

United States v. South Florida Water Management District, (S.D. Fla., No 88-1886) (consent decree)

In response to a motion filed by the Miccosukee Tribe claiming breach of the Settlement Agreement due to exceedances of the interim phosphorus limits in the Loxahatchee Wildlife Refuge, the Court has conducted several hearings. First, in September, it heard the Tribe's evidence of a breach (the District and DEP, which were not allowed to present evidence at this hearing, agreed that there had been an exceedance). In December, the Court conducted a "remedy hearing" to address the Settling Parties' claim that the remedial measures they are putting into place (i.e., the Long-Term Plan, operational changes to the STAs and water delivery schedules, Acceler8 and Refuge monitoring and modeling) render the Tribe's motion moot. At the conclusion of that hearing, the Court scheduled yet another hearing for March 17 in Miami during which the parties were given the opportunity to make closing arguments. At the conclusion of that hearing, the Court stated it would issue a ruling before a previously scheduled status conference set for May 11.

With regard to the Tribe's motion alleging STA-3/4 was not built on time, the District filed a motion to amend the Settlement to reflect dates that actual flow-through operations occurred. As a result, the Court said it would defer any action on the Tribe's motion for breach. The motion to amend has been fully briefed and is ready for disposition.

South Florida Water Management District v. Miccosukee Tribe (U.S. Supreme Court/S.D. Fla., Nos. 98-06056/98-06057) (S-9 pumping station)

The 11th Circuit denied plaintiff's motion for fees as well. A joint scheduling report has been filed with alternative proposed trial dates, Plaintiffs request September, Defendants December. A motion has been filed to determine the scope of remand. Plaintiffs contend only one single factual issue remains to be determined, i.e. whether they are meaningfully distinct. The 11th circuit, however, already rejected that argument when it denied Plaintiffs' request for limiting instructions on remand and their opposition to vacatur. The Department of Justice has filed motions to intervene.

Miccosukee Tribe of Indians v. U.S. Army Corps of Engineers (S.D. Fla., No. 02-22778) (Interim Operational Plan)

Cross motions for summary judgment have been filed. NRDC added a counterclaim under the CWA to require NPDES permits to move water through structures entering Everglades National Park. The briefing schedule has been stayed pending motions for discovery depositions of U.S. employees that provided declarations in support of the depositions.

Florida Wildlife Federation v. SFWMD (S.D. Fla., No. 02-80309)

The Department of Justice has filed a motion to intervene and the City of South Bay has withdrawn from the case. A hearing has been scheduled for May 2, 2005, on all pending motions (to intervene and to strike some of the defendant's pleadings).