

FMC Corporation v. Shoshone Bannock Tribes



FMC Corp. v Shoshone Bannock Tribes Timeline

1949 - 2001

FMC Opens Phosphorus Plant on Reservation Land

- The plant produces and stores 22 million tons of hazardous waste in storage ponds, in loose soil and groundwater, and buried in 20-30 railroad tanker cars.

1949

1990

EPA Designates Site as a Superfund

- EPA designated the plant and off-reservation facility a Superfund Site under the Comprehensive Environmental Response, Compensation, and Liability Act.

EPA Sues FMC

- EPA sues FMC for violations of the Resource Conservation and Recovery Act (RCRA), a federal statute that regulates the disposal of solid and hazardous wastes.

1997

1998

FMC Settles the RCRA Suite

The suit is settled via a Consent Decree that required:

- Multiple waste and environmental management programs to be constructed
- The company to obtain permits from the Tribes to store hazardous wastes on the Reservation.

FMC Consents to Tribal Jurisdiction in Verbal And Written Statements

- FMC agrees to submit to the SBT permitting process, including the payment of \$1.5 million annual fee for a tribal use permit after a negotiation process

1998-2001

FMC Corp. v Shoshone Bannock Tribes Timeline

2002 - 2008

FMC Stops Operations and Payments

- FMC closes plant operations
- Annual fee payments stop
- Waste remains stored on site

2002

SBT File Motion in Federal Court

- SBT file motion - FMC was in violation of a Consent Decree
- Federal court determines:
 - All arguments should first be addressed in the Tribal forum
 - Requires FMC to submit applications for Tribal permits
 - Continue to pay annual fee

2005

FMC Challenge Annual Fee in Tribal Court & Appeal Federal Decision to the Ninth Circuit

Tribal Court Decision:

- The Tribe has jurisdiction
- Tribal permits under 1998 agreement had not been codified in a tribal ordinance and the fee had not been approved by the Sec. of Interior

Ninth District Court Decision:

- The Ninth Circuit agrees with FMC and vacates Federal District court's decision

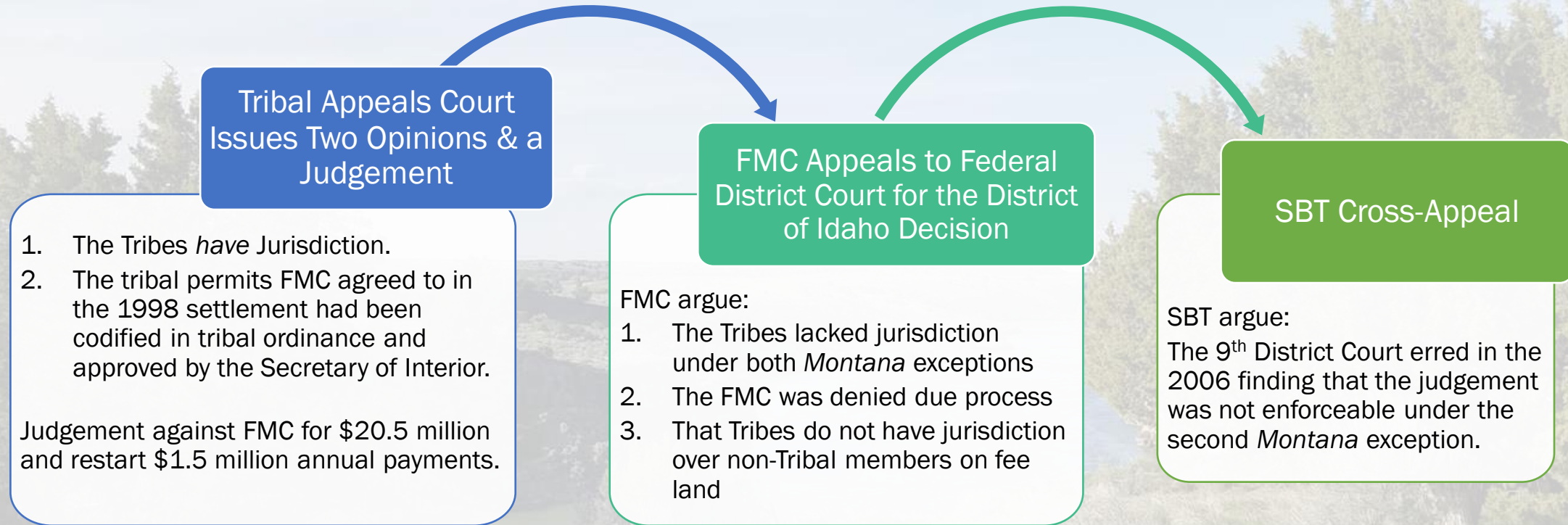
2006

2008

SBT Appeals Tribal Court Permitting Decision to Tribal Appellant Court

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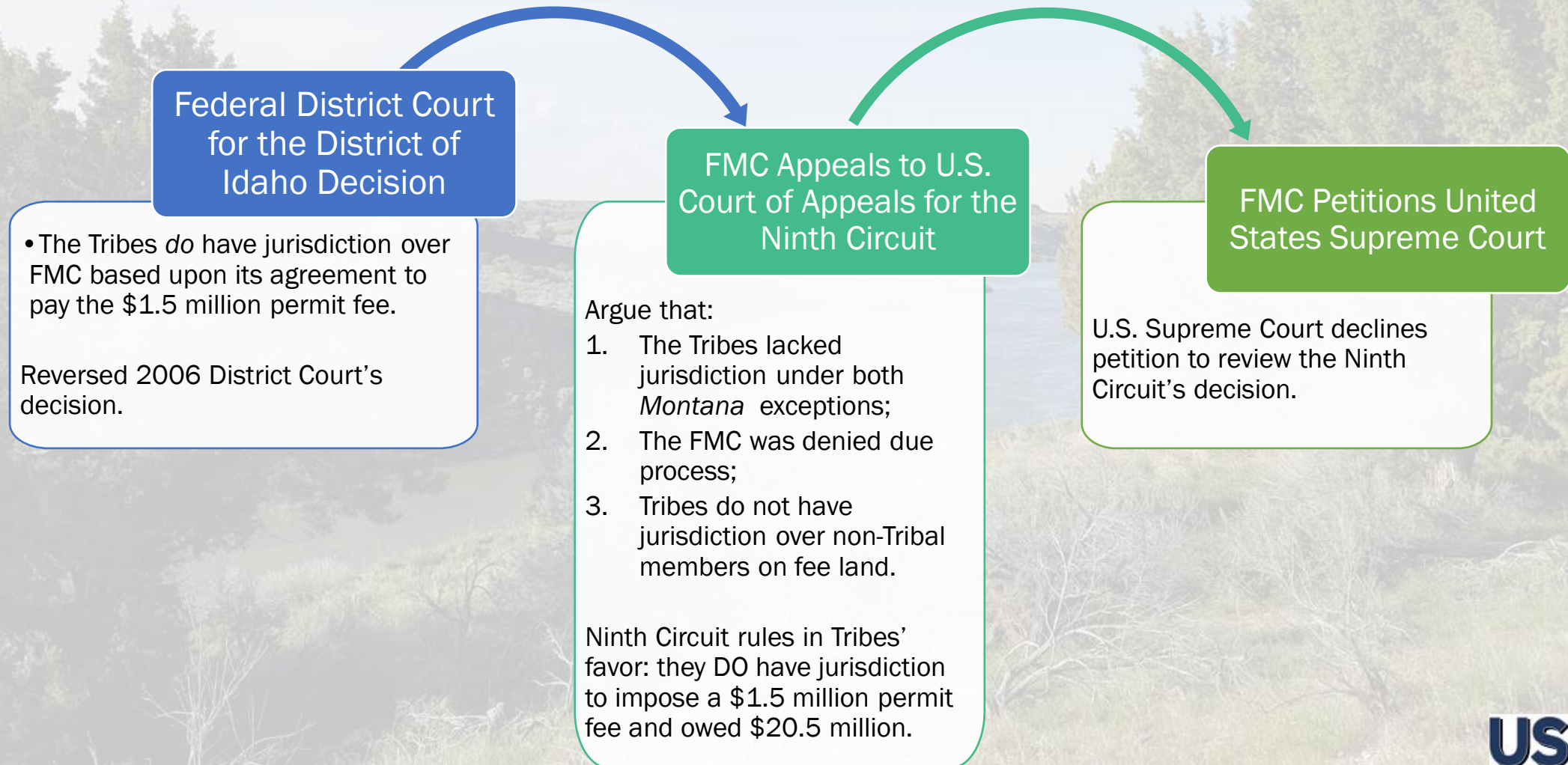
2012 - 2014



**Montana v. United States*, 450 U.S. 544, 565-66 (1981) (...a tribe may establish civil jurisdiction over non-Indians if either the non-Indian consents to tribal jurisdiction or the non-Indian's conduct threatens the "political integrity, the economic security, or the health or welfare of the tribe").

FMC Corp. v Shoshone Bannock Tribes Timeline

2017 - 2021



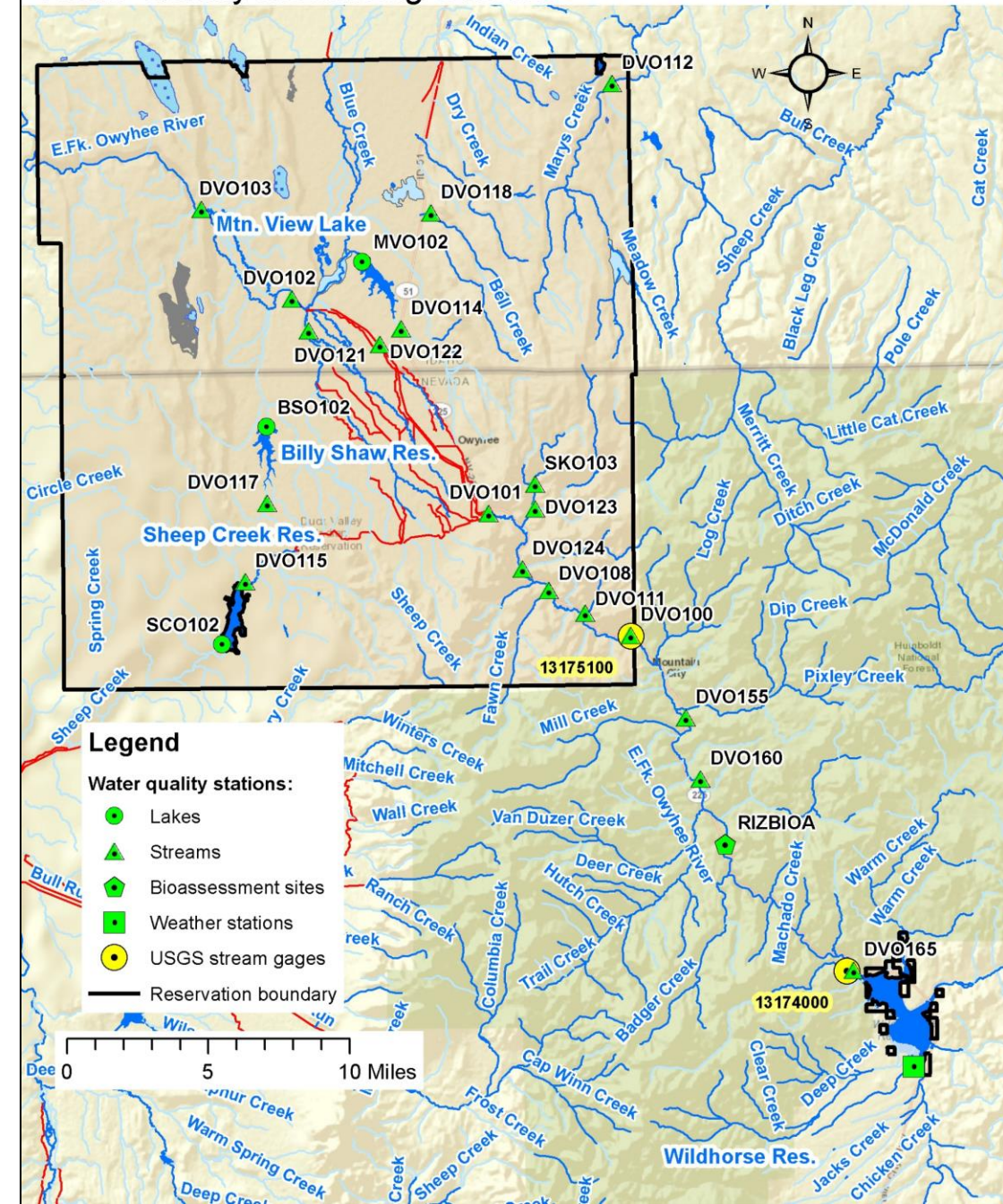
Duck Valley Indian Reservation (DVIR) – Water Resources

- Wildhorse Reservoir located 20 miles upstream from Reservation boundary in Nevada provides storage of snowmelt runoff (71,500 acre-feet). Sho-Pai Tribes own the water rights
- Water flows from E. Fork Owyhee River basin to China Dam (DVO101) where it is diverted into irrigation system (red on map)
- Three off-channel reservoirs on DVIR are fed by irrigation system, provide put-take trout fishery for tribal subsistence and recreation
- Reservoirs on DVIR were constructed and fisheries are maintained by BPA as mitigation for fish and wildlife habitat affected by the construction and operation of the Federal hydroelectric system in the Columbia River Basin
- The Tribes have collected water quality samples at stream and lake sites since 2003
- The only stream gage on DVIR has been a USGS gage at the South Boundary



E. Fork Owyhee River at South Reservation Boundary (DVO100)

Shoshone Paiute Tribes of the Duck Valley Indian Reservation Water Quality Monitoring Stations



DVIR Tribal Water Monitoring Program

- During 2021 the Sho-Pai Tribes installed stream gages on the inflows to each of the three reservoirs
- Water quality samples were collected six times March to September in the reservoir inflows, E. Fk Owyhee River, and on the reservoirs
- Analysis for nutrients, bacteria, sediment, and cyanotoxin for Harmful Algal Blooms
- Cooperative program with Bureau of Reclamation Regional Analytical Lab in Boise, with funding from Tribal Technical Assistance Program
- Flow and phosphorus concentrations will allow preliminary estimates of nutrient loading to reservoirs
- Water quality data buoy at Mountain View Lake has ten temperature sensors and DO is monitored at surface and bottom. Data are telemetered to allow access from web portal
- Monitoring program will provide data to evaluate water quality trends and assess conditions relative to land use and climate change



Sampling Inflow to Lake Billy Shaw, April 2021



Mountain View Reservoir - August 2021



Boyle Ck Inflow to Mountain View Reservoir, August 2021

