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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
MEDFORD DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

KLAMATH DRAINAGE DISTRICT,

Defendant.

Case No. 1:22-cv-00962

COMPLAINT

The United States of America brings this action against Defendant Klamath Drainage District (“KDD”), on behalf of the United States Department of the Interior, Bureau of Reclamation (“Reclamation”), seeking declaratory and injunctive relief and pleads:

INTRODUCTION

1. The United States seeks to enforce its contractual rights to prevent unauthorized diversions of water from the Klamath River by KDD in a year when water is especially scarce. KDD has been a part of Reclamation’s Klamath Project (the “Project”) for over a century, under terms set forth in a series of contracts with the United States. Those contracts govern the delivery of water to KDD, in an amount that Reclamation determines as part of its integrated management of the Project—a determination that KDD is bound by contract to follow. For decades, all parties have understood that, as a matter of law and contract, the allocation to KDD, a junior contractor on the Project, might be diminished in drought years, and that Reclamation has authority to make such determinations on allocation. And this year, extreme drought conditions forced Reclamation to allocate no water to KDD. But KDD has now decided to make unauthorized diversions, in contravention of Reclamation’s directives, leading the United States to file this action for declaratory and injunctive relief.

2. The Project, a federal Reclamation project in southern Oregon and northern California, provides water to farmland for irrigation through a system of canals within the Klamath Basin, mostly from Upper Klamath Lake (the “Lake”) and the Klamath River. Reclamation does not typically deliver water to farmers directly; instead, Reclamation has contracted with local irrigation districts for the delivery of water to the districts’ headworks, and the districts, in turn, have contracted with individual farmers. KDD, one of those irrigation districts, originally contracted with the United States in 1917 to participate in the Project.

Reclamation and KDD worked to turn the land within KDD’s boundaries from marsh into irrigable farmland. That transformation was successful. And for a century, Reclamation has been providing water, pursuant to its contract with KDD, so that the farmers in these reclaimed marshlands can grow crops.

3. In its operation of the Project as a whole, Reclamation must make operational decisions in light of various competing interests and legal requirements. While Reclamation has contractual obligations to the irrigation districts, Reclamation must also manage water and flow levels in the Lake and the Klamath River in a manner that is consistent with the requirements of the Endangered Species Act (the “ESA”), 16 U.S.C. §§ 1531 *et seq.*, and that is consistent with tribal reserved water rights held for fisheries purposes, which supersede the rights of KDD and other irrigation districts. When water is scarce, Reclamation first determines how much water is required to comply with federal law, then allocates the remaining supply to irrigators, in order of contractual seniority. KDD is a junior contractor compared to several of the largest irrigation districts.

4. This year, for the third year straight, the Klamath Basin faces a serious drought. Reclamation has issued an annual Operations Plan and a Drought Plan (the “Plans”) that therefore allocate a limited water supply to Project irrigators for this season. The Plans’ allocation is an initial estimate, and Reclamation intends to manage the Project adaptively, as conditions change, with the goal of first meeting ESA requirements and operating the Project consistent with senior tribal rights, while giving irrigators as much water as possible. Nevertheless, the Plans make clear that, barring dramatic shifts in hydrological conditions, no water will be available to junior contractors like KDD during the 2022 irrigation year.

5. KDD is bound by contract to respect Reclamation's allocation determinations.

The operative provisions of KDD's principal contract with the United States, dated April 28, 1943 (the "Contract," Exhibit 1), govern KDD's receipt of water from the Klamath River as part of the Project. It provides that the United States will deliver water to KDD for distribution to individual farmers, subject to (among other things) proration in the event of a shortage, as deemed "equitable" by the Secretary of the Interior. As part of the bargain it struck to participate in the Klamath Project, KDD also agreed to observe Reclamation's "rules and regulations."

Those rules include Reclamation's annual Operations Plan and, in times of scarcity, Drought Plan.

6. Notwithstanding its contractual obligations, KDD is making diversions in contravention of Reclamation's Plans and written directives to KDD. Reclamation has clearly communicated to KDD that KDD is not currently authorized to make any diversions during the 2022 irrigation season, but KDD has refused to cease its diversions. These diversions interfere with Reclamation's ability to operate consistent with its ESA obligations and senior tribal rights, and decrease the amount of water available to Reclamation for delivery to its senior contractors. KDD's unauthorized diversions therefore threaten injury to ESA-listed species, senior tribal interests, and senior contractors. And fundamentally, KDD's refusal to follow Reclamation's Plans impedes Reclamation's ability to operate the Project.

7. The United States therefore brings this lawsuit to compel KDD to comply with its contractual obligation to follow Reclamation's rules and regulations, including the Plans, and to cease diverting water from the Klamath River.

JURISDICTION AND VENUE

8. This Court has jurisdiction under 28 U.S.C. § 1345 because the United States is the plaintiff.

9. Venue is proper in this district because a substantial part of the events giving rise to the claims occurred in the district.

PARTIES

10. Plaintiff the United States of America, acting through Reclamation, operates the Project and is a party to the Contract.

11. Defendant KDD is a drainage and irrigation district organized under the laws of Oregon with a principal place of business in Klamath Falls, Oregon. KDD is a party to the Contract.

GENERAL ALLEGATIONS

The Klamath Project

12. Reclamation has operated the Project since 1906, under the provisions of the general 1902 Reclamation Act, 43 U.S.C. §§ 371 *et seq.* (the “Reclamation Act”), a Project-specific 1905 authorization statute, and the Secretary’s authorization of the Project in 1905. Section 10 of the 1902 Reclamation Act authorizes the Secretary of the Interior “to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying out the provisions of this Act into full force and effect.” 43 U.S.C. § 373. The 1905 statute established that “[t]he Secretary of the Interior is hereby authorized in carrying out any irrigation project . . . in the States of Oregon and California, to raise or lower the levels

of [the relevant] lakes” within the Klamath Basin and “any river or other body of water connected therewith . . . as may be necessary.” Pub. L. No. 58-66, 33 Stat. 714 (Feb. 9, 1905).

13. The Project’s principal water storage facility is the Lake, a natural lake that predates the Project. The Link River Dam, which is owned by the United States and was constructed as part of the Project, controls storage in and releases from the Lake and allows Reclamation to regulate lake levels. Reclamation releases from Link River Dam flow downstream into the Klamath River, enabling the Project to operate consistent with federal law requirements (including the ESA and downstream senior tribal reserved water rights) and, when adequate water is available, the demands of Project contractors, including those of KDD and the farmers to whom it distributes water.

14. The Ady and North Canals are irrigation canals that can divert water from the Klamath River downstream of Link River Dam and are the primary canals for the delivery of water to KDD. The United States owns gates that control access to the Ady Canal, but the Contract authorizes KDD to operate the Ady Canal upon certain terms and conditions. KDD asserts ownership over the headgates of the North Canal and the canal itself.

15. Several competing demands for water from the Lake and Klamath River constrain Reclamation’s ability to supply water to the irrigation districts. As relevant here, Reclamation must manage the Project in accordance with two responsibilities under federal law, which limit its ability to deliver water for irrigation. First, the ESA requires Reclamation to ensure that, in operating the Project, it does not jeopardize the continued existence of any listed species or destroy or adversely modify any designated critical habitats. *See* 16 U.S.C. § 1636(a)(2). The ESA-listed species affected by Project operations include the endangered Lost River sucker and shortnose sucker in the Lake, the threatened Southern Oregon/Northern California Coast coho

salmon in the Klamath River, and the endangered southern resident killer whale in the Pacific Ocean, which depends on non-listed Chinook salmon in the Klamath River for its prey.

16. Reclamation operates consistent with the requirements of the ESA relative to these listed species by maintaining certain minimum “boundary conditions” or elevations in the Lake, as well as by releasing water from Link River Dam to support minimum streamflows in the Klamath River below the Lake (and occasional higher flows under certain conditions). These operations were developed through formal consultation between Reclamation and the U.S. Fish and Wildlife Services and the National Marine Fisheries Service (together, the “Services”). The Services have both issued Biological Opinions, pursuant to the ESA, in which they have determined that, as long as Reclamation satisfies the specified minimum lake elevations and streamflows, its operation of the Project will not jeopardize listed species or destroy or adversely modify designated critical habitat in violation of the ESA. When KDD diverts water from the Klamath River in violation of the Plans, Reclamation releases additional water from Link River Dam to maintain ESA-required streamflows. Such releases, however, deplete water in the Lake available to meet ESA-required lake elevations or that Reclamation can deliver to other contractors out of the Lake.

17. Second, Indian tribes downstream of the Project have federal reserved water rights for fisheries purposes that are senior to those of the Project irrigation districts. Reclamation must operate the Project consistent with those tribal rights based in federal law. Courts have found that those rights entitle the tribes to, at a minimum, water necessary to avoid

jeopardy within the meaning of the ESA to species of importance to the tribes¹ and to avoid destruction or adverse modification of these species' designated critical habitat.

Reclamation's Formulation of Operations Plans

18. Reclamation operates the Project as an integrated whole and depends on each year's hydrology to determine how best to operate the Project consistent with the requirements of federal law, tribal rights, state law, and the interests of various stakeholders. At the beginning of each irrigation season (which in years of average or greater inflow may begin in early- to mid-April and run through September 30), Reclamation publishes an annual Operations Plan to inform interested parties of how it intends to operate the Project during that year's season. The Operations Plan explains how Reclamation intends to meet the conditions identified in Biological Opinions as necessary to avoid jeopardy to the ESA-listed species and destruction or adverse modification of designated critical habitat. Comparing these ESA requirements to forecasted hydrological conditions, Reclamation estimates how much water, if any, will be available to Project irrigators during the irrigation year.

19. If the available water is less than the amount necessary to satisfy the demands of all Project irrigators, Reclamation will issue an additional document, called a "Drought Plan," with additional details on the allocation of the limited water supply, using a seniority system among Project contractors. The first tier of this seniority system consists of contractors whose rights pre-date the 1902 Reclamation Act. The second tier comprises the most senior Reclamation Act contractors. The third tier consists of junior contractors, including KDD.

¹ Specifically, the suckers in the Lake have cultural significance to the Klamath Tribes in Oregon, and the coho salmon in the Klamath River have cultural significance to the Yurok and Hoopa Valley Tribes in California.

Ordinarily, Reclamation will satisfy all of the water requirements of each tier before beginning to allocate water to entities in the next tier.

20. Reclamation begins formulating the Operations Plan and Drought Plan many months in advance of their formal issuance based upon hydrology forecasts of how much water will be available in the Lake and Klamath River during the year; changing conditions require dynamic planning throughout the early part of the year leading up to the beginning of the irrigation season. After formulating its initial forecasts, Reclamation provides notice on prospective operations to stakeholders by holding regular meetings to apprise them of the developing hydrologic conditions, in addition to soliciting feedback on planning through formal and informal communications. The irrigation districts, including KDD, thus have notice of and an opportunity to weigh in on a plan well before its issuance.

Reclamation's 2021 and 2022 Plans

21. The Klamath Basin is experiencing one of the most severe droughts in its history, with three consecutive critically dry years since 2020. Hydrologic records reveal that 2021 was the driest year on record in terms of inflows to the Lake in the period Reclamation uses as the basis for operational planning (1980 to 2020). In fact, 2021 was the driest year on record since the U.S. Geological Survey began measuring and recording stream flows in the Klamath Basin in 1904. As a result of these conditions, Reclamation has been forced to limit the water available to Project irrigators and has had particularly close engagement with stakeholders in formulating its Plans during these years.

22. In 2021, Reclamation issued an Operations Plan and a Drought Plan that, among other things, allocated only 33,000 acre-feet to all Project contractors combined. Because this amount was less than the total water demands of the first- and second-tier contractors,

Reclamation directed that the Project water supply would be available only to those senior contractors. As KDD is a junior contractor, Reclamation informed it that no water would be available to KDD. KDD nevertheless diverted water during 2021—over 32,000 acre-feet, effectively exhausting the entire allocation to Project contractors. Reclamation therefore could deliver no water to the senior contractors that would have been entitled to it under the 2021 Plans.

23. Reclamation began formulating its 2022 Operations Plan in December 2021. Hydrological forecasts suggested that 2022 would be similarly dry to 2021, and Reclamation once again planned for drought conditions that would seriously limit the availability of water for irrigation. Beginning in January 2022, Reclamation held regular meetings with stakeholders, including KDD and other Project irrigators, to discuss conditions and prospective operations for the irrigation season.

24. On March 1, 2022, anticipating that the Plans would allocate limited water to some Project irrigators and none to others, Reclamation sent a letter to all irrigation districts, including KDD, directing all districts “to delay diversions of water from [the Lake] and the Klamath River until further notice.”

25. On April 11, 2022, Reclamation issued its 2022 Operations Plan. (Exhibit 2.) The Operations Plan stated that “Project Supply^[2] allocation from the Lake and the Klamath River for the 2022 spring/summer irrigation season [would] be insufficient to provide full deliveries to Repayment and Settlement Contractors (‘A’ Contractors),” which are the first and second tiers of

² “Project Supply,” as used in the Operations Plan, reflects the volume of water available from the Lake and the Klamath River to Project irrigators.

Reclamation's seniority system, "and at this time no water will be available for other Project contractors," including KDD. (*Id.* at 2.)

26. On April 29, 2022, Reclamation issued its Drought Plan. (Exhibit 3.) The Drought Plan made clear that no water would be available to KDD or other contractors of similar seniority, absent a dramatic change in hydrological conditions. (*Id.* at 2–3.)

27. Also on April 29, Reclamation sent a copy of the Drought Plan to KDD with a transmittal letter that made clear that no water was available to KDD and that KDD was not authorized to divert any water from the Klamath River. On information and belief, KDD received the transmittal letter with the copy of the Drought Plan no later than May 3, 2022.

The KDD Contract

28. KDD has been a Project contractor since 1917. KDD's original 1917 contract with the United States has been amended many times, including by the operative contract here, the 1943 Contract. In general, the contracts have provided that the United States would construct infrastructure, or operate infrastructure it already constructed, for the benefit and use of KDD, while KDD would defray some of the United States' construction costs. The Contract, among other things, substantially reduced the outstanding debt owed by KDD to the United States, as KDD had not been able to pay the prior construction charges. As relevant here, the Contract also added or otherwise amended significant terms regarding irrigation and water deliveries to KDD. (Exhibit 1.) Subsequent amendments have not changed the relevant provisions, so the Contract governs the matters at issue.

29. In the Contract, the United States agreed to deliver to KDD "a supply of water out of storage in Upper Klamath Lake and from the natural flow of the Klamath River," in an undefined amount not to exceed certain upper bounds. (Exhibit 1, Art. 14(a).) However, in the

“event of a shortage of water,” the Contract gives the United States the right to prorate the supply between KDD and others “in a manner deemed equitable by the Secretary [of the Interior].” (*Id.*)

30. The Contract further provides that the “delivery of water to [KDD] . . . shall be made at such times and in such quantities (compatible with the operation of the project works in connection with the handling and disposition of water to others) as may be arranged between” KDD and the United States. (*Id.* Art. 14(c).) Thus, despite operating the Ady and North Canals, KDD does not have unfettered rights to divert water as it chooses; rather, the timing and quantity of KDD’s diversions, if any, require Reclamation’s agreement.

31. In Article 35 of the Contract, KDD expressly agreed to abide by Reclamation’s rules and regulations relating to the management of the Project. Specifically, the United States, acting through the Secretary of the Interior, reserved the right “to make reasonable rules and regulations, and to add to or modify them as the Secretary may deem proper and necessary to carry out the true intent and meaning of the law and of this contract and to supply necessary details of their administration; and [KDD] agree[d] to observe such rules and regulations.” (*Id.* Art. 35.) In other words, in exchange for the opportunity to participate in the Project and benefit from the United States’ construction and operation of irrigation infrastructure, KDD agreed to abide by Reclamation’s decisions about how to operate the Project as a whole.

32. Reclamation’s 2022 Operations Plan, Drought Plan, and related directives concerning the operations of the Klamath Project for the 2022 irrigation season are “rules or regulations” that KDD agreed to observe under Article 35 of the Contract. The Plans are clear that, as a junior Project contractor, KDD must not divert any water this year.

KDD's Improper Diversions

33. On or around May 1, 2022, Reclamation learned that KDD had begun diverting water from the Klamath River, in contravention of Reclamation's Plans and directives.

34. On May 12, 2022, Reclamation notified KDD that its unauthorized diversions through the Ady and North Canals were in violation of the Plans and consequently breached KDD's obligations under the Contract to abide by Reclamation's rules and regulations. Reclamation also ordered KDD not to make any further diversions for the 2022 irrigation season.

35. Also on May 12, 2022, KDD sent Reclamation a letter requesting an amendment to the Drought Plan and an explanation of certain Reclamation determinations. KDD did not indicate that it would cease its diversions.

36. On May 20, 2022, KDD responded to Reclamation's May 12 letter, and (among other things) asserted that KDD was making diversions pursuant to a plan agreed upon by KDD and several of the senior irrigation districts. That plan, however, included no commitment by the senior contractors to forgo any water to which they would be entitled under the Plans in order to allow KDD to divert water this year. And even if it had, it could not preempt or alter Reclamation's binding Plans without agreement by Reclamation. This informal district-created plan does not authorize KDD's diversions.

37. KDD's May 20 letter also asserted that KDD was entitled to proration on an equal footing with the senior contracts. But under the long-established seniority system, KDD is a junior contractor with no right to proration when senior contractors are not receiving their full allotments.

38. KDD's May 20 letter did not state that it would cease making diversions without authorization.

39. On June 1, 2022, Reclamation sent KDD a letter reiterating that KDD was not authorized to divert any water and that any diversions would interfere with Project operations, including with Reclamation's ability to properly distribute water while meeting its obligations under federal law. Reclamation requested a written response from KDD by June 10, 2022 confirming that it would cease its diversions.

40. On June 10, KDD responded and refused to agree to cease its unauthorized diversions.

41. As of the date of this Complaint, KDD has refused to cease making unauthorized diversions from the Klamath River.

FIRST CLAIM FOR RELIEF

(Breach of Contract – Injunctive Relief)

42. The United States incorporates by reference all paragraphs of this Complaint set out above as if fully set forth herein.

43. The Contract is a valid contract between the United States and KDD.

44. KDD's duties under the Contract include observing Reclamation's rules and regulations related to the operations of the Klamath Project and diverting water through the Ady and North Canals only as may be arranged with Reclamation.

45. KDD has breached and is continuing to breach those duties by making unauthorized diversions of water through the Ady and North Canals in contravention of Reclamation's 2022 Operations Plan, Drought Plan, and related directives concerning the operations of the Klamath Project for the 2022 irrigation season.

46. The United States has no adequate remedy at law. No amount of monetary damages could replace the water improperly diverted by KDD, or compensate for harm to ESA-

listed species, to senior tribal interests, to Reclamation's ability to operate the Project, or to senior Project contractors by KDD's improper diversions.

47. The United States is therefore entitled to injunctive relief ordering KDD to to perform its contractual obligation to comply with Reclamation's rules and regulations, including Reclamation's Plans and directives, and to divert water through the Ady and North Canals only as arranged with Reclamation.

SECOND CLAIM FOR RELIEF

(Declaratory Judgment)

48. The United States incorporates by reference all paragraphs of this Complaint set out above as if fully set forth herein.

49. There is a definite and concrete dispute between the United States and KDD as to whether KDD's diversions of water from the Klamath River, which are contrary to Reclamation's Plans and directives and without Reclamation's agreement, constitute a breach of the Contract.

50. The Contract requires KDD to follow Reclamation's rules and regulations related to the operations of the Klamath Project, and to divert water through the Ady and North Canals only as arranged with Reclamation.

51. The United States is entitled to a declaratory judgment from this Court that the Contract requires KDD to comply with Reclamation's rules and regulations, including Reclamation's Plans and directives, and to divert water through the Ady and North Canals only as arranged with Reclamation.

PRAYER FOR RELIEF

The United States therefore requests entry of judgment in its favor and against KDD as follows:

- a. For injunctive relief ordering KDD to perform its contractual obligation to comply with Reclamation's rules and regulations, including Reclamation's Plans and directives, and to divert water through the Ady and North Canals only as arranged with Reclamation;
- b. For a declaration that the Contract requires KDD to comply with Reclamation's rules and regulations, including Reclamation's Plans and directives, and to divert water through the Ady and North Canals only as arranged with Reclamation.
- c. For all other applicable costs, fees, and interest; and
- d. For such other and further relief as the Court deems appropriate.

Dated: July 5, 2022

Respectfully submitted,

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