

**ORAL ARGUMENT HAS NOT BEEN SCHEDULED**

**No. 18-1316**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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*In Re* SISKIYOU COUNTY WATER USERS ASSOCIATION

*Petitioner*

On Writ of Petition for Mandamus

**UNOPPOSED MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF  
OF INSTITUTE FOR TRADE, STANDARDS AND SUSTAINABLE  
DEVELOPMENT OUT OF TIME**

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Date: March 19, 2019

## CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

Pursuant to Circuit Rules 12(c) and 28(a)(1), Petitioner certifies the following:

### **A. Parties and Amici**

*Petitioner:* The Siskiyou County Water Users Association is the Petitioner.

*Respondent:* The Federal Energy Regulatory Commission is the Respondent.

*Amicus Curiae:* The Institute for Trade, Standards and Sustainable Development is the only *Amicus Curiae* participating in this matter (“*Amicus* ITSSD” or “ITSSD”).

*Intervenors:* The Court has not granted any motions to intervene at this time, nor have any motions been filed.

### **B. Rulings Under Review**

An accurate reference to the ruling at issue appears in Petitioner’s brief.

### **C. Related Cases**

An accurate reference to cases related to the current matter appears in Petitioner’s brief and below.

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, *amicus curiae*, the Institute for Trade, Standards and Sustainable Development (“ITSSD”), makes the following disclosure: ITSSD is a nonprofit (501(c)(3)) research and educational organization formed under the law of the State of New Jersey. It has no parent corporation, and no publicly-held company has a 10% or greater ownership interest in ITSSD.

Date: March 19, 2019

/s/ Lawrence A. Kogan  
LAWRENCE A. KOGAN  
*Counsel for Amicus Curiae*

Interested *Amicus Curiae* Institute for Trade, Standards and Sustainable Development (“*Amicus ITSSD*”), pursuant to Circuit Rule 29(a)(6), seeks leave to file the attached *Amicus Curiae* Brief out of time, and for grounds in support thereof states:

1. Pursuant to Circuit Rule 29(a)(6), an *Amicus Curiae* brief is due to be filed: “7 days after the principal brief of the party being support is filed.” In this matter, since Petitioner’s brief was filed on November 21, 2018, that date would have been November 28, 2018.

2. Only approximately three months later, on or about February 23, 2019, did *Amicus ITSSD* learn of this matter for the first time from a Klamath Basin email newsletter which also identified a quickly approaching deadline regarding the submission of public comments concerning water quality issues relating to the removal of the Klamath River dams in a related state administrative proceeding, about which *Amicus ITSSD* had expertise and information..

3. Following its preparation and filing of detailed public comments and other accompanying documentation by the noticed deadline, Counsel for *Amicus Curiae* proceeded, on or about February 27, 2019, to contact Counsel for Petitioner regarding the status of this matter. At such time, Counsel for Petitioner provided Counsel for *Amicus Curiae* with a copy of the case docket.

4. On or about March 7, 2019, Counsel for *Amicus Curiae* again contacted Counsel for Petitioner via email requesting a copy of the filed Petition for Writ of Mandamus which was provided the same day, and requested Counsel for Petitioner's consent for ITSSD to participate as an *Amicus Curiae* and to file an *Amicus Curiae* Brief at this late time, which consent was provided.

5. On or about March 8, 2019, Counsel for *Amicus Curiae* contacted Counsel for the Federal Energy Regulatory Commission ("FERC"), after having reviewed FERC's filed Opposition to the Petition for a Writ of Mandamus, requesting his consent to ITSSD's participation as an *Amicus Curiae* and to file an *Amicus Curiae* Brief at this late time. Counsel for FERC responded that he took no position on *Amicus Curiae* ITSSD's filing of a brief at this time.

6. On March 11, 2019, Counsel for *Amicus Curie* updated his NextGen CM/ECF electronic filing registration with this Court, and later filed with this Court its Notice of Intent to Participate as an *Amicus Curiae* and to File an *Amicus Curiae* Brief (Doc. # 1777049). That Notice further described the interests of ITSSD.

7. The issues raised and the information contained in the attached *Amicus* ITSSD's brief are potentially dispositive of the Petition for Writ of Mandamus, and they have not been raised in any depth by Petitioner. If, anything, this Court's recent ruling in *Hoopa Valley Tribe v. Federal Energy Regulatory Commission*, No. 14-1271 (D.C. Cir. 1-25-19), directing FERC "to proceed with its review of, and

licensing determination for, the Klamath Hydroelectric Project,” after ten years of delay accepting PacifiCorp’s repeated withdrawals and resubmissions of Clean Water Act § 401 water quality certification requests, clearly conveys the urgency underlying the bases for Petitioner’s request for relief in this action, and the significance of *Amicus* ITSSD’s brief in support thereof.

8. Since FERC filed its Opposition to the Petition for Writ of Mandamus on February 26, 2019, *Amicus* ITSSD’s filing of an *Amicus* Brief at this time will neither unduly delay these proceedings nor prejudice either Party.

WHEREFORE, *Amicus* ITSSD respectfully requests leave to file the attached *Amicus Curiae* brief out of time.

Date: March 18, 2019

By: /s/ Lawrence A. Kogan  
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*Counsel for Amicus Curiae  
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**CERTIFICATE OF SERVICE**

I hereby certify, pursuant to Red. R. App. P. 25(d) and Cir. R. 25, that on March 19, 2019, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter who are registered with the Court's CM/ECF system.

Dated: March 19, 2019

By: /s/ Lawrence A. Kogan  
Lawrence A. Kogan

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT**

I HEREBY CERTIFY that this document complies with the type-volume limit of Fed. R. App. P., Rule 32(a)(7)(B) and the word limit of Fed. R. App. P. Rule 5(c)(1) because, excluding the parts of the document exempted by Fed. R. App. P., Rule 32(f), this document contains 573 words.

I HEREBY CERTIFY that this document complies with the typeface requirements of Fed. R. App. P. Rule 32(a)(5) and the type-style requirements of Fed. Rule P. 32(a)(6), because this document was prepared in proportionately spaced typeface using Microsoft Word in 14-point font size and Times New Roman type style.

Dated: March 19, 2019

By: /s/ Lawrence A. Kogan  
Lawrence A. Kogan