

Court Upholds Tribes' Klamath Basin Water Rights
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Judge Clarke, of the U.S. District Court in Medford Oregon, on May 15 upheld the sovereign immunity and the water rights of the Hoopa Valley Tribe and the Klamath Tribes of Oregon in *Klamath Irrigation District (KID) v. U.S. Bureau of Reclamation* and a companion case brought by Shasta View Irrigation District and others. In those cases irrigation districts argued that the federal government is seizing their water without compensation when water deliveries are deferred in order to satisfy the needs of endangered fish in Upper Klamath Lake and in the Klamath River. The Hoopa Valley and Klamath Tribes argued that the districts' claims threaten tribal water and fishing rights and that the cases cannot be heard unless the tribes agree to join the lawsuits, which they declined to do. Judge Clarke agreed.

“These cases are an important affirmation of our sovereignty and our Tribe’s right to the water to sustain our fisheries,” said Hoopa Valley Tribal Chairman Byron Nelson Jr.

Water diversions from Upper Klamath Lake are regulated by Endangered Species Act (ESA) biological opinions of federal agencies. If full irrigation water is delivered in dry years like 2020, then biological requirements for fish survival won't be met. However, many federal court rulings as well as general principles of water law in the western states, affirm the right of senior water rights holders, in this case the tribes, to first priority in use of water. Those tribal water rights are property which the tribes, as governments, can protect. Because of tribal sovereign immunity, tribal property cannot be placed at issue in litigation without the consent of the tribes themselves. In this instance, the tribes refused to consent to place their rights in issue.

The *KID and Shasta View* plaintiffs argued that the Bureau of Reclamation cannot comply with the ESA or tribal water rights until the irrigators' rights under state law are fulfilled or paid for. Hoopa Valley and the Klamath Tribes refused to join in litigation of that redundant and false legal theory and urged the court to dismiss the cases. Judge Clarke applied court rules and agreed that the tribes are

necessary to such lawsuits and respected their right to decline to participate, so he dismissed the irrigators' claims. The parties now will likely appeal from Judge Clarke to the senior judge of the district court.

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