

CLEAN WATER ACT

States echo call for Supreme Court to hear permitting dispute

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PacifiCorp's Iron Gate Dam on the Klamath River in Northern California. Jeremy P. Jacobs/E&E News

A coalition of 21 states is calling on the Supreme Court to review a practice of prolonging state water quality permitting deadlines for complex federal infrastructure projects such as dams and pipelines.

California Trout Inc. and Trout Unlimited this summer asked the justices to reverse a U.S. Court of Appeals for the District of Columbia Circuit ruling finding that Oregon and California had "far exceeded" their authority under Section 401 of the Clean Water Act ([Greenwire](#), Aug. 27). The provision allows states to certify that federally permitted projects comply with water quality requirements within their borders.

A panel of D.C. Circuit judges found the states had abused that power by reaching an arrangement with PacifiCorp to withdraw and resubmit certification applications for a set of hydroelectric dams along the Klamath River, effectively resetting the clock on the states' review.

Led by Oregon, the state coalition echoed the conservation groups' request for the Supreme Court to scrutinize the lower court's finding.

"The decision of the court of appeals in this case, and actions taken by federal regulatory agencies to implement that decision, have resulted and will continue to result in States being deemed to have unwittingly waived their authority to certify that certain projects requiring federal licenses and permits comply with state water quality requirements," attorneys for the states wrote in a friend-of-the-court [brief](#) filed Friday.

California, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, New Jersey, New Mexico, North Carolina, Rhode Island, South Dakota, Utah, Washington and Wisconsin also joined the call for the justices to take up the case.

The Supreme Court, which begins its term next week, has not yet set a date to decide whether it will add *California Trout v. Hoopa Valley Tribe* to its calendar. Acceptance of a case requires the vote of four justices, who can only hear about 1% of the many thousands of petitions they receive each term.

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