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 10th, 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 4th , 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 3rd , 2014 at 1:00 p.m.**, set by the Court's April 11th , 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_####."

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 4th , 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 3rd , 2014 at 1:00 p.m**.

2. Service of Exceptions

Exceptions must be served as provided in 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/

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 ACFFOD *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

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.[1]

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.

---

[1] 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.