

WESTERN WATER

Judges nix Ore. ranchers' bid for water in tribal dispute

Jeremy P. Jacobs, E&E News reporter

Published: Friday, March 19, 2021



The U.S. Court of Appeals for the District of Columbia Circuit ruled in a long-running dispute between tribes in southern Oregon and irrigators over water that is in increasingly short supply. Bill Oxford/Unsplash

Federal judges today rejected a bid from Oregon ranchers to secure more water from the increasingly drought-stricken Klamath River Basin.

A group of ranchers filed the lawsuit over a complicated regime in which the federally recognized Klamath Tribes exercise their senior water rights.

The ranchers claimed that the process deprived them of irrigation water and improperly abdicated federal regulators' role in managing the river's flows.

The U.S. Court of Appeals for the District of Columbia Circuit dismissed those claims, upholding a lower court ruling that also went against the ranchers.

A three-judge panel unanimously held that the ranchers did not establish standing to sue, mainly because the requirement that they challenged — essentially that the federal government must approve the tribes' "call" for water — doesn't exist.

Judge Judith Rogers wrote: "[We] conclude that no such concurrence requirement exists under federal or Oregon law, and that, consequently, the ranchers cannot establish the causation or reponsibility necessary for standing."

Under an 1864 treaty, the Klamath Tribes hold senior water rights in the large basin. They may file a "call" for those rights with the Oregon Water Resources Department for a variety of reasons, including to ensure flows for the river's threatened salmon, upon which the tribes rely for food. That agency then requires irrigators to shut off their pumps to allow water to flow downstream.

Those calls have become increasingly frequent due to climate change and drought. The ranchers contend that they threaten their operations and property values.

And they argue that under a "protocol agreement," the Oregon regulators must get a "concurrence" from the federal Bureau of Indian Affairs.

But Rogers and the D.C. Circuit found that "[t]here is no concurrence requirement imposed by federal law on the Tribes' reserved instream water rights."

She added that the ranchers, represented by the California-based Pacific Legal Foundation, concede that their water rights are junior to those of the tribes.

The ranchers "sued only the federal government on the premise that the Tribes would be unable to obtain enforcement of their calls for water in the absence of concurrence by the federal government."

Because that doesn't exist, the court can't redress their injury, Rogers wrote, and therefore they lack standing.

Twitter: [@GreenwireJeremy](#) | Email: jjacobs@eenews.net

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