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## Editorial: Bend wins deserved victory in Bridge Creek case



In this 2015 file photo, water from a Tumalo Creek tributary is diverted through a series of large pipes to allow construction crews to install the new Bridge Creek water pipeline last summer. A panel of judges from the 9th Circuit Court of Appeals ruled in favor of the city and the U.S. Forest Service in a lawsuit filed by Central Oregon Landwatch and WaterWatch of Oregon in 2013 (Ryan Brennecke / Bulletin file photo)

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The city of Bend has won another legal victory in its battle over the Bridge Creek water project. Bend residents should be glad it did.

The project (<http://www.bendoregon.gov/city-projects/city-infrastructure-projects/recently-completed-projects/bridge-creek-pipeline-replacement-project>) replaced two pipes built in the 1920s and 1950s to carry water 10 miles from the city's Bridge Creek intake to a new water filtration plant.

A panel of the United States Court of Appeals for the Ninth Circuit ruled Wednesday (<http://cdn.ca9.uscourts.gov/datastore/memoranda/2017/08/23/15-35089.pdf>) in favor of the city and the U.S. Forest Service about the project. This is now the second time federal judges have dismissed the arguments by Central Oregon Landwatch and Waterwatch of

Oregon. Let's hope the city does not have to spend more money and time fighting this case.

In 2015, the city calculated the lawsuit had cost the city's taxpayers some \$5.5 million in legal costs and project delays. It's about \$6.4 million now, though Landwatch contests the numbers. Are Landwatch and Waterwatch going to write the city a check, perhaps? Or apologize to taxpayers for costing the city so much money?

The environmental groups argued that the Forest Service's decision to approve the piping project was arbitrary and capricious and violated federal law. Specifically, they said the Forest Service was not doing enough to adhere to its own standards to protect fish. But the Forest Service found the project would improve fish habitat. Another issue brought up in the case was the possibility that the Forest Service should mandate minimum flows for Tumalo Creek, which Bridge Creek flows into. But the Forest Service found that the project would have a positive impact on the creek in some areas and minimal or no impact in others. The plaintiffs also argued that the Forest Service did not take enough of a "hard look" at climate change. The Ninth Circuit panel said it did.

Even as recently as Thursday, Landwatch stated on its website that "The City of Bend has built a huge pipe and plans to double the amount of water taken from the Creek...." That is false. The city has agreed to not take any more water with the new pipe than the old — about 18 cubic feet per second. With the new pipeline, the city also has the ability to adjust the water intake according to its needs. Under the old system the city could only turn the flow on or off.

The case had the potential to have broad repercussions for any city that got its water from a source on federal land. Former Bend City Councilor Victor Chudowsky, who was involved in this case and the mediation to find a settlement, said he believed at first that the environmental groups were out to find a way to protect Tumalo Creek. But he came to believe that they were pursuing a long-shot legal strategy aimed at curtailing Bend's

growth by limiting its access to drinking water. If they won in Bend, the case could be used as a precedent to curtail growth in other cities.

Paul Dewey, executive director of Landwatch, said the agenda was never about stopping growth, but protecting the creek and habitat. He is not sure if the environmental groups will take other action on this matter.

The worst thing about the lawsuit is that after years in court and millions spent the creek is no better off. Imagine how much more could have been accomplished to protect water if the environmental groups could have worked in cooperation with the city and Tumalo Irrigation District to improve flows in the creek. The clear winner was not the creek, but lawyers.