

# Corps cleared in dredging lawsuit

Judge: Project followed all applicable rules

Posted: Wednesday, February 10, 2016 12:00 am

By **ERIC BARKER** of the Tribune | [3 comments](#)

The U.S. Army Corps of Engineers and barging advocates scored a sweeping victory Tuesday when a federal judge ruled the agency's 2015 dredging program on the lower Snake and Clearwater rivers did not violate environmental laws, and that the agency was not required to complete a cost-benefit analysis as plaintiffs had charged.

U.S. District Judge James L. Robart of Seattle said in his ruling that the plaintiffs, which included Idaho Rivers United, the Nez Perce Tribe and Friends of the Clearwater, not only were wrong on the merits but lacked standing, their complaints were moot and not ripe for a decision.

The environmental groups and tribe, who support breaching the four lower Snake River Dams that make river transportation between Lewiston and the Columbia River possible, filed their lawsuit in December 2014. They charged that dredging posed a harm to salmon, steelhead and Pacific lamprey, that it was not economically justified and that the corps failed to consider other options to clear sediment from the navigation channel. At the time, the groups asked for an injunction that would have delayed dredging until the case could be heard. But Robart declined to issue an injunction, and the nearly \$10 million dredging project was finished in early 2015.

In Tuesday's ruling, Robart said the plaintiffs lacked standing because they failed to show fish would suffer any "concrete and particularized" harm from dredging. He also said the case is moot and not ripe for review since dredging is now complete.

The judge also dismissed the plaintiffs' claims that the corps violated the National Environmental Policy Act, also known as NEPA, by failing to consider a wide range of alternatives before it chose dredging as the best way to restore the navigation channel to a depth of 14 feet and a width of 250 feet. In its Programmatic Sediment Management Plan, the corps outlined several actions to deal with sediment accumulation. It said dredging was the only option that would solve the problem in short order and return the channel to its congressionally authorized dimensions. Robart pointed out that the corps considered other alternatives and spent time documenting why they would not work before dismissing them, and thus satisfied its requirements.

"Plaintiffs may not agree with the corps' conclusions, but the corps' discussion of alternatives complied with NEPA," he wrote.

In so doing, Robart also dismissed the environmental groups' argument that the corps wrongly said the navigation channel was "mandated" by the Flood Control Act of 1962. Instead, the groups insisted the act only "authorized" the channel at those dimensions. Robart said the corps' interpretation of the act was reasonable.

The judge ruled the agency performed its requisite "hard look" at whether dredging would harm lamprey and he said courts have said for 40 years that agencies don't need to complete a cost-benefit analysis to satisfy the demands of NEPA. He also said economic information the corps included was reasonable; the corps at first indicated shipping by barge saves \$8.45 per ton over other transport methods like truck and rail, then revised that to a savings of \$10.90 per ton.

Corps spokesman Bruce Henrickson at Walla Walla said the agency is pleased with the ruling and will continue to maintain the shipping channel as outlined by Congress.

"I think the judge agreed we complied with all the applicable environmental laws," he said. "It's business as usual for us."

Port officials also welcomed the ruling.

"Snake River navigation provides good-paying jobs for the Lewis-Clark Valley and we could not be happier that our farmers, cruise boats and other customers will be able to continue to rely on this important federal navigation channel," Port of Clarkston Manager Wanda Keefer said in a statement issued by the Pacific Northwest Waterways Association.

Kevin Lewis of Idaho Rivers United at Boise said taxpayers were not served by the ruling.

"We have a system that is failing, that is costing taxpayers a tremendous amount of money every year to support, and we are not getting anywhere close to a solution," he said.

---

Barker may be contacted at [ebarker@tribune.com](mailto:ebarker@tribune.com) or at (208) 848-2273. Follow him on Twitter @ezebarker.