

# Reviving

THE river OF grass



January 2009

## just the FACTs

This fact sheet is provided as a reference to encourage a greater understanding of the various issues related to managing water in South Florida.

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## Reviving the River of Grass Purchase Contract and Lease Agreement

*On December 16, 2008, the Governing Board of the South Florida Water Management District voted to accept a proposal to acquire more than 180,000 acres of agricultural land for Everglades restoration from the United States Sugar Corporation, after strengthening financing conditions within the purchase and sale agreement offered by the corporation. This historic transaction, subject to financing, would provide water managers with the unprecedented opportunity to store and treat water on a scale never before envisioned for the benefit of America's Everglades, Lake Okeechobee and the St. Lucie and Caloosahatchee rivers and estuaries.*

### Summary of the Proposed Agreement

- U.S. Sugar Corporation agreed to sell its land holdings to the District for the primary purposes of Everglades restoration. The two parties finalized a proposed purchase contract for presentation to U.S. Sugar's Board of Directors and to the District's Governing Board.
- Under a separate assignable lease agreement, U.S. Sugar has the option to continue agricultural operations on the land for seven years.
- Under the agreement, U.S. Sugar would retain ownership and continue operating the company's major assets, including its sugar mill, refinery, citrus processing plant and railroad.
- The purchase and sale agreement is subject to financing. Before closing, a contract clause added by the District's Governing Board allows the Board to review the most current economic conditions – including interest rates and revenue streams – and verify the agency's capacity to finance the purchase and accomplish its existing statutory mandates and legal obligations.
- The District reviewed thousands of documents including title policy and surveys, leases, contracts, licenses and maintenance records as part of its due diligence to support a proposed purchase.
- The District's legal team was supported by attorneys from Sidley Austin, LLP, a full-service firm with an experienced transactional practice in corporate mergers and acquisitions.

### About the Real Estate Transaction

- The District would take ownership of a minimum of 180,000 acres land.
- The purchase would include the acquisition of water control and conveyance infrastructure located on the land, including pump stations, some of which may ultimately be incorporated into environmental projects and utilized to convey water for restoration purposes.
- The purchase price is \$1.34 billion. Subject to validation and market conditions, the District would issue certificates of participation to finance the land acquisition.
- The purchase price was established after extensive negotiations and is supported by two independent appraisals. Land holdings were appraised at \$1.3 and \$1.37 billion.



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## ***Reviving the River of Grass: Contract and Lease Agreement***

### **About the Real Estate Transaction** *(continued)*

- As is typical with a District land acquisition, the cleanup of pollutants to commercial standards would be the responsibility of the seller (U.S. Sugar); the purchaser (District) would be responsible for any remediation needed to achieve ecological standards. Typically more stringent than commercial cleanup standards, ecological standards are the benchmarks that would need to be achieved for an environmental restoration project. Acreage requiring cleanup to ecological standards by the District would be determined by the project footprint.
- The total cost to remediate the issues attributed to U.S. Sugar is estimated at \$16.5 million. Under the agreement, the District would assume control over remediation, which is the preferred option. U.S. Sugar would provide the District with a \$21.5 million payment for the environmental cleanup – 130 percent the estimated remediation costs.
- U.S. Sugar would also retain responsibility for any undiscovered or new contamination. U.S. Sugar would be responsible for the remediation – to commercial standards – of any pollution discovered during the lease period and for three years after its termination.
- An “evergreen” General Escrow Fund would be established by U.S. Sugar and maintained at a minimum of \$10 million for any undiscovered environmental impacts.
- The sale and purchase of the property shall occur 90 days after court validation of the Certificates of Participation. The agreement may be terminated if validation has not been issued on or before July 10, 2009, or if closing has not occurred by September 25, 2009.

### **About the Lease Agreement**

- Under a separate agreement, U.S. Sugar would lease the land for agricultural operation for seven years. Conditions include a lease rate of \$50/acre for six years with the seventh year at no cost. The lease expires June 30, 2016.
- The lease arrangement allows for the release of the first 10,000 acres of property to the District (in 2,000-acre parcels of contiguous lands) at any time after the first year with appropriate notice. An additional 30,000 acres (in 10,000-acre or more parcels of contiguous lands) may be released in year six, on or after December 30, 2015.
- The agreement also allows for the release of up to 3,000 acres in connection with transfers to municipalities or other governmental entities.
- U.S. Sugar would be required to pay all property taxes and assessments, control the land for exotic and invasive plants and implement Best Management Practices to prevent pollution.
- The lease would generate a minimum of \$54 million in revenue and avoid more than \$40 million in land management costs.
- The District may continue to lease the land after seven years if not yet needed for restoration purposes. U.S. Sugar is provided the right to match any lease offer from other interests.

### **What Happens Next?**

- Subject to financing, the two parties would close the transaction in 2009.
- The District will undertake a thorough and open public process to determine the most viable footprint for constructing a managed system of water storage and treatment to support ecosystem restoration efforts. The District will include all stakeholders, including landowners interested in land trades, in the development of a project footprint. Once a project footprint is determined, the District may surplus land not needed for restoration.