

# Irrigators hope to benefit from Klamath re-quantification ruling

By MATEUSZ PERKOWSKI  
Capital Press

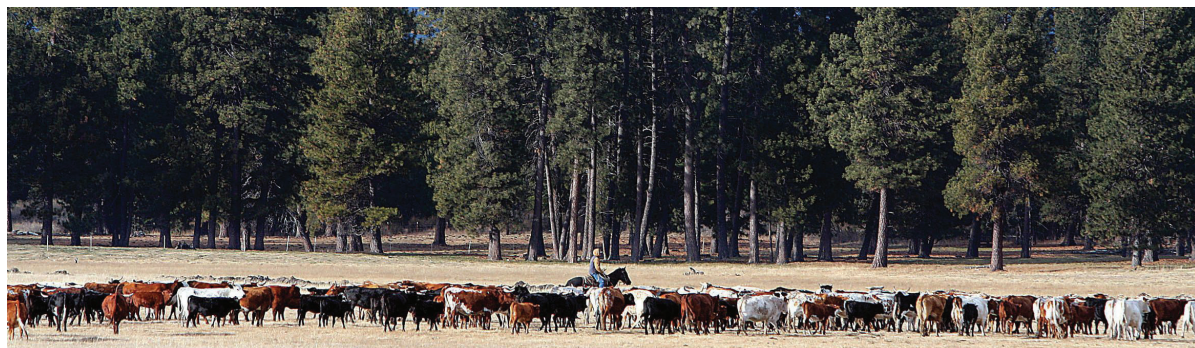
Water rights held by the Klamath Tribes must be re-quantified under a recent court decision that's offered hope to irrigators facing water shut-offs in the region.

The ruling has largely upheld a determination by the Oregon Water Resources Department that the Klamath Tribes have "time immemorial" in-stream water rights that haven't been diminished or abandoned.

However, Klamath County Circuit Judge Cameron Wogan has agreed with Upper Klamath Basin irrigators that OWRD must re-quantify the Klamath Tribes' water rights because the agency didn't consider their "moderate living standard."

Under an eventual re-quantification, Upper Klamath Basin irrigators with junior water rights can argue that water flows can be reduced and still satisfy the "moderate living standard" for tribal hunting and fishing required under an 1864 treaty.

More immediately, Upper Klamath Basin irrigators expect the ruling will prevent water shut-offs resulting from the enforcement of tribal water rights, since the judge



A cowboy drives cattle near Fort Klamath, Ore., in the Upper Klamath Basin. Irrigators in the basin hope to benefit from a court ruling ordering the re-quantification of tribal water rights.

Andrew Mariman/Associated Press File

agreed to vacate OWRD's water claim quantifications.

"If they're vacated from OWRD's order of determination, there would be nothing to be enforced," said Dominic Carollo, attorney for the Upper Klamath Basin irrigators.

The Klamath Tribes dispute this interpretation, arguing that OWRD's determination remains enforceable until the entire court process is completed for adjudicating water rights in the region.

"Until we get to that end point, what we are left with is that determination," said Sue Noe, an attorney representing the Klamath Tribes.

The enforceability question will be subject to further legal battles:

OWRD must submit a proposed order by March 16 to implement the judge's findings, and the other parties have until March 30 to object to that proposal.

Irrigators could also file independent legal actions if OWRD tried enforcing tribal rights despite the ruling.

The judge said the "moderate living standard" may not have a practical effect because flows can't be decreased below the minimum level needed to support "healthy and productive habitat." How those standards are applied to actual stream levels will be decided by OWRD.

"That's a do-over. The flows are going to have to be redone based on those two issues," Carollo said,

referring to the moderate living standard and the healthy and productive habitat standard.

Martin Nicholson, an Upper Klamath Basin rancher, said he expects the tribal claims can be re-quantified at a reduced level that still makes irrigation possible, which occurred under a previous settlement agreement that terminated in 2017.

Currently, stream flows fall below the level needed to satisfy tribal water rights even without irrigation in the Upper Klamath Basin, Nicholson said. "The challenge we have is those were set so high that the odds of being able to irrigate even in good (water) years wasn't very good."

Noe, the attorney for the Klamath Tribes, said that irrigation was pos-

sible in the Upper Klamath Basin under the earlier settlement because the agreement encompassed a broad range of measures aside from minimum in-stream flows.

"There were other components there that contributed to the improvement of the habitat," she said.

Under the adjudication process, on the other hand, the amount of water is the only element affecting the habitat's health and productivity, Noe said.

The prospect of tribal water claims getting re-quantified at a lower level isn't likely, she said.

"We're not too concerned, because we already aimed our claims at healthy and productive habitat," Noe said. "We don't think there's any excess that could be reduced."

The judge's ruling was generally positive, since it denied motions challenging the OWRD's determination that the tribes hold "time immemorial" water rights, she said.

"That's a great positive step and positive decision in affirming our water rights," said Don Gentry, chairman of the Klamath Tribes.

Since the tribes have been enforcing their rights, they've already seen improvements in fish health, he said. "The ability to enforce our water rights is critical to protecting species in the system."

# USDA concludes 'mystery seed' investigation, creates new guidelines

By SIERRA DAWN MCCLAIN  
Capital Press

WASHINGTON, D.C. — USDA has concluded its months-long investigation into last year's "mystery seed" case, during which thousands of people across the U.S. received unsolicited seed packages in the mail.

The Agriculture Department said that after a detailed investigation, it found no evidence that someone was trying to harm U.S. agriculture. The report concluded the seeds were likely part of an internet scam to help a seller boost its search results.

The investigation also prompted the agency to create new guidelines to prevent such events in the future.

Last summer, thou-

sands of Americans nationwide received mysterious seed packages, labeled as though they were from China, Uzbekistan, the Solomon Islands, the United Arab Emirates, Kyrgyzstan and elsewhere.

The mass mailing sparked concern about foreign seeds. State and federal agriculture departments issued warnings to citizens not to plant the seeds, saying the packages could potentially contain invasive species, pathogens or pests.

"We are thankful to the public for reporting the seeds and getting them to USDA officials so that we could investigate them and avoid introducing foreign pests into our environment," Osama El-Lissy, plant protection and quarantine program deputy, said in a



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WSDA

statement.

A few months into the investigation, USDA concluded that the seed samples were benign, including varieties like rosemary, cabbage,

mustard and basil.

Nevertheless, USDA's Animal and Plant Health Inspection Service, or APHIS, concluded the seed shipments were ille-

gal because they entered the U.S. without a permit or phytosanitary certificate.

Agency spokeswoman Cecilia Sequeira told the Capital Press last summer that the packages were probably part of a global "brushing scam," generating fake sales to boost a seller's legitimacy. But the agency did not issue that final conclusion officially until this month, after further probing and analysis.

Last year's scare prompted a few major changes that could impact seed sales in the future.

In response to the scam, online retail giant Amazon banned foreign sales of seeds in the U.S.

USDA this month, also acting in response to last year's events, issued additional guidance to help

online buyers and sellers comply with U.S. laws when they import seeds and live plants from other countries.

The new guidance explains buyer and seller responsibilities, outlines required documents, including import permits and phytosanitary certificates, provides information about which seed and plant species have import requirements and clarifies what plants are not allowed in the U.S.

"We've been working closely with e-commerce companies and other federal partners to stop the flow of illegal plant and seed shipments entering the country," said El-Lissy of USDA. "This new site is a big step forward in our efforts to facilitate the safe trade of plants and seeds through the e-commerce pathway."



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