

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 #23  
) SETTING RESPONSES, REPLIES AND  
) ORAL ARGUMENT ON PHASE 1B  
) MOTIONS  
)  
\_\_\_\_\_ ) February , 2017

**SUMMARY OF ISSUES ADDRESSED BY THIS CASE MANAGEMENT ORDER**

**I. BACKGROUND AND ORDER REGARDING REFERENCE TO PHASE 1B MOTIONS**

**II. ORDER REGARDING PHASE 1B RESPONSE AND REPLY BRIEFS AND ORAL ARGUMENTS**

This Case Management Order will be mailed to those listed on the current service list provided by the court on 8/4/2016.

**I. BACKGROUND AND ORDER REGARDING REFERENCE TO PHASE 1B MOTIONS**

In Case Management Order #14, the Court ordered that hearings on the exceptions in this proceeding would proceed in phases. In general, Phase 1 addresses issues or issue categories not inherently limited to a single claim or category of claims, and will proceed in three distinct parts or sub-phases, including Phase 1A (jurisdictional and similar issues), Phase 1B (procedural issues), and

Phase 1C (other threshold or cross-cutting issues). Section III of Case Management Order #14 includes standards and instructions for motions in each of the sub-phases.

Case Management Order #21 set December 16, 2016 as the deadline to file motions regarding Phase 1B issues or issue categories. The Court received ten Phase 1B motions from seven parties or groups of parties, each requesting rulings as to one or more Phase 1B issues or issue categories. Following is a list of the Phase 1B motions and the issues or issue categories addressed therein.

A. *Cameron Curtiss, Seven Lawrence and James Lawrence's Motion for an Order Regarding Phase 1B Issues No. 1 and 2* which can be referred to as "Phase 1B, Motion A" or within this order as simply "Motion A" [Issue or Issue Category Nos. 1 and 2];

B. *Phase 1B Motions of Agri Water, LLC et al.*; Phase 1B; Issues Categories 1, 2, 5, and 6 which can be referred to as "Phase 1B, Motion B" or within this order as simply "Motion B" [Issue or Issue Category Nos. 1, 2, 5, and 6].

C. *Motion of Petitioner-Contestant Mathis Family Trust for Judicial Determination of Phase 1B Issues and Categories of Issues* which can be referred to as "Phase 1B, Motion C" or within this order as simply "Motion C" [Issue or Issue Category Nos. 1-6];

D. *Taylor Ranch Motion for an Order on Issues 1 and 2 of Case Management Order #21 Phase 1B Order List of Issues or Issue Categories to be Resolved* which can be referred to as "Phase 1B, Motion D" or within this order as simply "Motion D" [Issue or Issue Category Nos. 1 and 2];

E. *United States of America's and the Klamath Tribes' Joint Motion for Order Establishing Procedures for Resolving Exceptions Regarding Phase 1B Issue Categories 1-6* which can be referred to as "Phase 1B, Motion E" or within this order as simply "Motion E" [Issue or Issue

Category Nos. 1-6];

F. *Klamath Project Water Users' Motion for Rulings on Phase 1B Issues: Issue Categories #1-6* which can be referred to as “Phase 1B, Motion F” or within this order as simply “Motion F” [Issue or Issue Category Nos. 1-6];

G. *PacifiCorp's Motion for an Order Ruling on the Applicable Standard of Review for this Court's Review of the ACFOD (Phase 1B, Issue #1)* which can be referred to as “Phase 1B, Motion G” or within this order as simply “Motion G” [Issue or Issue Category No. 1];

H. *PacifiCorp's Motion for an Order Ruling that Non-Record Evidence May be Introduced Only Under Standards and Procedures Set Forth in ORS 539.150(3) (Phase 1B, Issue #2)* which can be referred to as “Phase 1B, Motion H” or within this order as simply “Motion H” [Issue or Issue Category No. 2];

I. *PacifiCorp's Motion for an Order Ruling that Discovery is Not Available in These Circuit Court Proceedings, Except to the Extent Permitted by ORS 539.150(3) (Phase 1B, Issue #5)* which can be referred to as “Phase 1B, Motion I” or within this order as simply “Motion I” [Issue or Issue Category No. 5];

J. *PacifiCorp's Motion for an Order Ruling on the Application of the ORCP's Generally and as to ORS 36-46 Specifically (Phase 1B, Issue #6)* which can be referred to as “Phase 1B, Motion J” or within this order as simply “Motion J” [Issue or Issue Category No. 6].

**II. ORDER REGARDING PHASE 1B RESPONSE AND REPLY BRIEFS AND ORAL ARGUMENTS**

1. Any party or the Oregon Water Resources Department (OWRD), responding in whole or in part to any of the above motions, shall file its response brief no later than March 3,

2017.

2. Responsive briefs shall be organized and limited as follows:

a. Responses to Motions A-J and all rulings requested therein shall be filed in a single combined brief (responding to one or more motions) not to exceed 35 pages.

b. Responsive briefs shall include a simple caption substantially similar to the following: *[Name of party or group of parties filing the response]*'s Response to Phase 1B Motion(s). Case Management Order #14, section 111.C ("Captions") does not apply to responses to Phase 1B motions.

c. The parties should identify in the first paragraph of their response the motion(s) and issue(s) or issue categories addressed. The parties may reference the Phase 1B motions using the identifiers (e.g., Phase 1B, Motion A") provided in section I above.

3. The movant(s) and any party supporting one or more of the above motions and/or rulings requested therein shall file their reply brief no later than April 10, 2017.

4. Reply briefs shall be organized and limited as follows:

a. Reply briefs to response to Motions A-J and all rulings requested therein shall be filed in a single combined brief not to exceed 25 pages.

b. Reply briefs shall include a simple caption substantially similar to the following: *[Name of party or group of parties filing the reply]*'s Reply in Support of Phase 1B Motion(s). Case Management Order #14, section III.C ("Captions") does not apply to Phase 1B reply briefs.

c. The parties should identify in the first paragraph of their reply the

motion(s), issue(s) or issue categories, and response(s) addressed. The parties may reference the Phase 1B motions using the identifiers (e.g., “Phase 1B, Motion A”) provided in section I above.

5. No party is required to file a response or reply concerning any given motion. A party can file a reply even if they did not file a motion. Except as otherwise provided in this Case Management Order, responses and replies shall comply with Case Management Order #14, section III.E.

6. The page limitations for response and reply briefs do not include caption, Table of Contents, Table of Authorities, or any attachments.

7. The Court will hold a hearing on the above motions on June 7<sup>th</sup> and 8<sup>th</sup>, 2017. Prior to the hearing, the Court will issue a schedule for oral argument. A party will be permitted to make oral argument only if the party filed a motion, response, or reply. In its discretion the Court will determine the length and order of oral argument.

Dated this \_\_\_\_ day of February, 2017.

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CAMERON F. WOGAN  
Circuit Court Judge