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BRADENTON, Fla. — The Florida Supreme Court Monday decided to hear oral arguments on April 7 in the South Florida Water Management District's quest to get legal validation for \$650 million of certificates of participation, the sale of which is being opposed by two appellants.

The district plans to use the COPs to purchase 72,500 acres of land owned by U.S. Sugar Corp. for Everglades restoration. The purchase will include an option to buy the remaining U.S. Sugar property consisting of 107,500 acres within 10 years.

The Miccosukee Tribe of Indians of Florida and New Hope Sugar Co., a U.S. Sugar competitor, initially objected to the validation of the COPs before a lower court.

Palm Beach County District Judge Donald Hafel on Aug. 26 ruled the district had the lawful authority to sell the debt and authorized the issuance of \$650 million of COPs, though the district sought validation of \$2.2 billion.

The Miccosukee Tribe and New Hope then appealed the validation to the state's highest court.

The district's agreement with U.S. Sugar requires final validation of the certificates by March 31 in order to sell the debt shortly thereafter and close on the purchase contract by June 30. U.S. Sugar has indicated it is willing to consider modifying dates in the purchase contract.

"The district is pleased that the Florida Supreme Court has set a date and we look forward to briefing the governing board," district spokesman Randy Smith said Tuesday.

Among the reasons for objecting to the COP sale, Miccosukee and New Hope contend that purchasing land from a private company does not serve a public purpose.

The Miccosukee Tribe in a brief filed Dec. 1 said the use of COPs is not unusual or unique but there are "no reported cases anywhere in the country where, as here ... COPs were validated for a pure land purchase, without money for the projects necessary to accomplish the stated public purpose."

COPs are commonly used by Florida's public school districts to build schools. The debt typically is structured as a lease-back transaction secured by annual appropriations.

The state's courts, including the Supreme Court, have long held that the use of COPs in Florida is legal.

The water district's plan is "a drastic expansion of bond validation law," the Miccosukee brief said, noting that underlying issues in the water district case are different from the school districts' issues.

"This court should reject the district's efforts to boldly go where no bond issuer has gone before," the Miccosukee brief urged the high court.

The district has argued in court briefs that it has narrow eminent domain powers and it typically is limited to acquiring land from willing sellers.

Once land is acquired, the district begins the process of designing and building site-specific facilities. The process can take 30 to 40 years, the district told the court.

The district also cited Florida law, which grants water management districts the power to buy land for public health and welfare.

The purchase of land "for this objective shall constitute a public purpose for which public funds may be expended," the law said.

The COP dispute has drawn interest from environmentalists, who support the district's plan to buy the land as part of the effort to protect and restore the Everglades.

Florida and the federal government have a multi-year agreement to fund restoration efforts to help save the internationally renowned area that is home to some of the most diverse, rare, and endangered plant and animal habitat in the world.

The Florida School Boards Association Inc. and the Florida Association of District School Superintendents also filed a friend-of-the-court brief in November analyzing for justices the essential nature of the COP structure.

The brief said Florida school districts have \$14.26 billion of outstanding certificates with plans to issue another \$2.15 billion over the next five years.

The school boards and superintendents said they “have a special interest in [the water district] case because of the possible consequences this court’s decision will have on the ability of school districts to finance the construction of school facilities needed to comply with Florida’s constitutional and statutory mandates.”

The friend-of-the-court brief was filed out of caution, according to Robert Nabors, an attorney with Nabors, Giblin & Nickerson PA who represents the school groups.

“I don’t want to infer that there’s any doubt about COPs,” said Nabors, who noted that he and his firm were involved with the first cases before the Florida Supreme Court that established certificates of participation financing in the state is legal.

“We have no reason to believe that the court will change its mind [about the legality of COPs] but we wanted to make sure because it’s an issue you don’t see every day,” he said.

Nabors also said he did not anticipate the water district case would be similar to Strand v. Escambia County.

In that case, the Florida Supreme Court in September 2007 stunned the bond market with a ruling that called into question the legality of tax-increment financing bonds and COPs that had not been approved by voters or validated.

The decision initially reversed decades of case law.

A few weeks later, the high court –clarified its decision by taking COPs out of its review. And eventually it also reversed itself with regard to TIF bonds — assuring the bond market that both TIF bonds and COPs are legal for issuers in the state.

“We wanted to make sure that [in the water district case] the court had our analysis about why schools are different and why certificates of participation are important,” Nabors said.

Briefs and court orders in the water –district’s COP validation case are available at [www.floridasupremecourt.org/pub\\_info/summaries/briefs/09/09-1817/index.html](http://www.floridasupremecourt.org/pub_info/summaries/briefs/09/09-1817/index.html).

