

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Pyramid Lake Paiute Tribe of Indians v. United States Department of the Navy James Webb, as Secretary of the Navy

Pyramid Lake Paiute Tribe of Indians v. United States Department of the Navy James Webb, as Secretary of the Navy, 20 Env'tl. L. Rep. 20,572 (9th Cir. 1990) · No. No. 88-1650 · Decided March 19, 1990

SUMMARY

The Ninth Circuit held that the Navy's agricultural outlease program at Fallon Naval Air Station did not violate the Endangered Species Act (ESA) because the Navy's reliance on Fish and Wildlife Service "no jeopardy" biological opinions was not arbitrary or capricious under §7(a)(2), and the Navy did not breach its affirmative duty to conserve under §7(a)(1) where the Tribe's proposed alternatives would have had only an insignificant effect on water flows for the endangered cui-ui. The court also found no "taking" under ESA §9 because the record did not show that the Navy's diversions actually harmed the fish, and the short-term leases fell within a NEPA categorical exclusion. Additionally, the Navy did not breach its fiduciary duty to the Pyramid Lake Paiute Tribe, as the "no jeopardy" finding and ongoing conservation steps supported the district court's judgment.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	O'SCANNLAIN; TANG; CANBY
JURISDICTION	Federal
DECIDED	March 19, 1990
DOCKET	No. 88-1650
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the District of Nevada
STANDARD OF REVIEW	Judicial review of administrative decisions involving the ESA is governed by 5 U.S.C. § 706 of the APA. The reviewing court must satisfy itself that agency decisions are not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. The court reviews de novo the district court's application of this standard, as well as its legal conclusions under the ESA. The district court's findings of fact are reviewed for clear error pursuant to Fed.R.Civ.P. 52(a). An

	agency's construction of the laws it administers is accorded considerable weight under Chevron.
PRECEDENTIAL VALUE	Published
PARTIES	Pyramid Lake Paiute Tribe of Indians v. United States Department of the Navy; James Webb, as Secretary of the Navy

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QUESTIONS PRESENTED

1. Whether the Navy's outlease program violates section 7(a)(2) of the Endangered Species Act by jeopardizing the continued existence of the cui-ui.
2. Whether the Navy violated section 7(a)(1) of the ESA by failing to adopt conservation measures proposed by the Tribe.
3. Whether the Navy's outlease program constitutes a 'taking' of the cui-ui under section 9 of the ESA.
4. Whether the Navy violated the National Environmental Policy Act by failing to prepare an environmental impact statement for the outlease program.
5. Whether the Navy breached its fiduciary duty to the Tribe.

HOLDINGS

1. The Navy's reliance on the FWS's biological opinions that the outlease program would not jeopardize the cui-ui was not arbitrary or capricious, and therefore the Navy did not violate section 7(a)(2).
2. The Navy did not abuse its discretion under section 7(a)(1) by rejecting the Tribe's alternative proposals, because the proposals would have had an insignificant effect on the conservation of the cui-ui.
3. The evidence does not establish that the Navy's outlease program has actually harmed the cui-ui, so there is no 'taking' under section 9(a)(1)(B).
4. The Navy did not violate NEPA because the short-term outlease program fits within a categorical exclusion, and the Navy has not yet implemented a long-term outlease program.
5. The Navy did not breach its fiduciary duty to the Tribe because the 'no jeopardy' finding and the affirmative steps taken by the Navy to conserve water demonstrate that the Navy has not violated its trustee obligations.

KEY QUOTATIONS

“An action jeopardizes the continued existence of a species if it 'reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.'” (at 1414)

“The plain intent of Congress in enacting [the ESA] was to halt and reverse the trend toward species extinction, whatever the cost.” (at 1417)

“'Harm' in the definition of 'take' in the Act means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.” (at 1418)

FACTUAL BACKGROUND

The Navy owns and operates Fallon Naval Air Station in Nevada, which contains nearly 3,000 acres of Project water right land within the Newlands Reclamation Project. To reduce risks from desert conditions (dust storms, foreign object damage, fire), the Navy surrounds runways with buffer zones of irrigated vegetation. Since the 1950s, the Navy has leased about 2,200 acres of its Project water right land to local farmers (the 'outlease program') to maintain the buffer zones. The diversion of water for irrigation is controlled by the Truckee-Carson Irrigation District, which diverts water from the Truckee River into Lahontan Reservoir, reducing flow into Pyramid Lake. The cui-ui, an endangered fish species endemic to Pyramid Lake, has been adversely affected by reduced water levels. The Tribe seeks to enjoin the outlease program to protect the cui-ui.

PROCEDURAL HISTORY

The Tribe filed a complaint in federal district court seeking to enjoin the Navy's outlease program at Fallon Naval Air Station. The district court denied the Tribe's motion for a preliminary injunction. After trial on stipulated facts, the district court held that the Navy's actions did not violate the Endangered Species Act, the National Environmental Policy Act, or the federal government's fiduciary obligations to the Tribe. The Tribe appealed.

DISPOSITION

affirmed

CASES CITED

- Friends of Endangered Species, Inc. v. Jantzen, 760 F.2d 976 (9th Cir. 1985)
- Baltimore Gas & Elec. Co. v. Natural Resources Defense Council, Inc., 462 U.S. 87 (1983)
- Animal Defense Council v. Hodel, 840 F.2d 1432 (9th Cir. 1988)
- Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)
- Stop H-3 Ass'n v. Dole, 740 F.2d 1442 (9th Cir. 1984)
- Conner v. Burford, 848 F.2d 1441 (9th Cir. 1988)
- Carson-Truckee Water Conservancy Dist. v. Clark, 741 F.2d 257 (9th Cir. 1984)
- Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978)

- United States v. Hurt, 795 F.2d 765 (9th Cir. 1986)
- North Dakota v. United States, 460 U.S. 300 (1983)
- Palila v. Hawaii Dept. of Land & Natural Resources, 852 F.2d 1106 (9th Cir. 1988)
- Pyramid Lake Paiute Tribe v. Morton, 354 F.Supp. 252 (D.D.C. 1972)
- Nance v. EPA, 645 F.2d 701 (9th Cir. 1981)
- Morton v. Ruiz, 415 U.S. 199 (1974)
- Truckee-Carson Irrigation Dist. v. Department of Interior, 742 F.2d 527 (9th Cir. 1984)
- Zayas-Marini v. INS, 785 F.2d 801 (9th Cir. 1986)