

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

TRISHA RONINGER,
Petitioner,

vs.

KLAMATH COUNTY.

LUBA No. 2021-027

FINAL OPINION
AND ORDER

Appeal from Klamath County.

Trisha Roninger filed the petition for review and argued on their own behalf.

No appearance by Klamath County.

ZAMUDIO, Board Chair; RUDD, Board Member, participated in the decision.

RYAN, Board Member, did not participate in the decision.

AFFIRMED 07/28/2021

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner challenges a county board of commissioners decision approving with conditions a reclaimed water project including transmission, storage, and application of reclaimed water to land zoned Exclusive Farm Use-Cropland.

FACTS

The challenged decision is the county's decision on remand from *South Suburban Sanitary District v. Klamath County*, ___ Or LUBA ___ (LUBA No 2020-090, Dec 10, 2020) (*SSSD II*). Petitioner was not a party to that appeal. We reiterate the pertinent facts from our prior decision.

South Suburban Sanitary District applied to the county for land use approval for a reclaimed water project consisting of approximately 11 miles of water transmission line, approximately 88 acres of reservoir storage, and approximately 750 acres of agricultural irrigation applying reclaimed water to a site east of the intersection of North Poe Valley Road and Highway 140.¹ The county processed the application under a Type II review and denied the application on August 11, 2020. South Suburban Sanitary District appealed and we reversed the county's denial. *SSSD II*, ___ Or LUBA ___. South Suburban

¹ In a decision issued this same day, we address a challenge to a similar county approval authorizing application of reclaimed water to a separate site. *Roninger v. Klamath County*, ___ Or LUBA ___ (LUBA No 2021-026, July 28, 2021).

1 Sanitary District initiated remand proceedings with the county. On January 19,
2 2021, the county approved the application with conditions. This appeal followed.

3 **ASSIGNMENTS OF ERROR**

4 In six assignments of error, petitioner argues that our final opinion in *SSSD*
5 *II* was wrongly decided and that we should reconsider our decision in light of
6 petitioner's arguments presented in this appeal. Our decision in *SSSD II* was not
7 appealed and is final. We do not have authority to reconsider our final decision
8 in light of petitioner's arguments in this appeal. *Sarti v. City of Lake Oswego*, 20
9 Or LUBA 562 (1991) (explaining that LUBA lacks statutory authority to
10 reconsider its final decisions); *Jacobsen v. Douglas County*, 56 Or LUBA 816
11 (2008) (explaining that LUBA does not have authority to "reopen" or "restart"
12 an appeal in which a final opinion and order has been issued). In addition, on
13 review in post-remand proceedings, petitioner is foreclosed from raising issues
14 at LUBA that could have been raised and were not raised in *SSSD II*, a prior
15 LUBA appeal in the same proceeding. *Beck v. City of Tillamook*, 313 Or 148,
16 153-54, 831 P2d 678 (1992); *Green v. Douglas County*, 63 Or LUBA 200 (2011).

17 The assignments of error are denied.

18 The county's decision is affirmed.