SC09-1818

FILED
THOMAS D. HALL
2009 SEP 30 A 11: 21
CLERK, SUPREME COURT

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: 50-2008-CA 031975XXXXMB

SOUTH FLORIDA WATER MANAGEMENT DISTRICT,

Plaintiff,

v.

THE STATE OF FLORIDA, et. al

Defendants.

_____/

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SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL/PROBATE

NOTICE OF APPEAL

NOTICE IS GIVEN that Defendants, New Hope Sugar Company and Okeelanta Corporation (collectively "New Hope"), appeals to the Florida Supreme Court, the Final Judgment of this Court Validating Certificates of Participation Lease-Purchase Financing, Not to Exceed $650 Million rendered August 26, 2009. A conformed copy of the Order is attached hereto. The nature of the order is a Final Order.

Respectfully submitted,

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By:_____
Juan Carlos Antorcha

1856630-1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. Mail delivery, this 25th day of September, 2009 to:

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By: _____
Juan Carlos Antorcha

4831-4061-1844, v. 1

1856630-1

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

SOUTH FLORIDA WATER MANAGEMENT DISTRICT, a water management district organized and existing under the laws of the State of Florida,

CASE NO. 50-2008-CA-031975XXXXMB

Plaintiff,

v.

STATE OF FLORIDA AND THE TAXPAYERS, PROPERTY OWNERS AND CITIZENS WITHIN THE JURISDICTION OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT, INCLUDING NONRESIDENTS OWNING PROPERTY OR SUBJECT TO TAXATION THEREIN AND OTHERS CLAIMING ANY RIGHTS, TITLE, OR INTEREST IN THE CERTIFICATES OF PARTICIPATION HEREIN DESCRIBED, OR TO BE AFFECTED IN ANY WAY THEREBY,

Defendants.

_____/

FINAL JUDGMENT VALIDATING CERTIFICATES OF PARTICIPATION LEASE-PURCHASE FINANCING, NOT TO EXCEED $ 650 MILLION

This cause was heard on February 6, 2009; March 16-18, 2009; July 13-16, 2009; and August 6, 2009. Having considered the extensive testimony, documentation and other evidence offered by the South Florida Water Management District ("District") and the Defendants, and the law applicable to this proceeding, this Court validates $650 million in Certificates of Participation ("COPs") for the reasons set forth below.

PROCEDURAL HISTORY

On October 14, 2008, the District filed this action seeking validation of its authority to cause the issuance of COPs pursuant to Chapter 75, Florida Statutes. On October 21, 2008, the Court issued a Notice and Order to Show Cause and scheduled a hearing for December 12, 2008.

On November 13, 2008, the District filed an Agreed Motion to File a Supplemental Complaint and an Agreed Motion for Amended Notice and Order to Show Cause. The Court granted the motions and on November 14, 2008, entered an Amended Notice and Order to Show Cause, which retained the hearing date of December 12, 2008.

The District caused the Amended Notice and Order to Show Cause to be published in accordance with Chapter 75, Florida Statutes. (Pl.'s Ex. 26).

On various dates, the state attorneys for each of the judicial circuits within the District's jurisdictional boundaries (the 9th, 10th, 11th, 15th, 16th, 17th and 19th Circuits) responded to the Complaint.

On December 11, 2008, the New Hope Sugar Company and Okeelanta Corporation (collectively, "New Hope") served an answer and a memorandum in opposition to the Complaint. On December 12, 2008, Dexter Lehtinin served an answer in his individual capacity.

On December 11, 2008, the District filed a Motion for Continuance of Bond Validation Hearing. The parties appeared on December 12, 2008, when the Court considered the District's motion and subsequently entered a Second Amended Notice and Order to Show Cause, rescheduling the bond validation proceeding for February 6, 2009.

The District caused the Second Amended Notice and Order to Show Cause to be published in accordance with Chapter 75, Florida Statutes. (Pl.'s Ex. 14).

Following the December 12, 2008, hearing, several more interested parties have appeared. On January 9, 2009, United States Sugar Corporation served a notice of appearance and a Motion to Intervene as Party Defendant. On January 12, 2009, Dexter Lehtinen, already a defendant, served a notice of appearance and an answer on behalf of the Miccosukee Tribe of Indians of Florida (the "Tribe"). On January 23, 2009, various individuals and the Concerned Citizens of Glades, Inc. (collectively, the "Citizens") served a notice of appearance and an answer to the Complaint. On February 3, 2009, the National Audubon Society and Florida Audubon Society served a notice of appearance and notice of intervention.

Between December 2008 and the beginning of February 2009, the District and others participated in accelerated discovery proceedings. On February 3, 2009, the District served a Motion to Strike and Motion in Limine Regarding Issues and Evidence beyond Scope of Hearing. Also on February 3, 2009, Citizens served a memorandum of law in opposition to validation.

On February 5, 2009, the District served a Memorandum of Law and Fact in Support of Complaint for Validation.

The hearing began on February 6, 2009. Counsel appeared on behalf of the District, New Hope, the Tribe, the State Attorneys, Citizens, the Audubon Society, Nathaniel P. Reid, and U.S. Sugar. That day, New Hope served a response to the District's Motion to Strike and Motion in Limine served February 3, and Mr. Lehtinen served a motion to dismiss the District's Complaint, both of which the Court took under advisement. At the end of the day, the Court continued the hearing until its next trial docket on March 16, 2009. The Court did not further amend the order to show cause.

On February 17, 2009, the Jupiter Island Garden Club, Inc., served notice of intervening in the case.

On March 12, 2009, the Court conducted a case management conference. At the start of the resumed hearing on March 16, 2009, the Court entertained proffers of evidence on a wide range of issues over three days (March 16-18, 2009). On March 18, New Hope served a response to the District's Memorandum of Fact and Law served February 5, 2009. At the close of the hearing, the Court took the matter under advisement and invited the parties to submit proposed final judgments.

On March 26, 2009, before the Court issued its judgment, New Hope filed a Motion to Hold Proceedings in Abeyance, citing a press report that the District might renegotiate the agreement with U.S. Sugar Corporation. On March 27, 2009, Citizens filed notice of joining in New Hope's motion. The same day, the Tribe filed a Motion to Stay Proceedings. The Court issued an Order Setting Status Conference for April 8, 2009.

On April 7, 2009, the District filed a Motion to Abate Proceedings and to Reopen Evidence to Consider Modification of Transaction with U.S. Sugar Corporation. The District agreed with New Hope, Citizens, and the Tribe that the matter should be abated and reopened for new evidence to be considered by this Court as part of the validation proceeding.

Following the April 8 status conference, on April 16, 2009, the Court entered an Order Granting Joint Motions to Abate Proceedings and to Reopen Evidence to Consider Modification of Transaction with U.S. Sugar Corporation. The order directed the District to file an amended or supplemental complaint after the District's Governing Board modified the transaction, directed

the other parties to file responsive pleadings thereafter, and placed the case on the Court's docket sounding for May 15, 2009.

On May 13, 2009, the District filed a Second Supplement to the Complaint for Validation, which included as an attachment a resolution of the District's Governing Board approving an Amended and Restated Agreement with U.S. Sugar Corporation.

On May 15, 2009, the Court entered an Order Continuing the Order to Show Cause Hearing, scheduling the continued hearing for July 13 and 14, 2009, and directing republication of notices. The District caused the Order Continuing the Order to Show Cause Hearing to be published in accordance with Chapter 75, Florida Statutes. (Pl.'s Ex. 22).

On May 29, 2009, the Tribe and Mr. Lehtinen served a Motion to Dismiss Second Supplemental Complaint for Validation, in support of which they served a memorandum of law on June 22, 2009. The District served an opposing memorandum of law, arguing that the motion was procedurally improper. Following a hearing on July 2, 2009, the Court denied the motion in certain respects and deferred ruling on the motion in other respects, essentially concluding that the arguments were more properly suited to post-proof arguments after the show cause hearing.

During June and July, the parties engaged in extensive and expedited discovery. The hearing resumed on July 13, 2009 and concluded on July 16, 2009.[1]

On July 13, the Tribe served a Motion for Sanctions Against Plaintiff for Fraud Upon the Court, response to which the District served on July 15. On July 15, New Hope served a Motion for Judgment as a Matter of Law. The Court took both motions under advisement and the

[1] The Court notes that the Concerned Citizens of Glades, Inc., who actively opposed the initial validation request did not appear at the July 13-16, 2009 and August 6, 2009 hearings and filed nothing in opposition to the revised proposed purchase. Only Mr. Lehtinen, who also served as the Tribe's attorney, appeared at the aforementioned latter hearings as a defendant "taxpayer, property owner (or) citizen" within the District's jurisdiction.

evidence was closed on July 16, 2009. On August 6, 2009, the parties appeared for closing arguments and presentation of any remaining legal issues.

FINDINGS OF FACT

Based on the arguments and evidence presented at the hearings on February 6, 2009, March 16-18, 2009, and July 13-16, 2009, and on the entire record of the proceeding, the Court makes the following findings of fact.

1. The District is a regional governmental agency created pursuant to the Florida Water Resources Act of 1972, as amended, which is codified at Chapter 373, Florida Statutes (the "Act"). The District is responsible for water quality, flood control, water supply and environmental restoration in all or a part of sixteen (16) counties: Broward, Charlotte, Collier, Glades, Hendry, Highlands, Lee, Martin, Miami-Dade, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Polk and St. Lucie. § 373.069, Fla. Stat. (2008) (Pl.'s Ex. 1.c.; Pl.'s Ex. 7.e., at Bates No. 01264).

2. Charged with regional flood control, water supply and water quality protection and ecosystem restoration management within its territorial boundaries, the District's responsibilities and lawful mandate include, but are not limited to, restoring and cleaning up the Everglades ecosystem. § 373.016(3), Fla. Stat. (2008); (Trial Tr. 86-88, Feb. 6, 2009; Trial Tr. vol. I, 69, 154 , July 13, 2009; Trial Tr. vol. II, 323, Mar. 16, 2009).

3. The District acts through its governing board (the "Governing Board"), which is comprised of individuals with "significant experience in . . . agriculture, the development industry, local government, government-owned or privately owned water utilities, law, civil

engineering, environmental science, hydrology, accounting, or financial businesses." §373.073(2), Fla. Stat. (2008) (Pl.'s Ex. 1.d.).

4. The Governing Board is authorized to set policy for and governs the District in accordance with Chapter 373, Florida Statutes. § 373.083, Fla. Stat. (2008) (Pl.'s Ex. 1.e.).

5. In June 2008, the Governing Board adopted Resolution No. 2008-643 directing the District staff to begin negotiating an agreement to acquire as much as 187,000 acres of agricultural land owned by the United States Sugar Corporation and affiliated entities ("U.S. Sugar"). (Pl.'s Exs. 3.a. through 3.c.).

6. As early as August of 2008, District staff briefed the Governing Board on construction projects which were identified to be constructed on U.S. Sugar lands. A million acre feet of storage and treatment were identified as beneficial for Everglades Restoration. (Pl.'s Ex. 4.c., at Bates No. 0144-0145).

7. As authorized by the Act, specifically Section 373.584, Florida Statutes, at an open, public and duly noticed meeting on October 9, 2008, the Governing Board adopted two resolutions to facilitate financing of the proposed Everglades restoration program.

8. The first resolution adopted by the Governing Board on October 9, 2008, is Resolution No. 2008-1026 ("Governing Board Resolution No. 2008-1026"), which amended the District's five-year plan to include the acquisition of U.S. Sugar's land and assets. (Pl.'s Ex. 7.d., at Bates No. 1194 – 1195).

9. The second resolution adopted by the Governing Board on October 9, 2008, is Resolution No. 2008-1027 ("Governing Board Resolution No. 2008-1027"), which established a master lease-purchase program and authorized the issuance of Certificates of Participation

("COPs") to finance and refinance certain capital projects, programs and works as approved by the District from time to time (the "Project"), including the U.S. Sugar transaction. (Pl.'s Ex. 7.e., at Bates No. 1240-1483, 1243).

10. The Summary of Benefits attached to Governing Board Resolution No. 2008-1027 outlined the anticipated benefits to be achieved by Governing Board Resolution No. 2008-1027. (Pl.'s Ex. 7.e., Bates Nos. 1240-1343; Pl.'s Ex. 17). The Board found that acquisition of this real estate offered the District the opportunity and flexibility to store and clean water in order to protect Florida's coastal estuaries and to revive, restore and preserve the Everglades.

11. Under Governing Board Resolution No. 2008-1027, the COPs are designated "Certificates of Participation, Series ____, Evidencing an Undivided Proportionate Interest of the Registered Owners thereof in Basic Lease Payments to be Made by the Governing Board of the South Florida Water Management District, as Lessee, Pursuant to a Master Lease Purchase Agreement with South Florida Water Management Leasing Corp., as Lessor." The principal amount of COPs that may be issued under the program is not limited by a specific par amount. At the October 9, 2008, meeting, Governing Board Resolution No. 2008-1027 and its exhibits were available for inspection and review by the public. § 373.584(1), (4)(a) Fla. Stat. (2008); (Pl.'s Ex. 1.o.; Pl.'s Ex. 7.a.; Pl.'s Ex. 7.e, at Bates Nos. 1240 – 1482).

12. Also on October 9, 2008, the South Florida Water Management District Leasing Corporation (the "Leasing Corporation") conducted an open, public and duly noticed meeting. (Pl.'s Ex. 13.a.).

13. The Leasing Corporation is a non-profit corporation that was created on November 9, 2005, in accordance with the Act and Chapter 617, Florida Statutes. The Governing Board of the

District and the Board of Directors of the Leasing Corporation, while comprised of the same members, are separate and distinct legal entities. (Pl.'s Ex. 12.a.).

14. As authorized by the Act, at the meeting on October 9, 2008, the Leasing Corporation adopted Resolution No. 2008-01 ("Leasing Corporation Resolution No. 2008-01"), authorizing the Leasing Corporation to enter into a Master Lease Purchase Agreement in substantially the same form of Master Lease Purchase Agreement which is appended as an exhibit to the Governing Board and Leasing Corporation Resolutions. At the meeting, Leasing Corporate Resolution No. 2008-01 and its exhibits were available for inspection and review by the public. (Pl.'s Ex. 13.d, at Bates Nos. 2041 – 2217).

15. Under a Master Lease Purchase Agreement, as referenced above, the Leasing Corporation is authorized to lease-purchase to the District a Project to be acquired and or constructed from the proceeds of a series of COPs, and consisting of structures, fixtures, equipment and improvements ("Facilities") which are to be built, installed or established on real property ("Facility Sites") either (i) owned by the Governing Board at the time of the issuance of a series of COPs to finance Facilities, (ii) to be acquired by the Governing Board with the proceeds of such series of COPs, upon which a Facility is to be located within the District, or (iii) owned by or co-owned with another governmental entity. (Pl.'s Ex. 7.e., Ex. B, §§ 1.1, 2.1 and 2.10(f)); § 373.019(26), Fla. Stat. (2008) (Pl.'s Ex. 1.b.); § 373.584(1), Fla. Stat. (2008) (Pl.'s Ex. 1.o.).

16. To establish the leasing relationship provided for in the Master Lease Purchase Agreement between the District, as the lessee, and the Leasing Corporation, as the lessor, it is first necessary to establish with the Leasing Corporation a ground lease interest in the land. This

is accomplished through the Ground Lease, forms of which are attached to Governing Board Resolution No. 2008-1027 (Pl.'s Ex. 7.e., Ex. D) and to Leasing Corporation Resolution No. 2008-01 (Pl.'s Ex. 13.d., Ex. B). The Governing Board, acting as the ground lessor, is authorized to lease or sublease each Facility Site to the Leasing Corporation, acting as the ground lessee, through one or more ground leases (the "Ground Lease"), in substantially the same form as is appended to Governing Board Resolution No. 2008-1027 and Leasing Corporation Resolution No. 2008-01. Once the Leasing Corporation has this interest in the land, it may then enter into the Master Lease Purchase Agreement with the District and lease back to the District both the Facility Sites and the Facilities to be constructed on the Facility Sites. (Pl.'s Ex. 7.e., §§ 1, 7; Pl.'s Ex. 7.e., Ex. B.).

17. Under the Master Lease Purchase Agreement, the District is authorized to and lawfully retains title to the Facility Sites or related Facility Site Leaseholds, and is authorized to lease-purchase the Facilities and Facility Sites in accord with schedules ("Schedules") attached to the Master Lease Purchase Agreement. Together, the Master Lease Purchase Agreement and each Schedule will comprise a lease ("Lease"). Under this method of lease-purchase financing, the District, as the lessee, agrees to make lease payments to the Leasing Corporation, as the lessor. The lease payment includes both principal and interest, and at the time the final lease payment is made the District becomes the owner of the improvement. In order to raise the capital necessary to purchase or build a Project that the District has identified to be acquired or constructed, the District and the Leasing Corporation will enter into a Schedule that will identify a specific Project and the lease payments associated with the Project. The Leasing Corporation then assigns to a corporate trustee the Leasing Corporation's interests under both the Ground

Lease and the Master Lease Purchase Agreement, as they relate to that individual Project. The corporate trustee then authenticates and issues the COPs pursuant to the terms of the Master Trust Agreement. The COPs represent an investor's right to receive its proportionate share in each lease payment being made by the District, as lessee, under the Master Lease Purchase Agreement and the related Schedule. (Pl.'s Ex. 7.e., Ex. B, §§ 1.1, 2.10(f), 6.1.).

18. In accordance with the payment schedule set forth in the Lease, the District is authorized to make Basic Lease Payments ("Basic Lease Payments") to the Leasing Corporation for each Lease, from funds which the District appropriates each year. Such funds may include ad valorem revenues. The District may elect not to appropriate funds pursuant to the Master Lease Purchase Agreement and cannot be compelled to appropriate funds with which to make the Basic Lease Payments. (Pl.'s Ex. 7.e., Ex. B, § 3.1; Trial Tr. vol. III, 348-49, Mar. 16, 2009; Trial Tr. vol. III, 301, July 14, 2009).

19. The District has not pledged its ad valorem taxing powers to pay any sum due under the Master Lease Purchase Agreement or any lease. Neither the Leasing Corporation, the Trustee, nor any holder of a COP can compel the District to levy any ad valorem tax to pay any sum due under the Master Lease Purchase Agreement or any Lease. (Pl.'s Ex. 7.e., Ex. B, § 3.1; Trial Tr. vol. III, 300-01, July 14, 2009).

20. Neither the District, the State of Florida, nor any political subdivision or agency of the State pledges its full faith and credit to pay Basic Lease Payments or any other sum due under the Master Lease Purchase Agreement or any Lease. (Pl.'s Ex. 7.e., Ex. B, § 3.1.).

21. Upon the direction and authorization of the Governing Board, the Leasing Corporation shall be duly authorized to fund the acquisition, construction and installation of

Facilities and/or Facility Sites by entering into a Master Trust Agreement with the Trustee ("Master Trust Agreement") in substantially the same form as is appended to the Governing Board Resolution No. 2008-1027 and Leasing Corporation Resolution No. 2008-01. (Pl.'s Ex. 7.e., § 5, Ex. C; Pl.'s Ex. 13.d., § 3, Ex. C.).

22. Under the Master Trust Agreement, the Leasing Corporation is authorized to (a) establish a trust and assign to the Trustee all of the Leasing Corporation's right, title and interest in and to the Master Lease Purchase Agreement and its Schedules, (b) direct the Trustee to execute and deliver series of COPs to the public, (c) deposit the proceeds of each series of COPs with the Trustee and (d) direct the Trustee to hold the proceeds from the sale of the COPs in trust to pay the costs of acquiring, constructing and installing the Facilities and/or Facility Sites. (Pl.'s Ex. 7.e., Ex. C, §§ 201, 202, 302, 305(c), art. IV; Pl.'s Ex. 13.d., Ex. C, §§ 201, 202, 302, 305(c), art. IV.).

23. Through one or more assignment agreements ("Assignment Agreement"), the Leasing Corporation is authorized to assign the Leasing Corporation's right to receive Basic Lease Payments under each Lease and all of its other rights in each Ground Lease and Lease to a Trustee, in substantially the same form as is appended to the Governing Board Resolution No. 2008-1027 and Leasing Corporation Resolution No. 2008-01. For the Trustee to authenticate and issue the COPs secured by the lease payments to be made by the District, the Leasing Corporation must first assign to the Trustee the Leasing Corporation's interest under the related Ground Lease and Lease. (Pl.'s Ex. 7.e., § 7.).

24. The COPs evidence undivided proportionate interests in the principal and interest of the Basic Lease Payments and are secured by and payable from only the Trust Estate, created

under the Master Trust Agreement or any supplemental Trust Agreement. The Trust Estate is comprised of all the estate, right, title and interest of the Trustee in (a) the Basic Lease Payments, the Master Lease Purchase Agreement, the Leases and each Assignment Agreement, (b) all amounts, including investment earnings, deposited in the funds and accounts created pursuant to the Master Trust Agreement and any supplemental Trust Agreement in accord with the Master Lease Purchase Agreement; and (c) any and all monies, which the Trustee receives and is not required to remit to the Governing Board, pursuant to the Master Lease Purchase Agreement or the Master Trust Agreement. (Pl.'s Ex. 7.e., Ex. C, §§ 101, 201.).

25. Pursuant to the Master Trust Agreement and upon the direction and authorization of the Governing Board, each series of COPs shall be authorized by the Leasing Corporation, and executed and delivered by the Trustee to (a) finance or refinance the cost of acquiring Facility Sites and/or Facilities, (b) finance or refinance the cost of constructing, installing and equipping Facilities, (c) finance or refinance the cost of increasing, improving, modifying, expanding or replacing any Facilities, (d) pay or provide for the payment of the principal portion and interest portion of the Basic Lease Payments with respect to, all or a portion of the Facility Sites and/or Facilities financed from the proceeds of any series of COPs theretofore executed and delivered, (e) fund a reserve account, (f) capitalize the interest portion of Basic Lease Payments during construction, and (g) pay the costs of issuance applicable thereto, including any premium for any credit enhancement on the COPs. The District may enter into one or more hedge or swap agreements in connection with the COPs. (Pl.'s Ex. 7.e., § 3 & Ex. C, § 302.).

26. At the direction of the Leasing Corporation, the Trustee shall be authorized to issue the COPs as fully registered certificates, which will mature on a specified date or dates, not more

than 30 years after the date of initial issuance, bear interest at a rate that does not exceed the maximum rate permitted under Florida law and have such other details as may be determined by subsequent resolution or resolutions of the Governing Board and the Leasing Corporation, and incorporated in the Master Trust Agreement. (Pl.'s Ex. 7.e., Ex. C, § 303.).

27. By resolution, and as required by law, the Governing Board is authorized and required to choose a qualified banking institution to serve as Trustee which is authorized to do business in Florida, accept trusts under Florida law, and accept and administer the trust created by the Master Trust Agreement, and such Trustee shall be obligated to certify to the proper expenditure of the proceeds of the COPs and be a fiduciary for the certificate holders. (Pl.'s Ex. 7.e., Ex. C, §202, art. IV.).

28. Pursuant to Leasing Corporation Resolution No. 2008-01, the Leasing Corporation selected Deutsche Bank as the Trustee. (Pl.'s Ex. 13.d., at Bates No. 02043). The District expects to use Deutsche Bank as the Trustee (Trial Tr. vol. III, 333, July 14, 2009).

29. Based on further negotiations with U.S. Sugar, the Governing Board on November 13, 2008, adopted Supplemental Resolution No. 2008-1109 ("Governing Board Resolution No. 2008-1109"), which authorized the District to purchase approximately 182,500 acres of land, without purchasing the related assets (operating sugar mill, refinery, citrus processing plant and railroads). (Pl.'s Ex. 9.d.).

30. The Governing Board members were briefed on the project's pros and cons by District staff, including environmental and financial experts. The Governing Board meetings were public, and supporters and opponents of the project had an opportunity to be heard. (Pl.'s Ex. 11.a.).

31. After two full days of presentations, public participation and discussion, on December 16, 2008, the Governing Board voted, by a vote of 4-3, to advance the River of Grass Acquisition Project by executing a land sales agreement and lease with U.S. Sugar. (Pl.'s Ex. 11.f.).

32. The District entered into an Agreement for Sale and Purchase with U.S. Sugar and others dated December 23, 2008. (Pl.'s Exs. 15.a. and 15.b.). The agreement, together with a related lease agreement authorized thereby (Pl.'s Ex. 15.c.), provided for the acquisition by the District of approximately 182,500 acres of land upon the satisfaction of a number of conditions precedent and the payment of the purchase price. Together the documents provided for the acquisition of the land and the subsequent lease to U.S. Sugar for a specified period of time during which lease term U.S. Sugar agreed to use and manage the land subject to a number of limitations and restrictions benefiting the District.

33. The December 2008 agreement between the District and U.S. Sugar included certain conditions concerning economic feasibility and the District's ability to finance the transaction. If such conditions were not satisfied, the District could elect not to proceed to financial close. (Pl.'s Ex. 11.f.; Trial Tr. vol. II, 171, July 13, 2009; Trial Tr. vol. III, 299-300, July 14, 2009).

34. In March 2009, preliminary figures from the legislative revenue estimating conference indicated continuing declines in District revenues, which concerned the District staff and the Department of Environmental Protection (the "DEP"). The DEP oversees water management districts in Florida and was working closely with the District on the Everglades restoration project. (Trial Tr. vol. I, 44, July 13, 2009; Trial Tr. vol. II, 179, July 13, 2009; Trial Tr. vol. III, 340, July 14, 2009).

35. The Florida Legislature also opened its 2009 session in March, and this session included "sunset review" of the Act and a series of bills concerning water management districts' financing authority. (Trial Tr. vol. II, 180-81, 187, July 13, 2009).

36. On April 1, 2009, Governor Crist announced that the District and U.S. Sugar were considering renegotiating the transaction. (Trial Tr. vol. I, 43, July 13, 2009; Tribe Ex. 210).

37. At its April 2009 meeting, the Governing Board authorized the District to proceed to negotiate with U.S. Sugar. (Trial Tr. vol. II, 189-90, July 13, 2009). The District and its Governing Board revisited the agreement with U.S. Sugar.

38. As authorized by the Act, specifically Section 373.584, Florida Statutes, at an open, public and duly noticed meeting on May 13, 2009, the Governing Board adopted an Amended and Supplemental resolution to Governing Board Resolutions No. 2008-1027 and 2008-1109, ("Governing Board Resolution No. 2009-500A") which reflected and approved the amended and restated terms of the agreement between the District and U.S. Sugar. (Pl.'s Ex. 20.a. through 20.g, at Bates Nos. 2614 – 3187).

39. The parties executed the Amended and Restated Agreement for Sale and Purchase, which provides for a purchase price of $536,486,180, subject to adjustment at closing based on exact acreage. (Pl.'s Ex. 20.g., at Bates No. 2609 *et seq.*). The proposed lease agreement between the District and U.S. Sugar is included as an exhibit to the purchase agreement. (Pl.'s Ex. 20.g., at Bates No. 2804 *et seq.*).

40. The revised proposed transaction has the District initially acquiring approximately 73,000 acres for approximately $536 million, with a $50 million option to acquire the remaining 107,000 acres later in time. (Tribe Ex. 223; Pl.'s Ex. 20.g., at Bates No. 2609 – 2610 (initial

purchase), Bates No. 2671 – 2678 (option).

41. The May 2009 amendment and restatement of the transaction did not alter certain key terms of the transaction. Governing Board Resolution No. 2009-500A did not alter the master lease-purchase program established by Governing Board Resolution No. 2008-1027 (Pl.'s Ex 7.e), and all of the terms of that earlier resolution and of Governing Board Resolution No. 2008-1109 (Pl.'s Ex 9.d.) remained in full force and effect except as specifically modified by the May 2009 resolution. (Pl.'s Ex. 20.g., at Bates No. 2607). As under the December 2008 agreement, the initial term and all renewal terms of each Lease entered into pursuant to the Master Lease Purchase Agreement expires on September 30 of each fiscal year of the District, but may be automatically renewed annually, subject to the District making sufficient annual appropriations therefor. The Master Lease Purchase Agreement continues to provide that the District's obligation to make lease payments shall not be a debt of the District or the State of Florida, and shall not be a pledge of the full faith and credit of the District or the State of Florida, and that neither the District nor the State of Florida shall be obligated to make any payments from ad valorem or other taxes, except the taxes which are included in the District's legally available funds budgeted and appropriated to make Basic Lease Payments each year. (Pl.'s Ex. 7.e., Ex. B, §§ 3.1, 3.5).

42. Governing Board Resolution No. 2009-500A increased the District's flexibility under the COPs program. The COPs will be payable from the District's lease payments under the initial lease Schedule related to the lease of the U.S. Sugar lands, or from other lands the District currently owns. (Pl.'s Ex. 20.g, at Bates No. 2606). This alternative structure offers the District the potential opportunity to avoid negative tax consequences and thereby reduce the overall

transaction costs. (Trial Tr. vol. III, 329-30, July 14, 2009; Trial Tr. vol. VII, 877-80).

43. During its 2009 session, as part of a scheduled sunset review of the laws related to water management districts in general, the Legislature enacted Senate Bill 2080, which Governor Crist signed on June 30, 2009, making it effective on July 1, 2009, as Chapter 2009-243, Laws of Florida. Section 13 of the law adds a new Subsection (5) to Section 373.584, Florida Statutes, which is addressed below in the Court's conclusions of law.

44. This Court has carefully considered the pleading, arguments, and motions of Plaintiffs and the collective Defendants. This Court recognizes that it has a limited scope of review as recently set forth in *Strand v. Escambia County*, 992 So. 2d 150, 154 (Fla. 2008). The Court also recognizes the considerations placed on it by Senate Bill 2080 ("SB 2080"). Considering the totality of both facts and law, this Court approves validation of the COPs not to exceed $650 million, comprised of the $536 million cost of land and transaction costs (issuance costs and debt reserve). That is, and as will be more fully set forth below, the Court validates COPs sufficient for the initial purchase of approximately 73,000 acres of land for the River of Grass Acquisition project.

CONCLUSIONS OF LAW

In bond validation proceedings, the Court is limited in its scope of review. Specifically, the Court is constrained to: "(1) determine if a public body has the authority to issue the subject bonds; (2) determine if the purpose of the obligation is legal; and (3) ensure that the authorization of the obligation complies with the requirements of law." *Strand v. Escambia County*, 992 So. 2d 150, 154 (Fla. 2008). Defendants challenge the bond validation on all three points.

a. ***Strand* Analysis**

1. **The District has the Authority to Issue Bonds.**

Subsection 373.584(4)(a), Florida Statutes, defines "bonds" to include Certificates of Participation ("COPs"), and Subsection 373.584(4)(c), Florida Statutes, defines "revenue bonds" to mean "bonds of a water management district to the payment of which the full faith and credit and power to levy ad valorem taxes are not pledged." The statute further provides that the District's "powers and authority . . . shall be coextensive with powers and authority of municipalities to issue bonds under state law." *See* § 373.584(2), Fla. Stat. (2008). As a result, the District possesses the same broad powers to issue COPs that municipalities possess under Chapter 166, Fla. Stat. This broad power includes the ability to seek issuance of finance bonds. Furthermore, this Court has previously recognized the District's authority in this respect and sees no reason why it should not now. (Pl.'s Ex. 2). Accordingly, the District has the authority to issue COPs.

2. **The District has Demonstrated a Legal Purpose Warranting Partial Validation of the COPs.**

The District argues that the acquisition of approximately 180,000 acres of land for enhanced water treatment and storage serves a valid public purpose. Defendants, on the other hand, vehemently argue that the acquisition of land cannot constitute a project with a valid public purpose, especially when the District has no plans for the use and development of that land. Thus the issue before the Court is whether the District has shown a legal purpose warranting validation of $ 2.2 billion in COPs. Based on the following analysis, the Court finds that the District has demonstrated a valid public purpose warranting partial, but not full, validation of COPs because: 1) the District has demonstrated a valid public purpose with respect to the initial

purchase of 73,000 acres of land, and 2) the District has failed to show any purpose with respect to the acquisition of the remaining 107,000 acres, that is, the "option land." Furthermore, the Court has not considered issues of economic feasibility and finds that any private benefits inuring to U.S. Sugar Corporation are incidental.

First, defendants' arguments notwithstanding, the Court finds that the District does have plans for the use of the 73,000 initially acquired acres. The pleadings filed by the District and the testimony offered by the District's witnesses evidence plans to utilize the revenue bonds for water storage and treatment. The importance of protecting and managing water resources in the Everglades was emphasized not only by witnesses testifying on behalf of the District but also by experts called to testify by the Defendants. The law is clear that specific, detailed plans are not required in order to find that a valid public purpose exists. *See Strand*, 992 So. 2d at 156 (sufficient to submit supporting resolution generally describing proposed improvements) (citing *State v. Manatee County Port Auth.*, 171 So. 2d 169 (Fla. 1965)); *State v. Osceola County*, 752 So. 2d 530, 540 n.13 (Fla. 1999) (rejecting as collateral challenger's arguments that proposed development and operating agreement were incomplete).

Here, not only did the Governing Board, after much debate, vote to approve the Amended and Restated Agreement, but the District's witnesses outlined, parcel by parcel, the immediate and future benefits to be gained by the 73,000 acre acquisition. (Plaintiff's Exs. 20.f. and 20.g.; Trial Tr. vol. I, 60-62, July 13, 2009). Among the benefits to be achieved are storage and treatment of water before it is pumped into Lake Okeechobee, additional storage and treatment facilities that will work in conjunction with Comprehensive Everglades Restoration Projects ("CERP") basins, and land that will be valuable for future land swaps. (Trial Tr. vol. I, 60-62,

July 13, 2009). As admitted by defendants' own expert witnesses, surface water storage and treatment is a valid public purpose. (Trial Tr. vol. VI, 792-93, Mar. 18, 2009). Thus, the Court finds that the District has sufficiently shown how the public will be served through the acquisition of the initial 73,000 acres.

In contrast, however, the record is essentially devoid of any information discussing how the remaining 107,000 acres (if acquired) would be utilized. While detailed, specific plans are unnecessary, this is not to say that the District may seek bond validation with ideas so nebulous that the Court cannot determine their legality. *See State of Florida v. Suwannee County Development Auth. of Suwannee County*, 122 So. 2d 190 (Fla. 1960). As structured, the deal entails the initial purchase of approximately 73,000 acres of land. The District may then purchase a $50 million option for the remaining 107,000 acres. The option provides for a fixed purchase price for three years. After the initial three years, the option is for the higher of a fixed floor price of $7,400 per acre or the appraised value of the land. (*See* Tribe Exh. 213).

Undoubtedly, the purchase and development of the option land hinges on collaborative financing by various state and federal agencies. (*See* Trial Tr. vol. II, 129-30, July 13, 2009). It is perhaps these unknown variables that have resulted in a lack of any kind of plan with respect to the remaining acreage. The District's own witness admits as much. When questioned, Mr. Paul Dumars, the Chief Financial Officer for the South Florida Water Management District, could not explain how bonds issued in excess of the $536 million needed for the initial 73,000 acre purchase would be utilized. In fact, he suggested that the bond validation earmarked for this land acquisition could be used for purposes not before this Court. (*See* Trial Tr. vol. III, 311-15, July 14, 2009) ("The 2.2-billion was not requested for specific River of Grass slated projects. It

was requested for restoration. And so when I say construction, it could be construction of projects away from the River of Grass projects, because we are in the business of restoration"). It is apparent to the Court that as it concerns the option land and the COPs issued in excess of $ 536 million, the members of the South Florida Water Management District offer at best only speculation. *Suwannee County Dev't Authority of Suwannee County*, 122 So. 2d at 194 ("The testimony of the members of the appellee Authority is entirely speculative as to how or for what purpose the revenue bond proceeds will be used"). While detailed plans are unnecessary, a minimal level of specificity is required in order for the Court to determine that a valid public purpose exists. As it relates to the proposed option, that minimal level of specificity is lacking.

In that vein, the Court recognizes that economic feasibility of the project is outside of its scope of review. The Court acknowledges the strong arguments made by the Defendants that the project is simply economically impossible. They point to evidence showing that water management district staff had estimated the cost of the total project (including construction of infrastructure) to be upwards of $ 8 billion dollars or more; yet these figures were never communicated to the Governing Board. (Trial Tr. vol. VI, 686-89, July 15, 2009). While the Court questions the wisdom of seeking $ 2.2 billion in COPs during these economic times, it is bound by precedent which instructs that economic feasibility is collateral to bond validation proceedings. *Warner Cable Commc'ns v. City of Niceville*, 520 So. 2d 245, 246 (Fla. 1988) (trial court properly rejected as collateral arguments questioning necessity for project and economic and fiscal feasibility); *see also Boschen v. City of Clearwater*, 777 So. 2d 958, 966 (Fla. 2001) ("[T]he wisdom or desirability of a bond issue is not a matter for [courts'] consideration"). As

such, the Court cannot and does not base its decision on whether the District will have the financing to actually complete a project of this magnitude.

Finally, any private benefit inuring to U.S. Sugar Corporation is incidental. *Orange County Indus. Dev. Auth. v. State*, 427 So.2d 174, 179 (Fla.1983) ("If there is only an incidental benefit to a private party, then the bonds will be validated since the private benefits 'are not so substantial as to tarnish the public character' of the project") (citation omitted). Although Defendants allude to questionable motives in this land deal, they have provided no evidence showing that the land deal is primarily a "bail out" of U.S. Sugar Corporation. (Trial Tr. vol. I, 28-30, July 13, 2009). While it is contemplated that portions of the acquired land will be leased to U.S. Sugar Corporation before any construction, Defendant's own experts agree that allowing the land to go fallow would be worse than allowing U.S. Sugar Corporation to continue farming. (Trial Tr. vol. II, 294-98, Mar. 16, 2009; Trial Tr. vol. VI, 666, July 15, 2009). In previous proceedings, Defendants pointed to below market lease payments by U.S. Sugar as evidence of this alleged private benefit. However, Defendants can no longer avail themselves to this argument as the May 2009 amended agreement triples the lease rate to $150 per acre. (Trial Tr. vol. IV, 425, July 14, 2009). Thus, while the Court has carefully considered these allegations, Defendants have failed to show that any private benefit to U.S. Sugar is more than incidental to any public purpose.

3. The Issuance of the COPs Complies with the Requirements of Law

Defendants further argue that the District has not complied with the requirements of law governing issuance of COPs. The Court observes that the District has followed the same procedures it followed in issuing COPs in 2006, which were validated by this Court (Pl.'s Ex. 2.).

Nonetheless, the Court will address each issue.

(a) Legislative Approval Is Not Required by Article VII, Subsection 11(f)

Defendants contend that the District was required to obtain legislative approval of the COPs under Article VII, Subsection 11(f), of the State Constitution, which was not done here. This section applies to "state bonds" and, per Subsection 11(d), applies to revenue bonds issued by "the state or its agencies." Defendants contend that the District is a "state agency" for purposes of this constitutional section and, therefore, Subsection 11(f) applies. However, the Court rejects this argument.

Subsection 11(f) provides: "Each project . . . to be financed with revenue bonds issued under this section shall first be approved by the Legislature by an act relating to appropriations or by general law."

Florida law is clear that while the District is a "state agency" for some purposes, it is not classified as a "state agency" for purposes of Article VII of the Florida Constitution. Defendants cite no authority supporting its position that Subsection 11(f) applies to or otherwise restricts the District. From the position that the District is an "agency" for some purposes (such as the Administrative Procedures Act or Sovereign Immunity under the federal constitution), the Court cannot conclude that the District is a "state agency" for purposes of Subsection 11(f) or other tax and financing purposes.

Article VII, Subsection 1(a), prohibits the state (and its agencies) from levying ad valorem taxes upon real estate or tangible personal property. Yet, Article VII, Subsection 9(b), authorizes levy of ad valorem taxes "for water management purposes" and for "all other special districts." Since the District can (and does) levy ad valorem taxes, it cannot be deemed a "state

agency" for purposes of Article VII.

This conclusion, drawn from the plain language of the Constitution, is consistent with Florida case law. The Supreme Court of Florida has expressly held that a water management district was not levying a state ad valorem tax in violation of Article VII, Sections 1(a) and 9. *St. Johns River Water Mgmt. Dist. v. Deseret Ranches of Fla., Inc.*, 421 So. 2d 1067, 1070-71 (Fla. 1982). The district court of appeal and trial court decisions go into greater detail regarding this issue. The trial court specifically found that the water management district was a special district under Article VII, Section 9(a) of the Florida Constitution, and "was thereby authorized to levy ad valorem taxes." *Deseret Ranches of Fla., Inc. v. St. Johns River Water Mgmt. Dist.*, 406 So. 2d 1132, 1139 (Fla. 5th DCA 1981) (reversed in part, but not as to issue of ability to levy an ad valorem tax). The District Court held, and the Supreme Court affirmed, that a water management district is not the alter ego of the Department of Environmental Regulation (now known as the Department of Environmental Protection, or "DEP"). *Id.* The water management districts are granted a wide number of powers and duties which are independent of DEP, and many of the functions of the water management districts are local in nature. *Id.* The District Court found that the "fact water resource conservation, control, planning and development are state functions does not make them exclusively so." *Id.* at 1140. Just because a water management district is furnishing a state function, policy or purpose does not mean it cannot levy an ad valorem tax where the local function, policy or purpose is important to the local district area. *Id.*

Moreover, the foregoing analysis is consistent with the great weight of authority under Florida law distinguishing between state agencies and water management districts. Generally,

state agencies are component parts of the state with jurisdictions that extend to every part of the state, whereas districts are portions or subdivisions of the state for a special and limited governmental purpose. *See* Op. Att'y Gen. Fla. 96-89 (1996) (citing Fla. Att'y Gen. Fla. 84-21 (1984)). Unless legislatively declared to be or designated as an agency of the state, a district is not an agency of the state. *Id.* For instance, in opinion 90-66, the attorney general cited to the distinction between a state agency and a district noted above, and concluded that water management districts were not state agencies for purposes of Section 253.025(8)(e), Florida Statutes, relating to acquisition of state lands. Op. Att'y Gen. Fla. 90-66 (1990). Similarly, in opinion 86-55, the attorney general concluded that a basin board is a part of a water management district and is not a part of the executive branch of state government, but rather is a sub-district of a special district. Op. Att'y Gen. Fla. 86-55 (1986). The attorney general cites Section 20.261, Florida Statutes (1986), showing that in creating the Department of Environmental Regulation and in establishing its structure, the Legislature did not include water management districts as part of the department. *Id.* Also, in opinion 96-89, the attorney general held that a water control district is not a state agency for purposes of Section 112.0455, Florida Statutes, the Drug-Free Workplace Act. Op. Att'y Gen. Fla. 96-89 (1996). A number of these attorney general opinions were approved in *Martinez v. South Florida Water Management District*, 705 So. 2d 611 (Fla. 4th DCA 1997), when the District Court held the District is not a state agency for purposes of Section 112.0455. The entirety of Defendants' argument rests on the premise that the District is a "state agency" for purposes of Article VII, Subsection 11(f). Because the District is not, the argument fails.

(b) The Trust Indenture Is Sufficient

Defendants contend that the District has not established a trust indenture under which a trustee will certify the proper expenditure of the COPs proceeds, as required by Section 75.04(2), Fla. Stat. In response, the District first notes that Chapter 75 establishes procedures for validation of bonds in circuit court, not substantive requirements for the issuance of bonds. Defendants concede that paragraph 20 of the District's Complaint strictly complies with the procedural pleading requirement. Substantively, however, Defendants claim that the allegation is false and that the Master Trust Agreement does not require the Trustee to certify to anything or to act as a fiduciary. The Court finds otherwise.

Through Sections 202 and 305 of the Master Trust Agreement, the Trustee is bound to act as fiduciary and to hold and distribute the trust proceeds for the use and benefit of the Certificate Holders. Sections 402 and 404 closely control how the Trustee may use the proceeds. Section 505 holds the Trustee to account. (Pl.'s Ex. 7.e., Exh. C at 15, 19-20, 25-28, 36). There is no substantive Florida law requirement that a trust agreement provide for any kind of *written certification* process by a trustee. Accordingly, it is enough that the trustee assume contractual and fiduciary constraints on its expenditure of the funds, to act accordingly and to keep accurate records thereof and be able to account for its expenditures when called upon to do so in accordance with the requirements of the Master Trust Agreement.

Moreover, Defendants' argument does not square with *Dorman v. Highlands County Hospital District*, 417 So. 2d 253 (Fla. 1982). In *Dorman*, the challengers contended that the complaint failed to comply with Section 75.04 because it failed to allege the present creation of a trust indenture. The complaint stated that all payments on the bond issue will be pursuant to a

Trust Indenture substantially in the form attached to the bond resolution, to be made between the issuer and one of the banks or trust companies to be designated by the issuer by the adoption of a subsequent resolution. *Id.* at 254. The Court held that the complaint, which included the bond resolution and trust indenture, complied with Section 75.04(2) because the resolution listed three banks that would be designated as the trustee in a subsequently adopted resolution, and the trust indenture contained numerous blanks which would be filled in at the time of execution. Here, the District already has determined to use Deutsche Bank as the Trustee, a selection the Court previously validated in connection with the 2006 COPs. (Pl.'s Ex. 2; Trial Tr. vol. III, 45, July 14, 2009).

(c) Section 373.45924, Florida Statutes, Does Not Apply

Defendants argue that the District has not complied with the "truth-in-borrowing" requirements of section 373.45924, Fla. Stat. By its plain terms, the requirements of section 373.45924 apply only to financing of projects under section 373.4592, the "Everglades Forever Act." Presently, the District has not availed itself of any of the powers under that section. In the event the District does avail itself of such powers, it will need to comply with the provisions prior to the issuance of the bonds. The clear reading of the statute shows that the District cannot issue the type of statement required by section 373.45924 because many of the required details are not yet known, and could not be known until later in the process. The interest rate and the term of the COPs will not be known until shortly before the sale of the COPs. Therefore, absence of these details now cannot be grounds for refusing to validate the bonds. *See GRW Corp. v. Dep't of Corrections*, 642 So. 2d 718, 720-21 (Fla. 1994) (rejecting argument that

documents that must be completed before final issuance of COPs had to be completed before court could validate COPs).

(d) Article VII, Section 12, Referendum Requirement Does Not Apply

Defendants contend that Article VII, Section 12, of the Florida Constitution requires the District to obtain referendum approval before issuing the COPs, because the lease payments will be "payable from ad valorem taxation." This argument is misguided on two fronts: (i) the obligation to make lease payments is an annual obligation and does not extend more than twelve months and (ii) the lease payments are not "payable from ad valorem taxation."

Defendants' argument ignores the plain language of the constitution, of the relevant Florida Statutes, and of the governing resolution and agreements. (Pl.'s Ex. 7.e., Ex. B, § 3.1). It also ignores the Supreme Court's decision in *Strand*, which expressly rejected the reasoning advanced by Defendants. In September 2007, the Supreme Court initially issued an opinion in *Strand* concluding that "payable from ad valorem taxation" meant potentially payable from ad valorem tax revenues and reversing *State v. School Board of Sarasota County*, 561 So. 2d 549 (Fla. 1990). On motion for rehearing, but before oral argument on rehearing, the Supreme Court issued a revised opinion restoring the holding of *Sarasota County*. Following oral argument on rehearing, in September 2008, the Supreme Court issued its final opinion in *Strand*, reaffirming its long-held distinction between (1) pledges of the ad valorem *taxing power* and (2) use of ad valorem tax revenues. *See Strand*, 992 So. 2d at 157-59. *Strand* is wholly consistent with the relevant statutory language here, which provides that "the ad valorem ***taxing powers*** of the district may not be pledged . . . without compliance with the requirements of the State

Constitution," rather than speaking in terms of use of tax revenues. § 373.584, Fla. Stat. (2008) (emphasis added).

Defendants contend that the COPs are invalid because the issuance thereof constitutes an indirect pledge of the ad valorem taxing power of the District. Such argument ignores the direct mandates of the Florida Supreme Court in *School Board of Sarasota County* and *Strand.* Although the District has ad valorem taxing power pursuant to section 373.503, Florida Statutes, there is no direct pledge of the District's ad valorem taxing power and no referendum is required under Article VII, Section 12 of the Florida Constitution.

The District proposes to issue the COPs pursuant to a classic, annual appropriation, lease-purchase structure that has been consistently approved by the Florida Supreme Court. Here, the District will purchase property which it will then ground lease to the Leasing Corporation. The Leasing Corporation will lease such property back to the District pursuant to the Master Lease Purchase Agreement. The District will manage such property and may make improvements thereto. Pursuant to Section 3.5 of the Master Lease Purchase Agreement, the District must annually determine whether to appropriate funds, which may include proceeds of ad valorem taxes, to pay the Leasing Corporation for the annual rental of such property. Each of these structural elements is similar to those present in *School Board of Sarasota County*, where title to the public lands remained in the school boards, the ground lease was up to thirty years, and "[m]oney from several sources, including ad valorem taxation, [was] used to make the annual facilities' lease payments." *School Bd. of Sarasota County*, 561 So. 2d at 551.

If, in any year, the District determines not to appropriate funds to make the annual rental payments, the Lease Term of all Leases made under the Master Lease Purchase Agreement will

terminate no later than the end of the District's fiscal year for which the District appropriated funds to make lease payments. Upon such termination, the District must immediately surrender and deliver possession of the property to the Trustee as assignee of the Leasing Corporation. The District surrenders possession only for the remaining period of the Ground Lease but does not surrender ultimate ownership of the property. At the end of the Ground Lease, the District regains possession of the property. During such period of the ground lease, the District may freely substitute other property for the property then controlled by the Leasing Corporation pursuant to the Ground Lease.

This lease-purchase structure allows the District to maintain full budgetary control in a fashion identical to that approved in *School Board of Sarasota County*. The Governing Board has the freedom to decide anew each year whether to appropriate funds for the lease payments. In the event the District elects not to appropriate funds it must comply with the lease penalties and surrender the land to the Trustee. However, here, as in *School Board of Sarasota County*, the certificate holders are limited to lease remedies and the annual renewal option preserves the District's full budgetary flexibility. Since the obligation of the District to make rental payments never exceeds twelve months, Section 12 of Article VII of the Florida Constitution is never compromised, even if the District utilizes ad valorem tax receipts to make such rental payments. The issuance of the COPs in no way violates Article VII, Section 12 of the Florida Constitution. *Id.* at 553; *see also, e.g., State v. Brevard County*, 39 So. 2d 461 (Fla. 1989) (affirming validation of COPs financing and rejecting argument that referendum was required).

Defendants attempt to distinguish the District's proposed lease-purchase structure from the structure approved under *School Board of Sarasota County* by pointing to the anticipated

leaseback of the property from the District to U.S. Sugar. This argument is purely a business consideration to the purchasers of the COPs. Since the leaseback agreement is a permitted encumbrance, the District retains full budgetary flexibility and its hands are not tied. No obligation, legal or otherwise would prohibit the District from exercising its non-appropriation right under the Master Lease Purchase Agreement. The requirements of Section 12 of Article VII of the State Constitution and *School Board of Sarasota County* are satisfied by the District's proposed structure for the COPs.

(e) The District Has Not Violated Section 373.099, Fla. Stat.

Defendants incorrectly contend that the District is warranting title in violation of Section 373.099, Fla. Stat. The District is merely stating in Section 2.10 of the Master Lease Purchase Agreement that it will *have* fee simple title, not that it warrants title to any other party. The statute only prohibits the District from actually warranting title, and therefore, does not apply to these facts.

(f) The District Is Authorized to Create the Leasing Corporation

Defendants have questioned the District's authority to create the Leasing Corporation and its role in the financing. (Trial Tr. vol. VII, 1016-17, Mar. 18, 2009). Because government entities may create nonprofit corporations for the sole purpose of facilitating a COPs transaction, the Court rejects defendants' challenge to the District's creation of the Leasing Corporation. *See Leon County Educ. Facilities Auth. v. Hartsfield*, 698 So. 2d 526, 527 (Fla. 1997).

b. The Impact of Senate Bill 2080.

Even if the Court were inclined to validate the entire $ 2.2 billion in COPs—which it is not— it may be prohibited from doing so by Senate Bill 2080 ("SB 2080"). SB 2080 caps the

total annual debt service for bonds to twenty percent (20%) of the District's ad valorem tax revenue. Senate Bill 2080 was signed by Governor Crist on June 30, 2009. The law became effective on July 1, 2009, as Chapter 2009-243, Laws of Florida. Section 13 of the new law adds a new Subsection (5) to Section 373.584 to the Florida Statutes, which now provides:

> 373.584 Revenue bonds.—
>
> (5)(a) The total annual debt service for bonds issued pursuant to this section and s. 373.563 may not exceed 20 percent of the annual ad valorem tax revenues of the water management district, unless approved by the Joint Legislative Budget Commission.
>
> (b) The Joint Legislative Budget Commission is authorized to review the financial soundness of a water management district and determine whether bonds may be issued by a water management district in excess of the limitation provided in paragraph (a).
>
> (c) A water management district may not take any action regarding the issuance of bonds in excess of the limitation of paragraph (a) without prior approval of the Joint Legislative Budget Commission pursuant to joint rules of the House of Representative and the Senate.
>
> (d) Bonds issued and outstanding before January 1, 2009, are exempt from this subsection and shall not be included in the calculation of the limitation of paragraph (a).
>
> (e) This subsection does not affect the validity or enforceability of outstanding revenue bonds.

According to the District, the new law does not implicate these bond validation proceedings because the Governing Board acted in December 2008 and May 2009 before the law was enacted. While the District concedes that the new legislation places a barrier on the issuance of bonds, it argues that the Court's validation of bonds is necessarily different from the District's issuance of bonds. As such, the Court's decision should remain unaffected.

Because the Court validates bonds in the amount of $650 million (below the amount permitted by the 20% legislative cap), the Court need not address the applicability of SB 2080 to these proceedings.[2]

c. **Conclusion**

In conclusion, the Court recognizes that it may validate an amount of financing less than the amount requested by the District. *See Nohrr v. Brevard County Educational Facilities Authority*, 247 So. 2d 304 (Fla. 1971); *see also Lee County v. State of Florida*, 370 So. 2d 7, 8 (Fla. 1979) ("[W]e hold that a circuit court has authority to validate certain portions of a bond issue and invalidate others. The procedure avoids duplicative effort and has been sanctioned in the past."). The parties have conceded as much. (Trial Tr. vol. VII, 1014-15, 1043, Mar. 18, 2009). Because the District has demonstrated a valid public purpose for the acquisition of the initial 73,000 acres but has failed to do so for the additional 107,000 acres of option land, the Court validates the amount needed to finance the initial 73,000 acre land acquisition. With regard to the actual estimated cost, the Court accepts the testimony of Thomas Olliff, Assistant Executive Director of the District, who testified that the total cost to the District for the issuance of the COPs will be approximately $650 million, comprised of the $536 million cost of land plus transaction costs (issuance and transactional costs and the equivalent amount of one year's debt service payment) that are typically included in the financing amount. (Trial Tr. vol. II, 255-59, July 13, 2009; Trial Tr. vol. VII, 918, July 16, 2009). The Court denies validation in excess of this amount.

[2] The Court notes that the State of Florida—through the Offices of various State Attorneys who were present throughout the entire hearing process— fully concurred with the District's position with the exception of the applicability of SB 2080. It was opined that, read conservatively, the Court did not have authority to validate bonds beyond the 20% legislative cap.

Accordingly,

IT IS HEREBY ORDERED AND ADJUDGED:

1. Under the Constitution and laws of the State of Florida, the District has the power and authority to undertake the COPs lease-purchase financing for capital projects, programs and works of the District comprising the Project in accordance with Chapter 373, Florida Statutes, including the power to deliver any and all documents, instruments and related agreements, and to do and cause to be done any and all acts and things necessary or proper to carry out the transaction contemplated by the COPs lease-purchase financing structure described herein;

2. The proceedings essential to the COPs lease-purchase financing structure, the Trust Estate pledged for the payment of the COPs, the Governing Board Resolution No. 2008-1026, the Governing Board Resolution No. 2008-1027, the Corporate Resolution No. 2008-01, the Governing Board Resolution No. 2008-1109 and the Governing Board Resolution No. 2009-500A have been properly approved by the District and the Leasing Corporation, respectively, and are valid and in conformity with law;

3. The District has the power to undertake the COPs lease-purchase financing for the purposes of financing for capital projects, programs and works of the District which comprise Initial Project, in accordance with Chapter 373, Florida Statutes, without the approval of the electorate in a bond referendum;

4. The District has the power to plan, finance, acquire, construct, equip and install capital projects, programs and works of the District, which comprise the Project, including the River of Grass Acquisition Project and costs associated with the design, construction of facilities and works of the District, in accordance with Chapter 373, Florida Statutes, in one or more

stages; and

5. The selection of Deutsche Bank as Trustee for the purposes of carrying out the duties as required is hereby approved.

6. Said COPs in the aggregate amount of not exceeding $650 million, the proceedings authorizing the issuance thereof, including the authority of the District and the Corporation to act, undertake the Project, including the River of Grass Acquisition Project, the sources of security pledged to the payment thereof, the obligations of the District, the use of the proceeds thereof for the purposes described herein, and the legality of all proceedings in connection therewith are hereby validated and confirmed.

7. Final judgment is hereby entered in favor of plaintiff, in part.

ORDERED AND ADJUDGED at the Courthouse in Palm Beach County, Florida, this 26 day of August, 2009.

Donald W. Hafele
Circuit Judge of the 15th Judicial Circuit in and for
Palm Beach County, Florida

Copies to counsel of record

STATE OF FLORIDA • PALM BEACH COUNTY
I hereby certify that the foregoing is a true copy of the record in my office.
THIS 28 DAY OF SEP 20 09
SHARON R. BOCK
CLERK & COMPTROLLER
By _____ DEPUTY CLERK