

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) Case No. WA1300001
BASIN,)
) CASE MANAGEMENT ORDER # 14
)
)
)
_____) December 10, 2015

SUMMARY OF ISSUES ADDRESSED BY THIS CASE MANAGEMENT ORDER

- I. Introduction and Order That This Case Will Proceed in Phases**
- II. Phase 1: Resolution of Threshold Issues**
- III. Procedure for Phase 1**
- IV. Phase 1A Case Management Order**
- V. Phase 2: Resolution of Undisputed Exceptions**
- VI. Further Proceedings**

I. INTRODUCTION AND ORDER THAT THIS CASE WILL PROCEED IN PHASES.

This proceeding is referred to as the “Klamath Adjudication,” or simply the “Adjudication.” This Case Management Order # 14 will be mailed to all those listed on the current service list provided by the Court on November 18, 2015. This Case Management Order #14 addresses

the process for further proceedings to resolve the exceptions to the Oregon Water Resources Department's (OWRD's) Amended and Corrected Findings of Fact and Order of Determination (ACFFOD) following the Case Management Conference held on March 18, 2015.

Having reviewed the written submittals and the comments provided by the parties at the Case Management Conference, the Court ordered the Case Management Committee (Committee) to prepare a proposed Case Management Order for Phase 1 of the Adjudication. On June 18, 2015, the Committee submitted a draft of this order including the attachment. The Committee's transmittal is retained by the Court and open to inspection in accordance with Case Management Order # 4. That draft and attachment were mailed to all those listed on the current service list and comments were requested in Case Management Orders #11 and #12.

Having reviewed the Committee's draft order, the written comments received from Taylor Ranch, Pacificorp, and the Case Management Committee and otherwise having fully considered the options for proceeding to resolve the exceptions to the ACFFOD in a fair and efficient manner, now therefore, the Court,

HEREBY ORDERS:

1. That the hearing on exceptions in this proceeding will proceed in Phases;
2. That Phase 1 will address issues appropriate for early resolution, and will proceed in three distinct parts or sub-phases, as set forth more fully in Section II below;
3. That the procedures applicable to resolution of the Phase 1 issues shall be as set forth more fully in Section III below;
4. That the issues and categories of issues for resolution in Phase 1A shall be determined after all parties have an opportunity to object to or comment on the Court's

preliminary list of issues and/or issue-categories or submit additional issues and/or issue-categories as set forth more fully in Section IV below;

5. That commencement of Phase 1B and Phase 1C each will be preceded by an order initiating identification of the issues and/or issue-categories for that sub-phase and a case management order confirming the issues and/or issue-categories and process for that sub-phase, using the same general format as more fully described in Section II below;
6. That Phase 2 will address certain exceptions that are in the nature of typographical or other minor corrections which have not been disputed and with which OWRD agrees;
7. That the procedures applicable to Phase 2 shall be as set forth more fully in Section V below; and
8. That Phase 1 and Phase 2 shall first be resolved by the Court, prior to commencement of the other Phases.

II. PHASE 1: RESOLUTION OF THRESHOLD ISSUES

Threshold issues are issues raised by exceptions, or reasonably necessary to resolution of exceptions, and not inherently limited to a single claim or category of claims. Phase 1 will proceed in three distinct sub-phases, conducted in sequence, corresponding to jurisdictional and similar issues (Phase 1A); procedural issues (Phase 1B); and other threshold or cross-cutting issues (Phase 1C). The Court will determine the list of issues and/or issue-categories appropriate for resolution in Phase 1.

The Court will serve a proposed case management order for each sub-phase identifying a

preliminary list of issues and/or issue-categories. The Attachment to this Case Management Order #14 is the *Proposed Case Management Order #B: Phase 1A Order List of Issues or Issue Categories to Be Resolved*. The Court anticipates using a similar form for the case management orders for Phase 1B and Phase 1C.

Phase 1 issues shall be resolved based on motions of the parties subject to the procedures set forth in Section III below.

All orders or rulings by the Court during Phase 1 shall be applicable and controlling in all subsequent proceedings and Phases of the Adjudication.

III. PROCEDURE FOR PHASE 1

Phase 1 issues will be resolved through motion practice. Any party or OWRD may file a motion or motions for a ruling on one or more issues within the listing of issues identified in the case management order for Phase 1A, Phase 1B, and/or Phase 1C, respectively. The *Proposed Case Management Order #B: Phase 1A Order List of Issues or Issue Categories to Be Resolved* is attached. The Court's procedure for finalizing *Proposed Case Management Order #B: Phase 1A Order List of Issues or Issue Categories to Be Resolved* is set forth below in Section IV.

A. Conferral on Motions

To the extent the UTCR 5.010 conferral obligation would otherwise apply to the filing of motions in Phase 1 of the Adjudication, each moving party is hereby deemed to have complied. Parties, however, are encouraged to confer on such issues and, where possible, narrow the issues to be decided through motion practice in Phase 1.

B. Briefing Schedule

The deadline for filing motions in each sub-phase will be set in the applicable Case Management Order (see attached *Proposed Case Management Order #B: Phase 1A Order List of Is-*

sues or Issue Categories to Be Resolved). Approximately fourteen days following the applicable deadline for filing any motion in a sub-phase of Phase 1, the Court will conduct a case management teleconference for the purpose of scheduling deadlines and setting page limits for response and reply briefs and setting a date for oral argument, if requested, on the motions that have been filed in that sub-phase. The date for each such case management teleconference will be set in the applicable Case Management Order (*see attached Proposed Case Management Order #B: Phase 1A Order List of Issues or Issue Categories to Be Resolved*). The dates for response and reply briefs and hearing will be memorialized in a case management order issued after the case management conference.

C. Caption

In the caption of all documents, the filing party shall identify the issue(s) and/or issue-category(ies) addressed in the document. For example, if John Smith makes a motion concerning whether Mary Jones is an appropriate party to participate in proceedings on exceptions to the Partial Order of Determination on Claim 1234, then the caption of Mr. Smith's motion and reply must include a statement substantially similar to the following:

John Smith's Motion for an Order Ruling that Mary Jones May not Participate in Proceedings on Exceptions to the Partial Order of Determination on Claim 1234: Phase 1A: Issue Category: 3

D. Standards for Motions

A motion filed by a party in Phase 1 must satisfy all of the following requirements:

1. The motion must include in the same document a concise statement of the points and authorities supporting the motion;
2. The first paragraph of the points and authorities must identify why the movant(s) seek resolution of the issue(s) in this proceeding;

3. The motion must seek an order ruling on an issue that is within the list of issues and/or issue-categories set forth in the applicable case management order for the sub-phase; such issue or issue-category must be specifically identified by number in the caption of the motion;

4. A separate motion may be filed for each issue or issue-category for which an order is sought;

5. At least one applicable exception must be identified in the motion, although it is not necessary to identify all applicable exceptions. A party need not be the proponent of an exception in order to file a Phase 1 motion that relates to that exception;

6. Motions shall conform to the pleading format of UTCR 2.010;

7. Motions containing more than 10 pages (exclusive of the caption) shall include a Table of Contents and Table of Authorities; and

8. Motions shall be no longer than 30 pages (exclusive of the caption, Table of Contents, Table of Authorities, and any attachments).

E. Responses and Replies

Responses and replies shall conform to the pleading format of UTCR 2.010. Responses and replies containing more than 10 pages (exclusive of the caption) shall include a Table of Contents and Table of Authorities.

The first paragraph of any response must identify why the respondent(s) seeks to participate in the resolution of the issue(s). Responses and replies may respond or reply to more than one motion or response as applicable, but each motion or response being responded to must be identified in the first paragraph of the response or reply. The parties are encouraged to file combined responses and replies where such approach is likely to aid in efficiency of the Court's reso-

lution of all motions.

F. Citations

Citations shall conform to the following conventions. Citations to Bates-stamped pages of the ACFFOD: KBA_ACFFOD_00000. Citations to Bates-stamped pages of OWRD's record: OWRD0000000. Citations to material that is not in the preceding two categories (including pages of the ACFFOD that are not Bates-stamped) shall include the title of the document, date, author, recipient, and page number, to the extent such information appears on the document or is readily ascertainable.

G. Service

All documents filed with the Court in Phase 1 shall be served on all parties on the Court's then-current service list.

IV. PHASE 1A CASE MANAGEMENT ORDER

Attached hereto is the *Proposed Case Management Order #B: Phase 1A Order List of Issues or Issue Categories to Be Resolved* which identifies a preliminary list of issues and issue-categories for Phase 1A. Parties may object to or comment on the issues or issue-categories and/or propose additional issues and/or issue-categories. When the Court finalizes and enters the order it shall be labeled *Case Management Order #[appropriate number]: Phase 1A Order List of Issues or Issue Categories to Be Resolved*.

A. Preliminary Issues and Issue-Categories List

Based on the recommendations and comments of parties and the Committee, the Court preliminarily approves the issues and issue-categories set forth in the attached *Proposed Case Management Order #B: Phase 1A Order List of Issues or Issue Categories to Be Resolved* for consideration in Phase 1A. This list of issues and issue-categories will be modified as the Court

determines appropriate after consideration of positions of the parties, as provided in Section IV.B immediately below.

In accordance with the schedule set by the Court in Section IV.B. below, any party may comment on or object to any of the issues or issue-categories. Any party may submit additional issues or issue-categories for consideration. Any party may comment on or object to additional issues or issue-categories submitted.

B. Schedule for Comments, Objections, or Proposed Additions to Preliminary Phase 1A Issues or Issue-Categories and Responses

1. 45 days after this Case Management Order #14 is signed by the court: Comments on and objections to the preliminary Phase 1A issues or issue-categories list and submission of proposed additional Phase 1A issues or issue-categories are due.

2. 75 days after this Case Management Order #14 is signed by the court: Responses to comments, objections, and proposed additional issues or issue-categories are due. Such responses shall include any response to the previously-filed *Taylor Ranch Motion to Request Order for Additional Issue or Issue Category and to Object or Alter Issues 1, 2, 3, 4 & 5 of Proposed Case Management Order #B: Phase 1A Order List of Issues or Issue Categories to be Resolved Richard Taylor – Claimant, Claim No. 199*.

3. If oral argument is requested by a party, the court will set a date for hearing(s) and notify the parties.

4. All filings shall be served on all parties identified in the Court's then-current service list.

V. PHASE 2: RESOLUTION OF UNDISPUTED EXCEPTIONS

Phase 2 of the Adjudication will address exceptions that are in the nature of typographical

or other minor corrections. Phase 2 will be conducted according to the following schedule:

1. OWRD shall determine the exceptions that are in the nature of typographical or other minor corrections and to which it has no objection (“Phase 2 exceptions”).

2. By no later than 60 days after the date this order is signed by the court, OWRD shall notify the affected exceptor(s), claimant(s) and any parties or persons who filed a Request to be Heard on a particular Phase 2 exception that OWRD proposes resolving the noticed exception in whole or in part through Phase 2.

3. Within 30 days of OWRD’s notification described in paragraph V.2, OWRD and those receiving notice shall confer to determine whether the noticed exception is appropriate, in whole or in part, for early resolution in Phase 2.

4. If OWRD and those receiving notice agree that the noticed Phase 2 exception is unopposed in whole or in part, the exceptor(s) shall file a motion no later than 45 days following receipt of notice from OWRD under Paragraph 2 of this section. The motions shall seek summary affirmance of the exception. The motion shall be accompanied by a certification that the motion is unopposed based on conferral and a proposed form of order with the corrected version of the relevant claim description (or other portion of the partial order of determination) attached. The motion shall be served on counsel for OWRD, the claimant, any exceptor to the corresponding claim, and any party who has filed a Request to be Heard with respect to that claim.

5. Any response to a Phase 2 motion shall be filed within 14 days of the date of service of the motion. Responses shall be served on counsel for OWRD, the claimant, any exceptor to the corresponding claim, and any party who has filed a Request to be Heard with respect to the claim.

6. The Court may summarily resolve all unopposed motions without further briefing

or proceedings. If any motion is opposed, the Court will deny the motion and subsequently schedule the matter for hearing.

7. The Court recognizes that OWRD may identify after Phase 2 deadlines have passed other exceptions that are in the nature of typographical or other minor corrections that it does not oppose. Nothing in this Order precludes any party or OWRD from requesting that the Court resolve any such exceptions in an expedited manner, including applying procedures similar to Phase 2 procedures.

VI. FURTHER PROCEEDINGS

The Court recognizes that it is difficult to predict how future aspects of the Adjudication will unfold. The Court therefore expects to hold periodic scheduling conferences and issue case management orders to initiate additional Phases and to more fully define the schedule, substance, and process for each such Phase as it commences.

IT IS HEREBY ORDERED this _____ day of December, 2015.

CAMERON F. WOGAN
Circuit Court Judge