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S. Fla. Water Mgmt. Dist. v. Miccosukee Tribe, 124 S. Ct. 1537 (U.S.2004)

# COURT REPORTS

## FEDERAL COURTS

### UNITED STATES SUPREME COURT

**S. Fla. Water Mgmt. Dist. v. Miccosukee Tribe, 124 S. Ct. 1537 (U.S.2004)** (holding the Clean Water Act requires National Pollutant Discharge Elimination System permits for point sources that convey pollutants into navigable waters of the United States, though they do not themselves produce any pollutants).

The South Florida Water Management District (“SFWMD”) appealed summary judgment entered by the United States District Court for the Southern District of Florida as affirmed by the Eleventh Circuit Court of Appeals, regarding whether one of its facilities required a National Pollutant Discharge Elimination System (“NPDES”) permit under the Clean Water Act (“CWA”). The facility was an SFWMD pump station that pumped water from a canal into a wetlands conservation area in the Everglades. The canal and wetlands conservation area were separated by a system of man-made levees, having once been parts of a single watershed. SFWMD pumped water from the canal, which carried pollutants from upstream surface runoff and groundwater discharge, into the wetlands conservation area. The Miccosukee Tribe of Indians (“Tribe”) brought the action to prevent SFWMD from operating its pump station without an NPDES permit, asserting that the pump station was a point source that added a pollutant to the navigable waters of the United States.

SFWMD argued the pump station was not a point source for purposes of determining whether the CWA required SFWMD to obtain an NPDES permit for its operation because the pump station itself generated no pollutants. The pollutants originated, rather, from surface runoff and groundwater discharge along the canal, upstream of the pump station. The district court disagreed. The CWA defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source,” and defines “point source” as “any discernable, confined and discrete conveyance . . . from which pollutants are or may be discharged.” The district court found that, in the absence of language concerning the generation of pollutants, the pump station constituted a point source, as defined above, if it discharged pollutants from one water body into another, even though it did not generate those pollutants.

SFWMD further argued that it did not discharge pollutants into navigable waters because the canal and wetlands conservation area were, in fact, a single water body, separated only by human interference with natural movements of water. SFWMD contended that, if it did not operate the pump station, one result would be that the canal would flood, and the artificially separated canal and wetlands conservation area would flow back together. The pump station was, therefore, not the but-for cause of canal water entering the wetlands conservation area. Rather, the pump station merely put the water where it would flow naturally, if not for the intervening system of man-made levees. The Tribe conceded that, if the canal and wetlands conservation area were not distinct bodies, and the pump station was not the but-for cause of water moving from one to the other, then the pump station did not require an NPDES permit. However, the Tribe contended that, as a matter of fact, the two bodies were distinct, and the pump station was the only reason water entered the wetlands conservation area from the canal. On its own determination that canal and the wetlands conservation area were distinct water bodies and that the pump station was the but-for cause of their waters joining, the district court granted summary judgment to the Tribe.

The Eleventh Circuit upheld the district court on both findings and SFWMD appealed to the United States Supreme Court, which granted certiorari. The Court upheld the district court's holding that the pump station was a point source that discharged a pollutant because the CWA made "plain that the point source need only convey the pollutant to navigable waters." As an example, the Court noted that the CWA imposes NPDES requirements on municipal wastewater treatment plants whose purpose is to "treat and discharge pollutants added to water by others."

On the second point, however, the Court held that the district court improperly granted summary judgment on the issue of whether the canal and wetlands conservation area were "meaningfully distinct water bodies," and remanded the case for further proceedings to resolve that issue. The Court concluded that if SFWMD's factual description of the canal, wetlands conservation area, and the intervening man-made structures was correct, then its contention that the canal and the wetlands conservation area were not meaningfully distinct water bodies under the law would also be correct. At trial, the parties did not dispute this point of law, but disputed whether the two bodies were, in fact, meaningfully distinct. If they were not, the pump station would not require an NPDES permit. The Court held that the district court made its determination prematurely, disallowing valid evidence contrary to its finding. Therefore, an unresolved factual controversy remained, and the district court's summary judgment was improper.

The Court did not resolve the issue, which SFWMD raised, of whether the requirement of an NPDES permit turns on the question of whether the two bodies are not distinct because "navigable waters of the United States" refers to a unitary sum. The SFWMD argued that,

because waters in the canal and in the wetlands conservation area were both “navigable waters of the United States,” the pump station could not be said to “add” any pollutant to the nation’s navigable waters, whether or not it would otherwise constitute a point source. Because SFWMD failed to raise the issue before the courts below, however, the Court declined to address it, leaving it to SFWMD to raise it on remand.

*Owen Walker*

**Virginia v. Maryland, 124 S. Ct. 598 (U.S. 2003)** (holding in absence of express grant of regulatory authority in interstate compact and arbitration award governing Potomac River, each state was free to regulate activities only of its own citizens with regard to use of the river, and Virginia did not lose sovereign riparian rights by acquiescing to Maryland’s regulation).

The Commonwealth of Virginia sought a declaration from the United States Supreme Court that it had a right to withdraw water from and construct improvements appurtenant to the Potomac River free from the regulatory authority of the State of Maryland. Maryland objected to the Special Master’s report recommending that the Court grant Virginia’s requested relief. A majority of the Court overruled Maryland’s exceptions in a 7-2 ruling.

The Potomac forms much of the boundary between Maryland and Virginia as it flows from the Appalachians to Chesapeake Bay. Both Maryland and Virginia claimed ownership of the river under conflicting seventeenth century royal charters. Virginia ceded ownership of the river to Maryland in its 1776 State Constitution, but specifically excepted from cession “the free navigation and use of the Rivers Potowmack and Pocomoke, and all improvements made on Virginia’s shores.” However, in the same year Maryland passed a constitutional resolution rejecting Virginia’s constitutional reservation.

In 1785, Maryland and Virginia appointed commissioners to resolve their differences. The commissioners agreed on the Mount Vernon Compact (“1785 Compact”), which the legislatures of both states ratified. The 1785 Compact provided that the Potomac “shall be considered as a common highway, for the purpose of navigation and commerce . . . and that all laws regulating fishing and navigation shall be made with the mutual consent and approbation of both states.” Further, the 1785 Compact explained “the citizens of each state respectively shall have full property in the shores of Potowmack river [sic] . . . and the privilege of making and carrying out wharves and other improvements, so as not to obstruct navigation of the River.”

The 1785 Compact did not, however, determine the precise boundary line in the river. After nearly a century of conflict, the states submitted the boundary dispute to arbitration. The arbitration