

Irrigation Interests Threaten Precious Hoopa Tribal Fisheries, a Legal Perspective

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Teaching Notes

Learning Objectives:

1. Learn about the implications of federal reserved water rights for Indian tribes.
2. Learn about the impact of the 1902 Reclamation Act projects, the Federal Power Act and environmental laws such as the 1973 Endangered species Act.
3. Understand the importance of salmon to Klamath Basin Indian tribes in California and Oregon.
4. Learn about the life cycle of salmon and their habitat.
5. Understand how federal court decisions have upheld tribal water and fishing rights.
6. Learn about challenges tribes face in protecting water, fish, and other natural resources that are integral to their culture and economies.
7. See the ambiguous role played by non-profit groups that sometimes support resource protection and sometimes argue against tribal resource rights.

Audience: Suitable for undergraduate or graduate college students. This case is useful for study in environmental studies, natural resource policy, American Indian studies, biology, political science, history, public administration, and law.

Themes: activism, law and justice, federal reserved rights and self-governance, salmon, leadership, intergovernmental relations, environmental restoration, cultural preservation

Implementation

Students should read [Winters v. United States](https://supreme.justia.com/cases/federal/us/207/564/) (1908)(reserved water rights) [Washington v. Passenger Fishing Vessel](https://supreme.justia.com/cases/federal/us/443/658/) (1979)(quantification of treaty fishing rights) [and Arizona v. Navajo Nation](https://www.supremecourt.gov/opinions/22pdf/21-1484_aplc.pdf) (2023)(limited federal trust obligation to protect water absent legislation) https://www.supremecourt.gov/opinions/22pdf/21-1484_aplc.pdf as general background.

Small group discussions are useful for addressing the key questions in the case. The questions require students to review cited documents, not just the text of the case. A class session could work as follows:

Divide the students into small groups (four to a maximum of seven students each). After everyone has read the case, each group is given discussion questions.

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In the final part of the class, each small group presents their topics and conclusions to the larger group. This is followed by a general discussion about the case in which the teacher emphasizes the key points.

If time permits, using a video on the Klamath and dam removal topic will enhance the learning opportunities. E.g., <https://www.youtube.com/watch?v=UDcg4jAfBMQ>

Discussion questions:

Group #1 The Importance of salmon in the Klamath Basin

1. To what extent did tribes of the Klamath River basin rely on anadromous fish traditionally? See e.g., endnotes 23-24.
2. Why is the First Salmon Ceremony important to the Indian tribes of the Pacific Northwest?
3. Is the importance of salmon to Klamath Basin tribes different than other PNW tribes today?
4. What role has the importance of salmon to tribes played in federal actions to protect tribal rights?

Group #2 The tribes fight for their water and fishing rights.

1. What specific actions did the Hoopa Valley Tribe take to fight for their fishing rights in the Trinity and the Klamath Rivers? List actions taken in chronological order.
2. Considering requests to the Interior Department, to Congress, and to the courts, which was the most successful? Explain why.
3. Are measures required by the Endangered Species Act the only legal basis for protecting Klamath Basin tribes' water and fishing rights? See, e.g., endnote 88.
4. To what extent were Klamath Basin tribes united in their battles for water and fishing rights; were Nongovernmental Organizations supportive?

Group #3 The tribes fight for their water and fishing rights in federal courts.

1. Describe the *Winters* decision and state why it is important. Do you think this decision was the basis for the court decisions that followed? Why?
2. Gradually court decisions have recognized that federal reserved rights have high allocation priority. Why was this important?
3. *Washington v. Passenger Fishing Vessel* (1979) (upholding the Boldt decision) was a landmark case for Indian treaty rights. What were the key elements of this judicial decision? What did the decision mean for non-treaty tribes?
4. Why did Westlands Irrigation District and the Klamath Irrigation District oppose tribal river restoration efforts? See, e.g., endnote 19.

