

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
#54

April 7th, 2021

This Case Management Order (CMO) #54 will be mailed to those on the current service list provided by the court on January 28, 2021.

SUMMARY OF ISSUES ADDRESSED BY THIS CASE MANAGEMENT ORDER

- I. Klamath Tribes' Motion for Clarification
- II. KID Emergency Motion for Preliminary Injunction
- III. New Judge and Future Proceedings
- IV. Document filed by Jerry Jones

I. Klamath Tribes' Motion for Clarification

On March 8, 2021 at 5:00 p.m. the Klamath Tribes filed the "KLAMATH TRIBES' MOTION FOR CLARIFICATION OF COURT'S OPINION AND CONCLUSIONS OF LAW ON PHASE 3, PART 1, GROUP C MOTIONS" (referred to as "The Klamath Tribes' Motion"). In Case Management Order #53 the court set dates for parties to file responses and replies to the Klamath Tribes' Motion.

Some responses and replies raise different issues than those set forth in the Klamath Tribes' Motion. Some involve factual determinations. While those issues may be important, this is not the time for them to be heard and many need to be more completely briefed and argued later.

Attached as Exhibit A are "AMENDMENTS TO THE COURT'S OPINION AND CONCLUSIONS OF LAW ON PHASE 3, PART 1, GROUP C MOTIONS" (referred to as "Amendments") that makes appropriate clarifications.

Unless specifically granted in the Amendments or in this Case Management Order, requests or motions raised in the Klamath Tribes' Motion or any responsive pleadings are denied.

In "OWRD'S RESPONSE TO KLAMATH TRIBES' MOTION FOR CLARIFICATION OF COURT'S OPINION AND CONCLUSIONS OF LAW ON PHASE 3, PART 1, GROUP C MOTIONS" on Pages 2-4, OWRD suggests that "redlining modifications" be made to the order set out in Case Management Order #42, Section II. OWRD should draft the order implementing whatever redlining practices it believes are appropriate. It should describe those redlining practices in a cover letter to the proposed order. Parties may comment upon those redlining

practices just as they would comment upon the form of the order. This process is set forth in the FIRST AMENDMENT in Exhibit A.

II. KID EMERGENCY MOTION FOR PRELIMINARY INJUNCTION

The United States has filed a Notice of Removal for this motion removing it to the United States District Court for the District of Oregon. Therefore, the Klamath County Circuit Court “shall proceed no further unless and until the case is remanded”. 28 U.S.C. §1446 (d).

III. NEW JUDGE AND FUTURE PROCEEDINGS

The information set forth in Case Management Order #52 about a new judge and future proceedings is still correct. I will retire May 1, 2021 and may be authorized to work on this case as a senior judge after that date. I plan to see the Phase 3, Part 1, Group C Motions to a conclusion including entering an order.

As mentioned in Case Management Order #52, the new judge will conduct all future proceedings including Phase 3, Part 2 Motions to present non-record evidence.

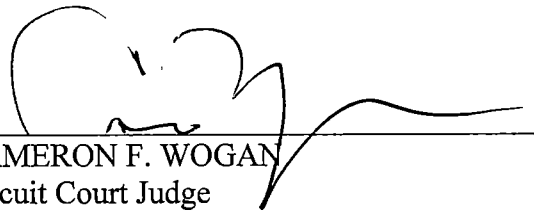
A new judge has not been designated and it could be months before that occurs.

IV. DOCUMENT FILED BY JERRY JONES.

On March 29, 2021 at 11:50 a.m. Jerry Jones filed a document in this case and served it

on the current service list. The court will take no action as a result of that document.

Dated this 2th day of April, 2021.



CAMERON F. WOGAN
Circuit Court Judge

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FOR THE COUNTY OF KLAMATH

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AMENDMENTS TO THE COURT'S OPINION
AND CONCLUSIONS OF LAW ON PHASE 3,
PART 1, GROUP C MOTIONS

FIRST AMENDMENT

The first paragraph on Page 1 is replaced by the following two paragraphs:

This opinion contains my decisions on Phase 3, Part 1, Group C motions. No later than April 26, 2021 counsel for the Oregon Water Resources Department must file a proposed order which incorporates this opinion and any amendments. It must also submit a cover letter explaining the redlining practices it used in the order. No later than May 17, 2021 any party can file an objection to the proposed order and/or redlining practices used. The proposed order, the cover letter, and any objections must be served on the current service list. If there are objections,

the court in its discretion may simply determine the form of the order, may set the matter for arguments, or may take other action.

Nothing in this opinion and conclusions of law is to be interpreted to be contrary to ORS 539.170 and it does not modify the operation of ORS 539.170 which provides that "...the division of water from the stream involved in the appeal shall be made in accordance with the order of the director."

SECOND AMENDMENT

The paragraph about 6 ¾ inches from the top of Page 16 is amended to read as follows:

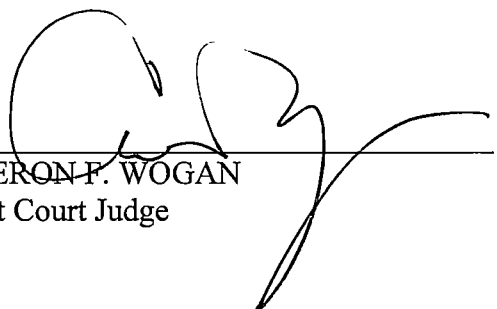
OPINION – GRANTED in part and DENIED in part as explained below. Adair II provides guidance for this process at Pages 1414-1415. It provides in part:

THIRD AMENDMENT

On the very last line on Page 16, "...footnote 10, ..." is amended to read "... footnote 11, ...".

IT IS SO ORDERED.

Dated this 7th day of April, 2021.



CAMERON F. WOGAN
Circuit Court Judge