

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC09-1817

Lower Case No. 50-2008-CA-031975XXXXMB

MICCOSUKEE TRIBE OF INDIANS
OF FLORIDA, etc.

Defendants/Appellants,

vs.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT

Plaintiff/Appellee

**INTERVENORS' OBJECTION AND RESPONSE IN OPPOSITION TO
MICCOSUKEE TRIBE OF INDIANS OF FLORIDA'S MOTION TO
ORDER TRANSMISSION OF RECORD AND TO SET BRIEFING
SCHEDULE**

Intervenors, Florida Audubon Society ("FAS") Inc. and National Audubon Society d/b/a Audubon of Florida ("NAS") (collectively "Audubon") and Nathaniel P. Reed, object to the Miccosukee Tribe of Indians of Florida's (the "Tribe") Motion to Order Transmission of Record and to Set Briefing Schedule and file this response in opposition as follows:

1. A Complaint was filed by the Appellee, South Florida Water Management District ("District") on October 14, 2008, to validate the proposed issuance of Certificates of Participation (the "COPs") to finance the purchase of

land owned by the United States Sugar Corporation (the "USSC") that will provide a historic opportunity to restore the Everglades ecosystem. Coined the "River of Grass Acquisition," this project will provide the foundation for Everglades restoration on a scale and in a location not previously thought possible. On August 26, 2009, the trial court issued its Final Judgment finding that acquisition of lands for Everglades restoration was an important public purpose and validating the COPs in the amount of 650 million dollars, sufficient to purchase 73,000 acres of key property from the USSC. *See* Final Judgment Validating Certificates of Participation Lease-Purchase Financing, Not To Exceed \$650 Million (Fla. 15th Cir. filed August 26, 2009).

2. Florida's legislative and judicial systems have gone to great lengths to ensure bond validation proceedings are addressed by the court system in an expedited manner. Most notably, besides final judgments imposing the death penalty, final judgments in bond validation cases are the only other category of cases in which a party has the right of direct review by this Court. *City of Oldsmar v. State*, 790 So.2d 1042, 1049 n.7 (Fla. 2001). This mandatory review, provided by Section 75.08 of the Florida Statutes, is paired with appellate procedures that further ensure a speedy review of bond validation matters. *See Id.* at 1049-1050 (reviewing the expedited nature of bond validation proceedings). These procedures include Florida Rule of Appellate Procedure 9.110(i) which provides

for expedited review by, in part, requiring an initial brief to be filed within twenty days of filing a notice of appeal and also providing that “the record shall not be transmitted unless ordered by the supreme court,” but instead an appendix must accompany the initial brief (emphasis added). This expedited system ensures that delay caused by litigation regarding the validity of bonds does not harm either the marketability of the bonds or the public’s interest in the project at the heart of the bond validation case. *See Id.* at 1050; *State v. Fla. State Tpk. Auth.*, 134 So. 2d 12, 15 (Fla. 1961).

3. In conflict with the above, the Tribe’s Motion to Order Transmission of Record and to Set Briefing Schedule attempts to put on hold the public’s interest in Everglades restoration and ignore the requirement of expediency in bond validation matters. The Tribe’s motion is nothing less than a request for this Court to ignore the expedited briefing schedule required by Florida Rule of Appellate Procedure 9.110(i) and the expediency afforded bond validation matters. As eluded to in the *City of Oldsmar*, the very reason to require an appendix and not transmit the record is to allow the expedited review of financing to support important public projects. *City of Oldsmar*, 790 So.2d at 1049-1050. To allow the Tribe to wait for the transmission of the record from the lower court, instead of compiling an appendix, would unnecessarily risk undoing this momentous purchase.

4. In contrast to the Tribes request to delay this matter, this Court has historically further expedited bond validation matters where contractual deadlines are fast approaching. For instance, in *Poe v. Hillsborough County*, 695 So. 2d 672 (Fla. 1997), this Court substantially expedited a similar bond validation appeal. *See* Order Scheduling Briefing and Oral Argument (April 4, 1997). In *Poe*, the governmental entity had entered an agreement that would have substantially penalized a governmental entity if the project was not completed on time. *Id.* Likewise, in *Keys Citizens for Responsible Gov't, Inc.* the Court further expedited the case by accepting it without oral argument, due to a looming deadline to receive over \$4 million in federal grant money. *See Keys Citizens for Responsible Gov't, Inc. v. Fla. Keys Aqueduct Auth.*, 795 So.2d 940, 944 (Fla. 2001). Thus, in stark contrast to the Tribe's request, in instances where the underlying project requires a ruling by a date certain the Court has been willing to further expedite the review of bond validation matters to ensure neither the marketability of the bonds nor the public purpose are harmed

WHEREFORE, the INTERVENORS AUDUBON and REED respectfully request that the Tribe's Motion to Order Transmission of Record and to Set Briefing Schedule, along with its Designation to Court Reporter filed below be denied and that the Tribe be required to follow the procedures set forth in Rule 9.110(i), Florida Rules of Appellate Procedure.

Respectfully submitted this _____ day of October 2009.

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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of this notice has been served this _____ day of October, 2009 by U.S. Mail to the following:

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