

**02-626 SOUTH FLORIDA WATER MGMT. DIST. v. MICCOSUKEE TRIBE**

Ruling below: CA 11, 280 F.3d 1364.

**QUESTIONS PRESENTED**

The South Florida Water Management District (SFWMD) is the governmental agency that manages an extensive system of levees and canals throughout populous south Florida and the Everglades region. For decades it has pumped public waters to prevent catastrophic flooding and allocate water supply. For thirty years, the federal and state agencies responsible for the Clean Water Act's National Pollutant Discharge Elimination System (NPDES) program have considered the SFWMD's movement of water to fall outside the scope of the federal NPDES permit program because nothing is "added" to the navigable waters from the pumps. The Eleventh Circuit, in conflict with decisions from other courts of appeals and without deference to the agencies, concluded that because the pumped water contains some pollutants that would not reach the receiving water "but for" the pumping, such pumping alone constitutes an "addition" of pollutants requiring an NPDES permit.

The questions presented, which are of great national importance, are:

1. Whether the pumping of water by a state water management agency that adds nothing to the water being pumped constitutes an "addition" of a pollutant "from" a point source triggering the need for a National Pollutant Discharge Elimination System permit under the Clean Water Act.

~~2. Whether the court below should have deferred to the consistent and long held federal and state agency position that the SFWMD's pumping does not constitute an "addition" that requires a National Pollutant Discharge Elimination System permit.~~

CERT. GRANTED: 6/27/03

Limited to question 1 presented by the petition.