

An epoch-making decision issued by Osaka High Court
in Second Eigenji Dam Case

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The New National Plan of Land Improvement in Echi River Area in Shiga Prefecture (as "Plan"), whose main project was the construction of Second Eigenji Dam (as "SED"), was adopted as a public work plan by the Minister of Agriculture, Forestry and Fisheries of Japan (as "Minister") on the 24th of January, 1994. The SED was planned to be newly constructed upstream from the existent Eigenji Dam for the purpose of securing water for agricultural use in the basin of Echi River. However, the SED was supposed to destroy the environment of the surrounding area and not to compensate its costs with its benefits. For those reasons and others, people living in the related area objected to the Plan adoption. The Minister dismissed their objections on the 14th of July, 1994. Accordingly, they sued the Minister, claiming that the Minister's dismissal must be vacated. Otsu District Court decided to dismiss the people's suit on the 28th of October, 2002. To the contrary, Osaka High Court admitted the people's contention and decided to vacate the Minister's dismissal on the 8th of December, 2005. This decision of Osaka High Court is epoch-making one for the following reason. In Japan it is extremely difficult for a citizen to win in a lawsuit against an administrative agency especially in environmental cases, because an agency's discretion is largely admitted. Notwithstanding, Osaka High Court held, for the first time in the history of Japanese environmental cases, that costs of the Plan would exceed its benefits and therefore the Minister's acts were not within its discretion.

The detailed reasonings of Osaka High Court were as follows.

1. Before the Plan was adopted, the agency had not measured the shape of the site where the SED was planned to be constructed. Also, the agency had not actually measured the valley where the reservoir would be located. Neither had it measured the valley even from the air. Furthermore, the agency had not conducted a boring survey or other effective geological surveys at the site where the SED was planned to be constructed. Those omissions of the measurements and surveys were against the official notification that the agency itself had issued and the omissions were unreasonable.
2. Between 2001 and 2003, it was discovered that the valley of the planned reservoir was narrower, the shape of the planned dam site was wider and the stone foundation of the planned dam site was deeper than estimated at the time of the Plan adoption. As a result, the scale of the SED had to be enlarged by 10% at least.

3. One of the fundamental elements under the related law is that costs of a plan must not exceed its benefits. Due to the above omissions and discrepancy between the planned SED scale and the actually needed SED scale at the time of the Plan adoption, costs of the Plan would exceed its benefits, contrary to the calculation at the time of the Plan adoption.

4. As far as the dam scale determination was concerned, the court did not find any adequate investigation or report by a specialist. This is definitely against the law.

5. In conclusion, this dam scale determination is an extremely serious defect of the Plan. This agency's acts are not within its discretion, and the dismissal of the Minister admitting the Plan adoption must be vacated.