

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 10-14271-E

MICCOSUKEE TRIBE OF INDIANS OF FLORIDA,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA; U.S. ARMY CORPS OF ENGINEERS;
JOHN McHUGH, Secretary of the Army; LT. GEN. ROBERT VAN ANTWERP,
Chief Engineer; MAJ. GEN. TODD T. SEMONITE, Division Engineer; and
COL. ALFRED A. PANTANO, Jr., District Engineer, in their official capacities.

Defendant-Appellees.

Appeal from the United States District court for the Southern District of Florida
Case No. 08-cv-23001(Honorable K. Michael Moore)

APPELLEES' MEMORANDUM
IN RESPONSE TO COURT'S LETTER OF AUGUST 16, 2012

OF COUNSEL

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The United States submits this memorandum in response to this Court's letter of August 16, 2012, which directs the parties to answer the following question:

Please describe in a memorandum to the court which entity [*i.e.*, the Corps or the South Florida Water Management District ("SFWMD")] has day-to-day responsibility for operating the S-12 gates. Specifically, do Corps personnel or SFWMD personnel actually operate the S-12 gates on a day-to-day basis? In addition, please furnish the court with a copy of the memorandum of understanding between the Corps and the SFWMD that describes these roles. If such understanding is contained in multiple documents, please provide all of the relevant documents.

RESPONSE

The Corps is responsible for the day-to-day operation of the S-12 gates. *Master Water Control Manual, Central and Southern Florida Project for Flood Control and Other Purposes*, Vol. 1, Authorities and Responsibilities (Sept. 1991) at p. 4-1 and Table 4-1; *see* Br. for Appellees at 17 n.8 ("the Corps directly controls the primary water control structures in the Water Conservation Areas, including the S-12 structures") and 22-24 (describing Corps's operational decisions involving the S-12A structure).¹

¹ At various times in the past, the Corps has paid SFWMD to operate these structures, but the Corps has always held responsibility

The Corps' responsibility for managing the S-12 structures derives from Section 203 of the Flood Control Act of 1948, which authorized the first phase of the Central and Southern Florida Project "as recommended by the Chief of Engineers in House Document 643[.]" Pub. L. No. 80-858, § 203, 62 Stat. 1171, 1175, 1176 (1948). House Document 643 in turn recommended that "local interests" be responsible for the operation and maintenance of all of the Project works "except . . . the main spillways of the conservation areas." *Comprehensive Report on Central and Southern Florida [Project] For Flood Control and Other Purposes*, H.R. Doc. No. 80-643 at 5, ¶ 16 (1948). As explained in our brief (pp. 3, 16-17), the S-12 structures are the main spillways from Water Conservation Area 3A.

Copies of the relevant portions of the 1991 Master Water Control Manual, the Flood Control Act of 1948, and House Document 643 are attached.

for the S-12 structures and the other main spillways of the conservation areas.

Respectfully submitted,

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90-2-4-12658/1

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2012, I electronically filed the foregoing Memorandum with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit using the appellate CM/ECF system, thereby serving all participants in this case who are registered CM/ECF users. In addition, I sent a copy of the foregoing Memorandum by United States Mail, postage prepaid to the following:

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s/Mark R. Haag