



## KLAMATH IRRIGATION DISTRICT

6640 K.I.D. LANE

KLAMATH FALLS, OREGON 97603

Phone: (541) 882-6661 Fax (541) 882-4004

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#### Media Contact:

Gene Souza, Lieutenant Colonel (U.S. Army Retired)

K.I.D. Executive Director

[Gene.Souza@KlamathID.org](mailto:Gene.Souza@KlamathID.org)

541-882-6661

### FARMERS APPEAL TO U.S. SUPREME COURT TO SAFEGUARD WESTERN WATER RIGHTS

*If the landmark ruling stands, thousands of water users across the West may be unable to enforce their water rights*

Klamath Falls, OR – Today marks a significant move by the Klamath Irrigation District (K.I.D.) to safeguard the interests of its farmers and countless others across the Western United States. Backed unanimously by its publicly elected Board of Directors, K.I.D. has lodged a petition with the U.S. Supreme Court, aiming to overturn the recent ruling by the Ninth Circuit Court of Appeals in *Klamath Irrigation Dist. v. United States Bureau of Reclamation*, 48 F4th 934, 938 (9th Cir 2022). This ruling threatens the livelihoods of thousands of Oregon farmers, jeopardizes established water rights, and challenges the foundations of domestic tranquility. The Supreme Court's consideration of K.I.D.'s appeal holds immense implications for millions of Americans, as the contested Ninth Circuit ruling risks negatively impacting water rights across the Western United States if it remains unopposed.

The petition to the Supreme Court signals a crucial juncture in the long-running dispute between farmers and the federal government over water rights in Oregon's Upper Klamath Lake. Over the past fifty years, the State of Oregon has remained dedicated to finalizing a comprehensive stream adjudication process to accurately determine ALL state and federal water rights in the Upper Klamath Basin. Throughout this process, the federal government and tribes have consistently contested Oregon's authority to adjudicate their rights. However, over thirty years ago, the Ninth Circuit dismissed these challenges in *United States v. State of Or.*, 44 F3d 758, 762 (9th Cir 1994), ruling that the McCarran Amendment (43 U.S.C. §666) waives the United States' sovereign immunity, allowing the State of Oregon to adjudicate all state and federal water rights, including those of tribes, in Oregon's Klamath Basin.

In 2013, following extensive deliberations, the State of Oregon issued an adjudication order, firmly establishing all state and federal water rights in the Klamath Basin. The adjudication notably confirmed that farmers and ranchers, rather than the federal government, retain the rightful water rights to utilize stored water in Upper Klamath Lake. Yet, since the adjudication order was issued, the federal government has consistently failed to comply, diverting stored water in Upper Klamath Lake for non-irrigation purposes and thus depriving K.I.D. and its landowners of the property to which they are entitled under their adjudicated water rights. With no other viable means to safeguard farmers' property, K.I.D. initiated legal action in federal court, seeking to compel the United States to honor the water rights determinations outlined in the Klamath Adjudication.

It is important to highlight that K.I.D. did not contest the water rights of any Native American Tribe during the litigation. However, Native American Tribes chose to intervene in the case, alleging potential indirect impacts on their interests and invoking Federal Rule of Civil Procedure 19 to seek dismissal of K.I.D.'s case against the federal government. The tribal claims were predicated on the assertion that their sovereign immunity prevented K.I.D. from including them as parties, as mandated by Rule 19. The trial court concurred with the Tribe's argument, resulting in the dismissal of K.I.D.'s case and with no ability to enforce its water rights.

K.I.D. contested this decision at the Ninth Circuit Court of Appeals, underscoring the damaging implications of the decision, which undermines the comprehensive, century-old system that Congress put in place to distribute water in the West, as well as the bedrock of the McCarren Amendment, specifically crafted for these circumstances. Regrettably, the Ninth Circuit Court of Appeals upheld the trial court's decision, leaving K.I.D. and its landowners unable to defend their property rights—a responsibility K.I.D. is tasked with.

Recognizing the substantial repercussions of the ruling, K.I.D. leaders deemed it necessary to seek justice from the U.S. Supreme Court. "We were compelled to take this step," stated K.I.D. President David Hamel. "If this ruling goes unchallenged, our capacity to enforce water rights is severely compromised unless Native American Tribes grant us consent."

K.I.D.'s Vice President, Rodney Cheyne, echoed this sentiment, emphasizing the significance of water rights as property rights. "Under the Court's ruling, our water rights become unenforceable, devaluing their inherent worth. If this ruling stands, and our century-old water rights are deemed unenforceable, our community faces serious repercussions," remarked Cheyne. He further added, "This issue extends beyond the Klamath region; water rights holders across the western United States should be vigilant. The repercussions have wide-ranging implications."

K.I.D.'s legal counsel anticipates a decision from the U.S. Supreme Court regarding the case will likely not materialize until mid-October of this year. By that time, the 2023 irrigation season will likely have concluded, exacerbating the water scarcity experienced by farmers in the Klamath Basin. Gene Souza, K.I.D.'s Executive Director, underscored the gravity of the situation. "Despite a 200% snowpack this year, with rivers in flood conditions, the federal government's denial of the Klamath adjudication's outcome and the court's dismissal of farmers' rights means they will only receive a fraction of the water they require and are entitled to this year. This overt undermining of our Constitutional foundation demands scrutiny," emphasized Souza.

K.I.D. and its landowners express profound frustration as their water rights are undermined by policymakers situated thousands of miles away in Washington, D.C., while their property rights' fate now rests with the judiciary. "As individuals nurtured in a culture of self-reliance, it is disconcerting to acknowledge that the scales of justice are far beyond our reach," shared K.I.D. President David Hamel. "The future of our farming community in Klamath now lies in the hands of those who do not live here, are not our neighbors, and bear no responsibility for their actions. We are obliged to recognize this reality, retain our trust in the system, and sincerely hope that our cause resonates with those who share our predicament and understand the imperative of protecting private property rights," concluded Hamel. For additional information on the case, please visit: <https://klamathid.org/>