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Wash. Judge Nixes Suit Over Army Corps River Dredging

By **Hannah Sheehan**

Law360, New York (February 10, 2016, 2:38 PM ET) -- A Washington federal judge on Tuesday dismissed a suit from Idaho's Nez Perce tribe and various environmental groups challenging sediment dredging activities in the lower Snake River by the U.S. Army Corps of Engineers, saying that the tribe lacked standing to bring the claims.

U.S. District Judge James L. Robart said that the tribe failed to show that the Corps' recent dredging project or its long-term programmatic sediment management plan for the area have negatively impacted local populations of salmon and lamprey.

The judge dismissed the tribe's motion for summary judgment and granted cross-motions for summary judgment in favor of the Corps and intervenor-defendant Inland Ports and Navigation Group, a subset of shipping industry trade group Pacific Northwest Waterways Association.

"We are pleased that the court recognized the Corps' thoughtful approach to maintaining navigation on our river system while addressing the needs of our migrating fish," PNWA's Executive Director Kristin Meira said in a statement.

"The Corps has created a plan that gives them the flexibility to evaluate sediment in the channel, then determine the most efficient and environmentally friendly way to keep this vital trade corridor open," Meira continued.

Judge Robart found that the tribe's claims involving the already completed 2015 dredging were moot because that aspect of the controversy had ended. He dismissed claims regarding the Corps' management plan for lack of ripeness, saying that the tribe must wait to bring those charges until the agency directly injures its interests.

The Nez Perce tribe, environmental groups such as the Sierra Club and Washington Wildlife Federation, and the Federation of Fishermen's Associations brought the suit in November 2014, claiming that the Corps didn't adequately consider other methods for removing accumulated sediment, which interferes with commercial navigation in a reservoir above the Lower Granite Dam on the Washington-Idaho border.

The groups accused the Corps of violating the National Environmental Policy Act and the Clean Water Act by failing to undertake a public interest review or consider the impact on Pacific lamprey, juvenile Chinook salmon and endangered steelhead trout.

Judge Robart denied their bid for a preliminary injunction last January, finding that they had failed to demonstrate irreparable harm to the Pacific lamprey, according to court records. He directed the parties to present other issues on summary judgment, and the

dredging project was completed in the winter.

In September, the Corps urged the court to dismiss the suit, saying that the tribe's challenge was moot and lacked redressable injuries.

A spokesman for the Corps told Law360 Wednesday that the agency is pleased with the decision.

Counsel for the plaintiffs did not immediately respond to requests for comment on Wednesday. The U.S. Department of Justice does not comment on litigation.

The Corps is represented by John C. Cruden, Kent E. Hanson and Kristofor R. Swanson of the U.S. Department of Justice, and Robert D. Eskildsen and Jason DeRosa of the U.S. Army Corps of Engineers.

The plaintiffs are represented by Stephen D. Mashuda and Matthew R. Baca of Earthjustice, and David J. Cummings of the Nez Perce Office of Legal Counsel.

The Inland Ports and Navigation group is represented by Beth S. Ginsberg, Jason T. Morgan and Sara A. Leverette of Stoel Rives LLP.

The case is Idaho Rivers United et al. v. U.S. Army Corps of Engineers, case number 2:14-cv-01800, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Vidya Kauri. Editing by Stephen Berg.

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