

IN THE SUPREME COURT OF FLORIDA
CASE NO. _____

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT,

Petitioner,

L. T. Case No. 3D09-2357 (consolidated)

vs.

MICCOSUKEE TRIBE OF INDIANS
OF FLORIDA, NEW HOPE SUGAR
COMPANY, and OKEELANTA
CORPORATION,

Respondents.

_____ /

PETITION TO INVOKE ALL WRITS JURISDICTION

Pursuant to Florida Rule of Appellate Procedure 9.100, the SOUTH FLORIDA WATER MANAGEMENT DISTRICT (the "District") respectfully petitions this Court for a writ directing the Third District Court of Appeal to immediately transfer to this Court the consolidated matter styled *New Hope Sugar Company v. South Florida Water Management District*, Case No. DC09-2357 (Fla. 3d DCA) (which includes *Miccosukee Tribe of Indians of Florida v. South Florida Water Management District*, Case No. 3D09-1960 (Fla. 3d DCA)) (collectively, the "Third DCA Appeal"). Immediate transfer is necessary and appropriate so the

Court can protect and exercise its mandatory and exclusive jurisdiction over matters currently pending before the Court: *Miccosukee Tribe of Indians of Florida v. South Florida Water Management District*, Case No. SC09-1817 (Fla.) and *New Hope Sugar Company v. South Florida Water Management District*, Case No. SC09-1818 (Fla.) (collectively, the "Validation Appeals").

I. Basis for Invoking Jurisdiction

This Court has jurisdiction to issue all writs necessary to the complete exercise of its jurisdiction. Art. V, § 3(b)(7), Fla. Const.; Fla. R. App. P. 9.030(a)(3).

II. Statement of the Facts

The District and the United States Sugar Corporation (the "USSC") have entered into a contract pursuant to which the District will acquire from USSC farmland for purposes of Everglades restoration and preservation. Pursuant to Chapter 75, Florida Statutes, the District filed suit to validate the proposed issuance of certificates of participation (the "COPs") to finance the acquisition.

The Miccosukee Tribe of Indians of Florida (the "Tribe") and New Hope Sugar Company and Okeelanta Corporation (collectively, "New Hope") appeared and actively opposed the bond validation. Following eight days of hearing and a half-day of closing argument, the trial court issued its final judgment validating the

COPs on August 26, 2009. (App. Ex. 1). The Tribe and New Hope have both appealed the final judgment to this Court (the Validation Appeals).

After commencement of the validation proceeding, the Tribe and New Hope initiated a parallel assault on the District's Everglades project and its financing by filing petitions for administrative hearing under Chapter 120, Florida Statutes (the Florida Administrative Procedures Act or "APA"). There, as in the validation proceeding, the Tribe and New Hope asserted that the land acquisition and its funding it "is a waste of money, does not fulfill a valid public purpose, and, due to its prohibitive cost, will cause important Everglades restoration projects to be delayed or terminated." Order Consolidating Petitions for Administrative Hearing and Dismissing Them With Prejudice, SFWMD Case No. 2009-178DOA at ¶ 9 (June 19, 2009) (App. Ex. 2).¹ After providing the Tribe and New Hope two opportunities to cure defects in their petitions, the District dismissed them for lack of standing. *Id.* The Tribe and New Hope have both appealed that decision, and their appeals have been consolidated in the Third District Court of Appeal. *See Order, New Hope Sugar Co. v. S. Fla. Water Mgmt. Dist.*, No. 3D09-2357 (Fla. 3d DCA Sept. 16, 2009) (App. Ex. 3). The briefing schedule in the Third DCA

¹The petitions are attached as Exhibits A and B to the order dated June 19, 2009 (App. Ex. 2)

Appeal is well-advanced. The appellants have filed their initial briefs (App. Exs. 4 and 5), and the District will file its answer brief by October 19, 2009.

On October 6, 2009, the District received from New Hope a motion asking the Third District Court of Appeal to certify the Third DCA Appeal as a matter of great public importance under Florida Rule of Appellate Procedure 9.125.² The District also received from New Hope an "emergency" motion to stay its part of the Validation Appeals. On October 7, 2009, the District filed its response in opposition to that motion, asking that the Court not stay the Validation Appeals.

III. The Nature of the Relief Sought

The District seeks a writ transferring the Third DCA Appeal to this Court for concurrent review with the Validation Appeals, thus protecting this Court's exclusive jurisdiction to review final judgments in bond validation proceedings and promoting judicial economy.

III. Argument

Article V, section 3(b)(7) of the Florida Constitution grants this Court jurisdiction to issue all writs necessary to preserve, aid, or protect its power to effectively decide issues within its "ultimate power of review, though it not be

²While the District agrees that these proceedings are of great public importance, New Hope's motion appears procedurally improper because Rule 9.125 only authorizes a district court of appeal to certify "any order or judgment of a trial court" – which is not at issue in the Third DCA Appeal. *See Boedy v. Dep't of Prof. Reg.*, 444 So. 2d 503, 504 n.2 (Fla. 1st DCA 1984).

immediately and directly involved." *Couse v. Canal Auth.*, 209 So. 2d 865, 868 (Fla. 1968). The all writs power may be invoked when proceedings in a lower court threaten to interfere with this Court's exercise of its existing or future jurisdiction. *Fla. Senate v. Graham*, 412 So. 2d 360, 361 (Fla. 1982); *Couse*, 209 So. 2d at 867-68.

Jurisdiction is proper under the Court's all writs power to protect the Court's independent, exclusive jurisdiction under article V, section 3(b)(2) of the Florida Constitution, to "hear appeals from final judgments entered in proceedings for the validation of bonds or certifications of indebtedness." *See Mize v. Seminole County*, 229 So. 2d 841, 843 (Fla. 1969). In *Mize*, this Court held:

This Court[']s...exclusive jurisdiction in all proceedings for the validation of bonds and certificates of indebtedness, would be completely frustrated in the necessary and proper exercise of that jurisdiction in the validation proceedings unless it could bring before it for review the decision of the District Court which enjoined the issuance of said bonds. Ultimate disposition of this case, therefore, is not only necessary and proper but essential to the complete exercise of our jurisdiction.

Id.; *see also Rowe v. Pinellas Sports Auth.*, 461 So. 2d 72, 74 (Fla. 1984) ("There is no question of our jurisdiction over the bond validation proceedings.... [I]t is necessary and proper to the complete exercise of our jurisdiction that we dispose of these common issues at one time").

As discussed above, the Third DCA Appeal involves many of the issues that were dispositive of the bond validation and that are now inextricably intertwined

with the Validation Appeals, thus creating a risk the district court will encroach upon this Court's ultimate jurisdiction to determine such issues. For example, in its initial brief in the Third DCA Appeal, New Hope defines the challenged "Agency Action" as the District's

decision to purchase ... [United State Sugar Corporation] farmland, finance that purchase with debt to be repaid from District tax revenue without a taxpayer referendum, then lease the very same purchased land back to the seller ... while simultaneously abandoning ongoing restoration projects to finance the purchase.

New Hope Initial Brief 1 (App. Ex. 4). Arguments in the Third DCA Appeal about the decision to purchase, the finance of the purchase, and the legality of the purchase all go directly to the elements of legal purpose and authority that the parties tried before the circuit court. The circuit court rejected the Tribe's and New Hope's position in its final judgment, which is now before this Court for review (the Validation Appeals). It would not be appropriate for the district court to review these arguments, now that they are before this Court pursuant to article V, section 3(b)(2). Nor would it be appropriate, after this Court resolves the Validation Appeals, for these issues to be re-litigated before an administrative law judge under the APA. *See* § 75.09, Fla. Stat. (2008) (preclusive effect of Chapter 75 proceedings).

The Court should exercise its discretion to invoke its all writs jurisdiction because these matters require this Court's specific and immediate attention. The

restoration of the Everglades is a matter of unique public importance, and the resolution of these issues will have a substantial impact on the State of Florida (and beyond, from an ecological perspective). *See Pettigrew v. Kirk*, 243 So. 2d 147 (Fla. 1970) (all writs jurisdiction should be exercised when plaintiffs sought to enjoin executive branch from performing official acts that would affect public interest).

The Court's immediate and specific attention is also required to protect the District's governmental functions. *See Div. of Bond Fin. v. Smathers*, 337 So. 2d 805, 807 (Fla. 1976) (Court's immediate attention is required "where the functions of government will be adversely affected without an immediate determination"). This Court has recognized that the special procedures for direct, expedited review in bond validation cases are designed to provide certainty to market participants as to the legality of bonded indebtedness. *See Citizens Advocating Responsible Env'tl. Solutions, Inc. v. City of Marco Island*, 959 So. 2d 203, 206 (Fla. 2007). Even if this Court affirms the circuit court judgment at issue in the Validation Appeals, the lingering existence of parallel litigation under the guise of the Third DCA Appeal will likely create market uncertainty and threaten financing of the transaction. Delaying the transaction until the district court's review is complete (and possibly reviewed by this Court) may effectively frustrate the District's ability to proceed with its duly validated governmental functions. It would be inconsistent with the

intent and purpose of the provisions of the Florida Constitution, Florida Statutes, and the Florida Rules of Appellate Procedure if the Tribe and New Hope could, in effect, hold the bond validation hostage by raising related issues in an alternative forum.

This Court has previously exercised its all writs jurisdiction to take jurisdiction over a lower court action in order to resolve it along with related matters pending in the Court. *See Advisory Opinion to the Attorney General – Fee on Everglades Sugar Production*, 681 So. 2d 1124 (Fla. 1996). In that case, after the Attorney General petitioned the Court for advisory opinions, other parties filed a declaratory judgment action in the circuit court. This Court ordered the circuit court to transfer the declaratory judgment action so that the matters could be decided together. *See id.* at 126-27.

Because appeals from final judgments in Chapter 75 proceedings are within this Court's exclusive jurisdiction, this Court is the most appropriate forum to resolve all issues related to the bond validation. *See Harvard v. Singletary*, 733 So. 2d 1020, 1023-24 (Fla. 1999). Disposition of the related issues in one proceeding by a court uniquely qualified to decide such issues will avoid piecemeal litigation and promote judicial economy. *See Keys Citizens for Responsible Gov't, Inc. v. Fla. Keys Aqueduct Auth.*, 795 So. 2d 940 (Fla. 2001); *GRW Corp. v. Dep't of Corr.*, 642 So. 2d 718, 721 (Fla. 1994).

WHEREFORE, the SOUTH FLORIDA WATER MANAGEMENT DISTRICT respectfully requests this Court issue a constitutional writ to the Third District Court of Appeal to immediately transfer the Third DCA Appeal to this Court for concurrent review with the Validation Appeals, and to maintain the current briefing schedule.³

Respectfully submitted this 9th day of October 2009.



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³Once the matters are all pending in this Court, it may be appropriate to consider consolidating one or more of the cases to expedite review and conserve resources.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail (without appendix) and US Mail (with appendix) to **Joseph P. Klock, Jr., Esq.**, 283 Catalonia Avenue, 2nd Floor, Coral Gables, FL 33134, and **Dexter W. Lehtinen, Esq.**, 7700 N. Kendall Drive, Suite 303, Miami, FL 33156, this 9th day of October 2009.



Frederick J. Springer

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this petition complies with the font requirements of Rule 9.100(*l*) of the Florida Rules of Appellate Procedure.



Frederick J. Springer