

# Klamath farmers urge Supreme Court to take up water fight

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Clouds hover over the Upper Klamath Lake on June 10, 2021, near Klamath Falls, Ore. | Nathan Howard/AP Photo

Farmers in the Klamath River Basin are pressing the Supreme Court to intervene in their long-running battle over the region's water — asserting that what started out as a challenge to a federal agency's operating plan now threatens to undermine water rights across the West.

The Klamath Irrigation District, which represents farms and other water users in Oregon and California, filed a [May 17 petition to the Supreme Court](#) seeking to review its latest challenge to the Bureau of Reclamation.

The dispute centers on Reclamation's management of the Upper Klamath Lake in Oregon, which stores water used to irrigate 210,000 acres of cropland.

Farmers in the region contend that Reclamation is misusing 400,000 acre-feet of water annually — or 130 billion gallons — to ensure sufficient flows for salmon and suckerfish populations.

In a 2019 lawsuit, the Klamath Irrigation District challenged Reclamation's current operating plan for the site, saying that farmers with water rights must receive their full allocation before any flows can be used to fulfill Endangered Species Act requirements.

But the 9th U.S. Circuit Court of Appeals [dismissed the case in 2022](#), ruling that because the Hoopa Valley and Klamath tribes had declined to join the lawsuit — and that Reclamation could not adequately represent their interests — it could not go forward.

The tribes had objected to the lawsuit, saying the operating plan protected their own water rights and treaty fishing rights in the region.

"Tribal water rights are the most senior water rights in the entire basin," said Hoopa Valley Chair Joe Davis, explaining that state adjudication of water rights cannot overrule those rights or ESA requirements. "That's the bottom line."

But in its appeal to the Supreme Court, the Klamath Irrigation District argues that the ruling could make bringing future lawsuits over water rights — or the property rights that determine how Western water is allocated — all but impossible without the approval of Native American tribes.

"The Ninth Circuit has granted Native American tribes effective veto power over all water rights cases against the federal government if those cases arguably affect their interests," attorney Frederick Yarger, who previously served as Colorado's solicitor general, wrote in the petition.

Klamath Irrigation District Vice President Rodney Cheyne added in a statement: "This issue extends beyond the Klamath region; water rights holders across the western United States should be vigilant. The repercussions have wide-ranging implications."

**Norman Semanko, general counsel for the Family Farm Alliance, said his organization is reviewing the petition.**

**"We're very concerned that the door to the courthouse seems to have been locked to the irrigation district, and we are actively evaluating what, if any, role we should play as an organization," he said.**

The petition from the Klamath Irrigation District is the latest move in a [decadeslong legal battle](#) over those waters that date to a 2001 decision by the George W. Bush administration to shut off water deliveries to farmers to protect salmon in a drought. The battle has produced a string of court losses for the farmers.

The Supreme Court in 2020 [rejected a petition from farmers](#) who had argued that the federal government's decision to cut off their waters amounted to an illegal taking of their property.

Irrigators in the region likewise lost a 1999 challenge to Reclamation, when the 9th Circuit ruled against them in *Klamath Water Users Protective Association v. Patterson*.

In that case, the court found that Reclamation's ownership of the Link River Diversion Dam — which regulates flows from the Upper Klamath Lake — allowed it to "override the water rights of the Irrigators" when necessary to meet ESA requirements.

"Because Reclamation maintains control of the Dam, it has a responsibility to divert the water and resources needed to fulfill the Tribes' rights, rights that take precedence over any alleged rights of the Irrigator," the court wrote.

Patti Goldman, senior attorney for Earthjustice, who represents the Yurok Tribe in a separate case over flows in the Klamath River, also emphasized the tribe's senior water rights in the region.

"The reality is there are three tribes who were there before there was an irrigation project, and their rights are inexplicitly intertwined with fish that are now on the Endangered Species list," she said.

In March, the Yurok Tribe, Pacific Coast Federation of Fishermen's Associations and Institute for Fisheries Resources sued Reclamation in the U.S. District Court for the Northern District of California to ensure sufficient flows remain in the Klamath River to protect coho salmon and other species.

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