

# Ninth Circuit Muddies the Waters of Tribal Sovereign Immunity and the Clean Water Act in *Deschutes River Alliance v. Portland GE*

## WRITTEN BY

Danielle A. Clifford

---

*This article was published on May 8, 2022 in Washington Journal of Social & Environmental Justice, Volume 12, Issue 2.*

Throughout 2011 and 2012, members of the Deschutes River community who fish in the Lower Deschutes River in Oregon noticed a slew of significant changes to their natural environment. The Deschutes River Alliance attributed the changes to the operation of the Pelton Round Butte Hydraulic Project, which is co-owned and operated by Portland General Electric and The Confederated Tribes of the Warm Springs. In July 2016, DRA filed a Clean Water Act lawsuit against them. To rule on the alleged CWA violations, the DRA must first get past the tribal sovereign immunity hurdle. It is long-recognized that American Indian Nations possess sovereign immunity, however, Congress may expressly abrogate immunity or immunity may be waived. The groundbreaking opinion in *Deschutes River Alliance v. Portland Gen. Elec. Co.* represents the first time a court has held Congress did not abrogate tribal sovereign immunity under the CWA. Despite decisions from sister circuits, the court dismissed the suit before deciding whether a CWA violation occurred. The Ninth Circuit decided to tread lightly to respect both the principle of tribal sovereign immunity and Congress's authority, but ultimately the court's decision creates a free pass for projects on tribal land to pollute the water with no repercussions.

[Read full article.](#)

## RELATED INDUSTRIES + PRACTICES

- [Environmental, Social + Governance \(ESG\)](#)
- [Water Quality + Water Resources](#)