request for hearing, relief, or review within the specified time period shall constitute a waiver of any right of any such person may have to request a hearing under Sections 120.569 and 120.57, F.S. Mediation pursuant to Section 120.573, F.S., 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.

DONE AND ORDERED in Gadsden County, Florida, on this 12th day of January, 2021.

NORTHWEST FLORIDA WATER
MANAGEMENT DISTRICT

Wendy Dugan
Witness

By: Brett Cyphers
Brett Cyphers, Executive Director

Date: 1/12/21

Filed this 12th day of
January, 2021.

[Signature]
Agency Clerk