Not an Everglades setback: Judge leaves room for U.S. Sugar deal to proceed

By THE PALM BEACH POST

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U.S. District Judge Federico Moreno seemingly dealt a significant setback to Gov. Crist's plan to buy U.S. Sugar land for Everglades restoration. But the judge's March 31 ruling calling on the South Florida Water Management District to make good on its promise to build a reservoir in southwestern Palm Beach County isn't damaging. It's constructive.

Within his 20-page ruling, Judge Moreno issues instructions on how the district can fix the problem his order raises. Yes, the district promised a reservoir. Yes, the district suspended construction, pending the $536 million U.S. Sugar deal that's before the Florida Supreme Court. But if the district would file a 60(b)(5) motion, the judge writes, this reservoir issue could be cleared up.

Under the Federal Rules of Civil Procedure, Judge Moreno writes, such a motion would allow the district to seek relief if "'a significant change either in factual conditions or in law' renders continued enforcement 'detrimental to the public interest.'" If the U.S. Sugar deal goes through, the $700 million A-1 reservoir would be in the way, making the reservoir "detrimental to the public interest." The judge all but begs the district to file a motion that would allow him to do what he has been doing as the second judicial overseer of Everglades cleanup in a case that dates to 1988: watch out for the Everglades.

The district argues convincingly that it stopped construction, after spending $280 million, in time to convert what would have been a reservoir with high walls into a marsh without walls. The U.S. Sugar deal enables the district to build a reservoir farther north, next to Lake Okeechobee. From there, dirty water would flow south to the A-1 site for cleansing before entering the Everglades.

Judge Moreno's order calls for reservoir construction to start again. Fortunately, there's a lawsuit, which environmental groups filed in 2007, arguing that the reservoir may not help the Everglades at all. Before construction starts, that lawsuit, dismissed in light of the U.S. Sugar deal, is likely to be reinstated.

Judge Moreno also ruled that water entering the Loxahatchee National Wildlife Refuge in Palm Beach County in November 2008 and June 2009 exceeded allowable pollution levels, thus violating a 2006 consent decree. Again, he suggests a solution: a hearing before a special master.

Judge Moreno worries that Miccosukee tribal lands within the Everglades "will ultimately be sacrificed to nutrient pollution" because of delays. But the judge is realistic about the "benefits" to be gained from building a reservoir in the wrong place and the potential benefits of holding out for the U.S. Sugar land. He's not threatening the deal. He's playing his role as the person who keeps all the competing parties on track to restore the Everglades.

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