



KLAMATH TRIBES OF OREGON NATIVE AMERICAN RIGHTS FUND JOINT PRESS RELEASE

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Court Rules No Compensation for Klamath Irrigators Due To Superior Tribal Rights

Washington, DC – On September 29, U.S. Court of Claims Judge Marian Blank Horn resoundingly re-affirmed the superiority of the senior water rights of the Klamath Tribes and downriver Klamath Basin tribes over other water interests in the Klamath Basin.

In the case decided Friday, the Klamath Reclamation Project irrigators sought nearly \$30 million in compensation from the United States government because of the Bureau of Reclamation’s curtailment of Project water deliveries during a severe drought in 2001. The irrigators argued that the government’s actions constituted a “taking” of their property under the Fifth Amendment to the United States’ Constitution, by depriving them of their alleged rights to use Klamath Project water. In accordance with briefs filed by the Native American Rights Fund (NARF) on behalf of the Klamath Tribes (download the Tribes’ briefs: dated [April 24, 2017](#) and [August 24, 2016](#)), the court denied the irrigators’ claims, ruling the irrigators were not legally entitled to receive any Project water in 2001, because the water was needed to fulfill the senior water rights of the tribes. Klamath Tribes Chairman Don Gentry stated, “We are pleased with the decision. This affirmation of the Tribes’ water rights should be another positive step towards the healing and restoration of our tribal treaty fisheries.” NARF [Staff Attorney Sue Noe](#) noted, “The Project irrigators took the position that the tribal water rights were irrelevant to their claims. Thankfully, the Court has made clear that the days of junior water users ignoring the senior tribal rights is over.”

In 2001, a massive drought struck California and Oregon’s Klamath River Basin. During the drought, the United States government followed federal and Oregon law, which required that water levels be maintained to protect imperiled coho salmon in the Klamath River and two species of sucker fish in the Upper Klamath Lake. The sucker fish, known

in the Klamath language as *c'waam* (Lost River suckers) and *qapdo* (shortnose suckers), are of enormous importance to the cultural, economic, and spiritual well-being of the Klamath Tribes. Salmon, historically an important treaty resource for the Klamath Tribes, have been blocked by dams from reaching the Upper Klamath Basin since the early 1900s.

The Klamath Tribes have resided in the Klamath Basin for millennia, sustaining themselves upon the Basin's fish and other water-dependent resources. In an 1864 treaty with the United States, the Klamath Tribes relinquished millions of acres of their aboriginal homeland but retained, among other things, a guarantee of their right to take fish in the Klamath Indian Reservation's streams and lakes. The Klamath Tribes' water rights have been previously confirmed to hold a "time immemorial" priority date, which makes them senior to all other water rights in the Basin. The seniority of these tribal water rights has been repeatedly and consistently recognized by the courts and, more recently, this seniority was again recognized by the State of Oregon in its Klamath Basin Adjudication. Judge Horn's decision confirmed yet again the seniority of the rights and their superiority under the Western water law doctrine of prior appropriation in which water users with junior rights are not entitled to receive any water until all senior rights have been fully satisfied—first in time, first in right. "A ruling for the junior Project irrigators would have turned Western water law on its head," declared Noe.

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About NARF: The Native American Rights Fund is the oldest and largest nonprofit national Indian rights legal services organization in the country. Since its inception in 1970, NARF has represented over 275 Tribes in 31 states in such areas as tribal jurisdiction and recognition, land claims, hunting and fishing rights, the protection of Indian religious freedom, and many others. This legal advocacy on behalf of Native Americans continues to play a vital role in the survival of tribes and their way of life. For more information, visit www.narf.org.

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