

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

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

Plaintiff,

v.

CASE NO. \_\_\_\_\_

THE STATE OF FLORIDA, et al.

Defendants.

**CIVIL COVER SHEET**

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statute 25.075.

**TYPE OF CASE**

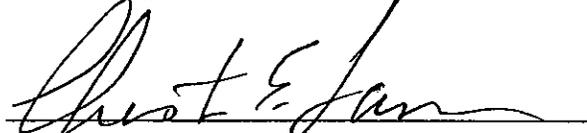
Domestic Relations	Torts	Other Civil
<input type="checkbox"/> Simplified dissolution <input type="checkbox"/> Dissolution <input type="checkbox"/> Support – IV-D <input type="checkbox"/> Support – Non IV-D <input type="checkbox"/> URESA – IV-D <input type="checkbox"/> URESA – Non IV-D <input type="checkbox"/> Domestic violence <input type="checkbox"/> Other domestic relations	<input type="checkbox"/> Professional Malpractice <input type="checkbox"/> Products liability <input type="checkbox"/> Auto negligence <input type="checkbox"/> Other negligence	<input type="checkbox"/> Contracts <input type="checkbox"/> Condominium <input type="checkbox"/> Real property/ Mortgage foreclosure <input type="checkbox"/> Eminent domain <input checked="" type="checkbox"/> Other <u>Validation Complaint</u>

**IS JURY TRIAL DEMANDED IN COMPLAINT?**

- Yes
- No

DATE October 13, 2008

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

Plaintiff,

v.

THE 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.

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

90 2008 CA U 3 1975 XXXX NB

CASE NO. \_\_\_\_\_

AB

COMPLAINT FOR VALIDATION

Plaintiff, the South Florida Water Management District (the "District"), brings this Complaint for Validation against the State of Florida, and the several property owners, taxpayers and citizens of Palm Beach County, Broward County, Charlotte County, Collier County, Glades County, Hendry County, Highlands County, Lee County, Martin County, Miami-Dade County, Monroe County, Okeechobee County, Orange County, Osceola County, Polk County and St. Lucie County, including non-residents owning property or subject to taxation therein and all others having or claiming any right, title or interest in property to be affected in any way by the issuance of not more than \$2,200,000,000 aggregate principal amount of in Certificates of Participation, Series \_\_\_\_\_, Evidencing an Undivided Proportionate Interest

of the Registered Owners thereof in Basic Lease Payment 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 (hereinafter "COPs") and respectfully shows and represents unto the Court as follows:

1. This Court has jurisdiction over this matter pursuant to Sections 75.01 and 373.573, Florida Statutes.

2. Plaintiff is a water management district, which is organized, exists and operates pursuant to the laws of the State of Florida, particularly the Florida Water Resources Act of 1972, Chapter 373, Florida Statutes, as amended (collectively, the "Act").

3. Headquartered in West Palm Beach, Palm Beach County, Florida, the District's territory encompasses all or a part of sixteen counties, i.e., Broward, Charlotte, Collier, Glades, Hendry, Highlands, Lee, Martin, Miami-Dade, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Polk and St. Lucie.

4. A nine-member Governing Board is authorized to set policy for and governs the District in accordance with Chapter 373, Florida Statutes.

5. As permitted 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 a resolution ("Governing Board Resolution"), authorizing a certificate of participation lease-purchase financing program to finance and refinance certain capital projects, programs and works as approved by the District from time to time (the "Project"). The COPs are designated "Certificates of Participation, Series \_\_\_\_\_ Evidencing an Undivided Proportionate Interest of the Registered Owners thereof in Basic Lease Payment 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 meeting, the Governing Board Resolution and its exhibits were available for inspection and review by the public. A copy of the Governing Board Resolution No. 2008-1027 and the exhibits are attached hereto as **Exhibit "A"** and incorporated by reference herein.

6. The South Florida Water Management District Leasing Corp. ("Corporation"), a non-profit corporation was created on November 9, 2005, in accordance with the Act, and particularly Chapter 617, Florida Statutes. The Governing Board of the District and the Board of Directors of the Corporation, while comprised of the same members, are separate and distinct legal entities.

7. As permitted by the Act, at an open, public and duly noticed meeting October 9, 2008, the Corporation adopted a resolution ("Corporate Resolution"), authorizing the 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 Corporate Resolutions. At the meeting, the Corporate Resolution and its exhibits were available for inspection and review by the public. A copy of the Corporate Resolution No. 2008-01 and exhibits are attached hereto as **Exhibit "B"** and incorporated by reference herein.

8. Under a Master Lease Purchase Agreement, as referenced above, the Corporation is authorized to lease-purchase to the District certain improvements, equipment, fixtures and structures ("Facilities") on specific facility sites, which are or will be owned or leased by the District ("Facility Sites").

9. The Governing Board is authorized to lease or sublease each Facility Site from the Corporation through one or more ground leases (the "Ground Lease"), in substantially the same form as is appended to Exhibits "A" and "B."

10. 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").

11. 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 Corporation for each Lease, from funds which the District appropriates each year. Such funds may include ad valorem revenues. The District cannot be compelled to appropriate funds with which to make the Basic Lease Payments.

12. 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 Corporation, nor Trustee, or 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.

13. Neither the full faith and credit of the District nor the State of Florida or any political subdivision or agency of the State is pledged to pay Basic Lease Payments or any other sum due under the Master Lease Purchase Agreement.

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

entering into a Master Trust Agreement with the Trustee ("Master Trust Agreement") in substantially the same form as is appended to Exhibits "A" and "B."

15. Under the Master Trust Agreement, the Corporation is authorized to (a) establish a trust and assign to the Trustee all of the 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.

16. Through one or more assignment agreements ("Assignment Agreement"), the Corporation is authorized to assign the 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 Exhibits "A" and "B."

17. 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.

18. 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 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 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.

19. At the direction of the 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 Corporation, and incorporated in the Master Trust Agreement.

20. 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, accepts trusts under Florida law, and has the ability to 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.

21. A Trustee which meets the qualifications in paragraph 20 above, as a matter of law, will be acceptable to the Court.

22. The District has fully complied with the law in its authorization of the certificates of participation lease-purchase financing structure and any interim financing, and has completed all conditions precedent to seeking validation of its indebtedness.

23. 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 provides 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.

24. 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.

25. As permitted by the Act, specifically Section 373.139, Florida Statutes, at an open, public and duly noticed meeting on October 9, 2008, the Governing Board adopted a "Plan Resolution," amending the five-year plan to include the acquisition of United States Sugar

Corporation's land and assets. At the meeting, the Plan Resolution and its exhibits were available for inspection and review by the public. A copy of the Plan Resolution No. 2008-1026 is attached hereto as **Exhibit "C"** and incorporated by reference herein.

26. To continue its mandate, the District is undertaking the continued restoration of natural resources, including the Everglades ecosystem, by undertaking projects pursuant to Section 373.016(3), 373.0831 and 373.086(1), Florida Statutes, which is known as the "River of Grass Everglades Acquisition Project" as part of the Project (the "Initial Project"). The cost of the financing of the Initial Project shall be financed with the initial series of COPs to be issued in an aggregate principal amount of not to exceed \$2,200,000,000.

27. The United States Sugar Corporation is unwilling to sell any assets to the District without the District purchasing substantially all of the land and assets of the United States Sugar Corporation. The acquisition of such lands and assets of the United States Sugar Corporation includes certain land and assets that likely are not needed for the public purpose of restoring, protecting and preserving the Everglades ecosystem as part of the Initial Project; and, the District is authorized, in such circumstance, to acquire same and diligently pursue the disposition and sale of all land and assets not otherwise needed for such public purpose.

28. Through the lease-purchase financing program and as part of the Initial Project, the District expects to acquire the foregoing lands and assets from the United States Sugar Corporation in accordance with the Act, specifically Section 373.139, Florida Statutes. The acquisition will include land and assets located outside of the District's territory. The District is authorized to acquire such land and assets pursuant to the Act, and specifically Sections 373.139 and 373.086, Florida Statutes. Such acquisition constitutes a public purpose for which public funds may be expended.

29. The District is authorized to lease all or a portion of the Initial Project to one or more private entities.

30. The Governing Board's finding in its Staff Report entitled "Summary of Benefits of USSC Acquisition," attached to the Governing Board Resolution and the Plan Resolution, evidences and summarizes the due and reasonable necessity for the acquisition of the land and assets to be acquired from United States Sugar Corporation as a major component of the restoration of the Everglades ecosystem.

31. The issuance of the COPs is consistent with the prior determinations of this Court on February 23, 2006, wherein this Court validated the authority of the District to issue its "South Florida Water Management District Certificates of Participation, Series 2006, 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., Lessor" for the purpose of financing expansion of stormwater treatment areas, construction of water preservation areas and restoration of certain coastland wetlands.

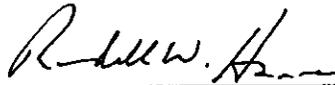
32. The health and safety and public welfare of the citizens of Florida will be benefited by the District financing, constructing, equipping and installing the Initial Project. The financing of the Initial Project under the Act is and constitutes a valid public purpose.

33. The COPs to be issued pursuant to the proposed lease-purchase program are of the character and the proceedings preliminary to their issuance are of the nature, which entitle Plaintiff to proceed within the provision of Chapter 75, Florida Statutes, to cause the COPs to be issued.

**WHEREFORE**, Plaintiffs prays as follows, that:

This Honorable Court issue an order against the State of Florida and against the several taxpayers, property owners and citizens thereof within Palm Beach County, Broward County, Charlotte County, Collier County, Glades County, Hendry County, Highlands County, Lee County, Martin County, Miami-Dade County, Monroe County, Okeechobee County, Orange County, Osceola County, Polk County and St. Lucie County, including non-residents owning property subject to taxation therein, and all others having or claiming any right, title or interest in property to be affected in any way by the issuance of the COPs herein described, or to be affected in any way thereby, requiring in general terms and without naming them, all persons and each of them and the State of Florida through the States Attorney for the Fifteenth, Seventeenth, Nineteenth and Twentieth Judicial Circuits of the State of Florida to appear at a time and place within Palm Beach County designated in such order and show cause why the prayers of this Complaint should not be granted, and said COPs in the aggregate amount of not exceeding \$2,200,000,000, the proceedings authorizing the issuance thereof, including the authority of the District and the Corporation to act, enter into and execute the transactions described herein, 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 should not be validated and confirmed as herein prayed.

RESPECTFULLY SUBMITTED this 13th day of October, 2008.



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# SOUTH FLORIDA WATER MANAGEMENT DISTRICT

STATE OF FLORIDA

COUNTY OF PALM BEACH

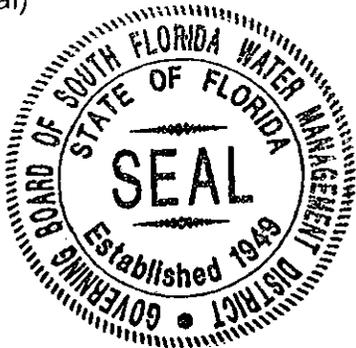
## CERTIFICATE

I, **JACQUELINE W. MCGORTY**, Secretary to the Governing Board of the **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**, do hereby certify that the attached is a true and correct copy of SFWMD Resolution No. 2008-1027, duly adopted by the Governing Board of said District on the 9<sup>th</sup> day of October, A. D., 2008.

I **FURTHER CERTIFY** that said Resolution has not been revoked, modified, or changed in any way and is at the date of this Certification in full force and effect.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of the Governing Board, this 10th day of October, A. D., 2008.

(Seal)



  
Jacqueline W. McGorty  
Secretary to Governing Board

