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For more information: Scott White
(541) 883-6100
scott@kwua.org

Water Users Say Klamath Tribes Suit is in Wrong Court

Klamath Falls, OR - Klamath Water Users Association has told the federal District Court in San Francisco that the lawsuit filed by the Klamath Tribes seeking higher Upper Klamath Lake levels must be dismissed. In a motion filed on June 6, KWUA and Sunnyside Irrigation District and Ben DuVal, who have intervened, say that the San Francisco Court is not a proper venue under the law.

There is a hearing scheduled on the Tribes' motion for preliminary injunction on July 11, before Judge William Orrick, who was the assigned judge for the cases brought by the Hoopa Valley and Yurok Tribe for disease management flows in the Klamath River. KWUA President and Operations Committee Chairman Brad Kirby said that if the preliminary injunction is granted, the Klamath Project will most likely be shut off completely on from this July until the year 2020.

"They want to require Upper Klamath to be held at unprecedented and artificially high elevations for suckers year-around," said Mr. Kirby. "I wouldn't expect there to be any water at all available for Klamath Project irrigation and wildlife refuges until there are new biological opinions, which is not expected until 2020."

The water users' motion to dismiss will have to be decided before the Court can rule on the preliminary injunction. DuVal, who is also a KWUA board member and Modoc County Farm Bureau President, said the motion to dismiss would not mean the lawsuit has to go away, but that it couldn't be pursued in the San Francisco Court.

Executive Director Scott White said that a party claiming injury is required to sue in a court in the district where the parties are or where they claim an injury happened, which is primarily Oregon.

"There are laws about where a lawsuit can be filed," said DuVal. "You can't just file a lawsuit in New Jersey because that is where you want to go. That's what our motion says. The Klamath Tribes lawsuit claims that part of the Klamath Project is in the judicial district based in San Francisco, but that's not correct" according to DuVal.

The water users motion says that a federal court in Oregon or Sacramento would be allowable, but not San Francisco.

A copy of the motion is attached.

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