

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 <sup>MMO</sup> of the Klamath River,  
A Tributary of the Pacific Ocean

In Re: )  
WATERS OF THE KLAMATH RIVER ) Case No. WA1300001  
BASIN, )  
) CASE MANAGEMENT ORDER #7  
)  
)  
)  
\_\_\_\_\_ ) May 28, 2014

**I. INTRODUCTION**

This proceeding is referred to as “The Klamath Adjudication.” This Case Management Order will be mailed to those listed on the current service list provided by the Court on May 29, 2014. This Case Management Order:

1. Addresses the Initial Hearing to be conducted on September 3<sup>rd</sup>, 2014, pursuant to Oregon Revised Statutes (ORS) 539.130(2);
2. Establishes the date and procedures for a further Case Management Conference to be held on February 4<sup>th</sup>, 2015 at 9:00 a.m.;
3. Provides guidance on exceptions, including the form of exceptions, that may be filed under ORS 539.150 and the service of such exceptions; and
4. Requires that those wishing to be heard on an exception file a Request to Be Heard no later than December 3<sup>rd</sup>, 2014 and provides accompanying procedures.

**II. BACKGROUND**

On March 7, 2013, Mr. Dwight French, the Oregon Water Resources Department’s (OWRD) Adjudicator, under authority delegated to him by the Director of OWRD, filed with this Court, through counsel, the “Findings of Fact and Order of Determination” (March 2013 FFOD), along with certain other material.

On January 15, 2014, pursuant to Case Management Order #3, OWRD filed a motion seeking correction in the March 2013 FFOD of certain terms that OWRD considered purely typographical or

technical errors. The Court granted OWRD's motion, and on April 10<sup>th</sup>, 2014, OWRD filed an Amended and Corrected version of the March 2013 FFOD. Said Amended and Corrected Findings of Fact and Order of Determination is hereafter referred to as the "ACFFOD."

On or about April 4<sup>th</sup>, 2014, OWRD served DVDs containing copies of the ACFFOD on the persons and entities on the Court's service list, together with a cover letter describing the contents and organization of the ACFFOD.

**III. ORDER REGARDING INITIAL HEARING ON SEPTEMBER 3, 2014, at 1:00 PM  
AND FURTHER CASE MANAGEMENT CONFERENCE ON FEBRUARY 4, 2015 at  
9:00 AM**

**A. Initial Hearing under ORS 539.130(2)**

By Order dated April 11<sup>th</sup>, 2014 the Court established September 3<sup>rd</sup>, 2014, at 1:00 pm as the date and time for the Initial Hearing under ORS 539.130(2). Exceptions to the ACFFOD must be filed prior to the hearing, pursuant to ORS 539.150(1).

At the September 3<sup>rd</sup>, 2014 Initial Hearing, the Court will take the appearances of the parties and other matters as appropriate. The Court does not anticipate argument on the exceptions at the initial hearing. Parties may identify at the Initial Hearing any recommendations for the structure and processing of future proceedings, but will also have the opportunity to make such recommendations in writing after the Initial Hearing, as described below.

IT IS HEREBY ORDERED that all water right claimants in this proceeding and all persons or entities who have filed exceptions shall appear at the September 3<sup>rd</sup>, 2014, Initial Hearing, personally or through counsel. Telephonic appearance, including the ability to speak in the courtroom over the telephone line, shall be allowed at this Initial Hearing, provided that any party or counsel seeking to appear by telephone shall notify Judge Wogan's office, not less than seven days before the Initial Hearing. Call-in information for the Initial Hearing will be as follows: Dial-In #(866)921-1127, Conference Code 7702927805.

**B. Further Case Management Conference and Related Filings**

IT IS ALSO HEREBY ORDERED that a further Case Management Conference shall be held on February 4<sup>th</sup>, 2015 at 9:00 a.m. and, continuing on February 5<sup>th</sup>, 2015 if necessary.

Thirty days before the Case Management Conference any party may submit to the Court recommendations for the structure and processing of future proceedings. Not less than fifteen days before the Case Management Conference, any party may file responses to those recommendations. The Case Management Committee may submit recommendations or responses to the parties' recommendations, or both. All recommendations or responses shall be served on all parties on the current service list provided by the Court.

At least one representative of each party that wishes to appear at the February 4<sup>th</sup>, 2015 at 9:00 a.m. case management conference must be present in the courtroom, unless the party or representative demonstrates by written or oral motion to the satisfaction of the Court that there are extraordinary circumstances justifying telephonic participation. Other parties or counsel not appearing in person may listen to the February 4<sup>th</sup>, 2015 at 9:00 a.m. case management conference but may not speak, using the following call-in information: Dial-In #(866)921-1127, Conference Code 7702927805.

#### **IV. ORDER REGARDING EXCEPTIONS, FORM OF EXCEPTIONS, AND SERVICE**

Exceptions shall be addressed to the ACFFOD in accordance with the Oregon Revised Statutes (ORS), the Court's May 8, 2013 Order, and this Order. This Order provides guidance on the form of exceptions to the ACFFOD that may be filed under ORS 539.150(1). Any person or entity filing an exception to the ACFFOD will be called an "Exceptor."

##### **A. Content of Exceptions**

1. Exceptions must comply with ORS 539.150. The "findings and order of determination" referred to in ORS 539.150(1) is the ACFFOD. ORS 539.150(1) provides in relevant part:

At any time prior to the hearing provided for in ORS 539.130, any party or parties jointly interested may file exceptions in writing to the findings and order of determination, or any part thereof, which exceptions shall state with reasonable certainty the grounds and shall specify the particular paragraphs or parts of the findings and order excepted to.

Additionally, exceptions must comply with this Court's Order Setting Initial Hearing (May 8, 2013), which stated that "[e]xceptions must be succinct statements complying with ORS 539.150 and should not contain any argument."

2. With respect to the ORS 539.150 requirement to specify the paragraph or parts of the ACFFOD excepted to, in order to provide uniformity and avoid confusion, Exceptors shall refer to the *Bates*-numbered page of the ACFFOD on which such paragraphs or parts appear as well as identifying the paragraphs or parts. In addition, if an Exceptor takes exception to paragraphs or parts of other documents incorporated or adopted by reference into the ACFFOD, the Exceptor shall refer to the *Bates*-numbered pages of such other documents. If any such material has not been *Bates*-numbered, any reference to such material should be based on its title and original page number or other identifying information.

3. Exceptions need not include attachments of any kind, other than a certificate or

affidavit of service. In addition, the Court does not expect the exceptions to include evidence. Further court orders will set forth the opportunity to present arguments and evidence on the exceptions.

4. Exceptions shall be verified or certified by each Exceptor or each Exceptor's attorney of record. See ORS 539.150(2).

## **B. Form of Exceptions and Use of Exception Form**

### **1. Exceptions Directed to Individual Partial Orders of Determination.**

Each Partial Order of Determination in the ACFFOD addresses an individual water right claim or group of related water right claims. Exceptions are to be directed to individual Partial Orders of Determination unless it is impracticable or inappropriate to do so. A separate exceptions document must be filed for each Partial Order of Determination to which the Exceptor excepts in whole or in part. This document should also include any exceptions to the general Findings of Fact and Order of Determination in the ACFFOD (*Bates* Nos. KBA\_ACFFOD\_00001 to KBA\_ACFFOD\_00070) relevant to the Partial Order of Determination or exceptions to documents adopted or incorporated into the Partial Order of Determination.

If an Exceptor takes exception to the ACFFOD in its entirety, or if for some other reason an exception or certain exceptions cannot be directed to a specific Partial Order of Determination, the Exceptor may file such exceptions to the ACFFOD as he or she determines appropriate, consistent with ORS 539.150(1).

### **2. Exceptions Form**

The Court approves a form for filing exceptions in the Klamath Adjudication. The form is titled "Statement of Exceptions of [*name*] to Amended and Corrected Findings of Fact and Order of Determination in the Klamath Basin Adjudication: Exceptions to Partial Order of Determination Concerning Water Right Claim or Claims Number(s) [\_\_\_\_]" (Exceptions Form), and is attached as Exhibit A.

The Court also approves the "Instructions for Filing Exceptions to the Oregon Water Resources Department's Amended and Corrected Findings of Fact and Order of Determination of Water Rights in the Klamath Adjudication Using the Court-Approved Exceptions Form" (Instruction Sheet), attached as Exhibit B.

Exceptors shall substantially comply with the Exceptions Form, using the instructions provided in the Instruction Sheet and the Exceptions Form format although they are not required to use the actual form.

Exceptors can download the Exceptions Form as a WORD document at <http://courts.oregon.gov/Klamath/pages/water.aspx> . The form allows Exceptors to insert information in

various locations. Exceptors can edit the WORD document to provide information called for in the form. Instructions for filling out the Exceptions Form are provided in the Instruction Sheet.

**C. Filing and Service**

**1. Deadline for Filing Exceptions**

Exceptions must be filed with the Klamath County Circuit Court prior to the Initial Hearing set for September 3<sup>rd</sup>, 2014 at 1:00 p.m.

**2. Service of Exceptions**

Exceptions must be served as provided in this Order.

Service may be made in any manner allowed under Rule 9 of the Oregon Rules of Civil Procedure (ORCP). Exceptions must be accompanied by a proof of service as provided in ORCP 9(C).

The persons to be served are:

**a. Service of Exceptions Directed to a Specific Partial Order of Determination:** Exceptions directed to a specific Partial Order of Determination shall be served upon:

(i) the claimant or claimants of the water right claim(s) at issue;

(ii) all other parties (or their counsel) to the administrative proceeding before the Office of Administrative Hearings (OAH) concerning the claim(s) that were the subject of the partial order being excepted to, as listed on the service list for the applicable claim(s) found at

[http://filepickup.wrd.state.or.us/files/Publications/klamath-adj/Captions and Service Lists/Service Lists Word/](http://filepickup.wrd.state.or.us/files/Publications/klamath-adj/Captions_and_Service_Lists/Service_Lists_Word/)

or in the contested case record; and

(iii) counsel for the Adjudicator, whose name and address are as follows:

Darsee Staley, Senior Assistant Attorney General  
Sarah Weston, Assistant Attorney General  
Oregon Department of Justice, Trial Division  
1515 S.W. 5th Avenue, Suite 410  
Portland, Oregon 97201

**b. Service of Exceptions Not Directed at a Particular Order of**

**Determination:** If an exception is directed to the ACFFOD *in its entirety*, and cannot be directed to a specific Partial Order of Determination, the exception shall be served on all parties identified on the Court's current service list for this proceeding, available from the Court or at <http://courts.oregon.gov/Klamath/pages/water.aspx>

### **3. Filing Fee**

Any Exceptor or joint Exceptors filing exceptions shall concurrently submit a single filing fee of \$252. Only one filing fee is required, regardless of the number of exceptions or Exceptions Forms filed. The United States and the Klamath Tribes are exempt from the filing fees as a matter of law.

### **4. Certification or Verification of Exceptions**

Each Exceptor or their representing attorney must sign the exception. In signing and filing the exception, the Exceptor is verifying or the attorney(s) for the Exceptor(s) is/are certifying, as required by ORS 539.150 and ORCP 17, that the exception(s) is/are based on each signor's reasonable knowledge, information and belief, formed after the making of such inquiry as is reasonable under the circumstances, and is/are not presented for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation, and that legal positions are warranted by existing law or a non-frivolous argument for the extension, modification, or reversal of existing law, and factual assertions are supported by evidence.

## **V. REQUEST TO BE HEARD BASED ON EXCEPTIONS**

Any party desiring to be heard, or group of parties desiring to be heard jointly, based on or in response to an exception must file a document entitled "Request to be Heard on Exception to Partial Order of Determination of Claim(s) [*insert number(s)*]." A Request to Be Heard is not a substitute for filing an exception; it is a separate requirement.

Requests to Be Heard must be filed by December 3<sup>rd</sup>, 2014. A Request to Be Heard shall contain a concise statement indicating the party's or parties' wish to be heard on a particular exception(s). The request shall contain the party's or parties' name(s), attorney if applicable, and whether the party was a claimant or contestant in the administrative proceedings below concerning the water right claim(s) associated with that exception(s). The Request to Be Heard shall not contain any argument and shall include no attachments of any kind other than a certificate or affidavit of service.

The Request to Be Heard on an exception must be served on all parties identified in the certificate of service of the exceptions at issue and shall be made in any manner permissible under Rule 9 of the ORCP.

Requests to Be Heard do not need to be filed by the claimant of a claim that is the subject of an exception to a Partial Order of Determination. Requests to Be Heard on an exception(s) concerning a particular Partial Order of Determination also do not need to be filed by parties who

have, themselves, already filed exceptions to that Partial Order of Determination. OWRD is not required to file requests to be heard. Only one Request to Be Heard need be filed to any given Partial Order of Determination by a given party.

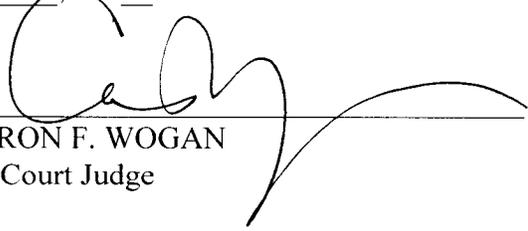
A party or parties filing a Request to Be Heard shall, at the time of filing, submit a filing fee of \$252, unless the party or parties have themselves filed one or more exceptions to the ACFFOD or any Partial Order of Determination and paid the filing fee. This filing fee requirement does not apply to the United States or the Klamath Tribes as a matter of law.

Each party filing a Request to Be Heard, or their representing attorney, must sign the Request to Be Heard. In signing and filing the Request to Be Heard, the requester is verifying or the attorney(s) for the requestor(s) is/are certifying that the request is based on the signor's reasonable knowledge, information and belief, formed after the making of such inquiry as is reasonable under the circumstances, and is not presented for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation, and that legal positions are warranted by existing law or a non-frivolous argument for the extension, modification, or reversal of existing law, and factual assertions are supported by evidence.

#### VI. INAPPLICABILITY OF THIS ORDER TO MERITS

Nothing in this Case Management Order will be construed as affecting or determining the merits of any water right claim or exception, or whether any party or entity has the right or standing to pursue or respond to exceptions.

Dated this 28<sup>th</sup> day of May, 2014.

  
\_\_\_\_\_  
CAMERON F. WOGAN  
Circuit Court Judge

Cc: parties

The Klamath County Circuit Court has approved this recommended format (form) for filing exceptions to the Amended and Corrected Findings of Fact and Order of Determination (ACFFOD). The Court has also adopted "Instructions for Filing Exceptions to the Oregon Water Resources Department's Amended and Corrected Findings of Fact and Order of Determination of Water Rights in the Klamath Adjudication Using the Court-Approved Exceptions Form" which are to be used in completing this form. Parties are advised to review the Instructions as well as Case Management Order #7 prior to completing this form.

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

**STATEMENT OF EXCEPTIONS OF [insert  
name(s) of Exceptor(s)] \_\_\_\_\_  
TO AMENDED AND CORRECTED  
FINDINGS OF FACT AND ORDER OF  
DETERMINATION IN THE KLAMATH  
BASIN ADJUDICATION; EXCEPTIONS  
TO PARTIAL ORDER OF  
DETERMINATION CONCERNING  
WATER RIGHT CLAIM OR CLAIMS  
NUMBER(S) [insert claim number(s)] \_\_\_\_\_**

The Exceptor or Exceptors filing this Statement of Exceptions take(s) exception to the Partial Order of Determination for Water Right Claim Number(s) [insert \_\_\_\_\_] within the Amended and Corrected Findings of Fact and Order of Determination (ACFFOD) as provided in this statement. Exceptor(s) acknowledge, and have read, Oregon Revised Statutes section 539.150 and the "Instructions for Filing Exceptions to the Oregon Water Resources Department's Amended and Corrected Findings of Fact and Order of Determination of Water Rights in the Klamath Adjudication Using the Court-Approved Exceptions Form" (Instructions).

**A. NAME(s) AND STATUS OF EXCEPTORS(s)** [list for each Exceptor the following information]:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Daytime Phone [*not required if represented by an attorney*]:  
\_\_\_\_\_

Email Address [*not required if represented by an attorney*]:  
\_\_\_\_\_

[*complete or otherwise provide the following information for each Exceptor*]

This Exceptor(s) [*check all boxes that apply*]

Is a claimant, or a successor-in-interest, on the claim(s) that is/are the subject(s) of the Partial Order of Determination being excepted to.

Was a contestant, or is a successor-in-interest to a contestant, before the Oregon Water Resources Department or the Office of Administrative Hearings with respect to the claim(s) that is/are the subject(s) of the Partial Order of Determination being excepted to.

Was not a claimant or contestant before the Oregon Water Resources Department or the Office of Administrative Hearings with respect to the claim(s) that is/are the subject(s) of the Partial Order of Determination being excepted to.

Owns irrigation works or claims an interest in the stream in question.

Other [*describe*] \_\_\_\_\_.

**B. NAME AND ADDRESS OF ATTORNEY(S), IF ANY, FOR EXCEPTOR(S):**

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Daytime Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

**C. CLAIMANT(S) OF WATER RIGHT(S) THAT ARE THE SUBJECT OF THE PARTIAL ORDER OF DETERMINATION BEING EXCEPTED TO:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**D. EXCEPTOR(S) IDENTIFIED ABOVE EACH INDIVIDUALLY TAKE(S) EXCEPTION AS FOLLOWS:**

*[Insert exception(s) consistent with ORS 539.150 and the Instructions.]*

**E. SERVICE.** I have attached a certificate or affidavit of service to this Statement of Exceptions, which evidences service consistent with Rule 9 of the Oregon Rules of Civil Procedure and the Instructions.

**F. VERIFICATION / CERTIFICATION BY PARTY OR ATTORNEY**

I am an Exceptor making the above exception(s) and am not represented by an attorney in this matter and I verify and declare, or I am an attorney representing one or more of the Exceptors making the above exception(s) and I certify and declare, that: as required by ORS 539.150 and ORCP 17, the exception(s) is/are based on reasonable knowledge, information and belief, formed after the making of such inquiry as is reasonable under the circumstances, and is/are not presented for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation, and that legal positions are warranted by existing law or a non-frivolous argument for the extension, modification, or reversal of existing law, and factual assertions are supported by evidence.

Dated this \_\_\_\_ day of \_\_\_\_\_ 2014.

\_\_\_\_\_  
Signature of Exceptor or attorney filing  
Statement of Exceptions

\_\_\_\_\_  
*[Typed name of signatory. If attorney,  
include bar number and identity of  
Exceptor(s) represented by the attorney.]*

*If more than one Exceptor is filing this Statement, each Exceptor or the attorney must sign and verify or certify the Statement of Exceptions. Include additional date and signature lines as necessary.*

**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**

**INSTRUCTIONS FOR FILING EXCEPTIONS TO THE OREGON WATER  
RESOURCES DEPARTMENT'S AMENDED AND CORRECTED FINDINGS OF FACT  
AND ORDER OF DETERMINATION OF WATER RIGHTS IN THE KLAMATH  
ADJUDICATION USING THE COURT-APPROVED EXCEPTIONS FORM**

**The Klamath County Circuit Court (Court) has issued Case Management Order #7 in the above-described legal proceeding, which, among other things, provides information on the filing and service of Exceptions to the Amended and Corrected Findings of Fact and Order of Determination (ACFFOD) that has been filed by the Oregon Water Resources Department (OWRD). The Court has approved a form for filing exceptions and has approved these Instructions for completion of the approved Exceptions Form.**

**I. BACKGROUND**

On March 7, 2013, counsel for Mr. Dwight French, OWRD Adjudicator, filed with the Court the "Findings of Fact and Order of Determination" (March 2013 FFOD), along with certain other material. The March 2013 FFOD provides the Adjudicator's determinations on uncontested water right claims, contested water right claims that had been subject to hearing by Administrative Law Judges of the Office of Administrative Hearings (OAH).

On April 10<sup>th</sup>, 2014, OWRD filed an amended and corrected version of the March 2013 FFOD. The Amended and Corrected Findings of Fact and Order of Determination is referred to as the "ACFFOD."

On or about April 4<sup>th</sup>, 2014, OWRD served DVDs containing copies of the ACFFOD on the parties to the service list, together with a cover letter describing the contents and organization of the ACFFOD.

Exceptions to the ACFFOD are to be filed **prior to the Initial Hearing on September 3<sup>rd</sup>, 2014 at 1:00 p.m.**, set by the Court's April 11<sup>th</sup>, 2014, Case Management Order #6. The Court-approved form for filing exceptions, "Statement of Exceptions of [name] to Amended and Corrected Findings of Fact and Order of Determination in the Klamath Basin Adjudication: Exceptions to Partial Order of Determination Concerning Water Right Claim or Claims Number(s) [ ]" is attached as Exhibit A to the Court's Case Management Order #7, and that form is referred to as the "Exceptions Form." Any person or entity filing an exception to the ACFFOD will be called an "Exceptor." Each page of the ACFFOD has "Bates" numbering, that is, sequential numbering in the lower right-hand corner of each page, in the following format: "KBA\_ACFFOD\_####" or, for the appendices to the ACFFOD, "KBA\_APP\_####."

INSTRUCTIONS FOR FILING EXCEPTIONS – EXHIBIT B to Case Management Order #7

## II. GENERAL REQUIREMENTS REGARDING EXCEPTIONS, FORM OF EXCEPTIONS, SERVICE, AND FILING FEES

### A. Subject of Exceptions and Form

In its letter to the parties dated April 4<sup>th</sup>, 2014, describing the ACFFOD, OWRD stated:

The first part of the ACFFOD (*Bates* Nos. x-y) is a general Findings of Fact and Order of Determination that is applicable to and incorporates all of the Partial Orders [of Determination]. Then, for each water right Claim Number, there is a Partial Order of Determination relating to that claim.

Some of the Partial Orders incorporate portions of the general Findings of Fact and Order of Determination or other documents such as Proposed Orders . . . , or Amended Proposed Orders. . . , or Stipulations referred to as Settlement Agreements . . . . Some Partial Orders stand alone.

Thus, each Partial Order of Determination in the ACFFOD addresses an individual water right claim or group of related water right claims. In accordance with Case Management Order #7, **exceptions are to be directed to individual Partial Orders of Determination within the ACFFOD (unless it is impracticable or inappropriate to do so).**

**A separate Exceptions Form must be filed for each Partial Order of Determination to which the Exceptor excepts in whole or in part. The form should also include any exceptions to the general Findings of Fact and Order of Determination in the ACFFOD (*Bates* Nos. KBA\_000001 – KBA\_000070) relevant to the Partial Order of Determination or any exceptions to documents adopted or incorporated into the Partial Order of Determination.**

Exceptors must substantially comply with the Exceptions Form, using these instructions and the Exceptions Form format although they are not required to use the actual form. Exceptors can download the Exceptions Form as a WORD document at <http://courts.oregon.gov/Klamath/pages/water.aspx> . The form allows Exceptors to insert information in various locations.

### B. Filing and Service

#### 1. Deadline for Filing Exceptions

Exceptions must be filed with the Klamath County Circuit Court **prior to the Initial Hearing set for September 3<sup>rd</sup>, 2014 at 1:00 p.m.**

#### 2. Service of Exceptions

Exceptions must be served as provided in Case Management Order #7.

INSTRUCTIONS FOR FILING EXCEPTIONS -- EXHIBIT B to Case Management Order #7

Service may be made in any manner allowed under Rule 9 of the Oregon Rules of Civil Procedure (ORCP). Exceptions must be accompanied by a proof of service as provided in ORCP 9(C).

Exceptions directed to a specific Partial Order of Determination shall be served upon:

- (i) the claimant or claimants of the water right claim(s) at issue;
- (ii) all other parties (or their counsel) to the administrative proceeding before the OAH concerning the claim(s) that were the subject of the partial order being excepted to, as listed on the service list for the applicable claim(s) found at

[http://filepickup.wrd.state.or.us/files/Publications/klamath-adj/Captions and Service Lists/Service Lists Word/](http://filepickup.wrd.state.or.us/files/Publications/klamath-adj/Captions%20and%20Service%20Lists/Service%20Lists%20Word/)

or in the contested case record; and

- (iii) counsel for the Adjudicator, whose name and address are as follows:

Darsee Staley, Senior Assistant Attorney General  
Sarah Weston, Assistant Attorney General  
Oregon Department of Justice, Trial Division  
1515 S.W. 5th Avenue, Suite 410  
Portland, Oregon 97201

Note that if an exception is directed to the ACFOD *in its entirety*, and cannot be directed to a specific Partial Order of Determination, a different service requirement applies. Any such exceptions must be served on all parties identified on the Court's current service list for this proceeding. See Case Management Order #7 for further information on this subject.

### **3. Filing Fee**

Any Exceptor or joint Exceptors filing exceptions shall concurrently submit a single filing fee of \$252. Only one filing fee is required per Exceptor or the same group of joint Exceptors, regardless of the number of exceptions or Exceptions Forms filed. The United States and the Klamath Tribes are exempt from the filing fees as a matter of law.

## **III. STEP-BY-STEP INSTRUCTIONS FOR COMPLETING STATEMENT OF EXCEPTIONS FORM**

**Follow these instructions to complete the Exceptions Form.**

### **1. Individual or Joint Exceptors**

Exceptions may be filed by an individual Exceptor or a group of Exceptors, so long as, where more than one Exceptor joins in filing the Exception, each Exceptor must be identified in

INSTRUCTIONS FOR FILING EXCEPTIONS – EXHIBIT B to Case Management Order #7

the Exception Form and each Exceptor, or their attorney of record, must verify or certify all the Exceptions.

## **2. Filling out the Exceptions Form**

Insert the information electronically into the Exceptions Form or, if not using a computer, enter information on the form by typing or using permanent ink. Italicized text does not need to be retained on the form when it is filed. Extra pages may be attached as necessary in order to complete the response to an item on the form. As explained in the general requirements section above, **a separate Exceptions Form must be filed for each Partial Order of Determination of the ACFFOD to which the Exceptor (or jointly filing Exceptors) excepts in whole or in part.**

## **3. Insertion of Water Right Claim(s) Numbers**

In various locations indicated on the form, insert the water right claim number or numbers to which the Partial Order of Determination being excepted to relates. If a Partial Order of Determination concerns more than one water right claim, identify all the water right claims that are the subject of the Partial Order of Determination.<sup>1</sup>

## **4. Caption and Introductory Text of Form**

In the caption of the Exceptions Form, insert in the relevant blanks the name or names of the Exceptor or Exceptors filing the exception and the water right claim number or numbers to which the Partial Order of Determination relates. The claim number(s) should also be inserted in the relevant blank in the introductory text.

## **5. Completion of Each Paragraph of Form**

Provide the information called for by each paragraph of the Exceptions Form, as follows:

### **A. Paragraph A of the Exceptions Form**

Complete paragraph A of the Exceptions Form by providing the information requested in the form, to identify each of the individual Exceptors.

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<sup>1</sup> If an exception is being filed to the Partial Order of Determination titled “Partial Order of Determination Water Rights Claims (OAH Case 003): 194 (Griffith/Devine); 211 (Leeland Woods Trust); 285 (Lilly); 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299 (Bureau of Reclamation); 312, 317 (U.S. Fish and Wildlife Service); 321-1, 321-2, 321-3, 321-4, 321-5, 321-6, 321-7, 321-8, 321-9, 321-10, 321-11, 321-12, 321-13, 321-14, 321-15, 321-16, 321-17, 321-18, 322-1, 322-2, 322-3, 323-1, 323-2, 323-3, 323-4 (Klamath Project Water Users),” rather than insert all water right claim numbers, insert the words “Various Klamath Project Water Right Claims (OAH Case 003).”

**B. Paragraph B of the Exceptions Form**

If any or all of the Exceptors are represented by an attorney, insert the information identified in paragraph B for each attorney, and if there is more than one Exceptor and more than one attorney, identify the specific Exceptors represented by each attorney. For any or all of the Exceptors not represented by an attorney, insert “not represented by an attorney” in the first line of paragraph B.

**C. Paragraph C of the Exceptions Form**

Insert in paragraph C the name of the claimant or claimants under the water right claim(s) that is/are the subject(s) of the Partial Order of Determination at issue.

**D. Paragraph D of the Exceptions Form**

In paragraph D of the Exceptions Form, state each exception and specify the relevant paragraph or part of the ACFFOD.

Exceptions must be consistent with the requirements of the Oregon Revised Statutes (ORS) and applicable Orders of the Court, as follows:

a. **ORS 539.150(1)**: Exceptions must comply with ORS 539.150. The “findings and order of determination” referred to in ORS 539.150(1) is the ACFFOD. ORS 539.150(1) provides in relevant part:

At any time prior to the hearing provided for in ORS 539.130, any party or parties jointly interested may file exceptions in writing to the findings and order of determination, or any part thereof, **which exceptions shall state with reasonable certainty the grounds and shall specify the particular paragraphs or parts of the findings and order excepted to.**

b. **Court’s Order Setting Initial Hearing (May 8, 2013)**: The May 8, 2013 Order states that “[e]xceptions must be succinct statements complying with ORS 539.150 and should not contain any argument.”

c. **Case Management Order #7**:

i. **Use of Bates-Numbers**: With respect to the ORS 539.150(1) requirement to specify the paragraph or parts of the ACFFOD excepted to, in order to provide uniformity and avoid confusion, Exceptors shall **refer to the Bates-numbered page on which such paragraphs or parts appear as well as identify the paragraphs or parts.**

ii. **Citation to Documents Relevant to Partial Order of Determination in Issue:** If an Exceptor takes exception to something set forth in material other than the Partial Order of Determination itself, such other material must be identified and addressed in the exception(s).

If taking exception to the general Findings of Fact and Order of Determination in the ACFFOD (*Bates* Nos. KBA\_00001 to KBA\_00070), that are incorporated in or relevant to the Partial Order of Determination at issue, the exception(s) shall refer to the *Bates*-numbered page and paragraph or part of both the Partial Order of Determination and the general Findings of Fact and Order of Determination, as applicable, and state the exception(s).

If taking exception to other documents that are incorporated or adopted by reference into the Partial Order of Determination (for example, Proposed Orders, Amended Proposed Orders of the OAH or OWRD, or settlement agreements), the exception shall refer to the *Bates*-numbered pages and paragraphs or parts of both the Partial Order and those of such other documents, and state the exception(s). If any such document has not been *Bates*-numbered, any reference to such document should be based on its title and original page number or other identifying information.

iii. **Evidence and Attachments Not Required:** Exceptions need not include attachments of any kind, other than a certificate or affidavit of service. In addition, the Court does not expect the Exceptions Form to include evidence. Further court orders will set forth the opportunity to present arguments and evidence on the exceptions.

#### **E. Paragraph E of the Exceptions Form**

No information need be inserted in paragraph E. However, Exceptor(s) must ensure proper service as provided in section II.B.2 of these Instructions and attach a certificate or affidavit of service consistent with ORCP 9(C).

#### **F. Paragraph F of the Exceptions Form**

In paragraph F, each Exceptor or their representing attorney must sign the Exceptions Form(s).

In signing and filing the Exceptions Form, the Exceptor is verifying, or the attorney(s) for the Exceptor(s) is/are certifying, as required by ORS 539.150 and ORCP 17, that the exception(s) is/are based on each signor's reasonable knowledge, information and belief, formed after the making of such inquiry as is reasonable under the circumstances, and is/are not presented for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation, and that legal positions are warranted by existing law or a non-frivolous argument for the extension, modification, or reversal of existing law, and factual assertions are supported by evidence.