

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
#51

November 13, 2020

This Case Management Order (CMO) #46 will be mailed to those on the current service list provided by the court on October 6, 2020.

SUMMARY OF ISSUES ADDRESSED BY THIS CASE MANAGEMENT ORDER

- I. Writ of Mandamus.**
- II. Argument Schedule – Wednesday, December 2, 2020 for remaining Phase 3, Part 1, Group C Motions not argued on August 25-26, 2020.**
- III. Schedule for briefing Phase 3, Part 2.**

IV. Phase 3, Part 2 Issue: Resolution of claims not subject to exceptions.

I. Writ of Mandamus.

Some parties to this case have filed a “Relators’ Petition for a Peremptory or Alternative Writ of Mandamus” with the Oregon Supreme Court in Case No. S067998.

That case will not affect the Circuit Court’s proceedings in this case unless the Supreme Court orders otherwise. ORS 34.130(5).

II. Argument Schedule – Wednesday, December 2, 2020 for remaining Phase 3, Part 1, Group C Motions not argued on August 25-26, 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)

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 are 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.

III. Schedule for Briefing Phase 3, Part 2

A. Introduction

In CMO #46, the Court directed the Case Management Committee (CMC) to "submit a proposed CMO to the Court setting forth a schedule for briefing and arguing the next part of this proceeding."

On June 26, 2020, the CMC chair transmitted a proposed order to the Court and notified the Court that the proposed order reflected the committee consensus.

On July 31, 2020, the Court circulated the CMC's proposed Case Management Order to the then-current service list and solicited feedback.

Having reviewed the feedback received, the Court enters the below order.

B. Motions to Present Non-Record Evidence for Phase 3, Part 2

Pursuant to the Court's prior Order on Phase 1B Motions (entered August 31, 2017):

Non-record evidence may be taken for good cause shown which will be determined on a case by case basis. The guidelines in the first sentence of ORS 183.482(5) apply when determining if good cause exists.

For each claim in this Adjudication that is subject to exceptions, all claimants and exceptors must file and serve any motions or cross-motions to present non-record evidence, and the scope of the proposed non-record evidence including the facts they intend to establish, in the upcoming Phase 3 Part 2 hearings, as follows:

1. For motions on non-tribal claims (Phase 3, Part 1, Groups A and B claims):
 - a) Opening Motions due: **December 18, 2020**;
 - b) Cross-Motions (limited to claims where an Opening Motion was filed, and as a result the claimant or an exceptor also wishes to move to present non-record evidence that goes beyond rebuttal evidence) due: **January 22, 2021**;
 - c) Responses in Opposition to Motions and Cross-Motions due: **February 12, 2021**;
 - d) Replies in Support of Motions and Cross-Motions due: **March 5, 2021**;
 - e) Telephone status conference to discuss oral argument scheduling to be scheduled in the future.
 - f) Oral Argument to be scheduled in the future.

2. For motions on tribal claims (Phase 3, Part 1, Group C claims):

All deadlines to be scheduled in the future at least sixty (60) days after issuance of the court's letter opinion on the Group C legal motions.

The court has delayed scheduling some events and deadlines until after the number and complexity of pleadings is known.

Pursuant to the Court's prior Order on Phase 1B Motions, "if the court determines that further testimony is necessary, it will be taken by the director or a referee." If any motions or

cross-motions are granted for presenting non-record evidence, all proceedings on remand will happen in the same manner. The court has not specified that manner at this time. Motions or Cross-Motions for non-record evidence should indicate the movant's position on the appropriate venue for taking any new evidence. Any party with unresolved claims or exceptions and OWRD may respond regarding the appropriate venue, as the court's ruling on venue will also apply to any new evidence that is allowed on any remanded Tribal claims, which motions are to be addressed at a subsequent time. If multiple motions for new evidence are filed, responding parties may file individual responses or a single, consolidated response to the portions of such motions regarding the appropriate venue. However, all cross motions, responses and/or replies must indicate in the caption what pleading(s) they are responding to.

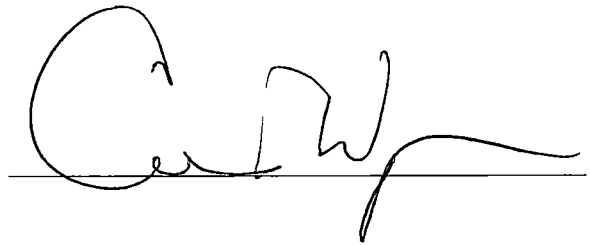
To the extent the Court grants a motion and/or cross-motion to present non-record evidence, rebuttal evidence shall be allowed as a matter of course without the necessity of filing a cross-motion. If no motion or cross-motion to present non-record evidence is timely filed in relation to a particular claim, then the claim will be set for a hearing before the Court on the existing record for the claim transmitted to the Court by OWRD. A subsequent order or orders of this Court will set forth the hearing schedules for the claims to be heard on the record.

IV. Phase 3, Part 2 Issue: Resolution of claims not subject to exceptions.

Phase 3, Part 2 is intended to address the issue of the resolution of claims not subject to exceptions. The Court's Order on Phase 1A Motions A, B and C (entered on December 15, 2016), determined that the Court lacks authority to issue a partial judgment. However, the Court declined to determine at that same time a proposed alternative to Motion A (seeking an order as opposed to a judgment). While a judgment cannot be issued at this time, the Court plans to issue

an order, pursuant to ORCP 67A, affirming the claims that did not have exceptions filed, or that had exceptions filed, but which exceptions have subsequently been withdrawn or resolved. OWRD shall prepare a list of those claims and submit a proposed order. Parties will have an opportunity to file any objections to this form of order.

Dated this 13th day of November, 2020.

A handwritten signature in black ink, appearing to be "C. W. J.", written over a horizontal line.

Cc: current service list

Event Information



Verified Correct Copy of Original 11/13/2020

Event: Klamath Basin Adjudication Hearings

Type: Unlisted Event

Event address for attendees: <https://oregonjudicial.webex.com/oregonjudicial/onstage/g.php?MTID=e80675fa775f2c1e679e2775e02724b70>

Event address for panelists: <https://oregonjudicial.webex.com/oregonjudicial/onstage/g.php?MTID=e44b9f0168a18fee58c743b786478a663>

Date and time: Wednesday, December 2, 2020 8:30 am
Pacific Standard Time (San Francisco, GMT-08:00)

Duration: 8 hours

Description:

Event number: 146 633 7769

Event password: bM3PVCqR*95

Host key: 713166

Panelist Info:

Panelist password:

Panelist numeric password: 417824

Video Address: 1466337769@oregonjudicial.webex.com
You can also dial 173.243.2.68 and enter your meeting number.

Audio conference: To receive a call back, provide your phone number when you join the event, or call the number below and enter the access code.
United States Toll
+1-408-418-9388
[Show all global call-in numbers](#)
Access code: 146 633 7769

Destination address after event:

Host image:

Attendee list available for viewing by: Host, presenter and panelists only

Event material: None

Post-event survey: No

Email configured: Pending, Approved, Rejected

Start Event Now

You can start the event by clicking Start Now.

Start Now

Send Event Emails

You can send event emails by clicking Send Emails

Send Emails

Delete Event

Edit Event