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Federal Circuit Decision a Big Win for Klamath Basin Water Users

WASHINGTON, DC – In a major victory for Klamath Basin farmers and irrigators in Oregon and northern California, the United States Court of Appeals for the Federal Circuit has thrown out a ruling by the United States Court of Federal Claims denying Plaintiffs' claims for \$100 million in just compensation from the federal Government, and has remanded the case for further proceedings. The Federal Circuit's decision emphasizes that on remand, the Government now "has the burden" of proving that delivering water to the Klamath Basin water users in 2001 was "impossible." The Government also has the burden of demonstrating "with specificity" how the water districts' repayment contracts redefined or altered the water users' water rights.

"The Government's decision not to deliver any water at all to the farmers in the Klamath Basin was devastating," explained Nancie Marzulla, counsel for the Klamath water users. "We are extremely pleased that the Federal Circuit and Oregon Supreme Court have confirmed that these farmers have a property interest in water that they have put to beneficial use for over 100 years."

The case, *Klamath Irrigation District v. United States*, No. 01-591 L, stems from a 2001 decision by the United States Bureau of Reclamation not to deliver any water to Klamath Basin farmers, solely for the purpose of protecting three species of fish under the Endangered Species Act. Plaintiffs filed suit in the U.S. Court of Federal Claims, alleging that the Government had taken their constitutionally protected property rights – in violation of the Fifth Amendment – or in the alternative, breached the water delivery contracts, by failing to deliver the water in 2001. In 2005, the U.S. Court of Federal Claims – relying on a 1905 Oregon statute – denied Plaintiffs' claims, holding that there was no equitable property right in their use of Klamath Basin water for irrigation. In 2007, the Court disposed of the remaining breach of contract claims, concluding that the Government was shielded by sovereign immunity. The U.S. Court of Appeals for the Federal Circuit rejected the lower court's rationale.

Marzulla Law, LLC is a Washington, D.C.-based law firm. Nancie G. Marzulla and Roger J. Marzulla help water users get paid just compensation for the Government's taking of their water rights through inverse condemnation. Nancie Marzulla and Roger Marzulla have been selected by their peers to be included on the list of Best Lawyers in America, and their firm has the highest AV rating from Martindale-Hubbe. For more information, visit <http://www.marzullalaw.com> or call 202-822-6760. Follow Nancie Marzulla at <http://www.twitter.com/takingslawyer>.

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