

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 #49
SCHEDULE AND GUIDELINES FOR ORAL
ARGUMENTS ON PHASE 3, PART 1, GROUP
C MOTIONS

July 31ST, 2020

This Case Management Order (CMO) #49 will be mailed to those on the current service list provided by the court on June 18, 2020.

I. INVENTORY OF PHASE 3, PART 1, GROUP B FILINGS

Twelve legal issues were set forth for resolution in Phase 3, Part 1, Group C in CMO #33.

No motions were filed on Issue #10 (gathering rights). Motions were filed as follows:



Court Motion #	Party	Issue # from CMO #33 listed in motion
M1	KPWU	1-3, 6-8, 13
M2	Klamath Tribes	11
M3	Klamath Tribes	3
M4	USA	11
M5	USA	3
M6	UBI #1	1, 4, 5, 13
M7	UBI #2	3, 4
M8	UBI #3	3, 4
M9	UBI #4	1, 2, 8, 13
M10	UBI #5	2, 7, 8, 9, 13
M11	UBI #6	1, 2, 8, 13
M12	UBI #7	12
M13	Mosby (joinder)	1-5, 7-9, 12, 13
M14	MID/RRVID	1, 2, 3

Oral arguments on the motions may be made by the moving, supporting and responding parties and OWRD. As a result, most motions will have presentations on behalf of UBI, Mosby, MID/RRVID, KPWU, USA, Tribes and OWRD.

II. TABLE OF CONTENTS MUST BE FILED

No later than August 17, 2020 any party that filed a Phase 3, Part 1, Group C motion, response in support, response in opposition, or reply (all referred to as a “Group C Pleading”) must file a Table of Contents for these documents that contains:

1. The title of the document filed.
2. A list of issues that document addresses from the list of Group C issues set forth in CMO #33.
3. The page(s) that address each issue.

The Table of Contents must be served upon every party/attorney who filed a Group C Pleading in the same Motion Group that contains the Table of Contents.

III. ARGUMENT SCHEDULE – TUESDAY, AUGUST 25TH AND WEDNESDAY, AUGUST 26TH, 2020.

Tuesday August 25, 2020

Court's introduction 8:30 - 8:40

Scheduling arguments in Section IV of this order 8:30 – 8:40

Motion Group #1 - Applicability of *US v Adair* 8:40 - 10:30

ISSUE #1 (Motions 1, 6, 9, 11, 13 and 14)

a). The applicability of judgments entered in the *United States v. Adair* litigation to the Klamath Basin Adjudication.

- KPWU (Deitchman/Simmons) (15 mins)
- UBI (Carollo) (15 mins)
- Mosby (Carollo) (5 mins)
- MID/RRVID (Shropshire) (15 mins)
- United States (Carreiro) (15 mins)
- Klamath Tribes (Tenorio/Noe) (15 mins)
- OWRD (Staley/DeFever) (15 mins)
- 5 min of reply each for KPWU, UBI, MID/RRVID (15 mins)

BREAK 10:30 – 10:40 (10 mins)

Motion Group #2 - General Legal Principals, Primary/Secondary Purpose & Abandonment 10:40 – 11:45

ISSUES #2, 4 and 6 (Motions 1, 6, 7, 8, 9, 10, 11, 13 and 14)

a). General legal principles pertaining to the tribal water rights and/or recognition of tribal water rights based on any claimed limitation of the purpose(s) for the rights.

b). Whether the tribal water rights have been abrogated or diminished, in whole or in part.

c). Whether Oregon's law of abandonment applies to tribal water right claims.

- KPWU (Deitchman/Simmons) (30 mins)
- UBI (Carollo) (30 mins)
- Mosby (Carollo) (5 mins)

LUNCH 11:45 – 1:00

Motion Group #2 - Continued 1:00 - 3:30

- MID/RRVID (Shropshire) (30 mins)
- United States (Carreiro) (30 mins)
- Klamath Tribes (Tenorio/Noe) (30 mins)
- OWRD (Staley/DeFever) (30 mins)
- 10 min of reply each for KPWU, UBI, MID/RRVID (30 mins)

Wednesday, August 26, 2020

Court's introduction 8:30 - 8:40

Motion Group #3 - Equitable Defenses & Preclusion 8:40 – 10:45

ISSUES #5 and 12 (Motions 6, 12 and 13)

a). Whether equitable doctrines are applicable (as a matter of law, not fact) against the United States and/or Klamath Tribes with respect to the tribal claims.

b). Whether claim preclusion and/or issue preclusion precludes the tribal water right claims, in whole or in part.

- UBI (Carollo) (20 mins)
- Mosby (Carollo) (5 mins)
- MID/RRVID (Shropshire) (20 mins)
- United States (Guarino) (20 mins)

- Klamath Tribes (Tenorio/Noe) (20 mins)
- OWRD (Staley/DeFever) (20 mins)
- 10 min of reply each for UBI and MID/RRVID (20 mins)

BREAK (10 mins) 10:45 – 10:55

Motion Group #4 - How Tribal Water Rights Are Held 10:55 – 11:55

ISSUE #11 (Motions 2 and 4)

a). General legal principles pertaining to how the tribal water rights are held and whether the denial of the Tribes' separate water right claims was appropriate.

- Klamath Tribes (Tenorio/Noe) (15 mins)
- United States (Carreiro) (15 mins)
- KPWU (Deitchman/Simmons) (15 mins)
- UBI (Carollo) (15 mins)

LUNCH 11:55 – 1:00

Motion Group #4 - Continued 1:00 – 1:25

- OWRD (Staley/DeFever) (15 mins)
- 5 min of reply each for Klamath Tribes/USA (10 mins)

Court's closing comments 1:25 – 1:35

**IV. ARGUMENT SCHEDULE – FOR TOPICS THAT WILL NOT BE
ARGUED AUGUST 25TH – 26TH.**

At 8:30 a.m. on Tuesday, August 25, 2020 with input from counsel and the parties, these arguments will be calendared for hearing near end of October/November, 2020.

Court's introduction 8:30 - 8:40

Motion Group #5 - On/Off-Reservation Rights 8:40 – 10:25

ISSUE #3 (Motions 1, 3, 5, 7, 8, 13 and 14)

a). Whether the Klamath Treaty reserved water rights in streams and water bodies lying outside, or bordering, the former Klamath Reservation.

- KPWU (Deitchman/Simmons) (25 mins)
- UBI (Carollo) (25 mins)
- Mosby (Carollo) (5 mins)
- MID/RRVID (Shropshire) (25 mins)
- United States (Guarino) (25 mins)

BREAK 10:25 – 10:35 (10 mins)

Motion Group #5 - Continued 10:35 – 12:15

- Klamath Tribes (Tenorio/Noe) (25 mins)
- OWRD (Staley/DeFever) (25 mins)
- 10 min of reply each for KPWU, UBI, MID/RRVID, US and Klamath Tribes (50 mins)

LUNCH 12:15 – 1:15

Motion Group #6 - Burden of Proof & Quantification 1:15 - 2:35

ISSUES #7, 8 and 9 (Motions 1, 9, 10, 11, 13)

a). General legal principles pertaining to the burden of proof for tribal claims that were imposed during the claims/contests process before the Adjudicator.

b). Whether the Adjudicator applied the correct quantification standard to the tribal claims.

c). Whether the Adjudicator properly completed the quantification of the tribal claims.

- KPWU (Deitchman/Simmons) (25 mins)

- UBI (Carollo) (25 mins)
- Mosby (Carollo) (5 mins)
- MID/RRVID (Shropshire) (25 mins)

BREAK (10 mins) 2:35 – 2:45

Motion Group #6 - Continued 2:45 - 4:30

- United States (Harder) (25 mins)
- Klamath Tribes (Tenorio/Noe) (25 mins)
- OWRD (Staley/DeFever) (25 mins)
- 10 min of reply each for KPWU, UBI, MID/RRVID (30 mins)

V. GUIDELINES FOR ORAL ARGUMENTS ON PHASE 3, PART 1, GROUP C MOTIONS

In its discretion the court may increase a party's time for argument and will announce that on the day of the hearing.

Any party may cede all or part of their allotted time to another party by orally advising the court of that choice on the day of the hearing.

Attorneys, clients, and spectators can listen and/or participate in this hearing by calling the court's WebEx hearing line. Attached hereto are the instructions for using the WebEx system. As a result of COVID-19, the hearing will be entirely telephonic and the courtroom will not be open to the public.

VI. ORDER SIGNED ON PHASE 3, PART 1, GROUP B MOTIONS

The COURT'S OPINION AND CONCLUSIONS OF LAW ON PHASE 3, PART 1, GROUP B MOTIONS was issued, the Oregon Water Resources Department drafted a proposed order and objections were entered to the form of the order.

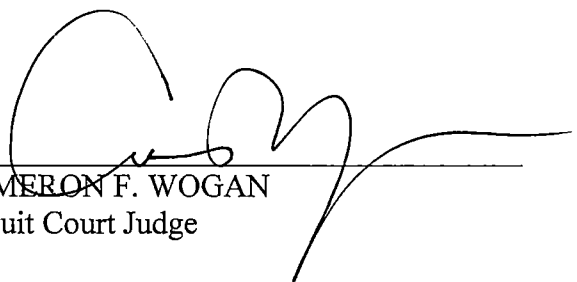
The court granted the objections and issued a new order which was signed and entered July 22, 2020 at 1:34 p.m.

VII. COURT WILL NOT CONSIDER CASE MANAGEMENT COMMITTEE (CMC) COMMENTS IT SOLICITED.

At the hearing July 15th the court ordered that by July 29th, 2020 the CMC must submit additional input about scheduling arguments. After making that request the court realized that this process would not allow the other parties to comment upon the CMC suggestions. This is contrary to the court's practice and therefore it will not consider that additional input. Please accept my apologies for the error.

IT IS SO ORDERED.

Dated this 31st day of July, 2020.


CAMERON F. WOGAN
Circuit Court Judge

Cc: current service list