

1 PRENTICE, LONG AND EPPERSON, LLP
2 MARGARET E. LONG (SBN 227176)
3 margaret@plelawfirm.com
4 2240 Court Street
5 Redding, CA 96001
6 Telephone: 530.691.0800
7 Facsimile: 530.691.0700

8 Attorneys for [Proposed] Amicus Curiae County of Modoc

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

11 THE KLAMATH TRIBES, a federally
12 recognized Indian Tribe,

13 Plaintiff,

14 vs.

15 UNITED STATES BUREAU OF
16 RECLAMATION; UNITED STATES FISH &
17 WILDLIFE SERVICE; NATIONAL MARINE
18 FISHERIES SERVICE,

19 Defendants,

20 and

21 KLAMATH WATER USERS ASSOCIATION,
22 SUNNYSIDE IRRIGATION DISTRICT, and
23 BEN DuVAL,

24 Defendant-Intervenors.

Case No: 3:18-cv-03078-WHO
[Related Case Nos. 3:16-cv-06863-WHO and
3:18-cv-03078-WHO]

**DECLARATION OF GARY FENSLER IN
SUPPORT OF AMICUS CURIAE
COUNTY OF SISKIYOU, COUNTY OF
MODOC, KLAMATH COUNTY, AND
THE MODOC TRIBE IN SUPPORT OF
DEFENDANTS UNITED STATES
BUREAU OF RECLAMATION ET AL.
AND DEFENDANT-INTERVENORS
KLAMATH WATER USERS
ASSOCIATION ET AL.**

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DECLARATION OF GARY FENSLER

I, Gary Fensler, declare as follows:

1. I am employed by the County of Modoc (“County”) as Agricultural Commissioner/Sealer of Weights and Measures. I have been employed by the County in this capacity since January 1, 2018. Prior to that, I was the County’s Tulelake Branch Office Deputy Agricultural Commissioner for six years, and prior to that I was the County’s Tulelake Branch Office Agricultural Inspector for four years. Unless otherwise stated on information and belief, I have personal knowledge of the facts stated herein and, if called as a witness, could testify competently thereto.

2. In my capacity as Agricultural Commissioner/Sealer of Weights and Measures, I am responsible for protecting and promoting agriculture in the County. My duties include ensuring the quality of fruits, vegetables, and eggs, enforcing agricultural and pesticide regulations, and certifying weighing and measuring devices throughout the County. As such, I am familiar with the farming practices, agricultural production, and irrigable land within the County’s borders. I am also familiar with the impact that a lack of water will have on the agricultural community in the County.

3. I have reviewed the Klamath Tribes’ (“Tribes”) Motion for Injunction, ECF No. 13, filed in the above-captioned lawsuit. I submit this declaration in support of the County’s amicus brief.

4. If the injunction that the Tribes’ seek is granted, it would halt delivery of water to nearly 185,000 acres of highly productive, irrigable farmland in the Klamath Basin. Approximately 34,505 of these acres are within the County of Modoc.

5. If the Tribes’ injunction is issued, it would cause property taxes within the County to decline dramatically. Land that is irrigated by the Project accounts for 17.3% of Modoc County’s total land value and 27.5% of Modoc County’s personal property value. Thus, property taxes generated from this land provide the County with nearly half of its discretionary revenue. If the injunction is issued and water deliveries are halted, the County may not receive

1 this revenue. This would hinder the County's ability to provide essential services to its citizens,
2 including services relating to public safety and criminal justice.

3 6. Property values in the County are also likely to decline if the injunction is
4 granted. In the County, the price per acre of irrigable land is approximately \$5,000, whereas the
5 price of non-irrigable land is approximately \$2,500. Thus, if the irrigable land within the County
6 becomes non-irrigable due to the Tribes' requested injunction, the land will decrease in value by
7 approximately 50%. This is consistent with what happened to land values the last time water
8 deliveries were stopped within the Klamath Basin.

9 7. The County also receives additional revenue from agricultural ground leases
10 under the Kuchel Act. This amount was approximately \$90,890 in 2017. If the injunction is
11 granted, this revenue could be lost because farmers are not able to harvest their crops, and
12 therefore cannot pay the amounts owed on their ground leases.

13 8. The County also receives approximately \$170,000 from gas tax revenues. This
14 revenue could also be impacted if the Tribes' injunction is granted.

15 9. The County's economy will suffer if an injunction is issued because small
16 businesses in the agricultural industry will lose revenue. For example, I am informed and
17 believe that Basin Fertilizer and Chemical Co. LLC generated \$2.5 million in sales in the County
18 in 2018 supporting crops such as potato, onion, alfalfa, and mint. These were all within the areas
19 irrigated by the Klamath Irrigation Project. If an injunction is issued, small businesses such as
20 these will suffer severe economic harm because farmers will not be planting and harvesting
21 crops, and therefore will not need their services.

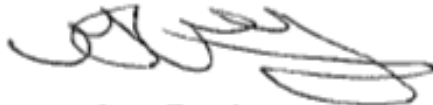
22 10. The timing of the requested injunction is particularly problematic. At this time,
23 the bulk of the cost of the crops that have not been harvested has been borne by farmers. If
24 farmers are unable to harvest their crops, which is likely to occur if they do not receive water due
25 to the injunction, they will not be able to fulfill their contracts, and will suffer devastating
26 economic losses. Further, contracts for future years will likely be canceled in favor of more
27 reliable agricultural areas.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed July 2, 2018, at Tulelake, California.



Gary Fensler