

# dbb DAILY BUSINESS REVIEW

## DEALMAKERS

### Attorneys help negotiate sale of U.S. Sugar's 180,000 acres

**Dealmakers:** Rick J. Burgess, Danielle DeVito-Hurley and Daniel M. Mackler.

**The Deal:** The attorneys with the Gunster law firm helped negotiate U.S. Sugar Corp.'s landmark agreement to sell up to 180,000 acres of agricultural land to the South Florida Water Management District. In the first phase of the deal, U.S. Sugar closed last month on the \$197 million sale of 26,791 acres to the district.

**Details:** If U.S. Sugar, a leading sugar and citrus producer, ultimately sells all 180,000 acres — the entirety of the company's farmland — it would be the single largest land sale for the purpose of restoring the Everglades.

The land deal changed in scope and structure several times during extended negotiations that began in 2008, demanding nearly nonstop attention from all three Gunster attorneys. "We have spent the last two and a half years together, locked in a room, negotiating this deal," said Burgess.

As part of the deal, the district also acquired a 10-year option to purchase the remaining 153,000 acres of the company's agricultural land, which is valued at more than \$1 billion.

U.S. Sugar would continue to operate as a processor of sugar and citrus and could continue as a grower, too, by using proceeds from land sales to buy replacement farmland elsewhere.

U.S. Sugar sold and leased back the 26,791 acres at the closing last month, and the company would structure future land sales under its agreement with the water management district as sale-lease backs, too.

The arrangement allows U.S. Sugar to keep land in agricultural production and allows the district to collect lease payments while planning how to use the land it acquires.

Gov. Charlie Crist initiated the deal-making by urging U.S. Sugar to consider selling a large tract of land to the district.



MELANIE BELL

**Daniel Mackler, Danielle DeVito-Hurley and Rick Burgess worked together for two and a half years on a landmark agreement that would ultimately restore the Everglades. The first phase was the sale of 26,791 acres sold for \$197 million.**

In June 2008, the governor announced an agreement in principle under which the company would sell all 180,000 acres in a single, \$1.75 billion transaction. Shortly after the announcement, the district temporarily considered the possibility of spending more than \$2 billion to buy all of the assets to U.S. Sugar, not just land, but also facilities including a sugar mill and refinery.

"There were a couple of frenzied months when they [the water district] tried to determine whether they could buy all that, and it turned out they couldn't, so they came back and settled on a real estate deal," DeVito-Hurley said.

The scope of the land deal shrank as financial issues mounted. The South Florida Water Management District is

financially reliant on property taxes, and the widespread drop in real estate values since 2008 restrained the district's buying power.

"Unfortunately for all the parties involved, you have a general economic downturn and the downward pressure on ad valorem revenues," DeVito-Hurley said.

The district had planned to use bonds called certificates of participation, or "COPs," to finance its purchase of all 180,000 acres from U.S. Sugar in a single transaction. But a U.S. Sugar competitor, Florida Crystals, and the Miccosukee Tribe of Indians of Florida are fighting the financing plan in court. In a case pending before the Florida Supreme Court, Florida Crystals and the Miccosukee Tribe are trying to prevent the district from proceeding with plans to borrow money to finance the U.S. Sugar land purchase, claiming that the deal lacks "public purpose," a prerequisite for COP-style bond issues. The third-party plaintiffs also have claimed that the district's land purchase plans should be subject to review by a state administrative judge.

The solution to these and other potential deal breakers was to downsize the transaction and structure it with no debt, to let the water district pay cash for a fraction of the 180,000 acres and put the rest of the land under an option to purchase.

The Gunster legal team advised U.S. Sugar to move ahead with the downsized version of the land deal despite the legal uncertainty "with the only condition being that there is no injunction issued by a court" at the time of the closing, Mackler said.

**Background:** Burgess is a shareholder and chairs the firm's associate compensation and retention committee. DeVito-Hurley is a shareholder and co-chair of the firm's distressed property practice. Mackler is a shareholder and the leader of the firm's real estate practice.

— Mike Seemuth