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Department of the interior Solicitor Leo M. Krulits has asked the Justice Department to appeal a Federal District Court decision against the Government and the Pyramid Lake Paiute Tribe of Nevada, which seeks Truckee River water rights to maintain a fishery on the Pyramid Lake Indian Reservation.

Judge J. Blaine Anderson ruled on December 12 in Reno that the Indians are barred from seeking water for their fishery. He said all rights to Truckee River water were settled finally in a 1944 decree. He ruled that the Indians were adequately represented in that settlement and have been adequately compensated for any fishery losses.

In a suit filed on their behalf by the Justice Department, the United States and the Indians asked for a water right under the Winters Doctrine, which holds that Indians are entitled to enough water to fulfill the purposes for which their reservations were established, Specifically, the Paiute Indians want enough flow from the Truckee into Pyramid Lake to allow two species of fish to spawn naturally in the river and the lake. The lake is the home of the threatened Lahontan Cutthroat trout and the cui-ui sucker, an endangered species.

"The water level of the lake has fallen by 70 feet since Truckee River water was diverted for the Newlands Reclamation Project," said Krulitz. "It is our contention that the tribe's rights were ignored during drafting of the 1944 decree because Government attorneys were more concerned with securing water for the reclamation project.

"The question of reserved water rights for the tribe is at the very heart of the case. Because the thrust of the Government's position is that the United States failed to pursue tribal rights in the first place, I think it is vital that we appeal the decision."

Krulitz said another aspect of the decision could have broad implications unless the case is appealed. That is the judge's holding that "Executive Order" Indian reservations - those such as the Pyramid Lake Reservation, withdrawn by the President rather than reserved by a treaty or an Act of Congress -- may be treated differently from the others in the application of Federal Reclamation laws.

"That has never been the policy of this Department," the Solicitor said. "If that part of the decision were allowed to stand unchallenged, it could result in serious impacts on all "Executive Order" reservations in the U.S."

The water right at stake in the suit, Krulitz said, is important not only to the Indians. The Paiute Tribe has made the lake available in perpetuity for public recreational use and that has become a major contributor to the economy of the surrounding area as well as the Tribe. In addition, the Secretary of the Interior has a responsibility to preserve the habitat of species which, like the Pyramid Lake trout and suckers, are threatened.

Without the water right, Krulitz said, both recreational use and the fish habitat will be difficult, if not impossible, to maintain.