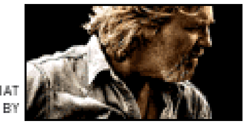

March 7, 2010

Deal to Save Everglades May Help Sugar Firm

By DON VAN NATTA Jr. and DAMIEN CAVE

When Gov. Charlie Crist announced Florida's $1.75 billion plan to save the Everglades by buying out a major landowner, United States Sugar, he declared that the deal would be remembered as a public acquisition "as monumental as the creation of the nation's first national park, Yellowstone."

Standing amid the marshes at the Loxahatchee National Wildlife Refuge in June 2008, Mr. Crist said, "I can envision no better gift to the Everglades, the people of Florida and the people of America — as well as our planet — than to place in public ownership this missing link that represents the key to true restoration."

Nearly two years later, the governor's ambitious plan to reclaim the river of grass, as the famed wetlands are known, is instead on track to rescue the fortunes of United States Sugar.

The proposal was downsized only five months after it was announced. By April 2009, amid the deepening recession, the state said it could afford to purchase only 72,800 acres of United States Sugar's land, for $536 million. The company would stay in business and the state would retain the option of buying the remaining 107,000 acres at a future date.

United States Sugar dictated many of the terms of the deal as state officials repeatedly made decisions against the immediate needs of the Everglades and the interests of taxpayers, an examination of thousands of state e-mail messages and records and more than 60 interviews showed.

Efforts to restore the Everglades have picked up urgency in the last decade: the sprawling subtropical wetland, the only ecosystem of its kind, is dying for lack of clean water. Many environmentalists remain convinced that Mr. Crist's deal with United States Sugar, even in its downsized form, offers the Everglades its best hope.

But documents and interviews suggest that the price tag and terms of the deal could set back Everglades restoration for years, or even decades.

Negotiations favored United States Sugar from the start, when the state accepted two outside firms' appraisals of the company's land that used figures from the height of the real estate market, according to documents.

When a "fairness opinion" commissioned by the state found that those appraisals had overvalued the land by $400 million, Florida officials orchestrated a public relations campaign to discredit the findings, internal e-mail showed. Appraisers from the Florida Department of Environmental Protection, which was required to sign off on the deal, were also cut out of the process after raising concerns, e-mail messages showed.

When it came time to decide which land to buy, state officials acknowledged that United States Sugar was, as one official put it during an interview, "pretty much in the driver's seat." The water district overseeing the restoration will end up with six large disconnected parcels under the current deal, including all of United States Sugar's citrus groves.

State officials acknowledged that some of that land, which has been ravaged by canker, a plant disease, is useless for restoration.

The officials defended the negotiations as appropriate, saying that United States Sugar needed certain tracts of farmland to continue operating.

Mr. Crist said in an interview that officials had "negotiated to try to get the very best deal we could." He added, "We have a duty and a responsibility as good stewards to understand that we may never have this opportunity again, ever, ever."

Supporters of the plan said the land would enable the state and federal government to build reservoirs and water treatment systems. But doing so would require deep financial reserves from the South Florida Water Management District, which oversees restoration and is financed by taxpayers in 16 counties. Internal district documents put the price tag at up to $12 billion and projected that the district would have nowhere near that amount.

In the meantime, more than a dozen projects under way as part of a 10-year-old federal and district restoration effort have been suspended or canceled in anticipation of the cost of the United States Sugar deal. Among them is a massive reservoir in western Palm Beach County that was seen as a major step toward restoration of the Everglades. In total, $1.3 billion had already been spent on the projects, according to an internal water district document.

Former Gov. Jeb Bush, who initiated most of that work, said in an interview that he was "deeply disappointed" with the decision by Mr. Crist, his successor and a fellow Republican, calling the move to halt the projects a setback for restoration.

"To replace projects that were under way for a possibility of a project decades from now is not a good trade," Mr. Bush said. "On a net basis, this appears to me there has been a replacement of science-based environmental policy for photo-op environmental policy."

In its current form, the deal's only clear, immediate beneficiaries would be United States Sugar, a privately held company based in Clewiston, Fla., and its law firm, Gunster, which is expected to collect tens of millions of dollars in fees for its work on the sale, according to current and former United States Sugar executives.

The sale, scheduled to close March 31, amounts to a lifeline for the company, which entered negotiations at a time of profound weakness; it was facing a costly shareholder lawsuit, sinking profit margins and increased foreign competition. The deal would enable it to wipe nearly all the debt from its books.

United States Sugar had an unusually powerful advocate in Gunster, a West Palm Beach law firm that had represented it since 1990. Gunster's chairman, George LeMieux, was Governor Crist's chief of staff when the deal was first conceived. Mr. LeMieux, who began working at the law firm in 1994, returned to it in January 2008 as the deal was being renegotiated.

He and Mr. Crist are confidants, and the governor referred to Mr. LeMieux as the "maestro" of his 2006 election victory. When a United States Senate seat was vacated in 2009, Mr. Crist appointed Mr. LeMieux to fill it. The governor is now campaigning for that post and has often described the United States Sugar purchase as a crowning achievement of his administration.

Mr. LeMieux said in an interview that he had recused himself from the United States Sugar negotiations while he was chief of staff, to avoid a conflict of interest. He said he had never discussed the deal with Mr. Crist, which was "awkward as heck," given how close they are.

Back at the law firm, Mr. LeMieux sent an e-mail message on Dec. 18, 2008, to its compensation committee, saying "I should not be compensated" for the firm's United States Sugar representation, according to a copy of the message. H. William Perry, Gunster's managing partner, said the firm complied. Mr. LeMieux said that he had only "management type discussions" about the case as chairman.

Rick J. Burgess, a Gunster partner, said he spoke to Mr. LeMieux on occasion about the deal, using him "as a sounding board."

Mr. LeMieux played a similar role for Kirk Fordham, who runs the powerful Everglades

Foundation. Mr. Fordham said he spoke two or three times with Mr. LeMieux when he was at the law firm for updates about the negotiations.

For United States Sugar, “it’s a fantastic deal,” said a former senior executive of the company, who described his colleagues as “elated.”

“I won’t lie to you — it’s a damn good price for that land,” said the executive, who spoke on the condition of anonymity because he had signed a nondisclosure agreement. “But it’s not as good a deal for the Everglades. If the district doesn’t have any money after this purchase, then they won’t be able to do any restoration projects. It could be a disaster in the making.”

A Governor’s Overture

On Route 27 heading out of Palm Beach, towering piles of rocks extend for more than a mile on the site of what was to become the largest man-made reservoir on the planet. Consuming more than 16,000 acres, it would hold enough water to fill 100,000 Olympic-size swimming pools.

The reservoir was a vital piece of the $7.8 billion restoration project put together by President Bill Clinton in 2000. Under the plan, reservoirs, marshes and hundreds of wells would collect, clean and deliver rainwater to the Everglades, where an array of plants and animals are threatened with extinction.

Environmentalists had long sought to restore the historic flow way, or waterway, from Lake Okeechobee south through the glades and into Florida Bay, a dream that had been hampered by more than a century of piping, dredging and development. The flow way required land owned by United States Sugar and its chief competitor, Florida Crystals, both of which refused to sell for years.

The system of wells and reservoirs was a way to circumvent that need. Like many previous restoration efforts, though, the Clinton plan hit obstacles, including competing local interests and insufficient financing from the federal government.

Even so, in 2004, Governor Bush was able to accelerate eight projects; some $282 million alone was spent on the giant reservoir.

But by 2007, with a sagging sugar business looking to prop up its balance sheet and a new governor looking to burnish his environmental and national credentials, the fate of the Everglades was about to take another abrupt turn.

United States Sugar’s debt soared that year to more than $500 million, former executives said, as operational problems and competitive pressures mounted. The company was in its second year of drought and further hampered by a recent water district restriction limiting a method of irrigation that sugar growers relied on during the dry seasons.

On Nov. 15, 2007, two United States Sugar lobbyists met in the governor's office with Mr. Crist and Eric Eikenberg, the deputy chief of staff under Mr. LeMieux.

The lobbyists, J. M. Stipanovich and Brian Ballard, had supported Mr. Crist's campaign for governor, and Mr. Ballard was one of its major fund-raisers. United States Sugar was still reeling from the government's decision to limit irrigation.

"It was a visit to open his eyes, to open his ears to the idea that a lot of these decisions were affecting their livelihood," Malcolm S. Wade Jr., a senior vice president at United States Sugar, said in an interview.

At the meeting, the governor announced that the state might be interested in buying United States Sugar. Mr. Crist said in an interview that he could not remember "the particulars" of when or how the idea had originated.

"There was a sense, or some indirect communication, that they might be a willing seller," the governor said.

Mr. Wade said that the company had been taken by surprise. "It caught everyone out of the blue," he said.

For its board members, Mr. Crist's overture was appealing in part because they figured a government purchase would be far more lucrative than a private deal.

"It wasn't another company coming in and bottom-fishing you," Mr. Wade said. "They knew it would be for fair-market appraisals."

A Setback Seems Averted

When the state began negotiating its ambitious plan to save the Everglades, key players were, notably, not invited.

Missing from the table, according to interviews and e-mail messages, were Miccosukee Indian tribe members, some of whom live in the Everglades; the Florida Crystals Corporation, the other major landowner in the area; and the federal agencies that partner with the state on restoration efforts.

Lawyers for the Miccosukees and Florida Crystals said their clients found out about the proposed deal with United States Sugar just a few days before it was announced to the public.

Likely supporters of the deal had been told months earlier, including Paul Tudor Jones II, a billionaire hedge-fund manager and philanthropist who co-founded the Everglades Foundation. The governor was friendly with Mr. Jones, who had contributed $400,000 to the state Republican Party — the largest single donation it ever received. And Mr. Jones was influential with other environmental groups that he and his foundation helped finance with millions of dollars.

As the negotiations proceeded, it became clear that financing was problematic. The cost of the land deal had initially been estimated at nearly $2 billion. But the water district was already committed to spending about $800 million for the giant reservoir outside Palm Beach. It could not afford both.

Responding to an e-mail message from a fellow environmentalist saying that the governor needed to understand the threat the reservoir posed to the United States Sugar land purchase, Mr. Jones replied, “He knows that and is doing the best he can.”

Yet stopping construction of the reservoir presented a potential political disaster.

So on May 15, 2008, with the United States Sugar deal still not public, the water board suspended work on the reservoir because of “uncertainties related to unresolved litigation.”

The litigation referred to a lawsuit environmental groups had filed over water usage from the reservoir. The announcement stunned the groups, which had made it clear that they did not want the project stopped.

“We were a convenient pretext,” said Bradford H. Sewell, a lawyer for one of the groups.

There were enormous financial consequences. The district had to pay the reservoir’s contractor a $2 million-a-month penalty for suspending the work. It eventually paid $25 million in penalties and fines for canceling the contract, on top of the $282 million it had already spent on the construction.

Fallout from the suspension was mounting when Shannon A. Estenoz, a member of the district’s advisory board who had been on the board of the Everglades Foundation, reached out to Mr. Jones. In an e-mail message on May 21, Ms. Estenoz urged Mr. Jones to send a message to the governor: “For your information only, our decision to pause construction is entirely justifiable on its own even without the US Sugar deal hanging out there, but once the litigation is finished our legitimate reason for delay goes away,” she said. “The message to the Governor is that we have until the end of the June at most.”

On June 24, 2008, with Florida already experiencing a recession and property values sinking, Ms. Estenoz stood beside the governor at the edge of the Everglades as he unveiled the $1.75 billion deal. Local cheers and sweeping national headlines followed.

Politically, the timing was perfect. Mr. Crist was on the short list of potential running mates for Senator John McCain, the presumptive Republican nominee for president.

Ellen Simms, a former United States Sugar comptroller who views the deal skeptically, said that despite the high cost to taxpayers, it was difficult in those early days to question it. “Who can be against it?” she said. “This was going to save the Everglades. It’s like being against motherhood and apple pie.”

A few did speak out. The Miccosukee Tribe quickly filed a lawsuit, saying that the purchase would delay the restoration. “This is a death warrant for the Everglades,” said Dexter Lehtinen, a lawyer for the tribe. “It sucks away all the money devoted to projects now in the pipeline.”

Florida Crystals labeled the deal a taxpayer-supported buyout of United States Sugar, and seemed to be smarting from being left out of it. Some of its land, in fact, was needed to recreate the waterway through the Everglades, which Mr. Crist called “the missing link” of restoration.

Interviews and previously undisclosed records showed that Florida Crystals had made two written offers to join in the deal. But, with United States Sugar resisting having its competitor involved, talks with the governor’s office went nowhere.

“For some reason, they weren’t willing to negotiate in a way that would bring us to an accord,” Mr. Crist said in an interview. “U.S. Sugar was. End of story.”

Twists and Disappointments

The growing financial crisis in the summer of 2008 was rapidly changing the scope of the deal. On Nov. 11, 2008, Mr. Crist announced a smaller, $1.34 billion purchase of just over 180,000 acres of United States Sugar’s land, but this time not including its other assets.

At a press conference, Mr. Crist called the new deal “miraculous.”

For United States Sugar, at least, it looked that way. David Guest, an environmental lawyer and vocal supporter of the full buyout plan, said that the state’s lead negotiator, Michael W. Sole, secretary of Florida’s Environmental Protection Department, had given away far too much to United States Sugar.

“He got scammed,” Mr. Guest said. “Everyone gasped in disbelief when he came back with what he did.”

Mr. Sole said in an interview that he got the best deal he could.

But internal district documents revealed that the land had been overvalued by the two firms that performed the independent appraisals. Both relied on figures from 2004 to 2008, when a speculative real estate market had prices soaring.

If the current prices had been used, the state would be paying far less. For example, while the water district agreed to pay United States Sugar nearly $7,000 an acre for citrus land, it is now selling for $4,000 an acre, independent appraisers said recently in interviews.

The two outside appraisal firms used by the district — Anderson & Carr, of West Palm Beach, Fla., and Sewell, Valentich, Tillis & Associates, of Sarasota — came up with almost identical figures of around $1.3 billion, a rarity that raised some eyebrows.

“When I had heard that number, I couldn’t swallow it — it was an unbelievable number,” said Woody Hanson, a land appraiser in Fort Myers with extensive experience in the Everglades. “Then I looked closely at the appraisals to test them for reasonableness and, wow, there is just no way it makes sense for the taxpayers.”

Neither appraisal firm used by the district would comment.

Eric Buermann, chairman of the district’s advisory board, defended the appraisals but acknowledged that they had used outdated values. “At the time we had to make the decision,” he said, “those were the latest, best numbers available.”

Yet when the appraisals were updated in 2009, they still relied on sale prices from 2004 to 2006, documents showed. District officials said the appraisers assured them that prices had held steady.

In an interview, Mr. Crist said critics of the appraisals were underestimating the land’s environmental value.

But the appraisers for the Florida Department of Environmental Protection had also questioned the methods of the two firms. According to internal e-mail, Thomas Porter, one of the department’s appraisers, would not give his requisite approval by the deadline.

In response, United States Sugar’s lawyers at Gunster persuaded the water district to change the contract so the department’s sign-off was no longer required, records showed. Several days after Mr. Crist’s November press conference, the water district learned that the firm it had hired to render the fairness opinion — an analysis of the entire deal — had also concluded that the land was worth far less.

The firm, Duff & Phelps, based in Manhattan, estimated the United States Sugar property was worth $930 million, about $400 million less than what the district would be paying.

When the firm's opinion arrived at the district, officials there consulted with Mr. Sole, the Environmental Protection secretary, about the best way to respond. The timing was critical because the district's board was scheduled to vote less than one month later, in mid-December, on the $1.34 billion purchase.

Officials who had commissioned the Duff & Phelps report, at a cost of $1.5 million, were now scrambling to minimize its impact. Internal e-mail messages showed that the district's scripted response for reporters was sent to Mr. Eikenberg, Mr. Crist's deputy chief of staff, as well as several prominent environmentalists.

"It is not an appraisal and does not provide a conclusion about the value of the acquisition relative to its public purpose," the district's statement said.

The deputy executive director for government and public affairs at the water district wrote talking points. "Note: There are differing views about the merit of fairness opinions within the business and academic communities," the public affairs official wrote, according to the e-mail.

Robert E. Coker, a United States Sugar vice president, was more blunt, characterizing Duff & Phelps publicly as "Huey, Dewey and Louie." He argued that Florida was paying bargain-basement prices, saying "the state is getting the Hope Diamond at cubic zirconia prices."

Paying for the land was only the beginning. A slide show prepared by the district on restoration projects and construction detailed one estimate that put the effort at $8.6 billion and another at $12.3 billion, according to records obtained by The New York Times.

Even at the lower estimate and with the federal government paying its share, the district would struggle to bear the costs. The details of the deal were now raising concerns among some district board members and environmentalists.

An unlikely cheerleader emerged. George LeMieux, despite having insisted that he had nothing to do with the deal, appeared at a legal conference in Deerfield Beach and offered "an insider's account" of Everglades restoration.

In a keynote address that went uncovered by the local media, Mr. LeMieux described the United States Sugar deal as "an unprecedented opportunity, really a game changer."

"We really stand at the intersection of opportunity and possibility," he said. "We have a historic opportunity to change the face of the Everglades and our environment with this acquisition of the U.S. Sugar lands."

'In the Driver's Seat'

In western Hendry County, on either side of State Road 833, sits Devil's Garden, a 5,500-acre orange grove. The land is elevated with soils that are sandy — a mix that is far from ideal for Everglades restoration.

Thomas Van Lent, a hydrologist for the Everglades Foundation, said he had "no idea" why the state had agreed to purchase it as part of the deal.

Mr. Wade, the United States Sugar senior vice president, does. "Buy it all," he said he told the state. "I don't want to be left with just a piece of the groves."

An environmental assessment presented to the district revealed that 49,000 acres of the United States Sugar land was contaminated with high levels of copper, DDT, selenium and other chemicals. Arsenic was detected at levels above human health standards in more than 6,000 acres of land, the documents showed.

Mr. Buermann, the water district advisory board chairman, said the state had little choice but to let United States Sugar choose what it wanted to sell.

"You have to understand that once the deal shrunk and we were not buying the sugar mill, the assets, U.S. Sugar had to be concerned about what lands they could let loose on and keep their business running on their end," he said. "It's understandable that they would be pretty much in the driver's seat as to what lands they could afford to sell."

Like other supporters, Mr. Buermann compared the deal to William Seward's purchase of Alaska, declaring that history would celebrate the acquisition.

"The issue for us is can we use that land, and the answer is yes," he said. "If we had a choice with all the land, it might not be our first choice of the inventory, but that doesn't mean it isn't valuable."

In April 2009, Governor Crist announced a second downsizing of the deal, necessitated again, he said, by the state's shrinking economy. The district would now buy 72,800 acres for $536 million. Critics said that as the deal got smaller, it got better for U.S. Sugar.

Under the terms of the new deal, United States Sugar will be able to keep farming some of the land for at least seven years. As a result, some environmental experts believe, the Everglades will be worse off in the short term.

“What you have is just another step in the category of kicking the ball down the road and chasing it,” said Alan Farago, the conservation chairman of Friends of the Everglades.

Criticism from other environmentalists, though, has been muted. Some have acknowledged concerns, but do not want to say anything that might help kill what would be the largest land purchase ever for the Everglades. With the state retaining an option to buy the rest of United States Sugar’s land, there also remains a romantic adherence in some quarters to the dream of a restored river of grass from Lake Okeechobee to Florida Bay.

“The whole concept that we are able to get additional land out of the E.A.A. — that has always been very difficult to do in the past,” said John H. Hankinson Jr., chairman of the board of directors at Audubon of Florida, referring to the Everglades Agricultural Area. “And that I think is ingrained in a lot of the consciousness of the people involved in this.”

Even if the deal goes through, it could be another generation before the Everglades gets what it needs.

Mr. Buermann said the water district was still analyzing whether it could afford to pay the $536 million and would discuss it at a two-day board meeting beginning Wednesday. Mr. Crist recently appointed two new members to the water board, both of whom support the purchase.

In an interview on Feb. 26, by phone as he traveled through the Everglades on the road known as Alligator Alley, the governor said that critics of the deal would come up with “all kinds of reasons not to do something.”

“But what are they doing to try and preserve the Everglades, other than complain about it?” he said. “What are they doing in a productive way to move forward and preserve this national treasure that exists nowhere else on the face of the earth? Nothing but complain. I rest my case.”

Tom Torok contributed reporting.