UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, Plaintiffs, MICCOSUKEE TRIBE OF INDIANS, Intervenor-Plaintiff, v. SOUTH FLORIDA WATER MANAGEMENT, et. al., Defendants.	))))))))) /	Case No. 88-1886-CIV-MORENO

MICCOSUKEE TRIBE OF INDIANS' EMERGENCY MOTION FOR INJUNCTIVE RELIEF AND SUPPORTING MEMORANDUM OF LAW

Miccosukee Tribe of Indians ("the Tribe") hereby submits its Emergency Motion for Preliminary Injunction and Supporting Memorandum of Law ("Motion").

INTRODUCTION

The Tribe seeks an immediate preliminary injunction to prevent the District from violating this Court's March 31, 2010 Order requiring the District to build the EAA A-1 Reservoir Project. On August 12, 2010, the District's Governing Board plans to vote on whether to spend some $200 million in cash reserves, which had been previously set aside to comply with this Court's Order, to purchase a portion of the U.S. Sugar lands.

Notwithstanding that the District is under an order to build the Reservoir Project, Eric Buermann, the Chairman of the District's Governing Board, has stated publicly that the "District doesn't expect to both buy the land and resume construction on the reservoir." Buermann also told the press, "I don't think that the Judge [Moreno] in that case really expected us to proceed with the reservoir." Evidently, Mr. Buermann did not read, or perhaps he misunderstood, this Court's March 31, 2010 Order, which plainly orders construction of the Reservoir Project: "The

time is now to go forward with the work that needs to be done on this [Reservoir] Project." D.E. 2134 at 19. As more fully explained below, this Court should enforce its previous Order and enjoin the District from dissipating assets previously set aside to comply with this Court's Order. Because the District plans to vote on the Sugar Land purchase on August 12, 2010, and to close on the proposed purchase within 60 days thereafter, the Tribe requests an immediate hearing pursuant to Local Rule 7.1(e).

RELEVANT FACTUAL AND PROCEDURAL HISTORY

A. This Court's Order Requiring Construction of the Reservoir

On March 31, 2010, this Court entered an Order compelling the South Florida Water Management District ("the District") to complete construction of the EAA A-1 Reservoir and associated canal conveyance improvements (the "Reservoir Project"). D.E. 2134 at 17-20. As this Court explained, "[t]he time is now to go forward with the work that needs to be done on this project, which all parties agreed to be important." *Id.* at 19. "The Court [referred the] matter to the Special Master to recommend realistic deadlines for work on this project . . . ." *Id.*

B. The State Parties' Pending Request to Abandon the Reservoir Project in Favor of the River of Grass Acquisition

On April 28, 2010, the State Parties filed a Rule 60(b)(5) Motion for Relief from the March 31, 2010 Order. D.E. 2139 (attached hereto as Ex. A). In its Motion for Relief, the State Parties seek to be relieved of their obligation to construct the Reservoir Project "so that the proposed purchase of the United States Sugar Corporation's farmland ("River of Grass Acquisition") … may instead, be achieved." *Id.* at 1. The State Parties argued that "[i]n practical terms, the Court's order requires the District to divert and pledge its *ad valorem* tax revenues to finance the debt to build the EAA A-1 Reservoir, leaving insufficient tax revenues to

fund bonds needed to close on the River of Grass acquisition. The District cannot do both simultaneously." *Id.* at 10.

This Court has not ruled on the State Parties' Rule 60(b)(5) Motion. Instead, the Special Master held an evidentiary hearing on the Motion for Relief from July 26 through July 30, 2010. The Special Master will provide this Court with a Report and Recommendation by August 31, 2010 on whether the State Parties should be permitted to abandon the EAA A-1 Reservoir Project in favor of the proposed River of Grass Acquisition. D.E. 2150.

During the evidentiary hearing, the District's Budget Director testified that "the District presently has cash reserves of approximately $250 million . . . . Given the two federal court orders, the District is setting aside the $250 million in reserves to fund future phosphorus reduction projects required by federal court Judges [Moreno and Gold]." Declaration of Michael Smykowski (hereinafter "Smykowski Dec.") at 3 (Ex. B hereto). Moreover, Kenneth Ammon, the Deputy Director of Everglades Restoration and Capital Projects testified that:

> Given the Court's order compelling construction of the EAASR and Judge Gold's Order regarding additional water quality remedies, the District is setting aside the $210 million it presently has in reserves, plus another $38 million in Save our Everglades Funds (which is dependent on Congressional appropriation) to fund future phosphorus reduction programs.

Declaration of Kenneth G. Ammon (hereinafter "Ammon Dec.") at 7-8 (Ex. C hereto).

C. The State Parties' Unauthorized Decision to Proceed with the River of Grass Acquisition in Lieu of the Reservoir Project

1. The Downsized Sugar Deal

Notwithstanding the District's representation to the Special Master that it was setting aside over $200 million in reserves to comply with Judge Moreno's and Judge Gold's Orders, the District now intends to spend these funds to purchase a small portion of the U.S. Sugar Lands

within approximately 60 days. *See* Second Amended and Restated Agreement for Sale and Purchase (hereinafter "Second Amended Agreement") at 64-68 (Ex. D hereto); SOUTH FLORIDA WATER MGMT. DIST., *Reviving the River of Grass* Fact Sheet, dated August 2010 ("Fact Sheet") (Ex. E. hereto). The District intends to vote at its next Governing Board Meeting, on August 12, 2010, whether to spend nearly $200,000,000 of "its available cash on hand" to purchase 26,800 acres of U.S. Sugar Land. SOUTH FLORIDA WATER MGMT. DIST., *Governing Board Meeting Agenda for August 12, 2010,* at 6 (Ex. F hereto); *see also* Fact Sheet at 1-2.

While the acquisition will require the District to spend most of its existing reserves, the land is a mere fraction of the originally proposed River of Grass Acquisition. *See* Fact Sheet at 1-2. In particular, on December 16, 2008, the District voted to acquire over 180,000 acres of U.S. Sugar Land at a cost of approximately $1.34 billion. *Id.* Due to the changing economic conditions, the proposed acquisition was downsized in May of 2009. *See* Fact Sheet at 1. The downsized agreement provided for an initial $536 million acquisition of close to 73,000 acres with options to purchase the remaining 107,000 acres during the next 10 years. *Id.* at 2.

The further downsized project, which the District is now pursuing, contemplates the purchase of only 26,800 acres of land for nearly $200 million with options to acquire approximately 153,200 acres over the next ten years. *Id.* at 1. 17,900 of the acres are citrus land which are not even in the Everglades Agricultural Area. *Id.* The remaining 8,900 sugar cane acres are located in Palm Beach County. *Id.* This land will be leased back to U.S. Sugar until such time in the future as the District chooses to use the land for restoration or land exchange. *Id.* at 2.

In its March 21, 2010 Order, this Court noted that the diminishing size of the proposed U.S. Sugar acquisition counseled in favor of moving forward with the Reservoir Project, which the District promised years ago to remedy Consent Decree violations:

> While the environmental groups laud the efforts of Governor Crist on behalf of Florida, the land deal to be diminishing in size due to the challenges facing Florida's economy. The Court is now uncertain as to what role the downsized land purchase will play in Everglades restoration. Meanwhile, the projects devised years ago to remedy Consent Decree violations are waiting in a standstill. The State of Florida Parties have obligations for construction projects to comply with the original Consent Decree. The Court has an obligation to monitor the progress of those projects consistent with the Consent Decree.

D.E. 2134 at 2. It appears now that the only role the even further downsized land purchase will play in Everglades Restoration is to preclude construction of the important Reservoir Project ordered to be completed by this Court in its March 31, 2010 Order.

2. The District's Public Admission that they are Proceeding with the River of Grass Acquisition Instead of the Reservoir Project

Eric Buermann, Chairman of the Governing Board of the District admitted publicly, that the District "doesn't expect to both buy the land and resume construction on the reservoir." *See* Simone Baribeau, *Florida Weighs Swapping Cash for Debt in Scaled Back Everglades Purchase*, BLOOMBERG (Aug. 5, 2010) http://www.bloomberg.com/news/2010-08-05/florida-weighs-using-cash-for-scaled-back-everglades-restoration-land.html (Ex. G hereto). Incredibly, and notwithstanding that the Court has not even ruled on the State Parties' Rule 60(b)(5) Motion, Buermann has stated publicly "I don't think that the judge in that case really expected us to proceed with that reservoir." *Id.* at 2. Moreover, since the District is using its "available cash on-hand," it is clear that the District has chosen to use the cash reserves, which it had represented to the Special Master were being set aside to comply with this Court's March 31, 2010 Order, to,

instead, purchase the Sugar Land. *See also* Adam Playford, *Everglades Restoration Buy of U.S. Sugar Land May Be Sharply Downsized*, THE PALM BEACH POST (Aug. 4, 2010), http://www.palmbeachpost.com/news/everglades-restoration-buy-of-u-s-sugar-land-841808.html?cxntcid=breaking_news (Ex. H hereto) ("The smaller amount of money can be found without borrowing," Buermann said. "We've identified the cash.").

D. The Tribe's Unanswered Inquiries to the District

On August 5, 2006, the Tribe sent the District's counsel a letter expressing concern about the District's plan to spend the money it had set aside to build the Reservoir Project on just a small fraction of the U.S. Sugar Land. *See* Letter to Kirk L. Burns, dated Aug. 5, 2010 (Ex. I hereto). In particular, the Tribe asked Mr. Burns to explain,

> Will the $197 million dollars come out of the approximately $250 million dollars that has been set aside? If so, how can the SFWMD justify this in light of Judge Moreno's Order to construct the Reservoir Project? In these dire economic times, if the District spends so much cash now solely on the purchase of land, what monies will you have left to satisfy your commitments to the Court?

Id. at 2. The Tribe also expressed concern that the Fact Sheet the District distributed on the proposed land buy has a number of inaccuracies:

> This land is not being bought due to the need to address "recent federal court orders." In the case before Judge Moreno, the Court ordered the District to complete construction of the Reservoir Project, which was promised to the Court and the Special Master. The land for this project is already owned. Therefore, spending $197 million dollars on land that has nothing to do with complying with the Court's Order to construct the Reservoir Project is not needed to address Judge Moreno's Order and, in fact, is adverse to it. While it is true the District has a Rule 60(b)(5) motion pending attempting to abandon the Reservoir Project, their motion has not been granted, yet the District seems to be proceeding as if it has been.

Id. at 2. Finally, the Tribe advised Mr. Burns:

> The Tribe does not agree that these are strategic parcels of land with high restoration potential. Nor are they instrumental to remedying the violations of the Consent Decree that Judge Moreno's Order addresses. Out of the 26,800 acres that will be purchased by the District, 17,900 acres is citrus land located outside of the Everglades Agricultural Area and will do nothing to remedy the violations of the Consent Decree in the Refuge that were the subject of the hearings before the Special Master. Nor can the 8,900 acres of land being purchased in Palm Beach County be used to expand Stormwater Treatment Area 1-W. Colonel Terry Rice testified before the Special Master that this land is not adjacent to STA 1-W, and that even if the District had money to construct a project to use the land, he did not see how an STA could be engineered on this land to benefit the Refuge. Exhibit E, Excerpt of Rice Testimony at 763. Moreover, as for the claim that these lands have high restoration potential, a review of the map shows that neither of these proposed land purchases are located in the central flow path of the historic Everglades, the prime area which the District claims that it is trying to restore. Exhibit F.

Id. at 3. The Tribe requested a prompt response to its inquiries but to date has not received any response whatsoever. Because it is clear that the District has unilaterally decided to abandon the Reservoir Project in favor of the even further downsized River of Grass Acquisition, the Tribe seeks emergency injunctive relief from this Court.

LEGAL STANDARDS

I. RULE 65(a).

A district court has the authority, pursuant to Federal Rule of Civil Procedure 65(a), to issue a preliminary injunction. Fed. R. Civ. P. 65(a) (2010). "The grant or denial of a preliminary injunction rests in the discretion of the district court." *Long v. Benson*, No. -8-16261, 2010 WL 2500349, at *1 (11th Cir. June 22, 2010). A preliminary injunction should be granted when the moving party demonstrates "(1) substantial likelihood of success, (2) irreparable harm; (3) that the balance of equities favors granting the injunction and (4) that the public interest would not be harmed by the injunction." *Mesa Air Group, Inc. v. Delta Air Lines,*

Inc., 573 F.3d 1124, 1128 (11th Cir. 2009); *see also Cardile Brothers Mushroom Packaging, Inc. v. First Choice Produce, Inc.*, No. 07-61870-CIV, 2007 WL 4592251, at *1 (S.D. Fla. Dec. 28, 2007) (same). The evidence which may be used to make out this showing need not be admissible at trial, and may consist of affidavits, declarations and hearsay. *See Levi Strauss & Co. v. Sunrise Int'l Trading, Inc.*, 51 F.3d 982, 985 (11th Cir. 1995) ("[A] district court may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction, if the evidence is appropriate given the character and objectives of the injunctive proceedings.").

II. THE ALL WRITS ACT.

In addition to the Court's authority under Fed. R. Civ. P. 65(a), a federal court has the power "to issue such commands under the All Writs Act as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued…." *United States v. New York Telephone Co.*, 434 U.S. 159, 172 (1977). The All Writs Act has consistently been applied "flexibly in conformity with [its] principles." *Id.* at 173. Moreover, the Act has been used, when necessary, to enjoin actions that may frustrate prior orders of the court. *See Guardian Pipeline, L.L.C. v. 950.80 Acres of Land*, No. 01 C 4696, 2002 WL 1359396, at *1 (N.D. Ill. June 21, 2002); *Mumford Cove Association, Inc. v. Town of Groton, Connecticut*, 647 F. Supp. 671 (D. Conn. 1986).

III. EMERGENCY RELIEF

Southern District of Florida Local Rule 7.5(e) provides for emergency relief. The Rule provides:

> **(e) Emergency Motions.** The Court may, upon written motion and good cause shown, waive the time requirements of this Local Rule and grant an immediate hearing on any matter requiring such

> expedited procedure. The motion shall set forth in detail the necessity for such expedited procedure.

Id.

ARGUMENT

I. THIS COURT SHOULD ISSUE A PRELIMINARY INJUNCTION PURSUANT TO RULE 65(a)

A. The Tribe is Likely to Succeed on the Merits

It is axiomatic that a court has the "authority to enforce its orders and provide for the efficient disposition of litigation." *Zocaras v. Castro*, 465 F.3d 479, 483 (11th Cir. 2006); *see also Miccosukee Tribe of Indians of Florida v. United States*, No. 04-21448, 2010 WL 1506267, at *18 (S.D. Fla. April 14, 2010) ("Gold case") ("A court has the power to enforce its orders."); *Bettis v. Toys "R" Us*, No. 06-80334, 2009 WL 5206192, at *7 (S.D. Fla. Dec. 31, 2009) ("Inherent powers are vested in the very nature and essence of the Court; without such power the Court would be unable to manage the expeditious disposition of its docket, enforce its orders, and guard the integrity of its proceedings."). Moreover, federal courts have the authority to enjoin a government agency from spending and/or dissipating funds which are needed to ensure compliance with existing law. *See Silva v. East Providence Housing Authority*, 390 F. Supp. 691 (D. R.I. 1975); *Dowdell v. City of Apopka, Florida*, 511 F. Supp. 1375 (M.D. Fla. 1981); *City of South Pasadena v. Slater*, 56 F. Supp. 2d 1106, 1145 (C.D. Cal. 1999) ("Therefore, the Court finds that it is appropriate to enjoin the defendants from spending either federal or state funds to construct any portion of the [challenged] project without leave of Court.").

In this case, the Tribe is likely to succeed on the merits of its request to enjoin the District because it is clear the District has elected to abandon the Court-ordered Reservoir Project, by using the very funds it had set aside for the reservoir's construction, to purchase U.S. Sugar land.

Indeed, the District has publically admitted: 1) that it is using the cash reserves previously set aside to comply with Judge Moreno's Order to purchase the U.S. Sugar Land; 2) that it "doesn't expect to both buy the land and resume construction on the Reservoir;" and 3) that the District "[doesn't] think that the judge [Moreno] in that case really expected us to proceed with the Reservoir." Such callous disregard for this Court's Order should not be tolerated. An injunction should be entered immediately.

Judge Gold's recent order is instructive on the Court's authority to enforce its own orders. In that case, Judge Gold found that the EPA and the State of Florida had failed to fulfill their duties under the Clean Water Act, as embodied in the court's Summary Judgment Order. Judge Gold stated, "[w]hile I concur with Plaintiffs that I can enforce my orders by means of contempt, I can also resort to my equitable powers to accomplish the same purposes before imposing civil sanctions calibrated to coerce compliance." *Miccosukee Tribe of Indians of Florida*, 2010 WL 1506267, at *18. Judge Gold then proceeded to, among other things, enjoin the Florida Department of Environmental Protection from issuing, or modifying, any new NPDES permits and stated as follows:

> [T]he FDEP is *enjoined* from issuing any new NPDES permits, or modifications to existing NPDES permits…for STAs that discharge into, or within, the Everglades Protection Area until such time as the State of Florida is found by the EPA and this Court to be in full compliance with the Clean Water Act, its implementing regulations, the Summary Judgment Order, and *this Order*.

Id. at *21 (emphasis added).

Furthermore, there is case law which supports a district court's authority to enjoin a government agency from dissipating funds necessary to comply with existing law. For example, in *Silva v. East Providence Housing Authority*, a class comprised of low-income families sought

a preliminary injunction to enjoin the dissipation of a fund. 390 F. Supp. 691. The fund consisted of federal money allocated for the construction of low-income housing in East Providence. *Id*. at 692. The construction was prematurely halted and ultimately abandoned. *Id*. at 693. Plaintiffs feared the allocated funds would be spent on other "HUD projects" while their action remained pending. *Id*. at 695. The district court agreed with the class and enjoined HUD from dissipating federal moneys originally allocated to fund the East Providence housing project. *Id.* at 696. In support of its holding the court stated:

> If [the funds were depleted] and plaintiffs ultimately prevailed on the merits, their's would be a Pyrrhic victory indeed. Since plaintiffs' entire cause of action would be jeopardized by the denial of the injunctive relief requested herein, the probability of their irreparable harm is beyond question.
>
> Similarly, plaintiffs seek no more than to preserve the status quo by ensuring that moneys once specifically set aside by the federal defendant for [East Providence housing] are not depleted….

Silva, 390 F.Supp at 695.

Similarly, in *Dowdel v. City of Apopka, Florida*, the Middle District of Florida enjoined the spending of funds by a government agency. 511 F. Supp. 1375. The *Dowdell* plaintiffs consisted of black residents of Apopka, Florida. *Id*. at 1377. The plaintiffs alleged that municipal services were being provided, in a discriminatory manner, in violation of the Equal Protection Clause of the 14th Amendment. *Id*. The Middle District of Florida found that 90% of the total funds expended by Apopka for municipal services went to predominately white communities. *Id.* at 1378. The district court also stated, "[t]o spend funds on new sections of town, specifically ignores the need for those funds in the black community." *Id*. at 1383. Finally, the district court enjoined the City from spending funds on the construction or

improvement of municipal services to white communities until the black communities were provided with comparable services, and specifically stated:

> An injunction will be issued against defendants, prohibiting their spending of any funds on the construction or improvement of municipal services in the white community until such time as the street paving, storm water drainage and water distribution systems in the black community are on par with that of the white sections. With respect to specific revenue sharing funds, the Court will order that these funds be placed in escrow to be used only for the construction or improvement of the municipal services and facilities in the black community.

Id. at 1384.

In this case, the District has publically stated that it does not intend to comply with this Court's Order, and that it will vote on Thursday, August 12, on whether to use the funds set aside to build the Reservoir to, instead, purchase U.S. Sugar land. Because the District is plainly violating this Court's March 31, 2010 Order, the Tribe has demonstrate a substantial likelihood of success on the merits.

B. The Preliminary Injunction is Necessary to Prevent Irreparable Harm

The Tribe and the Everglades will suffer irreparable harm if a preliminary injunction is not issued. The Supreme Court has stated that environmental injury is irreparable.

> Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable.

Amoco Prod. Co. v. Village of Gambell, 480 U.S. 531, 545 (1987); *City of South Pasadena v. Slater*, 56 F. Supp. 2d 1106, 1142-43, 1145 (C.D. Cal. 1999) (quoting *Amoco* and enjoining "defendants from spending either federal or state funds to construct any portion of [a freeway]"); *Southeast Alaska Conservation Council v. United States Army Corps of Engineers*, 472 F.3d 1097, 1101 (9th Cir. 2006) ("Ongoing harm to the environment constitutes irreparable harm

warranting an injunction.”). Moreover, this Court has recently held the Everglades are in ongoing danger of being “sacrificed to nutrient pollution.”

> The Tribe, however, has convinced this Court with its practical arguments that their lands will ultimately be sacrificed to nutrient pollution and the time has come for the Court to require the parties to abide by commitments made in this litigation.

D.E. 2134 at 19.

The District intends to use the funds it had previously set aside for the Reservoir Project to purchase a small portion of the U.S. Sugar land which the District believes will one day facilitate the construction of certain multi-billion dollar projects to help restore the Everglades. But as this Court has already held, abandoning the State Parties’ existing commitments in favor of the District’s pie-in-the sky scenarios for Everglades restoration will result in the destruction of the Everglades and the Tribe’s lands in the interim.

C. The Balance of Equities Favors Issuing a Preliminary Injunction

The balance of the equities favors granting a preliminary injunction because if the District spends the money that it has set aside to comply with this Court’s March 31, 2010 Order, the money will be gone and the Consent Decree violations will not be remedied. On the other hand, if the District prevails on its 60(b)(5) motion, which it should not, it will have the option to spend the money it had set aside to build the Reservoir on other projects. Moreover, it would hardly be equitable to permit the District to violate with impunity its obligations to implement remedies for Consent Decree violations while the Tribe continues to suffer as a result of those violations.

D. The Public Interest Will not be Harmed as a Result of the Preliminary Injunction

The public interest will be promoted rather than harmed by the preliminary injunction. The District plans to spend most of its cash reserves to purchase less than 1/5 of the U.S. Sugar Land that the District originally contemplated purchasing and eventually using it to construct Everglades Restoration projects. While the District will have the option to purchase the remaining 150,000 acres within the next 10 years, there is no evidence the District will ever have the financial resources to complete this purchase. Even if the District could ever afford to buy the rest of the land, there is no specific plan to build restoration projects, nor has the funding necessary to finance such projects been identified. On the other hand, if the District uses its cash reserves to complete the Reservoir Project, the Everglades will see significant benefits in the very near term. Accordingly, the preliminary injunction will promote the public interest.

II. THIS COURT SHOULD ISSUE AN INJUNCTION PURSUANT TO THE ALL WRITS ACT

The United States Supreme Court "has repeatedly recognized the power of a federal court to issue such commands under the All Writs Act, 28 U.S.C. §1651, as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued…." *New York Telephone Co.*, 434 U.S. at 172. In this case, an injunction pursuant to the All Writs Act is necessary, and appropriate, in order to prevent the District from violating this Court's March 31, 2010 Order. Case law supports an injunction pursuant to the All Writs Act under these circumstances.

For example, in *Mumford Cove*, the District Court of Connecticut issued an injunction pursuant to its authority under the All Writs Act against parties who were obstructing compliance with a prior order. 647 F. Supp. 671. At issue in that action was a sewer outfall necessary to

remedy the pollution of Mumford Cove. *Id*. at 687. Like the instant case, the *Mumford Cove* Court found that the pollution "had been allowed to continue for far too long" and that its prior order was entered to "remedy this unacceptable and illegal pollution as expeditiously as possible." *Id*.

The Court found that "[t]he actions of the City, its agencies and officials, and some of its residents, threaten to interfere with this court's efforts to remedy pollution of federally-protected waters of the United States." *Id*. at 691. The court recognized its authority under the All Writs Act, as well as its "broad discretion to fashion remedies that will protect and effectuate its judgment, particularly when the public interest is involved." *Id*. Finally, the Court held that it may "enjoin any city administrative agency which in effect prevents, or purports to prevent, conduct necessary to comply with this court's [order]." *Id*.

Similarly, this Court has previously entered an Order intended to remedy continuing violations of the Consent Decree. The District is violating this Court's prior Order by dissipating the funds needed to comply with the same, and publicly stating that it does not believe this Court meant what it said. This Court should issue an injunction, pursuant to its authority under the All Writs Act, to prevent the District from dissipating the funds which have been set aside to comply with this Court's March 31, 2010 Order.

III. THERE IS GOOD CAUSE FOR EMERGENCY RELIEF

In just two days, on August 12, 2010, the District will vote on whether to use the money it had previously set aside to comply with this Court's March 31, 2010 Order to, instead, purchase U.S. Sugar Land. If the proposed acquisition is approved, the deal will close, and the funds will be dissipated, within 60 days. Because this proposed course of action is contrary to

the Court's March 31, 2010 Order, the Court should grant emergency relief pursuant to Local Rule 7.5(e).

CONCLUSION

For the foregoing reasons, this Court should grant an immediate hearing and enter an order enjoining the South Florida Water Management District from abandoning the Reservoir Project in favor of the River of Grass Acquisition.

Respectfully submitted,

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CASE NO.: 88-1886-CIV-MORENO/SIMONTON

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