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Irrigators to Defend Klamath Water Users' Rights

Over 25 Klamath Basin irrigators are scheduled in Washington to defend water user's rights in the long awaited Takings Claims trial in Federal Court.

Washington, DC – Monday marks the beginning of the Federal Court of Claims Takings Case trial that has been on the docket for over 15 years. In this case, Klamath Project water users contend that curtailment of their water supplies in 2001 based on the Endangered Species Act (ESA) was a taking of property rights – water rights – that requires compensation under the Fifth Amendment of the United States Constitution. The outcome of the case may have lasting implications for future operations for the Klamath Project. More than 25 Klamath Reclamation Project irrigators, five of whom are former Klamath Water Users Association (KWUA) Presidents, will be in Washington, DC, to begin approximately two weeks of testimony in the case pending before the United States Court of Federal Claims.

“Although it has taken a long time to get to this point, this case is one that has never left the minds of those of us who lived through the event of 2001,” said Gary Wright, a Tulelake, CA, farmer, rancher and past president of KWUA. “I pray we never experience an event like that again.”

In biological opinions issued in April of 2001, the U.S. National Marine Fisheries Service and the U.S. Fish and Wildlife Service concluded that the Bureau of Reclamation's 2001 planned operations to allow the delivery of irrigation water to Klamath farmers threatened the listed threatened and endangered species of the Klamath Basin (coho salmon and sucker fish) and prescribed necessary river flows and lake levels. Immediately after that, the Reclamation issued an operations plan that barred the delivery of irrigation water to Klamath Project water users (a very limited supply was later made available for some, very late in the season). This action caused great hardship and gained national media attention.

“I think about it every day,” said Luther Horsley, a Midland and Lower Lake, OR, Farmer and past president of KWUA. “We all came together for something that was not only meaningful, it was symbolic of who we are as a community.”

Later in 2001, project water users filed suit against the United States in the U. S. Court of Federal Claims, asserting that the Federal government unconstitutionally took their water rights and breached the Klamath Basin Compact without just compensation. In 2005, the Federal Claims Court ruled that the Project water users do not have a property right in water. This ruling was appealed to the U.S. Court of Appeals for the Federal Circuit, which referred specific issues of Oregon law to the Oregon Supreme Court under a special procedure. The Oregon Supreme Court's answers to the questions led the Federal appellate court to reverse and remand the case to the Federal Claims Court for resolution in light of the application of Oregon law to the farmers' water rights. The water users have reasserted their claims on remand.

“This is a big deal,” said Scott White, Executive Director of the Klamath Water Users Association. “These guys have fought hard for this basin's water rights. But this is more than just their water rights. They are fighting for their neighbors, their economy and their community.”

The trial is set to begin Monday, January 30th in Washington and expected to last up to three weeks. There are two consolidated cases being tried at the same time, one titled *Klamath Irrigation District et al. v. United States*, and one titled *John Anderson Farms et al. v. United States*. Court of Claims Judge Marion Blank Horn will issue her decision following completion of the testimony and consideration of any remaining motions filed by the parties.

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