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From : Richard J. Miller 

Date : May 6, 2008

Re : Cone Ranch - Proposed 2,000 Acre Lease to the Lowry Park Zoological Society

FACTS PRESENTED

In 1988, Hillsborough County, Florida (the "County") issued its \$14,400,000 Weekly Adjustable/Fixed Rate Public Improvement Revenue Bonds, Series 1988 (Cone Ranch Project) (the "1988 Bonds") to finance the acquisition of the Cone Ranch parcel ("Cone Ranch"). Cone Ranch was acquired by the County to provide a well-field source of fresh water for the County's water and wastewater utility system (the "Utility"). The 1988 Bonds, which were County bonds, payable from County moneys, were subsequently refunded by a 1991 Junior Lien Utility Revenue Bond issue, which was subsequently refunded by the County's \$186,105,000 Junior Lien Refunding Utility Revenue Bonds, Series 2001 (the "2001 Bonds"). The County indicates

Memo

that approximately \$5,000,000 of the proceeds of the 2001 Bonds were used to redeem outstanding bonds relating to the Cone Ranch financing.

The Lowry Park Zoological Society, an independent and non-profit IRC 501(c)(3) charitable corporation (the "Zoological Society") and owner of Tampa's Lowry Park Zoo, has requested the County lease 2,000 acres (the "Cone Ranch Parcel") of the existing Cone Ranch property to the Zoological Society for use as a conservation facility and international conservation center (the "Conservation Facility"). The Zoological Society has proposed a long-term lease of the Cone Ranch Parcel to the Zoological Society for nominal consideration. Tampa Bay Water, of which the County is part owner and a participant, has by agreement certain water rights in Cone Ranch.

QUESTIONS PRESENTED

1. May the Utility lease the Cone Ranch Parcel to the Zoological Society under the Bond Resolution?
2. If the Utility may lease the Cone Ranch Parcel, may it do so for nominal consideration?

CONCLUSIONS

1. Cone Ranch is an asset of the Utility, and under the terms of the Amended and Restated Utility System Bond Resolution No, R03-112 adopted on June 4, 2003 (the "Bond Resolution"), the Utility may lease the Cone Ranch Parcel only under the following conditions: (i) the Director of the Water Department first finds in writing that such Cone Ranch Parcel is no longer necessary, useful or profitable in the operations of the System, taking into account, among other things, the rights in Cone Ranch of Tampa Bay Water, (ii) next the System's Qualified Independent Consultant finds in writing that it is in the best interest of the County Water Department that such property be sold or disposed of, taking into account, among other things, the rights in Cone Ranch of Tampa Bay Water, and (iii) then the Board of County Commissioners, by resolution, concurs in the findings of the Director of the Water Department and of the Qualified Independent Consultant, and authorizes the sale or other disposition of such property consistent with its Charter and Florida Law.
2. No. The Bond Resolution does not permit the transfer of property of the Utility System without fair market/replacement value consideration.

DISCUSSION

1. The Lease of Cone Ranch Parcel from the Utility to the Zoological Society.

The Bond Resolution defines "System" as follows:

"System" means the complete utility properties (including the Water System and Wastewater System) supplying, distributing and treating water and wastewater services (including reclaimed water services) now or hereafter, operated and maintained by the Issuer, whether owned by or leased by the Issuer, together with any and all improvements, extensions and additions thereto hereafter constructed or acquired and other related or similar services the Governing Body directs to be operated and maintained by the Department as part of the System.

Cone Ranch was acquired by the County to provide a source of fresh water for the County's Utility, and later transferred to the Utility; hence, by definition it is part of the System.

Section 11.07 of the Bond Resolution provides:

Section 11.07. No Mortgage or Sale of the System.

(1) The Issuer will not mortgage, pledge or otherwise encumber the System. The Issuer will not sell or otherwise dispose of any property of the System if the fair market value of the property in question as determined by the Qualified Independent Consultant:

[(a) does not exceed \$500,000, unless Director of the Water Department first finds in writing that such property is no longer necessary, useful or profitable in the operations of the Issuer.]

(b) exceeds \$500,000, unless (i) the Director of the Water Department first finds in writing that such property is no longer necessary, useful or profitable in the operations of the System, (ii) next the Qualified Independent Consultant finds in writing that it is in the best interest of the Issuer that such property be sold or disposed of, and (iii) then the Governing Body, by resolution, concurs in the findings of the Director of the Water Department and of the Qualified Independent Consultant, and authorizes the sale or other disposition of such property.*

* Which must be in accordance with the County Charter and Florida law.

(2)(a) if any sale proceeds received from the disposition of the property in question are less than ten percent (10%) of the fair market value of the fixed assets of the System as determined from the most recent audit report, the proceeds shall be placed in the Renewal and Replacement Account.

(b) If any sale proceeds received from the disposition of the property in question are ten percent (10%) or more of the fair market value of the fixed assets of the System as determined from the most recent audit report, the proceeds shall be placed in the Debt Service Account to be used to redeem Bonds as provided in Section 9.07(3).

(3) Notwithstanding anything in the foregoing paragraphs (1) and (2) of this Section 11.07 to the contrary, the Issuer shall have and hereby expressly reserves the right to sell, lease, donate or otherwise dispose of any of the property comprising a part of the System which shall have become unserviceable, inadequate, obsolete, worn out, or unfit to be used in the operation of the System or is no longer necessary, useful or profitable in such operation if (i) such finding is made in writing by the Director of the Water Department, and (ii) if the property is real property totaling more than 15,000 square feet, the fair market value as determined by a Qualified Independent Consultant of the real property in question is not more than \$100,000.

Based on the foregoing, and assuming the value of the 2,000 acre Cone Ranch Parcel would exceed \$500,000, the Utility must satisfy the conditions required by Sec. 11.07(1)(b) of the Bond Resolution in order to lease the Cone Ranch Parcel to the Zoological Society. This would require an initial finding by the Director of the Water Department that such property is "no longer necessary, useful or profitable in the operations of the System" and a finding by the Independent Consultant to the effect that it is in the best interest of the County that such property be disposed of.

Tampa Bay Water, of which the County is a participant, has contractual interests in water and land contained on all portions of the Cone Ranch property. Accordingly, the required findings could not be made as to the usefulness or disposition of the Cone Ranch Parcel without the concurrence of Tampa Bay Water.

2. Lease at Nominal Consideration.

The language of Section 11.07 of the Bond Resolution explicitly contemplates the receipt of fair market/replacement value for the transfer of System property. The only reference to the donation of property is found in Section 11.07(c) of the Bond Resolution, pursuant to which, in order to permit the transfer by lease (i) the Director must find the property unfit to be used in the operation of the System or no longer necessary, useful or profitable in such operation, and (ii) where real property totals more than 15,000 square feet, the fair market value as determined by a Qualified Independent Consultant of the real property in question is not more than

\$100,000. We do not believe that the Cone Ranch Parcel could be fairly assessed at a fair market value less than \$100,000; therefore, the Utility would be prohibited to lease the Cone Ranch Parcel under Section 11.07(c) of the Bond Resolution.

Moreover, leasing of the Cone Ranch Parcel for nominal consideration would also violate the Bond Resolution's prohibition against free service, contained in Section 11.09:

Section 11.09 No Free Service.

So long as Bonds are outstanding, the Issuer will not render or cause to be rendered any free services of any nature by the System . . .

We believe that a lease for nominal consideration would constitute the rendering of a free service—use of the Cone Ranch Parcel—which is prohibited by Section 11.09 of the Bond Resolution.

Therefore, based on the foregoing, we believe that the Utility cannot satisfy the conditions required by Sec. 11.07(1)(b) and (c) of Bond Resolution to lease the Cone Ranch Parcel to the Zoological Society for nominal consideration.