

10th Circuit probes Trump-era deal with Utah to 'exchange' Green River water

Environmental groups say the federal government failed to consider how drastically climate change and drought will strain water supplies.



Photo shows the Desolation Canyon Wilderness Area along the Green River in central Utah (Bob Wick/Bureau of Land Management via Wikimedia).

DENVER (CN) — The Trump administration failed to consider

the strain of climate change and drought on the Colorado River and tributaries when it agreed to give Utah 52,000 acre-feet of water from a reservoir annually, environmental groups argued Thursday and asked a 10th Circuit panel to order an environmental impact statement for the plan.

Forty million Americans depend on the [Colorado River](#) for water, along with 5.5 million acres of land, 22 Native American tribes and nearly two-dozen national parks and preserves.

One of the Colorado River's tributaries is the Green River, which winds through Utah and sustains ecosystems in the Browns Park National Wildlife Refuge, Dinosaur National Monument, Ouray National Wildlife Refuge and Canyonlands National Park. Endangered fish in the area include the Colorado pikeminnow, razorback sucker, bonytail, and humpback chub.

In 1958, the U.S. Bureau of Reclamation appropriated 3.96 million acre-feet per year from the Green River to the Flaming Gorge Reservoir in southwestern Wyoming and northeastern Utah. Utah defunded its Central Utah Project in the 1990s, and water rights were reallocated to the federal government.

Now Utah wants the federal government to allocate water for two projects: the Green River Block and the Lake Powell

Pipeline Project, including the release of 58,957 acre-feet of water from the Flaming Gorge Reservoir each year for the next 50 years. The Bureau of Reclamation approved the plan in 2019, relying on a localized analysis from 2012.

The Center for Biological Diversity and other environmental groups [sued](#) arguing the federal government approved the plan without an environmental impact statement taking into account how drastically drought and climate change would deplete the river.

U.S. District Judge David Barlow, appointed to the District of Utah by Donald Trump, [entered](#) judgment in favor of the federal government and Utah in July 2021. The Center for Biological Diversity [appealed](#).

Chief U.S. Circuit Judge Timothy Tymkovich, appointed by George W. Bush, asked why a robust environmental impact statement mattered if actual use is really limited by the amount of water in the river.

"Why is it a major problem that they localized the analysis here when the amount of water they're going to be able to appropriate depends on the water in the river and not what their right is?" Tymkovich asked.

The environmentalists' attorney William Snape, of the American University Washington College of Law, said the law

requires the government to consider reasonable alternatives, including not reappropriating the water at all.

"Half of the water won't be in the river at the end of the century," Snape stressed. "Robust alternatives are at the heart of the National Environmental Policy Act, and to have two alternatives that are the same, under each they assume the 58,000 acre-feet of water will be consumed, that does not address the crisis."

On behalf of the government, Department of Justice attorney John Arbab [argued](#) in favor of the localized study on the Green River basin behind the department's decision.

"The agency gets a lot of deference on modeling for the geographic area it chooses. That goes back to the Supreme Court," Arbab told the panel.

U.S. Circuit Judge Veronica Rossman, a Joe Biden appointee, questioned whether it's appropriate to zoom in on one tributary when making decisions that could have wider consequences.

"Why is that considered the best available evidence?" Rossman asked. "Why do we have to assume that the narrowing of the geographic scope is the right approach?"

On behalf of Utah, Assistant Solicitor General Erin Middleton [said](#) the exchange contract didn't give Utah any more or less

water than it already had. But the Ute Indian Tribe of the Uintah and Ouray Reservation [contested](#) in an amicus brief that water rights cannot simply be transferred in this way.

In the grand scheme of the river, Tymkovich asked how much water 58,000 acre-feet amounts to.

"Are we talking about a bucket in a pool?" he asked.

On rebuttal, Snape said the amount of water could supply 80,000 homes each year.

"It's a heck of a lot of water and the system needs it right now," he concluded.

U.S. Circuit Judge Nancy Moritz, a Barack Obama appointee, rounded out the panel. The court did not indicate when or how it would decide the case. The hearing was held at the Byron White Courthouse in downtown Denver and broadcast via YouTube.

Categories: [Appeals](#), [Environment](#), [Government](#)