

## HILLSBOROUGH COUNTY WATER RESOURCE SERVICES

### UTILITY ENTERPRISE AND CONE RANCH FACTS

November 2, 2009

The following clarifications are provided regarding the County's utility enterprise; the acquisition, financing, and disposal of utility enterprise assets; and the Cone Ranch property.

#### UTILITY ENTERPRISE

*Generally Accepted Accounting Procedures (GAAP)* require state and local governments to use enterprise-fund accounting for business-type activities similar to those of the private sector. The County's utility system is a self-supporting enterprise, and although operated like a business, it does not earn a profit. Nor does it receive ad valorem taxes to support its operations.

The system was largely constructed or acquired through the sale of municipal revenue bonds whose conditions require the County to collect sufficient revenues to support enterprise expenses and maintain minimum levels of reserves. Only the revenues of the enterprise (not its assets or the full faith and credit of the County) are pledged to secure payment of the principal and interest on those bonds.

Each time that the County issues bonds for its utility enterprise, the Board of County Commissioners (BOCC) adopts a County resolution setting forth the conditions of those bonds (bond covenants). The covenants constitute a contract between the County and the holders of those bonds.

#### ENTERPRISE ASSETS

Enterprise assets must be managed solely for the benefit of enterprise rate payers and bond holders—not taxpayers in general. Enterprise assets must be kept separate and apart from all other County assets and used only as provided in the covenants. The covenants prohibit the enterprise from rendering any free service of any nature. Any enterprise service rendered to the County must be paid to the enterprise from the County's general funds. The covenants prohibit the use of enterprise funds for other than any lawful enterprise purpose. They also prohibit the encumbrance of enterprise assets unless necessary or reasonable to accommodate or compliment enterprise operations.

Every enterprise asset is subject to the covenants of any outstanding enterprise bonds whether or not acquired directly with those bonds. If the enterprise redeemed all of its outstanding bonds and subsequently issued new bonds to finance an expansion of any portion of its system, all existing enterprise assets would typically be subject to the covenants of the new bonds. Such conditions are demanded by bond underwriters and purchasers to ensure that the assets of the utility cannot be easily disposed, potentially leaving the bondholders without the security of a system that is sufficient to generate the revenues that secure repayment of the outstanding debt.

## DISPOSAL OF ASSETS

Enterprise bond covenants do allow for the disposal of non-performing assets. The covenants prohibit disposal of enterprise real property exceeding 15,000 sq. ft. for less than its **fair market value** unless that value is \$100,000 or less. (Black's Law Dictionary [7<sup>th</sup> edition] defines fair market value as "the price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction" [emphasis added].) Per the bond covenants, fair market value must be determined by an independent appraiser. Before disposing of property valued at more than \$500K:

- The WRS Director must find the property to be no longer useful, necessary, or profitable to enterprise operations.
- The County's independent bond engineer must find such disposal to be in the best interests of the enterprise.
- The BOCC must concur with those findings and authorize disposal.

Proceeds from disposal of an enterprise asset which total less than 10% of the value of all enterprise fixed assets must be deposited in enterprise capital renewal and replacement account. As of 9/30/08, enterprise fixed assets totaled approximately \$1.4 billion. Proceeds from disposal of an enterprise asset which exceed 10% of the value of all enterprise fixed assets must be used to redeem outstanding enterprise bonds. As of 8/31/09, outstanding enterprise bonds totaled approximately \$80.5 million.

Each constitutional officer of Hillsborough County (such as Clerk of the Circuit Court, Supervisor of Elections, and Tax Collector) has the authority to enter into legally binding contracts on behalf of their respective organizations. The County through its BOCC has the legal standing to enter into legally binding contracts with other legal entities. Departments and offices under the BOCC are merely the designated managers of County's programs and assets and generally do not have the legal capacity to enter into a legally binding contract between themselves or with legal entities on behalf of the County except for limited emergency or procurement actions.

Non-performing enterprise assets may be transferred to other County departments by an affirmative action or resolution of the BOCC after complying with the enterprise bond covenants and compensating the enterprise at not less than fair market value of the transferred assets. Appraising real property based on "highest and best use" is necessary to ensure compliance with the enterprise bond covenant requirement for disposal at fair market value. It seems reasonable that the cost of determining the fair market value of an enterprise asset should be considered a cost to be shared equally by the enterprise and the transferee.

## CONE RANCH

The County acquired Cone Ranch in 1988 with the intent to finance the purchase solely from enterprise revenues. Acquisition was based on an agreement between the County and Tampa Bay Water's predecessor (the West Coast Regional Water Supply Authority) which estimated the water withdrawal potential of Cone Ranch at 45 to 50 MGD. Interest-only general improvement bonds were issued in 1988 to refinance the acquisition, and the interest was paid solely from enterprise revenues.

Enterprise bonds were issued in 1991 to retire the 1988 general improvement bonds. The 1991 bonds specifically addressed the purchase of the Cone Ranch property. The County issued new enterprise bonds in 1993, 2001, and 2003 to refund or retire outstanding bonds. Enterprise assets are currently subject to the covenants adopted by the County in 2003 for its Series 2001 enterprise bonds (County resolution R03-112). Only Series 2001 bonds remain outstanding at this time.

The 1988 agreement between the County and West Coast granted West Coast the exclusive right to develop wellfields on the property. It granted the County the right to receive all water extracted from the property and the right to compensation for sales of any excess water to other members. Although the agreement provided for reversion of West Coast's rights to the County if the property cannot be used as a water resource, it did not address any such action for a severely restricted resource or grant the County the authority to unilaterally determine whether such use was possible or feasible.

In 1998, the West Coast Regional Water Supply Authority became Tampa Bay Water (TBW) and the interlocal agreement between its members reserved to TBW the sole right to develop new water supply sources to serve those members. That agreement established the TBW's obligation to supply its members' water supply needs and specifically cancelled the County's exclusive rights under the 1988 agreement to any water supplies developed on Cone Ranch.