

**United States Court of Appeals  
for the Federal Circuit**

717 Madison Place, N.W.  
Washington, D.C. 20439

Jan Horbaly  
Clerk of Court

202-633-6550  
202-633-9623 (F)

By Facsimile:

March 11, 2008

Nancie G. Marzulla  
Marzulla and Marzulla  
1350 Connecticut Avenue, N.W.  
Suite 410  
Washington, DC 20036

Todd Dale True  
Earthjustice  
705 Second Avenue  
Suite 203  
Seattle, Washington 98104-1711

Katherine J. Barton  
Department of Justice  
P. O. Box 23795  
L'Enfant Plaza Station  
Washington, DC 20026-3795

Re: Klamath Irrigation District v. United States, No. 2007-5115

Dear Counsel:

Pursuant to Oregon Revised Statutes 28.200–.215, the court has decided to certify the following four questions of law to the Oregon Supreme Court:

- (1) Pursuant to Oregon General Laws, Chapter 228, §2 (1905), did the United States acquire a water right in the use of unappropriated Klamath Basin water that precludes irrigation districts and landowners from acquiring a beneficial or equitable property interest in the water right acquired by the United States?
- (2) In light of the statute, do the landowners who receive water from the Klamath Basin Reclamation Project and put the water to beneficial use have a beneficial or equitable property interest appurtenant to their land in the

water right acquired by the United States, and do the irrigation districts that receive water from the Klamath Basin Reclamation Project have a beneficial or equitable interest in the water right acquired by the United States?

- (3) Assuming that the United States did acquire a water right in the use of unappropriated Klamath Basin water, was the property interest such that the United States could completely transfer its interest to landowners through patent deeds or other conveyances of property rights?
- (4) Does Oregon State law recognize any property interest, whether legal or equitable, in the use of Klamath Basin water that is not being adjudicated in the Klamath Basin General Stream Adjudication?

By the close of business on April 9, 2008, the parties are to submit an agreed Joint Statement of Facts pertinent to the four certified questions, which Joint Statement of Facts shall include a statement of the controversy in which the questions arose. See Or. R. App. Proc. 12.20(1)(a). The parties should append to the Joint Statement of Facts any exhibits that they deem pertinent. See Chevy Chase Land Co. of Montgomery County v. United States, 158 F.3d 574, 576 (Fed. Cir. 1998). The Joint Statement of Facts may refer to documents contained in the Joint Appendix to the case filed in this court. Id.

Should counsel have any questions, they should contact the undersigned.

Sincerely,



Jan Horbaly  
Clerk