

No. 18-1316

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

In Re SISKIYOU COUNTY WATER USERS ASSOCIATION

Petitioner

**NOTICE OF INTENTION TO PARTICIPATE AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER
BY THE INSTITUTE FOR TRADE, STANDARDS
AND SUSTAINABLE DEVELOPMENT (ITSSD)**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, *amicus curiae*, the Institute for Trade, Standards and Sustainable Development (“ITSSD”), makes the following disclosure: ITSSD is a nonprofit (501(c)(3)) legal research and educational organization formed under the law of the State of New Jersey. ITSSD’s mission is generally to promote a *positive* paradigm of sustainable development consistent with the founding principles underlying the United States Constitution – i.e., the rule of law, economic freedom and risk-based empirical science. ITSSD has no parent corporation, and no publicly-held company has a 10% or greater ownership interest in ITSSD.

/s/ Lawrence A. Kogan

LAWRENCE A. KOGAN

Counsel for Amicus Curiae

NOTICE OF INTENT TO FILE AN *AMICUS CURIAE* BRIEF

Pursuant to D.C. Cir. Rule 29(b), and the guidance set forth in Section IX(A)(4) of this Court's Handbook of Practice and Internal Procedure, ITSSD hereby notifies this Court of the intent to file an *amicus curiae* brief in the above captioned matter in support of Petitioner, Siskiyou County Water Users Association.

Petitioner has consented to the ITSSD's filing of a brief, and Robert Solomon, Counsel for the Federal Energy Regulatory Commission ("FERC"), who has discussed this matter with Counsel for *amicus curiae*, takes no position on the ITSSD's filing of a brief.

The ITSSD is a nonprofit public interest legal research and educational organization in Princeton Junction, New Jersey. Since 2004, ITSSD has evaluated and advocated against sustainable development-related laws, regulations and technical standards adversely impacting U.S. constitutional rights, especially private property rights. ITSSD's website is globally recognized, and its publications and filed public comments are globally referenced, including by intergovernmental organizations, national and regional governments, universities, and academic and technical institutions.¹

The ITSSD and its counsel also have filed amicus briefs in several high-profile federal cases concerning important federal laws, and agency regulations and standards/guidelines adversely affecting private property rights. *See, e.g.,* Brief of *Amicus Curiae* The Institute for Trade, Standards and Sustainable Development in Support of Petitioners, *Chamber of Commerce of the United States of America, State of Alaska, and the American Farm Bureau Federation v.*

¹ *See* Institute for Trade, Standards and Sustainable Development, *Intergovernmental and Governmental References*, at: <https://www.itssd.org/intergovernmental---governmental-references.html>; *Id.*, at *University and Think Tank References*, at: <https://www.itssd.org/university---think-tank-references.html>.

Environmental Protection Agency, (Supreme Court of the United States, No. 12-1272 (May 24, 2013)) (on writ of *certiorari*; denied) (discussing how EPAs' evaluation of the United States Global Change Research Program/Climate Change Science Program ("USGCRP/CCSP"), National Research Council and Intergovernmental Panel on Climate Change ("IPPC") scientific assessments upon which the EPA Administrator's Final Endangerment Findings primarily relied failed to satisfy Federal Information Quality Act requirements and applicable binding IQA-implementing agency guidelines, which undermined the credibility of the Administrator's Final Endangerment Findings); *See e.g.*, Brief of *Amicus Curiae* Citizens for Equal Rights Foundation and Central New York Fair Business Association, supporting Petitioner, *State of Washington v. United States of America*, (Supreme Court of the United States, No. 17-269 (2018)) (on writ of *certiorari*; *per curiam* judgment *aff'd* by equally divided court) (discussing how the U.S. Supreme Court, based on international law, had incorrectly exercised its equity power in the Marshall Trilogy – *Johnson v. M'Intosh*, 21 U.S. 543 (1823), *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831), and *Worcester v. Georgia*, 31 U.S. 515 (1832) – to impose on the Federal Government a fiduciary trust obligation to protect dependent tribal nations that separated Indians from the rule of law established under the United States Constitution, effectively creating extra-constitutional authority over the Indians which it then delegated to Congress, and ultimately, in 1849, to the Department of the Interior after it had been formed and had been transferred the U.S. Department of War's Bureau of Indian Affairs).

The ITSSD has a keen interest in the Klamath River Basin Compact and its close relationship to the recent Klamath Hydroelectric Settlement Agreement ("KHSA") and Amended Klamath Hydroelectric Settlement Agreement ("Amended KHSA") processes. The ITSSD also possesses an informed awareness of the coordinated administrative practices in which the

Department of the Interior, the Environmental Protection Agency, the Federal Energy Regulatory Commission and the States of Oregon and California have engaged to choreograph the removal of the four PacifiCorp-owned and operated Klamath River dams which are the subject matter of this dispute.

The ITSSD intends to file an amicus brief addressing points minimally raised or not raised at all by Petitioner that will aid the Court's consideration of this case. The ITSSD's brief is necessary to address the important rule of law and human health and welfare interests at stake in the case under review. It also is necessary to inform the Court about key federal interests long ago addressed by Congress' and the President's enactment into federal law of the Klamath River Basin Compact, a federal-interstate compact the recent informal amendment or supplementation of which by the States of Oregon and California facilitating dam removal, requires congressional consent before it can proceed.

Respectfully submitted,

/s/ Lawrence A. Kogan

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Dated: March 11, 2019

CERTIFICATE OF SERVICE

The undersigned counsel certifies that on this 11th day of March 2019, he caused the foregoing “Notice of Intention to Participate as Amicus Curiae in Support of Petitioner” by the Institute for Trade, Standards and Sustainable Development to be electronically filed using the Court’s CM/ECF system, which served a copy of the document on all counsel of record in this case.

/s/ Lawrence A. Kogan

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Counsel for Amicus Curiae