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PRESS RELEASE

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Klamath Water Users Win Big in Oregon Supreme Court’s Ruling

Washington, D.C.—The Oregon Supreme Court issued a groundbreaking decision yesterday, resolving issues that have prevented the water users in the Klamath Reclamation Project (located in southern Oregon and northern California) from obtaining just compensation for the taking of their irrigation water in 2001. *Klamath Irrigation Dist. v. United States*, (No. S056275) (Or. Mar. 11, 2010). The Oregon Supreme Court held that the Oregon legislature in 1905 did not give away all of its water rights in the Klamath Reclamation Project to the federal government. Further, the Court stated that whatever rights the federal government did acquire in 1905 were for the benefit of the water users: “[I]n acquiring water rights under the aegis of the Reclamation Act, the United States was not acting for its own benefit, but for the benefit of the persons who Congress intended would put the water to beneficial use reclaiming the land”—in other words, the farmers who are the plaintiffs in this lawsuit. Finally, the Oregon Supreme Court held that the Klamath Basin adjudication that is currently underway does not deprive the water users of the ability to pursue their taking claim in federal court, explaining that “[a] person asserting only a beneficial or equitable property interest in a water right is not a ‘claimant’ who must appear in the Klamath Basin adjudication and file a claim to determine that interest.”

“We are thrilled with this decision,” stated Nancie G. Marzulla, lead counsel for the Klamath water users in the Court of Federal Claims proceeding. “The trial judge obviously was wrong on Oregon law and plainly misapprehended how federal reclamation law operates. We are glad that we now have some definitive guidance and direction for the trial court as we go forward to complete this litigation.”

The Oregon Supreme Court’s decision was in response to three questions posed to it by the U.S. Court of Appeals for the Federal Circuit. Now that the Oregon Supreme Court has answered these questions, the case will go back to the Federal Circuit and ultimately back to the trial court for final resolution. The case arises from events that took place in 2001. That year the federal government took all of the farmers’ water during the growing season, depriving the farmers of any water with which to grow their crops. The water was used to benefit three species of endangered fish. The water users did not challenge whether the federal government could take their water for endangered fish protection, but instead asked that the federal government compensate them for the taking of their water rights that year—which had inflicted devastating losses on the farmers who had been forced to sit out an entire growing season due to the taking.

Marzulla Law is a Washington, D.C.-based law firm that represents water users and water entities in complex litigation in matters involving water, property, and environmental issues. For further information about Marzulla Law or this decision call (202) 822-6760, or go to www.marzullalaw.com.