

September 14, 2023

FOR IMMEDIATE RELEASE

Contact: Scott White, General Manager
scott@klamathdrainagedistrict.org
(541) 510-6311

Reagan Desmond, General Counsel
rlbd@clydesnow.com
(541) 797-0011

**FEDERAL JUDGE RULES AGAINST DISTRICT’S RIGHT TO DIVERT WATER
District concerned of species restoration implications and prepares for appeal**

Klamath Falls, OR – On September 11th, a federal judge in Medford’s United States District Court ruled against the Klamath Drainage District (KDD), and entered an injunction against KDD, stating that KDD can no longer divert water from the Klamath River that has not been authorized by the United States, citing the Endangered Species Act (ESA) as its primary basis. On the same day, the same judge issued Findings and Recommendations in two other lawsuits brought by Klamath Tribes against Reclamation for ESA violations under 2021 and 2022 Klamath Project operations plans. In one case, the court found Reclamation violated the ESA in 2022 by providing farmers even a diminished supply when not all species goals could be met; in the other case, the court found Reclamation had not erred by prioritizing the needs of threatened salmon in Klamath River over endangered C’waam and Koptu in Upper Klamath Lake.

Last year, the United States brought the breach of contract case against KDD, alleging that KDD breached its Reclamation Act contract with the United States by irrigating in 2022 after the United States had informed KDD there was no Project supply available for the district. Notably, the United States provided no evidence of harm to any species as a result of KDD’s diversions in 2022. KDD irrigated under its separate state water right permit in 2022, as it has done since 1977 when it was issued. The ruling issued a permanent injunction that requires the United States’ “authorization” to divert water from the Klamath River, including for any diversions under the district’s separate state permit through the district’s private facilities.

“To say we’re disappointed is an understatement. I’m in disbelief,” said Bill Walker, President of the district. “We are still evaluating the effects of this ruling, but on the surface, it appears to reach far beyond where any court has ever gone.”

The District Board met on the 12th to discuss its options and voted unanimously to appeal the decision. The District Board believes there are several appealable errors in the decision, including what appears to be an unprecedented interpretation of the Reclamation Act and court endorsement of federal control over private state water rights. “Frankly,” as Walker stated with respect to appealing the decision, “we have no choice, our livelihoods and our families are at stake.”



EST. 1915

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4240 Hwy 39 | P.O. Box 1090 | Klamath Falls, OR 97601

O: (541) 884-1739 | F: (541) 887-8263

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KDD owns and operates its own infrastructure and also pays over double the percentage of any other district of Reclamation Project Operation and Maintenance costs, regardless of whether or not Reclamation supplies water. KDD is still in the process of evaluating the costs and impacts of this ruling on the operations and rights of both the district and its landowners. However, it is immediately apparent that it will lead to a significant loss in revenue to its landowners if not overturned on appeal, particularly in light of the court's separate ruling in the Klamath Tribes case which will almost certainly lead to a reduced amount of Project Supply for farmers under project irrigation contracts going forward.

The district is also assessing how this ruling could play a role in large-scale restoration planning. On the eve of the largest dam removal project in history, the district has been working with agencies, tribes and interested stakeholders to utilize existing district infrastructure for a massive restoration project. The district is concerned there are negative impacts to that effort as a result of this ruling.

“How can we afford to operate and maintain the facilities we are offering up for restoration when our landowners may not be able to pay their assessments,” questioned Scott White, General Manager of the district. “The financial impacts of this decision are so much larger than just harvesting a crop or not. We’re talking about the recovery of species here, and this ruling appears to have the opposite effect of what the court cited as their reason for the decision.”

For the last decade, Tracey Liskey, a lifelong landowner in KDD, a board member of the district, and the President of the Klamath Water Users Association, has committed his time, money, and energy to helping build a facility that grows endangered sucker specifically targeted at recovering the fish. “The United States and their courts are taking the tools right out of the hands wanting to do the hard work it takes for recovery,” Liskey lamented in frustration. “All we want is for these fish to recover and thrive so we can go back to what we love and here we have another ruling that hamstring our ability to utilize our resources in that effort.”

Liskey was not alone in his concern about the species. “All the restoration experts we work with are focused on ecosystem recovery as the major ingredient to species recovery,” noted Walker. “It is our duty and responsibility to seek a favorable ruling that will not limit anyone’s ability to help in the recovery of our environment. We owe it to the water users, and we owe it to the species to appeal this ruling.”

KDD has a long history in aiding species recovery. In 1978, Bald Eagles were listed as endangered, and the district’s lands became key to the birds’ recovery. In 1983, KDD’s lands were classified as the “Oregon Feeding Grounds” for our nation’s bird due to the district’s historical practice of winter diversions making it prime hunting habitat for the raptors and critical to the bird’s survival. The spirit of recovering species and providing wildlife habitat has been a mainstay for KDD ever since.



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More recently, when the Bureau of Reclamation denies water to Tule Lake and Lower Klamath National Wildlife Refuges, KDD's fields provide the much-needed winter habitat for the migrating waterfowl of the Pacific Flyway including Bald Eagles. Last year, KDD's lands were the only habitat in the Upper Klamath Basin where migrating water birds could find refuge due to the wildlife refuges being dry.

The district plans to begin communicating with its restoration partners immediately to discuss what this means for the projects and to identify if there are some opportunities remaining.

Klamath Drainage District (KDD) is a 27,000-acre district located in southern Oregon bordering the Lower Klamath National Wildlife Refuge in California. KDD proactively works to improve distribution and delivery of its scarce water resources including recycling over 35,000 acre-feet annually through its recently installed recirculation pumping plants. Of this recycled water, most is reused to grow crops, but a percentage is used for growers outside of the district and used for habitat improvement and other refuge purposes. KDD is home to one of the largest concentrations of bald eagles in the lower 48 states and prides itself on its restoration activities and the tremendous wildlife viewing opportunities it provides.

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