

Tribes' water rights at Klamath River upheld by federal circuit court



Native American tribal water rights are guaranteed by the federal government to the extent that endangered species, like salmon in the Klamath River, aren't placed in danger, according to a court decision on Thursday. (Shaun Walker — The Times-Standard file)

By SHOMIK MUKHERJEE | November 15, 2019

Native American tribal water rights are guaranteed by the federal government to the extent that endangered species, like salmon in the Klamath River, aren't placed in danger, according to a court decision on Thursday.

The decision ensures that tribes receive priority over a group of farmers who sued the federal government in 2001 for shortchanging irrigation water supply, following a dry year for Oregon's Klamath basin.

The farmers claimed millions of dollars were owed as the result of illegal search and seizure of their water rights, which were established in the early 20th century. But the U.S. Court of Appeals for the Federal Circuit on Thursday upheld that Native American water rights have existed since "time immemorial," giving them a higher priority.

"The Tribes' reserved rights are senior to those of any of the plaintiff users of the Klamath Project water," reads language in a decision on *U.S. v. Baley*, the legal matter in question.

While not directly involved in the legal dispute, the Hoopa, Yurok and Klamath tribes all rely on the Klamath River, and the court's decision comes as affirmation.

“It’s a great outcome from the perspective of Indian water rights,” said Hoopa attorney Tom Schlosser. “Pretty clearly, fish need water, so the court upheld the government’s trust responsibility to protect Indian fish.”

In a statement on Friday, Yurok general counsel Amy Cordalis said the decision is a key step forward in “reclaiming and restoring” the Klamath River’s ecosystem.

“The river has far more at stake than just threatened and endangered species, and adequate water to support the entire ecosystem is a necessary first step in restoring the Klamath River,” said Michael Belchik, the Yurok Tribe’s senior water policy analyst.

The farmers — who have pursued the case for nearly 20 years — have not yet decided if they will take the matter to the U.S. Supreme Court, said Nancie Marzulla, an attorney for the plaintiffs.



Coho salmon in the Klamath River are among the species protected by the Endangered Species Act. (NOAA Fisheries contributed)

While Marzulla said on Friday she believes the farmers are still entitled to compensation for the 2001 incident, she called it a “victory” that the courts are willing to stand behind the water rights for groups in federal reclamation districts.

Marzulla also said the decision opens up a new type of government trust responsibility to Native American tribes. Tribes could now sue the government for its past failures in protecting endangered species, since the court’s rationale establishes a standard for Native American water rights, she said.

“That is a novel position for the court to take,” Marzulla said. “I strongly suspect that if the government was now faced with tribes bringing suit... the government would likely change its tune and argue, ‘Oh no, no, we didn’t really mean that.’”

But the Hoopa Tribe’s fisheries director on Friday called Marzulla’s opinion a “reach.”

“Water rights and seniority are well steeped in the federal law,” said Mike Orcutt. “There’s been an obligation by the federal government to protect endangered species.”

Separately, the Yurok Tribe had sued the federal Bureau of Reclamation over its 2019 “water plan,” which the tribe said artificially reduced the Klamath River’s water flow and led to the outbreak of a fatal fish disease.

Just before press time on Friday, the [tribe announced that the bureau had decided to scrap the plan](#) and start over.

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