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Miccosukee Tribe of Indians v. S. Fla. Water Mgmt. Dist., 280 F.3d 1364 (11th Cir. 2002)

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ELEVENTH CIRCUIT

Miccosukee Tribe of Indians v. S. Fla. Water Mgmt. Dist., 280 F.3d 1364 (11th Cir. 2002) (affirming violation of the Clean Water Act when a pump station operated without a National Pollution Discharge Elimination System permit, and vacating an injunction to stop pumping due to significant public consequences).

The Miccosukee Tribe of Indians ("Tribe") and the Friends of the Everglades ("Friends") brought a citizen suit against the South Florida Water Management District ("Water District") in the United States District Court for the Southern District of Florida, alleging the Water District violated the Clean Water Act ("CWA") by discharging pollutants without a National Pollution Discharge Elimination System ("NPDES") permit. The Court of Appeals for the Eleventh Circuit affirmed the lower court's decision that the Water District was in violation of the CWA and therefore had to obtain an NPDES permit within a reasonable amount of time.

The South Florida Water Management District managed the Central and Southern Florida Flood Control Project through the operation of levees, canals, and water impoundment areas. The C-11 Canal ran through the C-11 Basin and collected water run-off. The S-9 pump station then pumped this water through pipes into the Water Conservation Area-3A ("WCA-3A"). The water pumped by the S-9 station into WCA-3A contained pollutants, in particular, higher levels of phosphorus than the naturally occurring level in the WCA-3A.

On appeal, the parties disputed whether the pumping by the S-9 pump station of the already polluted water constituted an addition of pollutants to navigable waters from a point source. The CWA prohibits the discharge of pollutants from a point source into navigable waters without an NPDES permit. The Act defined "discharge of a pollutant" as the addition of any pollutant to navigable waters from a point source. It also defined "point source" as any confined conveyance, including but not limited to a pipe, from which pollutants are discharged.

The parties agreed that the S-9 pump station and associated pipes constituted a point source that discharged phosphorus, a pollutant. However, the Water District argued that the S-9 pump did not itself introduce additional pollutants, but rather the pumped water was already polluted. The court rejected the Water District's argument and concluded that an addition from a point source occurs if the point source is the cause-in-fact of pollutants released into navigable waters. Here, the pollutants would not have entered the second body of water but for the S-9 pump station. Therefore, the S-9 pump station was the cause-in-fact of the additional phosphorus to the WCA-3A.

The appellate court then reviewed the district court's decision to

enjoin the operation of the S-9 pumping station until the Water District obtained an NPDES permit. The court stated that when determining whether an injunction is proper, a court should not only "balance the conveniences of the parties and possible injuries to them," but also "pay particular regard for the public consequences" of the injunction. Without the operation of S-9, the western portion of the county would flood in a matter of days, causing damage to, and displacement of, a significant number of people. Therefore, the court vacated the judgment awarding an injunction but ordered the Water District to obtain an NPDES permit within a reasonable amount of time.

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Sierra Club v. Meiburg, 296 F.3d 1021 (11th Cir. 2002) (holding that appellate courts have jurisdiction to review modifications of consent decrees, and that such modification is improper when there has been no change in law or fact subsequent to the party's agreement to the consent decree).

This case arose when the Sierra Club, along with various other environmental organizations ("Sierra Club"), sued the Environmental Protection Agency ("EPA") and several of the EPA's directors, including Mr. Meiburg. Sierra Club asked that the court order the EPA to implement total maximum daily loads ("TMDLs"), which the EPA was required to establish under a previously established consent decree. The Sierra Club originally brought the case in the United States District Court for the Northern District of Georgia, which found for Sierra Club. The EPA appealed, alleging the district court's holding improperly modified the consent decree. The Court of Appeals for the Eleventh Circuit agreed, and remanded the case to the district court.

The Clean Water Act ("CWA") established a statutory and regulatory scheme for lowering pollution levels in waters of the United States. The CWA addresses both point source pollution, which comes from a discernable point where pollutants are discharged, and non-point source pollution. When both point source and non-point source pollutants affect waterways, the CWA requires states to list each affected waterway in the state, and to set water quality standards for each. If a waterway does not meet those standards, the CWA requires states to determine TMDLs for the waterway, specifying the maximum daily amount of each pollutant that can pass through the waterway without violating the water quality standards. The CWA gives the EPA approval authority over both the list of polluted waterways and the corresponding TMDLs. If the EPA disapproves, the CWA requires it to issue its own list or its own TMDLs. The EPA has, for the most part, delegated authority for implementing TMDLs to the states.