

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF KLAMATH

In the Matter of the Determination of the Relative Rights of the Waters of the Klamath River,
A Tributary of the Pacific Ocean

In Re

WATERS OF THE KLAMATH RIVER BASIN.

Case No. WA1300001

CASE MANAGEMENT ORDER
39: REGARDING VARIOUS ISSUES

March 21, 2019

SUMMARY OF ISSUES ADDRESSED BY THIS CASE MANAGEMENT ORDER(CMO)

I. Introduction

II. Orders

- (A). Case Management Committee**
- (B). Spreadsheet**
- (C). The Amended and Corrected Findings of Fact and Order of Determination (ACFFOD)**
- (D). Withdrawing Exceptions**
- (E). Ancillary Motions**



This proceeding is referred to as the “Klamath Adjudication,” or simply the “Adjudication.” This Case Management Order #39: Regarding Various Issues will be mailed to those listed on the current service list provided by the Court on September 12th, 2018.

I. Introduction

In CMO #36 the court solicited written comments and responses about managing this case. Those comments, responses, and other topics were discussed at a Case Management Conference on February 28, 2019. This CMO sets forth orders that the court deems are appropriate as a result of those events or for other reasons.

II. Orders

(A). Case Management Committee (CMC)

1. Members – Following are the current members of the Committee and their clients. Members can designate an attorney from their firm or office to serve in their temporary absence.

Sarah Weston (Chair)	Oregon Water Resources Department
Susan Noe	The Klamath Tribes
Guss Guarino	USA
Steve Shropshire	Rogue River Valley Irrigation/Medford Irrigation
Paul Simmons or Rich Deitchman	Klamath Project Water Users

2. Contacts – The committee chair can be contacted at sarah.weston@doj.state.or.us or (971)673-1880 and the court's judicial assistant can be contacted at bethamy.dunaway@ojd.state.or.us or (541)883-5505 ext 244.

3. New Members – At any time an attorney or party involved in this case can nominate themselves to serve on the committee by notifying the court. The court will solicit comments about any prospective new members and, after considering those comments, will grant or deny the request for appointment.

4. Conference Calls – Any party or attorney can listen to the committee's conference calls. To do so they must notify and make arrangements with the committee chair.

5. E-mail List – Any party or attorney can be included on the committee's e-mail list to receive copies of all CMC correspondence and minutes of meetings. To do so they must notify and make arrangements with the committee chair.

6. Court's Letters to Committee Chair. On occasion the court will send a letter to the chair pursuant to CMO #4 which provides in part: "The initial coordinator and any subsequently designated chair or spokesperson and the court can communicate ex parte in writing about administrative matters relating to the committee's operation. The court will retain copies of any such communications, they will be open to inspection by anyone, and copies will be available after payment of copying costs". Anybody can obtain copies of these letters from the court's judicial assistant at bethamy.dunaway@ojd.state.or.us or (541)883-5505 ext 244.

7. E-mails Between Court's Judicial Assistant and Committee Chair – These communications are not part of the record and are not served on other parties to this case.

Anybody can obtain copies of these e-mails from the committee chair by a public records request or the court's judicial assistant.

8. Any Other CMC Records – Any attorney or party to this case can obtain any other records of the CMC from the committee chair.

9. Opportunity to Comment – The court will not enter proposed orders suggested by the CMC without allowing parties an opportunity to comment on those proposed orders.

(B). Spreadsheet

Counsel for the Oregon Water Resources Department has created a spreadsheet of this case which is located on the court's website www.courts.oregon.gov/courts/klamath. The court requests that counsel update that document from time to time and any revisions will be dated and posted on the website. The spreadsheet can be considered a handy reference tool but should not be considered reliable or conclusive evidence about the status of the case. There have been earlier versions of spreadsheets that are no longer in use.

(C). The ACFFOD

1. Form of Motions that Propose to Modify the ACFFOD – All motions that request modification of page(s) of the ACFFOD must include as an exhibit copies of the pages with any proposed changes red-lined.

2. Form of Orders that Modify the ACFFOD – All court orders that involve a change to a page or pages of the ACFFOD must include a copy of the modified ACFFOD page(s) as an exhibit to the order.

3. Modified ACFFOD

(a). All court orders including those that modify the ACFFOD are entered in the court's record chronologically.

(b). Counsel for the Oregon Water Resources Department (OWRD) is directed to investigate whether it could maintain a digital version of the ACFFOD containing all pages that have been modified by court order. Counsel should notify the court whether OWRD could do so, and if so, how it would be done. Any such notification to the court should be served on those on the current service list. The court will decide how to proceed after receiving such notification.

(D). Withdrawing Exceptions

A party can withdraw an exception or portion of an exception on its own accord without order of the court by filing a Notice of Withdrawal with the court. Any such notices filed after the date of this order must be served on those on the current service list. Once withdrawn, an exception cannot be refiled.

(E). Ancillary Motions

An “ancillary motion” is a request for a judicial resolution of an issue outside of the phased process adopted by the court or that is not provided for in a CMO.

1. An “ancillary motion” must:

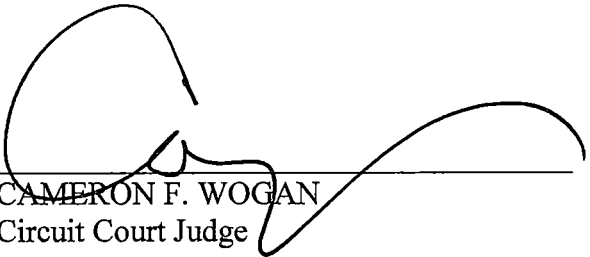
- (a). Be a formal written motion
- (b). Be served on the current service list
- (c). Explain why the party seeks, and believes it should receive, judicial

resolution of the issue it seeks to raise outside of the ordinary phased schedule or existing CMO’s.

An “ancillary motion” will be heard or not heard in the court’s discretion. If it is heard, the procedure will be within the court’s discretion and may include the process set forth in CMO #31 or the process on Pages 3-4 in the DIRECTION FROM THE CASE MANAGEMENT COMMITTEE MOTIONS AND REQUESTS (COMMITTEE RESPONSE TO CMO #25) dated April 13, 2017.

IT IS SO ORDERED.

Dated this 21ST day of March, 2019.


CAMERON F. WOGAN
Circuit Court Judge

Cc: current service list