



**Klamath Adjudication - Correspondence from Case Management Committee**

From: Sarah Weston <Klamath.Water@ojd.state.or.us>

03/21/2014 12:52 PM

To: "Barbara Scott-Brier (ssbrier@comcast.net)", "psimmons@somachlaw.com", "rdeitchman@somachlaw.com", "ehoward@schwabe.com", Steve Shropshire, "Sue Noe"

Dear Beth:

I write on behalf of the Case Management Committee. Attached for the Court's consideration please find:

- A letter to the Court from the Attorney Committee
- A proposed case management order
- A proposed form for exceptions
- A proposed instruction sheet for filling out the exceptions form
- A draft of a cover letter the State anticipates sending out with copies of the amended and corrected findings of fact and order of determination (ACFFOD).

It is the committee's understanding that the Court has authorized the committee to transmit such items directly to the Court, without service on all parties. If the Court would prefer we transmit these items in another manner, please let me know. Please feel free to contact me with any questions.

Thank you,  
Sarah Weston (on behalf of the committee)

**\*\*\*\*\*CONFIDENTIALITY NOTICE\*\*\*\*\***

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.



\*\*\*\*\* Proposed\_Exceptions\_Form.DOCX



Proposed Case Management Order 6.DOCX Proposed Instructions for Exceptions Form.DOCX



States\_DRAFT\_Cover\_Letter\_Acffod.PDF Committee Letter to Court.pdf

March 21, 2014

Honorable Judge Cameron F. Wogan  
Klamath County Circuit Court  
316 Main Street  
Klamath Falls, OR 97601

Re: *In re: Waters of the Klamath River Basin*, Case No. WA1300001

Dear Judge Wogan:

I write on behalf of the Case Management Committee (Committee) established in Case Management Order #4. Specifically, the Committee is reporting on its activities, progress, and recommendations.

**General**

In Case Management Order #3, the Court identified several potential issues for the Committee's work, as follows:

1. Form of exceptions.
2. Whether the court should separately address threshold issues such as burden of proof, standing, standard of review, and limitations, if any, on extra record evidence, and if so, a process for that determination.
3. Telephonic Hearings and Appearances.
4. What should take place at the March 3, 2014 hearing [subsequently put over to May 30, 2014]?
5. If there are claims not subject to exceptions, should they be entered into a partial decree that would be subject to later modification based on the resolution of the remaining exceptions?
6. Should there be a process to consolidate exceptions for briefing and hearing, and if so, what?
7. How should parties cite to the Office of Administrative Hearings' record and/or should documents or excerpts be attached?
8. Should the court impose page limits for briefing?
9. Any issues regarding service lists.
10. Should there be a continuing case management process involving the Committee and/or case management conferences?
11. Discovery issues.
12. Any other matters that the Committee deems to be appropriate.

The Committee believes that essentially all of these items would be appropriate subjects for consideration and recommendations by the Committee. It appears that some such items will best be addressed after exceptions have been filed, or on a case-by-case basis in the future. However, others have received attention over the past few months. In general, the

subjects that the Committee has focused upon to date concern use of technology to facilitate the proceedings and a proposed Case Management Order that would address near-term matters including the filing of exceptions, a format and instructions for exceptions, and some related issues. In turn, these subjects pertain to varying degree to certain items on the Court's list.

### **Technology**

The Committee understands that the Court is aware of efforts to bring efficiencies to the litigation through the use of available technologies. This work is proceeding in collaboration with the Court Administrator and Oregon Judicial Department (OJD).

The Committee hopes it will be possible to digitize the considerable record that Oregon Water Resources Department has filed, at minimum by *Bates*-stamping in order to facilitate references to and management of the record. We also hope that there will be further communication with the Court on this subject soon.

The Committee has also had dialogue with OJD and the Court Administrator with respect to accelerating Oregon eCourt, perhaps initially by use of another County Court's eCourt system as a portal for Klamath County filings in this case.

### **Proposed Case Management Order and Form for Exceptions**

Included with this letter are several documents for the Court's consideration and approval.

- A proposed Case Management Order # 6
- A proposed Form for filing Exceptions
- A proposed set of Instructions for filling out the Exception Form

These documents are provided to the Court in MS Word format, on the assumption that the Court may modify them as needed.

In preparing and proposing these documents, the Committee has sought to: assist the parties in digesting a somewhat complicated context for the ACFFOD; promote relative uniformity in exceptions in order to facilitate future organization and management of proceedings; and assist any *pro se* parties for whom litigation, let alone this specific litigation, is unfamiliar terrain.

Beyond the materials transmitted here for the Court's consideration and approval, the State is preparing to transmit a letter to the parties, with copy to the Court, that provides explanation of the ACFFOD. A draft of the State's anticipated letter to the parties (subject to further editing) is enclosed here for the Court's information. The Committee's intent is that

the State's letter, in combination with the proposed Case Management Order and accompanying material, serve these goals.

We hope that the proposed Case Management Order and accompanying exception form and instructions are self-explanatory. At the same time, we have identified various matters to bring to the Court's attention specifically. These matters are set out in the proposed Case Management Order, but of course subject to modification or deletion by the Court.

#### *Initial Hearing and Subsequent Case Management Conference*

The Court has established May 30, 2014, as the date for the Initial Hearing in this matter. That date is thus effectively the deadline for filing of exceptions to the ACFFOD. Presumably, next steps in the litigation will involve the structuring of future proceedings in light of the exceptions. However, it appears likely to the Committee that the Court and parties will likely know no more on May 30 than we know today about the exceptions or exceptors. Thus, the Proposed Case Management Order assumes that the May 30, 2014, Initial Hearing would be fairly cursory, and that parties will be able to appear by phone.

We also propose that a subsequent case management conference be set in October, after the parties have had time to consider the exceptions (October Case Management Conference). We have confirmed October 23 (and October 24 if necessary) as being available on the Court's calendar. Prior to the October Case Management Conference, parties (and this Committee) would have opportunity to provide written recommendations (and responses to others' recommendations) concerning the course of future proceedings.

The Committee believes that it would be optimal if the October Case Management Conference could be structured as an interactive dialogue among the parties and Court, rather than a formal oral argument proceeding. We do recognize that there are numerous parties, and there could be competing views about the best way to proceed, and have found the discussion format within the Committee a helpful way of working through some of those issues. After parties have provided their written recommendations for future proceedings, we may better know whether a relatively informal case management conference could work. The Committee may address this issue further in our subsequent written communications.

#### *Filing Fees*

The Committee has speculated on what the Court may consider appropriate in regard to filing fees for parties filing exceptions or a response to exceptions. (See sections IV.C.3 and V of proposed Case Management Order, highlighted in yellow in that document.) The Committee assumes the Court will adjust the text of these (and any other) parts of the proposed Case Management Order as necessary.

*Service – Persons and Entities to be Served*

The issue of service of exceptions upon other parties presents certain challenging questions, related to the difficulties in identifying relevant persons to be served, as well as problems with existing service lists. The committee has made certain proposals in the proposed Case Management Order (See section IV(C)(2) of the proposed Case Management Order), but anticipates that the Court will modify those proposals if necessary.

ORS 539.150(2) governs service of exceptions, and provides:

A copy of the exceptions, verified by the exceptor or certified to by the attorney for the exceptor, shall be served upon each claimant who was an adverse party to any contest wherein the exceptor was a party in the proceedings, prior to the hearing. Service shall be made by the exceptor or the attorney for the exceptor upon each such adverse party in person, or upon the attorney if the adverse party has appeared by attorney, or upon the agent of the adverse party. If the adverse party is a nonresident of the county or state, service may be made by mailing a copy to that party by registered mail or by certified mail with return receipt, addressed to the place of residence of that party, as set forth in the proof filed in the proceedings.

This statute only requires service on claimants. Earlier orders of this court, and arguably the ORCP, require service on additional parties. Accordingly, the proposed Case Management Order does not limit service to the claimant. It requires service on the claimant, OWRD, and 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.

The problem is identifying the relevant “other parties,” in a consistent fashion, and finding correct contact information for them. Unfortunately, there are no readily accessible and entirely updated case-specific lists for the individual contested cases that provide names and addresses of exactly whom would need to be served or at what address. We are concerned about requiring parties with limited resources to serve the entire service list, or requiring parties to undertake extensive efforts to develop particular service lists.

After reviewing a number of options, the Committee proposes that service be upon “all other parties to the administrative proceeding before the OAH concerning the claim(s) that were the subject of the partial order being excepted to (or their counsel), *as listed on the service list for the applicable claim(s) found at [http://filepickup.wrd.state.or.us/files/Publications/klamathadj/Captions\\_and\\_Service\\_Lists/Service\\_Lists\\_Word/](http://filepickup.wrd.state.or.us/files/Publications/klamathadj/Captions_and_Service_Lists/Service_Lists_Word/) or in the contested case record.”<sup>1</sup> However, we understand and emphasize*

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<sup>1</sup> Note that the proposed Case Management Order also provides that if a particular exception is directed to the entire ACFFOD, and not a particular partial order, the Court’s entire service list should be served. See Proposed Case Management Order section IV(C)(2)(b).

that this is an imperfect solution. These lists may not be up to date, and will not include changes of ownership or changes of address since these lists were compiled – in some cases many years ago.

Another option for identifying the contestants to be served would be to direct parties to the “Contestant Names and Addresses” link on the OWRD website ([http://apps.wrd.state.or.us/apps/wr/klamath\\_adj/contests.aspx](http://apps.wrd.state.or.us/apps/wr/klamath_adj/contests.aspx)), where contestants can be queried by claim number. This link will likely have more up-to-date lists and addresses than the service lists link mentioned above, although it will still not have been updated since March 7, 2013 at the latest, and some may find it more cumbersome. In addition, this list in some cases includes those with withdrawn contests. If this option is to be pursued, a decision must be made as to whether contestants for withdrawn contests would need to be served. The Committee recommends that service not be required on those with withdrawn contests. If the Court proposes to pursue this option, the proposed Case Management Order and Instructions would need to be updated accordingly.

The proposed Case Management Order also allows for service by any means permissible under ORCP 9.

*Making Exceptions Readily Available:*

The parties also encourage the Court to consider methods of making copies of all exceptions available to all participants.

We believe this is important for several reasons: First, the service lists for individual contested cases may be incomplete or not up to date. Second, there may be parties who were not involved in a particularly contested case below, but who nonetheless have an interest in an issue raised by an exception (for example, there may be legal issues that cut across several partial orders of determination but it may be that not all parties were involved in each administrative case where that issue may be implicated).

For these and other reasons, and without speaking to what rights any party may or may not have to participate, the Committee proposes two potential methods for making exceptions available:

First, the Court could post exceptions on its website, as it did with the Stay petitions.

Second, the Court could prepare CDs or DVDs of all of the exceptions, which could be served on the entire service list, or made available upon request under the public records law.

The issue of making exceptions readily available is not currently addressed in the proposed Case Management Order.

*Requests to be Heard*

As discussed in the proposed Case Management Order, and also below, the Committee is proposing a “requests to be heard” process, following the filing of exceptions. The purpose of this requirement would be threefold: first, to identify the group of participants for each exception; second, to allow a clear and up-to-date service list; and third, to allow a mechanism for identifying what issues are to be addressed with respect to particular water right claims.

It is the Committee’s understanding that if a person wants to challenge specific issues determined in the ACFFOD, they must identify those issues through exceptions filed before the May 30, 2014, Initial Hearing. It is foreseeable that a given party may not currently have cause to file exceptions (e.g., if they agree with OWRD’s determination) but that party would have an interest in opposing the exceptions filed by others. Accordingly, the Committee recommends that, after the filing of exceptions to a particular partial order of determination, parties who did not file exceptions would have the opportunity to file a “request to be heard” in connection with exceptions filed by others. The request to be heard process would attempt to identify those with an interest in litigation of a given partial order of determination. Neither the claimant nor OWRD would be required to file requests to be heard.

This request to be heard process is set forth in the proposed Case Management Order.

*“Alternative Grounds”*

The Committee discussed a related issue that we assigned the label “alternative grounds,” which we wish to bring to the Court’s attention, although it is not addressed in the proposed Case Management Order. This issue relates to the scope of issues that may be raised in response to an exception in this proceeding.

The Committee assumed that, to the extent that a party agrees with the ACFFOD or paragraphs or parts of the ACFFOD, the party is not required to include, in exceptions filed before the Initial Hearing, any “alternative grounds” for reaching the conclusion set out in the ACFFOD. For example, if a partial order of determination denies a water right claim and party “A” supports that outcome, party A would not be required to assert in an exception that there were alternative grounds for denying the claim that are not stated in the partial order of determination, or that, even if the claim were approved, the priority date should be different or the approved quantity less than what is stated in the claim. The Committee assumes that, if in this example the claimant timely filed exceptions to the denial of the claim, the right of Party A to assert those alternative grounds would be preserved, even though Party A did not file an exception.

The Committee agrees with the general principles stated above regarding alternative grounds, but also believes that too difficult to articulate specific language that will apply perfectly in all circumstances. Accordingly, the Committee has not included this concept in the proposed Case Management Order. The Committee has proposed that persons wishing to

Honorable Judge Cameron F. Wogan  
Re: Case No. WA1300001  
March 21, 2014  
Page 7

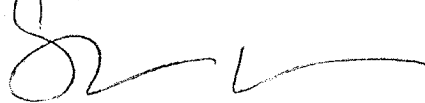
respond to exceptions be required to make a filing by way of a request to be heard, and has left it at that at this time.

We assume the "alternative grounds" issue (i.e., the scope of issues that may be raised by a party responding to an exception) will be addressed in the context of the participation of the responding party, and in a manner that does not prejudice any party. We also wish to be clear that we do not anticipate that this "alternative grounds" issue should provide "cover" for what is in reality an untimely exception to the ACFOD.

These are among issues that the Committee believes will require attention in the future.

Thank you for your consideration. Upon request, the Committee is happy to provide such further information or explanation as may assist the Court.

Sincerely,

A handwritten signature in black ink, appearing to be 'Sarah Weston', written in a cursive style.

Sarah Weston  
Chair, Case Management Committee  
On behalf of the Committee

Encs.

cc: Steve Shropshire  
Susan Noe  
Paul Simmons  
Kevin Haroff  
Barbara Scott-Brier  
Elizabeth Howard  
Ronald Yockim



Case Management Committee's Suggested Items for Inclusion in a Case Management Order #6

**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 \_\_\_\_\_. This Case Management Order:

1. Addresses the Initial Hearing to be conducted on May 30, 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 October 23-24, 2014;
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, 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 [insert date], 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 March \_\_, 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 MAY 30, 2014,  
AND FURTHER CASE MANAGEMENT CONFERENCE ON OCTOBER 23 & 24, 2014**

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

By Order dated February 14, 2014 the Court established May 30, 2014, at 9:00 am 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 May 30, 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 May 30, 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 the **[Clerk of the Court]**, not less than seven days before the Initial Hearing. Call-in information for the Initial Hearing will be as follows: **[insert number]**.

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

IT IS ALSO HEREBY ORDERED that a further Case Management Conference (“October Case Management Conference”) shall be held on Thursday October 23<sup>rd</sup> at 9:00 am and, continuing on Friday the 24<sup>th</sup> at 10:00 am, if necessary.

Thirty days before the October Case Management Conference any party may submit to the Court recommendations for the structure and processing of future proceedings. Further, not less than fifteen days before the October Case Management Conference, any party may file responses to those recommendations. Further, the Case Management Committee established in Case Management Orders #3 and #4 (Sept. 27, 2013 and Oct. 30, 2013) may submit recommendations or responses to the parties’ recommendations, or both. All recommendations or responses by any party or the Case Management Committee shall also 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 October 23, 2014 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 October 23, 2014, case management conference but may not speak, using the following call-in information: **[insert phone number]**.

**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 hereby 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 hereto as Exhibit A.

The Court also hereby 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 hereto 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 \_\_\_\_\_. 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 May 30, 2014 at 9:00 a.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%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

**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 service list for this proceeding, available from the Court or at [\_\_\_\_\_].

## 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 August 30, 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 shall 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 exceptions.

ELLEN F. ROSENBLUM  
Attorney General



FREDERICK M. BOSS  
Deputy Attorney General

DEPARTMENT OF JUSTICE  
TRIAL DIVISION

March 21, 2014

TO: Current Service List

Re: Klamath Basin Adjudication  
Case No. WA1300001

Enclosed please find a DVD that contains a *Bates*-numbered copy of the Amended and Corrected Findings of Fact and Order of Determination ("ACFFOD") in the Klamath Basin Adjudication.

You are receiving this mailing because your name is on the Current Service List maintained by the Klamath County (Oregon) Circuit Court. If you wish to be removed from the List or your address has changed, you can use the enclosed form which is also available on the court's Klamath Basin Adjudication website, <http://courts.oregon.gov/Klamath/pages/water.aspx>

On March 7, 2013, the State of Oregon<sup>1</sup> filed with the Klamath County Circuit Court the Klamath Basin Adjudication Findings of Fact and Order of Determination ("March 2013 FFOD") and the Record of the Adjudication compiled by the Oregon Water Resources Department (OWRD). Parties to the administrative proceedings leading up to the March 2013 FFOD received copies of the FFOD and other documents on DVD.<sup>2</sup>

On January 15, 2014, OWRD asked the court for permission to make certain corrections to the March 2013 FFOD to fix typographical and technical errors. The court allowed OWRD to make those corrections and also required OWRD to create a copy of the amended and corrected March 2013 FFOD with page numbers (known as "*Bates* numbering" or "*Bates* Nos.").

On or about March \_\_\_\_, OWRD filed the Amended and Corrected Findings of Fact and Order of Determination ("ACFFOD"). The ACFFOD includes *Bates* numbering. Your copy is on the enclosed DVD.

If you decide to file exceptions to OWRD's Findings of Fact and Order of Determination (i.e. exceptions to the ACFFOD), you must refer specifically to the *Bates* nos. of the pages that contain anything about which you are filing an exception. This is explained more fully below. Exceptions are due prior to the initial hearing in this matter, which is set for 9:00 am on May 30, 2014.

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<sup>1</sup> Mr. Dwight French signed the Final Order on behalf of the Oregon Water Resources Department, as the "Adjudicator" under authority delegated to him by the Director of the Department.

<sup>2</sup> In addition to the FFOD, the State also filed other documents March 7, 2013 such as certificates of authenticity and a motion asking the court to set a hearing date. All of these documents were provided to the parties on the DVD that was sent to the parties in March of 2013.





Included on the enclosed DVD is a document named "Index to ACFFOD" ("Index"). The Index allows you to find any part of the ACFFOD by using the Claim Number.

The Index has three columns: (1) the water right Claim Number, (2) the type of document and (3) a hyperlink to the document. If you click on the hyperlink, it should open up a PDF of the corresponding document. To access the documents using the hyperlink you must leave the DVD in your computer. Here is a representative sample of what the first part of the Index looks like:

| CLAIM NUMBER | DOCUMENT TYPE                                       | BATES NUMBER                     |
|--------------|---|----------------------------------|
|              | General Findings of Fact and Order of Determination | <a href="#">KBA ACFFOD 00001</a> |
| ALL          | Determination                                       | <a href="#">KBA ACFFOD 00071</a> |
| 1            | Partial Order of Determination                      | <a href="#">KBA ACFFOD 000xx</a> |
| 1            | Stipulation (Settlement Agreement)                  | <a href="#">KBA ACFFOD 000xx</a> |
| 2            | Partial Order of Determination                      | <a href="#">KBA ACFFOD 000xx</a> |
| 2            | Stipulation (Settlement Agreement)                  | <a href="#">KBA ACFFOD 000xx</a> |
| 3            | Partial Order of Determination                      | <a href="#">KBA ACFFOD 000xx</a> |
| 3            | Stipulation (Settlement Agreement)                  | <a href="#">KBA ACFFOD 000xx</a> |
| 4            | Partial Order of Determination                      | <a href="#">KBA ACFFOD 000xx</a> |
| 4            | Amended Proposed Order                              | <a href="#">KBA ACFFOD 000xx</a> |
| 5            | Partial Order of Determination                      | <a href="#">KBA ACFFOD 000xx</a> |
| 5            | Stipulation (Settlement Agreement)                  | <a href="#">KBA ACFFOD 000xx</a> |
| 6            | Partial Order of Determination                      | <a href="#">KBA ACFFOD 000xx</a> |
| 7            | Partial Order of Determination                      | <a href="#">KBA ACFFOD 000xx</a> |
| 8            | Partial Order of Determination                      | <a href="#">KBA ACFFOD 000xx</a> |
| 9            | Partial Order of Determination                      | <a href="#">KBA ACFFOD 000xx</a> |
| 9            | Proposed Order                                      | <a href="#">KBA ACFFOD 000xx</a> |
| 10           | Partial Order of Determination                      | <a href="#">KBA ACFFOD 000xx</a> |
| 10           | Stipulation (Settlement Agreement)                  | <a href="#">KBA ACFFOD 000xx</a> |
| 625-640      | Partial Order of Determination                      | <a href="#">KBA ACFFOD 000xx</a> |
| 625-640      | Proposed Order                                      | <a href="#">KBA ACFFOD 000xx</a> |

The first part of the ACFFOD is a general Findings of Fact and Order of Determination that is applicable to and incorporates all of the Partial Orders of Determination ([KBA ACFFOD 00001-70](#)). Then, for each water right Claim Number, there is a Partial Order of Determination relating to that claim.

Some of the Partial Orders of Determination incorporate other documents such as Proposed Orders (like Claim 9), or Amended Proposed Orders (like Claim 4), or Stipulations referred to as

Settlement Agreements (like Claims 1, 2, 3, 5 and 10).<sup>3</sup> Some Partial Orders stand alone (like Claims 6-8). Some of the Partial Orders resolve more than one claim and in the Claim Number column the range of Claim Numbers is listed (like Claims 625-640).

In addition, the general Findings of Fact and Order of Determination includes references to Appendices A-P. These appendices were included on the March 2013 DVD. These appendices are also included on the enclosed DVD, and are now Bates numbered (KBA APP 00001 et seq). A hyperlink to each appendix is provided at the end of the Index.

You may take exception to any "paragraph or part" of the general Findings of Fact and Order of Determination (KBA ACFOD 00001-70) and/or a Partial Order of Determination and/or something that is set forth in one of the incorporated documents pertinent to the water rights claim being excepted to. For every exception, the person(s) filing the exception ("Exceptor(s)") should identify the page by using the *Bates* no. and also say which paragraph on that page contains an alleged error. In some cases filing an exception to a Partial Order may require a party to identify page(s) and paragraph(s) of the Partial Order that adopts or incorporates another document and also the pages and paragraphs of the other incorporated document(s) (such as a Proposed Order or Stipulation).

We expect that the court will send out a Case Management Order that provides more information and direction on the filing of exceptions. Among other things, the Case Management Order the Case Management Order is expected to instruct that exceptions must identify pages (using *Bates* nos.) and paragraphs and state with reasonable certainty the grounds for the exception.

The ACFFOD disc includes only the parts of the ACFFOD itself and the Appendices. It does not include all of documents on the original DVD served on March 7, 2013.

Sincerely,

Darsee Staley  
Sarah Weston  
Assistant Attorneys General  
Attorneys for the Oregon Water Resources Department

**Comment [WS1]:** Should this be on behalf of the Adjudicator?

<sup>3</sup> The administrative process leading to the ACFFOD involved evaluation of water right claims by OWRD, an opportunity for interested parties to object to claims ("file contests") and, if contests were filed, for a contested case hearing at the Office of Administrative Hearings (OAH). The Adjudicator considered the Proposed Orders issued by the OAH or Stipulations reached by the parties that settled the disputes. Also, in some cases there was a Corrected Proposed Orders or an Amended (or even Second Amended) Proposed Order, or an Amended Stipulation. Where a Partial Order of Determination incorporates any of these types of documents, that underlying document is part of the ACFFOD and there is a link to it in the Index.

KBA Parties  
March 21, 2014  
Page 4

Enclosures: Change of Address Form; DVD labeled "March 2014 ACFOD"

cc: Honorable Cameron F. Wogan; see certificates of service

4982319

**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 #6 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 related to 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 [insert date], 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 March xx, 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 May 30, 2014 at 9:00 a.m.**, set by the Court's February 14, 2014, Amended Order Re-Setting Initial Hearing and Exceptions Deadline. 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 #6, and said 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 March xx, 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 #6, **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 [\\_\\_\\_\\_\\_](#). 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 May 30, 2014 at 9:00 a.m.**

#### 2. Service of Exceptions

Exceptions must be served as provided in Case Management Order #6.

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_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 service list for this proceeding. See Case Management Order #6 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**

**Complete the Exceptions Form consistent with the following instructions.**

### **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. Text that is italicized on the

form need not be retained on the form as filed. Continuation 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, in the relevant blanks. 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.

#### **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.

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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).”

#### 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 stated that “[e]xceptions must be succinct statements complying with ORS 539.150 and should not contain any argument.”

c. **Case Management Order #6**:

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.



**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 consistent with the above, as necessary.*

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.

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 #6, 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 herein. 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: \_\_\_\_\_

\_\_\_\_\_