

A Winter's Tale

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In 1944, Congress authorized a flood control scheme for the Missouri River, known as the Pick-Sloan Plan. That plan directed the construction of several dams along the Missouri River. Two of the dams led to the inundation of approximately 15,000 acres of the Crow Creek Sioux Tribe's reservation, for which the Tribe was paid \$4.4 million as compensation. The Tribe recently sued in the U.S. Court of Federal Claims, alleging that the United States' diversion of water from the Missouri River for flood control had breached its duty of trust owed to the Tribe by failing to preserve the Tribe's reserved water rights or had unconstitutionally taken the Tribe's reserved water rights. The Tribe sought \$200 million in damages for its alleged injuries. The Tribe also sought declaratory and injunctive relief, asking the Court to define its rights to waters of the Missouri River.

The Government moved to dismiss the lawsuit under Rule 12(b) (1) for lack of subject matter jurisdiction, arguing that the claims were time barred since the dams were built decades ago. The Government also argued that the claims were not ripe because the Tribe had not suggested what damages might have been incurred from the Government's diversion of water from the Missouri River or even how the Court might determine the amount of damages. The Government also argued that the Tribe could not point to any specific money-mandating statute or regulation that the United States had breached.

Although the Court recognized that the Winters doctrine guarantees the Tribe, and other Native American tribes, the right to sufficient water for the needs of their reservations, the Court noted that in this case the Tribe had not alleged how the Government's diversion of water from the Missouri River had reduced the amount of water available to the Tribe. "The Tribe has not shown that it has a need for the water other than for its own consumption, or that the water it obtains pursuant to the Winters doctrine is insufficient for its intended pursuits."

Explaining that the Tribe's claims were not ripe, that the general trust relationship between the Tribe and the United States could not support a breach of trust claim based on mismanagement of the Tribe's natural resources, and that the Court lacked jurisdiction to award injunctive or equitable relief, the Court dismissed the Tribe's lawsuit.

Read Judge Hodges's full decision [here](#).