

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 BEFORE THE HONORABLE WILLIAM G. COBB, MAGISTRATE JUDGE
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5 United States of America, : No. 3:73-cv-0125-ECR-WGC
6 Plaintiff, : 3:73-cv-0127-ECR-WGC
7 : 3:73-cv-0128-ECR-WGC
8 :
9 -vs- : May 9, 2012
10 :
11 Walker River Irrigation : United States District Court
12 District, et al., : 400 S. Virginia Street
13 : Reno, Nevada 89501
14 Defendant. :
15 _____ :
16 :

17 **TRANSCRIPT OF STATUS CONFERENCE**

18 A P P E A R A N C E S:

19 COUNSEL PRESENT: Gordon DePaoli
20 Therese Ure
21 Dale Ferguson
22 George Benesch
23
24 COUNSEL APPEARING
25 TELEPHONICALLY: Susan Schneider
Wes Williams, Jr.
Marta Adams
Karen Peterson
Simeon Herskovits
Stacey Simon
Michael Neville
Christopher Mixon
Chris Watson
Jim Shaw

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Reported by: KATHRYN M. FRENCH, RPR, CCR
NEVADA LICENSE NO. 392
CALIFORNIA LICENSE NO. 8536

1 Reno, Nevada, Wednesday, May 9, 2012, 1:30 p.m.

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4 THE CLERK: Please rise.

5 The United States District for the District of
6 Nevada is now in session. The Honorable William G. Cobb
7 presiding.

8 THE COURT: Thank you. Please be seated.

9 THE CLERK: This is the date and time set for a
10 Status Conference in case number 3:73-cv-125-ECR-WGC; and case
11 number 3:73-cv-127-ECR-WGC; and case 3:73-cv-128-ECR-WGC,
12 United States of America versus Walker River Irrigation
13 District, and others.

14 Present in the courtroom are Therese Ure, George
15 Benesch, Gordon DePaoli, and Dale Ferguson.

16 Present telephonically are Simeon Herskovits, Susan
17 Schneider, Michael Neville, Marta Adams, Christopher Mixon,
18 Chris Watson, Wes Williams, Jr., Karen Peterson, Jim Shaw, and
19 Stacy Simon.

20 THE COURT: Good afternoon everybody.

21 I presume you all had a chance to read Judge Reed's
22 order on this case, and we have the proposed agenda items that
23 Miss Schneider's office prepared in conjunction with other
24 counsel. And do you just wish to proceed off the proposed
25 agenda that has been submitted, or does anyone else have any

1 other suggestions?

2 Ms. Schneider.

3 Hello? Miss Schneider, are you there?

4 MS. SCHNEIDER: Oh, I'm sorry, Your Honor. I
5 had -- -- yes, I would, with the Court's approval, prefer to
6 use the agenda items, the agenda that we filed, and would be
7 prepared to just start to walk through the agenda like we did
8 at the last status conference.

9 THE COURT: Let's start walking.

10 MS. SCHNEIDER: All right. Two -- a couple
11 preliminary things before I get, actually get to item number
12 one. I want to apologize to the Court for the lateness of
13 filing this. We only filed it on Monday. We usually try
14 to get these agendas filed a few days earlier. And, for a
15 variety of reasons, there were delays.

16 And then the second apology is that the filing
17 is, the filing is not, it's not correct that it should be
18 dated 2010, which I realized this morning. Obviously, it's
19 a 2012 filing.

20 And then the third thing I wanted to mention was
21 the Court, at the last status conference, asked for letters to
22 the two individuals who had asked to be taken off the service.
23 And I have those. Those letters were done some time ago, but
24 I just wanted to follow-up with the Court.

25 THE COURT: All right. Thank you.

1 One thing I might note, too, is that in the
2 proposed order regarding the role that United States Board
3 of Water Commissioners is playing in this case, I did make
4 the modification which I think was noted in a Minute Order,
5 that I think what was submitted to me is that the Board was
6 to be served with any filing. And I changed that to reflect
7 that it should be served with any document required to be
8 served under the Federal Rules of Civil Procedure.

9 MS. SCHNEIDER: Yes, Your Honor.

10 THE COURT: All right. Just so everyone is
11 aware of that. And I --

12 MS. SCHNEIDER: Item number one --

13 THE COURT: -- thank you for your three
14 apologies. That's fine getting it to me on Monday. And I
15 thought it just sat there on my desk a little longer, from
16 2010. That's all.

17 MS. SCHNEIDER: Okay. But the first item on
18 the agenda is the status of the objections before Judge Reed.
19 As the Court noted, we've had an order issued on April 3rd on
20 the objections. I don't think that there's been any -- I
21 understand no one has made any effort to see if this is
22 the kind of order that can be appealed, so I'm assuming
23 that we're going to be proceeding with the Order and working
24 under it.

25 THE COURT: I think you may have said April 3rd.

1 It was the 23rd.

2 MS. SCHNEIDER: April 23rd; right.

3 THE COURT: Yeah. All right.

4 MS. SCHNEIDER: It seems to me that -- and then
5 the next item I had under that number one, is to make a
6 preliminary identification and discussion of follow-up and
7 implementation issues under the Order. And it seems to me
8 that this was one of the relevant next steps in both cases,
9 based on looking at the magistrate judge's orders and, also,
10 Judge Reed's order. Some of the things that came to mind,
11 certainly, for the successor in interest order, is that, in
12 both cases, it would be looking to use a model motion. In
13 fact, one was approved. But, there may be other motions
14 that we might want to talk to other defendants about putting
15 together.

16 Secondly, there are periodic notice requirements.
17 And exactly what there are to be, and how we're to implement
18 that is something that I think we should talk -- and that,
19 by the way, deals with successors in interest. But, it seems
20 to me that that would be something that it would be probably
21 most appropriate for the parties, the primary parties to talk
22 about it amongst themselves first, before we come back to the
23 Court.

24 And then the third, one of the -- the third item
25 that occurred to me was that there was supposed to be regular

1 updates provided by the two States and the Walker River
2 Irrigation District on water rights ownerships. And it's --
3 I think, for those, we probably just need to have short
4 discussions with Nevada and with the Walker River Irrigation
5 District. But, I did want to mention to the Court that we
6 had already been contacted by California a couple of months
7 ago, and we're in the process of trying to work out a process
8 that they would agree to as to how they would give us
9 information. So, those are follow-ups in both cases that I
10 think need some time.

11 I know that there are other follow-up --

12 THE COURT: When you say both cases, are you
13 talking about B and C?

14 MS. SCHNEIDER: That's correct. Both sub --

15 THE COURT: All right.

16 MS. SCHNEIDER: And in C-125-C, I know that
17 there are some other follow-ups that Mr. Herskovits has to
18 do, but I would turn to him and not --

19 THE COURT: I'm sorry?

20 Ms. Schneider, the court reporter could not hear
21 the end of what you said. I think you mentioned something
22 about turning something over to Mr. Herskovits.

23 MS. SCHNEIDER: That's correct; because I think
24 -- issues to discuss about the implementation of the orders in
25 sub-proceedings C, that's something he should address.

1 THE COURT: Okay. Go ahead.

2 MR. HERSKOVITS: Are you speaking to me, Your
3 Honor?

4 THE COURT: Yes, sir.

5 MR. HERSKOVITS: Yes. I think that the --

6 THE COURT: Could you just identify yourself for
7 the court reporter, Mr. Herskovits.

8 MR. HERSKOVITS: Yes, of course. I apologize.
9 This is Simeon Herskovits on behalf of Mineral County.

10 With regard to follow-up on service issues in the
11 C-125-C subproceeding, I think it's fairly straightforward.
12 There's a need to file an updated caption and proposed service
13 package. And we were proposing to file those two things
14 together with the Service Report on the next steps that were
15 required with the proposed schedule or deadline for completion
16 of service. And I think that we would propose to make that
17 filing by Monday, June 4. And I suggest that date because I
18 will be traveling on the East Coast for a good portion of the
19 intervening time, and we just need enough time to make sure
20 we've consulted with some of the people at Mineral County,
21 perhaps coordinate with Ms. Schneider about what ought to be
22 incorporated in any of our planning for the completion of
23 service.

24 And then, I, I would defer to the Court in terms of
25 the time period after we file that report with the updated

1 caption and service package, in terms of setting a time for
2 objections, perhaps setting a time for, or a date for the
3 next status conference at which that could be discussed and,
4 hopefully, resolved.

5 THE COURT: Would the June 4th date be
6 appropriate for the next status conference, or some time
7 that week; or is that too early for what you're contemplating?

8 MR. HERSKOVITS: Well, I think if we're
9 proposing to file it by then, and we might well file it the
10 week before, but I just don't want to set a deadline that
11 appears to be problematic. If we're filing it on the 4th,
12 and we want to provide an opportunity for objections --
13 although I think that there's not a great likelihood of that,
14 it's not really for me to say -- that it might make more
15 sense, to me, to have a status conference some relatively
16 short period of time after the 4th --

17 THE COURT: Yeah, the 4th isn't that far away.
18 I'm just wondering if that leaves you enough time to consult
19 with the other side and, particularly, with your travel
20 schedule that you mentioned.

21 MR. HERSKOVITS: Well, I guess maybe we could
22 hear from Mr. DePaoli about that, or Mr. Ferguson. But my
23 anticipation was that we already have an updated caption that
24 I think, as a result of Judge Reed's Order, is pretty clear.
25 And the service package, I think, is also not something that

1 there's much ambiguity about. So, I don't know if there's a
2 need to have a round of conferring before we go ahead and file
3 that.

4 THE COURT: Let me interrupt you a second.
5 Tell me again what it is, exactly, you're proposing to filing
6 in C.

7 MR. HERSKOVITS: A brief Service Report, with
8 attached, the updated caption and the updated service package.
9 And in the report, a proposed schedule or deadline for the
10 completion of service. That's essentially it.

11 THE COURT: All right. Thank you.

12 Mr. DePaoli, do you wish to comment on that at
13 this time, or withhold your comments? And please be seated
14 so we make sure the recording hears you.

15 MR. DEPAOLI: Thank you, Your Honor. Your
16 Honor, Gordon DePaoli on behalf of the Walker River Irrigation
17 District. I would -- actually, what Mr. Herskovits was
18 speaking to sort of fits under agenda item three, but it also
19 fits here. What I wanted to sort of preface the agenda with
20 today is that I think as we move through the agenda today, we
21 need to think about what things need to happen, and in what
22 order they need to happen, in order for these subproceedings
23 to move forward to get to the merits. And, and in -- it's not
24 necessarily the same in each one of these.

25 With respect to the relevant steps as a result of

1 Judge Reed's April 23, 2012 Order, we may very well have
2 disagreements as to what needs to be done and or doesn't
3 need to be done. The crux of that Order, at least as I
4 read it as to the successors in interest, is the successors
5 in interests are going to be bound by the results in this
6 proceeding, whether or not they are ever substituted or served
7 with any process, so --

8 THE COURT: That's how I read it, too.

9 MR. DEPAOLI: It's not entirely clear why we
10 need to spend a lot of time on model motions for substitution,
11 and who we're going to provide those model motions to. I do
12 agree that the Order does indicate that there will be, at the
13 discretion of the Court, periodic notice to, I think it's
14 interpreted as successors as to significant developments in
15 the proceedings, and the -- it will be up to the Court to
16 determine when, why, and how that notice ought to be given.
17 And I'm not sure that's something that we need to move -- do
18 anything about at this point. But, obviously, those are
19 things we need to consider and think about and in what
20 order.

21 In terms of updates of water right ownership, as I
22 read the Order that the judge has indicated that we should --
23 we, meaning the District of Nevada and California -- should
24 continue to do what we have been doing -- which we will do.
25 And, certainly, we're happy to talk to counsel for the United

1 States as to what, what other things that she may have in
2 mind.

3 The one thing that I would like to have clarified
4 on that is judge -- magistrate Leavitt's order directed that
5 those updates also be filed with the Court. And we certainly
6 can do that and will do that, it's -- however, they tend to
7 be about a half-a-box or, depending on the year, a box full
8 of information. And, and I would just need to know exactly
9 how the Court would like to have that filed; either if we do
10 it manually, or if we have to do it electronically, it will
11 be another process. So, if those filings need to be with
12 the Court, we will do that, but we probably will need some
13 guidance on that, on that part of it.

14 THE COURT: Well, I would need guidance,
15 too, myself. I don't know how the technology here at the
16 courthouse would accept a filing of that magnitude or how
17 they've done it in the past, so we might have to have
18 another hearing with the involvement of the CM/ECF people
19 or technology people.

20 MR. DEPAOLI: Other than -- there are -- I don't
21 know if there are other things that we need to discuss, or
22 they may come up when we get to other agenda items as they
23 relate to, to Judge Reed's Order.

24 As far as the date that Mr. Herskovits proposes to
25 provide the updated caption and the proposed service package,

1 June 4th, what -- I'm comfortable with whatever he is
2 comfortable with. I would ask that the -- in setting a
3 time for either objecting or providing comments on that
4 material, that we have some time past the end of June. And
5 the reason I ask for that is that, in the Orr Ditch case,
6 Judge George has set a schedule which requires a brief that
7 needs to be responded to; that the brief is going to be filed
8 on June 1st; and those of us responding -- and there are
9 several of us who are working together jointly on that --
10 have to reply by June 29th. And that -- pretty much, that
11 time frame will be taken up with that.

12 THE COURT: Now, that's for the -- the Orr Ditch
13 case aside, but getting back to 125-C, you're talking about
14 the service package approval that -- or is Mr. Herskovits
15 speaking to the approval of the service package in that case?

16 MR. DEPAOLI: Yes. It's really kind of set out
17 in more detail on agenda item three. And I'm speaking to
18 that; yes.

19 THE COURT: That's what I'm looking at now,
20 myself.

21 Let's come back to this a second. And
22 Ms. Schneider --

23 MS. SCHNEIDER: Yes, Your Honor.

24 THE COURT: -- if we could come back to agenda
25 item number two, is there anything that needs the Court's

1 attention or direction from agenda item number two?

2 MS. SCHNEIDER: This is on C-125-B, the
3 completion of service; is that what you're referring to?

4 THE COURT: Yes.

5 MS. SCHNEIDER: The first item there is Service
6 Report 17. We noted before that we have at least -- we have
7 one more Service Report, we think just one more Service Report
8 to file. And that, I think, is -- that needs to be done
9 before a lot of other things happen. It will include changes
10 of addresses. It will have dismissals. And, it will have a
11 variety of other updates in there. And I think we need to
12 get that filed and reviewed and approved before publication
13 and the final caption. We really can't finish all of that
14 without having the Service Report completed.

15 THE COURT: And what do you propose about
16 preparing and filing this Service Report 17?

17 MS. SCHNEIDER: We think it will take at least
18 a month to prepare. It has to be prepared by -- it has to be
19 prepared, and I'll be (inaudible - sound cutting in and out)
20 it's something that gets fit in with other tasks going on,
21 but it will take a while to do. It's been sort of a catch-all
22 pile of information that has to be pulled together that's been
23 accumulating for a period of time. So, we might actually be
24 able to think about trying to do it on June (inaudible), which
25 is the same date that Mr. Herskovits has offered --

1 THE COURT: June what? I'm sorry. You broke
2 up.

3 MS. SCHNEIDER: June 4th, if that's the same
4 date that Mr. Herskovits was doing his filing. The only
5 thing I'm going to be out of the -- I'm going to be out of
6 town for about a week at the end of May, but I think we could
7 probably get it done by June 4th.

8 THE COURT: Well, with Mr. DePaoli's own
9 schedule, what about moving that to June 11 --

10 MS. SCHNEIDER: That would be fine.

11 THE COURT: -- for a filing of both.

12 MR. HERSKOVITS: That would be fine.

13 THE COURT: Now, does this -- is this is going
14 to involve -- when you prepare your Service Report. Educate
15 me here -- is this going to involve response from Mr. DePaoli
16 or input from him as to the Service Report; or is this
17 something that the government will do directly?

18 MS. SCHNEIDER: What we've done in the past is
19 we've prepared the report and gone defendant by defendant and
20 category by category, whether it's a dismissal, or finding
21 that somebody has been served, or doing an address update or
22 whatever. And then we attach to the report itself all of the
23 backup documents. And that is electronically filed.

24 For each of the defendants, persons, and entities
25 who are discussed in the report, a copy is mailed to them,

1 along with the respective exhibits that deal only with
2 their water rights claims. So, that's how we've been
3 serving it.

4 In the past, either -- usually Mr. Ferguson and/or
5 Ms. Peterson have been the ones who have looked at the report
6 and raised any questions. Once I've gotten -- the report
7 itself asks people to contact me as soon as possible, to
8 contact me directly if there are any questions or changes.
9 And usually what's happened is that by the time we get to the
10 next status conference, I will have prepared a proposed order,
11 and will have tried to address any of the comments that I've
12 gotten, so that the Court is then in a position to consider
13 signing the order at that time.

14 THE COURT: So you've prepared the proposed
15 Service Report; it's disseminated among counsel; and, after
16 that, it's submitted to the Court with a proposed order
17 approving the Service Report?

18 MS. SCHNEIDER: No. No. We file, we file the
19 order at the same time, with the Court, at the same time that
20 we serve it on everyone else.

21 THE COURT: Okay.

22 MS. SCHNEIDER: But the Court delays
23 consideration, has delayed consideration of the report
24 until other counsel have a chance to look at it. And,
25 that way, when we've been in front of the Court, and the

1 Court has considered any, any of the service reports, we
2 have, the parties have had a chance to iron out any issues
3 and make any corrections before that. That way, it -- the
4 Court doesn't have to usually go through it page by page.

5 THE COURT: All right. Then when would you
6 suggest we have another status conference that would address
7 the Service Report issues of 125-B, and also those report
8 issues that Mr. Herskovits is going to have to prepare, and
9 in light of Mr. DePaoli's schedule in the Orr Ditch case?

10 MS. SCHNEIDER: I think that, uh, we -- I'm
11 going to suggest that we wait to figure out a status
12 conference date because I think there are a number of
13 issues that we might be able to get addressed to address
14 between now and then. Although I have to say that, initially,
15 I was thinking that, uh, we probably should be meeting
16 sometime in probably the middle of June -- excuse me, the
17 middle of July, because I think --

18 THE COURT: You mean a status conference in the
19 middle of July?

20 MS. SCHNEIDER: That's what my initial thinking
21 is, but I think it also depends on the other issues that we
22 discuss today.

23 THE COURT: Mr. DePaoli, Mr. Ferguson, anyone
24 else; mid July for the next status conference? I mean we
25 don't --

1 MR. HERSKOVITS: Your Honor --

2 THE COURT: -- we don't have to pin it down
3 right now, but just conceptually.

4 MR. HERSKOVITS: Your Honor, this is
5 Mr. Herskovits on the phone for Mineral County. With
6 regard to mid July, I just have to request of the other
7 parties and the Court, I actually will be back in
8 Massachusetts for an 80th birthday celebration for my
9 mother in the middle of July. And so slightly to, slightly
10 earlier in the month or slightly later in the month would
11 be better if it's not an inconvenience to the Court or the
12 other parties too much.

13 THE COURT: All right. I think we can work
14 around that important date.

15 MR. NEVILLE: And, Your Honor, this is
16 Michael Neville with the State of California. Mid July, I
17 think would work for me. I mean our input is not, is not
18 the most key for these issues, but I have -- I do have some
19 conflicts on -- you know, I don't know if we're getting down
20 to the date here -- but I have conflicts on July 10th, which
21 is a Tuesday and, also, the 24th, which is a Tuesday. Other
22 than that --

23 THE COURT: Well, I'm assuming --

24 MR. NEVILLE: -- that would work.

25 THE COURT: -- we're probably going to choose a

1 date here that's not convenient for everybody, typically,
2 with the summer months, but we'll work around that in a bit
3 though. But, I mean, conceptually, we're looking at another
4 status conference in mid to late July.

5 MS. SCHNEIDER: If Your Honor would like us --

6 THE COURT: Go ahead.

7 MS. SCHNEIDER: I'm sorry.

8 All right. And that's addressing persons and
9 entities that were served, but never responded or appeared.
10 We talked about this at the last status conference, and I
11 believe that the sense was that there was no additional
12 notice that would be required, but I had indicated that I
13 wanted to go back and look at some of the materials that
14 were filed -- that were provided to defendants in the service
15 packages.

16 I think what I would simply ask the Court to do
17 in -- at this point, is to clarify the same thing that
18 has been ordered more directly in the C-125-C case, that
19 defendants who failed to appear need not be served any
20 further because they failed to appear. And that is an
21 issue that was discussed in Judge Reed's recent Order at
22 pages 24 and 25, I believe, where the Court, where Judge Reed
23 indicates: "That while" -- among other things -- "that while
24 no defaults will be entered in this case, defendants must
25 still appear in order to receive further notice of filings

1 in the case."

2 That's the same situation as the B case; there will
3 be no defaults, but we do have people who have failed to file
4 any appearances.

5 THE COURT: Was judge -- were Judge Reed's
6 comments specifically addressed to C and not B then, in
7 the context of those who do not appear, but who have been
8 served?

9 MS. SCHNEIDER: The issue was addressed in the
10 objections in the context of C, but it's equally applicable
11 to B. And what I did do, and I noticed (Inaudible. Speaker
12 system cutting in and out) packages, what I do is that, in our
13 services is that whether --

14 THE COURT: You know, Ms. Schneider, just a
15 minute. If you're on a speakerphone and rattling papers,
16 we're having real trouble hearing you while you're doing
17 that, or just other interference with the line. And I think
18 our court reporter is getting a tad bit frustrated here. So
19 can we either speak more slowly, or just directly into the
20 speakerphone or something?

21 MS. SCHNEIDER: I'll try that. I'm not rattling
22 any papers.

23 THE COURT: Well, whatever happened, it was
24 overriding what you were trying to say, so maybe somebody
25 else was doing it.

1 MS. SCHNEIDER: All right.

2 I went and reviewed the service packages. They --
3 whether we were seeking waivers from individuals and entities,
4 or doing personal service on them, both require that notices
5 of appearance be filed. And so it's, as discussed in
6 connection with C-125-C in Judge Reed's order, that same
7 demand was in C-125-B.

8 So, I think that we are in the same position here;
9 that anyone who was served, or waived service and failed to
10 appear, need not be served, because they should be deemed --
11 because of the failure to appear.

12 THE COURT: That would be my interpretation of
13 the intent of Judge Reed's order as well.

14 Does anybody wish to speak and enunciate a contrary
15 position as to applying that rationale from C to B?

16 (No response.)

17 THE COURT: There does not appear to be any,
18 Ms. Schneider. Do you wish to prepare a proposed order to
19 that effect?

20 MS. SCHNEIDER: I will do that; yes.

21 THE COURT: All right. May we move to C?

22 MS. SCHNEIDER: Yes.

23 THE COURT: 2(c).

24 MS. SCHNEIDER: The third issue raised under
25 item two deals with a service issue that was raised by the

1 State of California on a number of occasions, including the
2 most recent status, the most recent filing on the status of
3 the cases that was made in January of this year. It basically
4 -- they had raised the question about whether persons and
5 entities in California who have dormant or unexercised
6 surface rights, or overlying, unexercised ground water rights,
7 need to be joined in the matter. And this is an issue about
8 which we have -- I've been talking to the State of California
9 about on a couple of times, and we are trying to work through
10 it.

11 I think what we would like to do, and I think that
12 Mr. Neville agrees with this, is that we want to spend a
13 little time researching and discussing the issue, the issues
14 that were presented before either presenting a joint position,
15 or identifying our respective positions to the Court on these
16 issues.

17 Mr. Neville was not the attorney who, in California,
18 who raised these issues at first. And so one of the things
19 that he and I, I think, both plan to do, is to look through
20 some of the historic pleadings on this issue in the case.

21 THE COURT: Were those people, would they
22 have been served already, as with those in subtopic 2(b)?

23 MS. SCHNEIDER: They would only have been served
24 if there were actual water rights.

25 THE COURT: So --

1 MS. SCHNEIDER: So there are some people in
2 California who might fit into this category, these categories,
3 who have already been served. I think that this issue may
4 have been briefed, to some extent, in connection with the
5 case management order in 2000. And that's one of things that
6 Mr. Neville and I want to take a look at. I also don't think
7 that some of these categories that California has raised fit
8 within the four corners of the Case Management Order, and the
9 nine categories of persons and entities who we are directed
10 to serve.

11 But we -- California had asked that I put this issue
12 on the agenda to alert the Court to it, but we are viewing it
13 more as a heads up. But because it deals with service, we
14 would like to get it resolved sooner rather than later, and
15 we would be -- our intent would be to try to focus on it and
16 either at the next, one of the next two status conferences,
17 be able to present more information to the Court.

18 THE COURT: Well, maybe by that next deadline
19 date we land on, whether it's June 4th, or whatever for the
20 filings, the State of California and your offices can come
21 up with either a joint statement, or a statement where your
22 opinions diverge.

23 Would there be anyone else among the parties who
24 would have an interest in how this issue is raised about
25 California and unexercised preparing of water rights?

1 MS. SCHNEIDER: Your Honor --

2 THE COURT: I think Mr. DePaoli wanted to raise
3 something, Ms. Schneider.

4 MR. DEPAOLI: Uh, yes, Your Honor. Gordon
5 DePaoli on behalf of the District. Two things about this,
6 Your Honor. One is that it is raised by California as a
7 proposed threshold issue, which is on the agenda, but which
8 we have not gotten to yet. And it sounds to me like what now
9 we are doing is we're raising this as, as an issue to go back
10 and see if there are other parties who need to be joined.
11 We dealt with the joinder issues initially 20 years ago, and
12 then again when Judge Reed entered the Case Management Order
13 in 2000. And it seems to me that this issue, particularly as
14 it relates to dormant, unexercised ground water rights, are
15 issues that are not appropriately raised at this time. And
16 I would ask that if this is going to be raised as an issue,
17 that it be setup for a schedule of briefing and argument so
18 that we can get it decided one way or the other. I, I don't
19 think that it's an appropriate issue to be raising some 20
20 years after we've started this.

21 It may turn out that other people have to be
22 joined after we get through the threshold issues. But to
23 bring it up now, I think we ought to have an opportunity
24 to participate in it, and it ought to be moved along
25 expeditiously.

1 THE COURT: After the passage of 20 years, we
2 have to accelerate resolution of this issue, is that what
3 you're saying?

4 MR. DEPAOLI: Well, it, at least as I recall,
5 it first showed up on a proposed threshold issue list in
6 front of Judge McQuaid when we were dealing with proposed
7 threshold issues. I can't say that I know what, if anything,
8 was said about it in connection with the Case Management
9 Order briefing, but I suspect that had it been there, it
10 would have been addressed in the Case Management Order.

11 THE COURT: Well, maybe I'm confusing things
12 here, but is this a threshold issue, or is this a service
13 issue?

14 MS. SCHNEIDER: Your Honor, this is Susan
15 Schneider. The State of California identified the issue
16 as a threshold issue; although, in some of the pleadings,
17 certainly the United States said that it categorized it as
18 more of a service issue.

19 What, what we're simply asked to do here, all we
20 wanted to do is alert the Court to the issue and say that --
21 and let the Court know that the State of California and the
22 United States will be talking about it. And I think that
23 we would like to (inaudible) up, and that we need to move
24 along expeditiously right now. We would like to (inaudible)
25 more informally, and then report back to the Court on it.

1 I don't think that either Mr. Neville or I would be
2 ready to file something on June 4th. I think that both of
3 us have commitments out of town that are going to make it
4 difficult for us to do a filing by then. But, I think that
5 we would hope to be prepared to follow-up with the Court on
6 the status of this issue, and where, where it should be
7 handled, if at all, later at the status conference in July.

8 THE COURT: Well, I think what we should do is
9 allow you and Mr. Neville to address this issue. And once
10 maybe you have some consensus, or even before, discuss it
11 with Mr. DePaoli and any other parties who want to have
12 involvement, and then maybe when we have the status conference
13 in July, you should calendar this as an agenda item with more
14 specific identification of the issue, and a summary, a brief
15 summary of the parties' positions, and what is to be decided
16 by the Court.

17 And I know that's a tall order but, if we can, keep
18 it brief in the context of an agenda item. I would appreciate
19 it. But that will able you to discuss it first informally,
20 and then maybe later on in July, we'll actually have to
21 schedule briefing on it.

22 MS. SCHNEIDER: Very well, Your Honor.

23 MS. SIMON: Your Honor, this is Stacey Simon
24 on behalf of Mono County, and I just wanted to respond to
25 your question about what other parties have an interest in

1 this issue, and make clear that Mono County also shares -- has
2 an interest in this issue.

3 THE COURT: Very good.

4 MR. NEVILLE: And, Your Honor, this is Michael
5 Neville, and I appreciate that. The idea of coming back to
6 you in July makes sense because of my schedule. I'm going
7 to be out of the country for three weeks between now and then.
8 I appreciate the ability to -- we still have to go back and
9 look at the historic pleadings, as Mrs. Schneider said. And
10 I think we do need to get a discussion going with the parties
11 as to whether we can agree as to how best to handle this, or
12 what's the best way to go forward.

13 THE COURT: Okay. Let's go to agenda item 2(d).

14 MS. SCHNEIDER: Yes, Your Honor. The items
15 listed under this point were intended to give an opportunity
16 just to let the Court know where we are on preparing a number
17 of items. The first one is our, United States' task to
18 prepare a final caption.

19 Currently, a caption is updated through report 16.
20 But, we won't be able to -- be able to finish the caption
21 until we finish and have Service Report 17 completed. And
22 so that's, that would be something that we could do fairly
23 readily after the completion of Service Report 17.

24 THE COURT: And when you speak to the caption,
25 are you just talking about identification of all the parties

1 that have been served in one document?

2 MS. SCHNEIDER: That's correct. But because
3 there is a lot of parties, it is probably going to be 21 pages
4 long, using the entire sheet of paper, not just the side of
5 it.

6 And I hesitate to raise this, but I figured we
7 better raise it now. The caption, as it is right now, is
8 not in alphabetical order. It has been done in -- because
9 service was done in phases, the caption is also in phases,
10 and each phase is probably, in some sense of alphabetical
11 order. If the Court wants the entire caption in alphabetical
12 order, it will take some additional time to do.

13 THE COURT: Well, I'm the new kid on the block
14 in these cases, and I'm going to defer to you all as to how
15 you think the caption should be best characterized or phrased.
16 And I'm not going to stick my nose into this thing about
17 how the caption should read, unless you all cannot come to
18 agreement on the caption of the case.

19 MS. SCHNEIDER: Well, we would proceed without
20 putting it in alphabetical order at this point, simply because
21 that will get it done quicker. But if any parties have a
22 problem with that, then they should contact me.

23 THE COURT: It seems like maybe the primary
24 names on the caption should be those who are called the
25 principal players. Then, after that, proceed alphabetically.

1 But other than that, I, I open this to any suggestions or
2 comments.

3 Anyone else have anything to say on this?

4 MR. DEPAOLI: Your Honor, Gordon DePaoli. To
5 the extent that the plan is eventually to publish with the
6 caption, at that point in time, it probably would be helpful
7 if it was in alphabetical order just because if, when it's --
8 one is to assume that someone out there is going to be looking
9 at the newspaper and sees the long caption, that they will
10 look to see if their name is in there in --

11 THE COURT: Sort of like the tax rolls.

12 MR. DEPAOLI: -- in an alphabetical way, would
13 be my guess. I don't know that it needs to be done now, but
14 perhaps if the plan is to publish it at some point, it might
15 be useful if it were done then.

16 THE COURT: Well, why don't you all work on that
17 and see what you can come up with.

18 MS. SCHNEIDER: Very well, Your Honor.

19 The next item on the agenda is the list of names
20 and addresses of persons and entities who were served, who
21 have filed a Notice of Appearance. This is information that
22 we had agreed we were going to provide to the clerk's office.
23 We're in the process of working -- of completing that list and
24 are working on final formatting of it. We have a number of --
25 oh, wait. I'm sorry. Report 17 might -- will definitely

1 impact this list. So, again, to finalize that, we need to
2 get report 17 finished.

3 Our intent is to talk to the clerk's office and
4 clarify exactly what they want, and what format they want
5 it in. But, again, the list is almost done, but it will
6 have to be updated with report 17.

7 THE COURT: And that's just --

8 MS. SCHNEIDER: The next item --

9 THE COURT: -- those people who have filed a
10 Notice of Appearance?

11 MS. SCHNEIDER: That's correct.

12 THE COURT: Not the list of those who have been
13 served who haven't filed a Notice of Appearance?

14 MS. SCHNEIDER: That's correct. We are also
15 working on putting a list of those persons together as well.
16 That's, that's the next item on the agenda. We are not sure
17 if the clerk's office wants it, but we will be asking them if
18 they want a list of those people as well.

19 THE COURT: All right.

20 MS. SCHNEIDER: And the final item under this
21 category is the clarification of any persons and entities
22 that filed an appearance, but were not served. Thus far, we
23 have identified the National Fish and Wildlife Federation.
24 And I believe it's either Arco or the successor to Arco.
25 There may be a couple of others, although we haven't quite

1 figured out how to identify them, but it has appeared to us
2 that this happened with a couple of, either a large group
3 like National Fish and Wildlife, or some of the companies,
4 the very large companies that know they are successors, so
5 they just filed a Notice of Appearance.

6 We are going to suggest to the ones we know that
7 they could test out the motions for, the joint motion for
8 successors that we prepared and is attached to Magistrate
9 Judge Leavitt's order that's not been approved. So, we think
10 that we can deal with them that way.

11 THE COURT: Okay.

12 MS. SCHNEIDER: And that would finish item (d).

13 Number (e), letter (e) is the consideration of
14 the Case Management Order paragraph 9 requirements. The
15 first question that we actually discussed to some degree at
16 the last status conference, and Mr. DePaoli has sent me some
17 additional information on, concerns whether the provisions
18 of paragraph 9 of the Case Management Order have previously
19 been satisfied. There is an Order, docket number 160, that
20 Magistrate McQuaid issued responding to our, United States'
21 filings on the methods that we used for service. I don't
22 know whether that's sufficient for the Court's consideration,
23 but the, the context of it is that we -- this is on page 8 of
24 the Case Management Order: "After the United States and Tribe
25 have received the information and compiled the list of parties

1 whom they intend to serve, that list, and a description of
2 the procedures which was compiled, shall be filed and provided
3 to the parties, who shall have such period of time as the
4 magistrate judge shall determine, to file objections
5 indicating whether the list is complete and includes all
6 such water rights claimants within the categories described
7 in paragraph 3 above, who can reasonably be identified."

8 That's the first requirement.

9 THE COURT: I'm confused about that one. The
10 Management Order says that the: "The document of who the
11 plaintiff or the U.S. and Tribe intend to serve, shall be
12 filed upon the parties."

13 Would that include everyone who they intend to serve
14 or have served or what?

15 MS. SCHNEIDER: We discussed this at the last
16 status conference and the parties and Your Honor came to the
17 conclusion that document 1300, which restricted the amount,
18 the breadth of service during, during the parties' efforts
19 to deal with service, that that was restricted to just the
20 lawyers who are on the E-service with the Court. And so
21 Your Honor had stated, last time, that those were the only
22 parties who needed to have the list provided to them. That,
23 certainly -- the list of parties is, we had, I think, decided
24 would be the caption, and that's something that we would
25 then file and serve through E-service on everyone who gets

1 E-service.

2 Then what had happened with the United States is
3 that in -- excuse me. I have these out of order here -- in
4 2001, we had filed a -- we made a filing with the Court
5 explaining what we had done to try to identify the parties,
6 the people that we would be serving in the case. And
7 the Court found that the efforts that we had made were
8 reasonable, but that it didn't mean that further down the
9 road there would not be other efforts that may need to be
10 made, or other avenues that may need to be explored.

11 I don't know whether our filing from over a decade
12 ago is sufficient, or whether the Court wants us to prepare
13 an additional filing about our methods that would be filed at
14 the same time that we file the caption.

15 THE COURT: About your methods?

16 MS. SCHNEIDER: The methods to identify and
17 serve parties, where it says in the Case Management Order,
18 Your Honor, is the description of the procedures by which
19 we compiled the list of parties to serve.

20 THE COURT: Do we need that at this point
21 in time --

22 MS. SCHNEIDER: That's --

23 THE COURT: -- after --

24 MS. SCHNEIDER: That's the question, I think,
25 Your Honor.

1 THE COURT: -- after the service has already
2 been effected, or what will be effected? I don't know that
3 we need a report on that.

4 MS. SCHNEIDER: Your Honor, if Your Honor deems
5 we do not need a report on that, that's fine with me.

6 THE COURT: Does anybody want a report on
7 that?

8 (No response.)

9 THE COURT: Nobody wants a report on that.

10 MS. SCHNEIDER: Very good.

11 THE COURT: By silence.

12 MS. SCHNEIDER: All right. Then the next item,
13 under (e), we already talked about, which is the submission
14 of the final caption. You've already indicated that we don't
15 need to file a description of the procedures followed for its
16 completion.

17 And then the next item --

18 THE COURT: Well, the caption you're going to
19 have to work out with Mr. DePaoli. And I tend to side with
20 him that the parties should be listed alphabetically, at least
21 after you identify what we've called the principal players,
22 just so somebody can turn to it and find out if they are a
23 party or not.

24 MS. SCHNEIDER: All right. We will do that.

25 The final item on the --

1 THE COURT: Isn't that -- Mr. DePaoli -- just a
2 minute -- Mr. DePaoli, wasn't that your point that you were
3 making?

4 MR. DEPAOLI: I think it's important if it's --
5 if there's going to be a publication of the caption, that it
6 be that way. Whether it needs to be that way initially, uh,
7 I, I don't think so. But if it's going to be published, and
8 the publication is expected to be helpful to someone who
9 might be looking at it, it probably needs to be alphabetical.

10 THE COURT: Either that, or if it's on a website
11 that we've talked about.

12 And Mr. Herskovits, I think that would probably be
13 the same consideration for (c), wouldn't you agree?

14 MR. HERSKOVITS: I would agree, Your Honor.

15 MS. SCHNEIDER: And, Your Honor, I think we will
16 try to put it -- we will put it in alphabetical order before
17 we submit it because since that is -- certainly, the parties
18 would like to see that happen at some point, but since
19 that is what would be distributed to the lawyers who receive
20 E-service, it would be for them to think -- to decide whether
21 they need to file any objections, it would be a lot easier for
22 them to have it in alphabetical order as well.

23 THE COURT: Okay. Thank you.

24 MS. SCHNEIDER: The last -- I'm sorry --

25 THE COURT: Next.

1 MS. SCHNEIDER: The last item would be -- raises
2 filing objections to the caption or the list of names, if
3 there are any objections. I don't think that we're ready
4 to set a schedule for that at this point, because we need to
5 figure out when the caption will be filed.

6 THE COURT: I think you're right.

7 MS. SCHNEIDER: And that finishes item two,
8 unless the Court has any other questions.

9 THE COURT: Not at this time. Thank you.

10 Are we now on item 3?

11 MS. SCHNEIDER: Yes. And that's C-125-C, and I
12 would turn to Mr. Herskovits.

13 MR. HERSKOVITS: Your Honor, again, this is
14 Simeon Herskovits for Mineral County. I apologize for
15 earlier in the status conference jumping ahead to these
16 issues. Since they were all that I really saw as needing to
17 be addressed regarding the C-125-C, or 128 subproceeding, I
18 just immediately assumed that that was what we were intending
19 to discuss at that time.

20 I think that the date suggested by the Court,
21 by Your Honor, of June 11th makes sense, especially
22 given Mr. DePaoli's own scheduling constraints. And that
23 once the Service Report, together with the updated caption
24 and service package are filed, that there would be ample
25 opportunity for objections before a status conference

1 in July. And I guess I would only just point out that
2 this will not be our final Service Report, unlike Service
3 Report 17 in the 125-B case. I think this would either be
4 the penultimate report, or there could potentially be a need
5 for two reports after this. But I think that this report
6 that we're talking about filing for the C subproceeding would
7 lay out a process and identify -- a process for completing
8 service and identify the remaining parties to be served, and
9 then there would need to be at least one more Service Report
10 to the Court before we would be at the point of completing
11 service.

12 And I don't know that there's more to say about
13 this right now. It seems fairly straightforward. And it
14 seems like the logical follow-up to Judge Reed's April 23rd
15 Order.

16 THE COURT: I would tend to agree.

17 Does anyone have any comment on that?

18 (No response.)

19 THE COURT: None appearing, please continue.

20 MS. SCHNEIDER: The next item, Your Honor,
21 is number -- I'm sorry. Mr. Herskovits, did you finish
22 everything?

23 MR. HERSKOVITS: I think so, yeah. The, you
24 know, the sub item C under this agenda item, I've already
25 mentioned that we would include it in a report of proposed

1 date or schedule for completion of service. And we're done
2 with item three, I believe.

3 THE COURT: Well, let me ask you a question,
4 Mr. Herskovits. When you talk about approval of the service
5 package, what exactly is the service package?

6 MR. HERSKOVITS: The service package
7 includes the original and amended motion and complaint in
8 intervention, which amended Mineral County's public trust
9 claim, and then a number of other documents, such as a notice,
10 request for waiver of service, and some related materials,
11 perhaps a proposed order regarding service. That's what I'm
12 referring to when I talk about the service package.

13 THE COURT: I would have assumed that that
14 would have been accomplished by this date, as I thought it
15 was in 125-B.

16 Am I mistaken on that?

17 MR. HERSKOVITS: It was -- there was a package
18 approved some number of years ago; however, in updating the
19 caption, and therefore modifying the documents that would be
20 served in that form, and in taking a (inaudible) cue from
21 what's been done in 125-B since that time, and making sure
22 that there's a notice of lawsuit and request for waiver, and
23 a particular form included, that's the kind of updating of the
24 service package that was originally proposed in the Service
25 Report that Mineral County submitted in 2008.

1 THE COURT: Well, in that case, tell me what
2 you contemplate as to item (c) there under agenda item three.

3 MR. HERSKOVITS: Well, when you say what I
4 contemplate, do you mean the time frame?

5 THE COURT: Yes.

6 MR. HERSKOVITS: Well, I'm still trying to
7 work that out, Your Honor. I think it's a matter of months,
8 certainly not years. But I feel that I need to look a
9 little further into what the historic experience has been,
10 and what -- there have been problems in the past, although
11 I'm not sure they're of continuing concern but, in the past,
12 there's been instances of evasion of service or obstruction
13 of service which delays it a bit.

14 I should think that we would, you know, at the
15 status conference in July, presumably we would have a decision
16 approving the service package and an updated caption and, at
17 that point, we would go out and do a mailing to the limited
18 number of remaining defendants to serve, uh --

19 THE COURT: What do you mean by the limited number
20 of defendants to be served? Many have already been served,
21 have they not?

22 MR. HERSKOVITS: They have, yes. There
23 are little more than 100 remaining names that we identified
24 back in 2008 who still, as far as our best efforts to
25 determine, have shown, are still outstanding in terms of

1 needing to be served.

2 THE COURT: All right. Then you're not talking
3 about thousands here?

4 MR. HERSKOVITS: No, no, no. I'm talking
5 about a little more than a hundred individuals or entities,
6 which is, I think, something that can be done in fairly short
7 order. But, um, fairly short order may mean several months.
8 It may take a few months to sift through who is responding
9 and returning by mail waivers. And those who are not, to
10 then have them personally served. And if there, there is
11 a need to file a report with the Court, as I would not be
12 surprised if there is a need for some dismissals or some
13 substitutions, it could be that it would take four to six
14 months, or something in that vicinity to actually complete
15 the process. That's what I'm anticipating, Your Honor.

16 THE COURT: Well, can't the preparation of the
17 service package be completed fairly expeditiously?

18 MR. HERSKOVITS: Yes, it can. That's why I was
19 proposing to file the report with this package and the updated
20 caption by the 4th of June.

21 THE COURT: All right. And then --

22 MR. HERSKOVITS: I think that --

23 THE COURT: And then after that, you would
24 have to continue the service on the other one hundred or so
25 parties?

1 MR. HERSKOVITS: Yes. Well, that would help
2 set clearly forth who those parties are and what is to be
3 served on them.

4 THE COURT: And I would assume that completion
5 of that service and the final report is a precondition to the
6 addressing of the threshold issues which I'm guessing is the
7 next step in this case.

8 MR. HERSKOVITS: Well, that makes some logical
9 sense, Magistrate Judge Cobb, But the threshold issues that
10 are typically referred to were actually defined as a stage
11 in the process for the C-125-B case in the Case Management
12 Order on that case. And that's a case that involves
13 considerably more complex issues than the C-125-C case.
14 There are -- there is no Case Management Order on C-125-C
15 that requires a threshold issue stage. There is the whole
16 question of intervention and whether the Court will permit
17 Mineral County to move forward on the merits with its
18 public trust claim brought in its amended complaint in
19 intervention.

20 THE COURT: Okay.

21 MR. HERSKOVITS: Am I being clear?

22 THE COURT: Yes, you are. That helps clarify
23 it. Thank you.

24 MR. HERSKOVITS: And I would just add, I guess,
25 that this is the threshold issue in 125-C, at least in my

1 view. Mr. DePaoli may disagree, but I think upon completion
2 of service, the Court would then make that determination and
3 that would be the threshold issue before proceeding to the
4 merits of the public trust claim, assuming Mineral County is
5 permitted to intervene.

6 THE COURT: All right. Thank you.

7 MS. SCHNEIDER: Your Honor, should I proceed
8 with item four?

9 THE COURT: Please.

10 MS. SCHNEIDER: That's publication. At the
11 prior status conferences, the Court has discussed publication
12 with us briefly, including two possible, two likely purposes
13 for publication.

14 (Speaker cutting out) provides notice to identify
15 but unserved persons and entities. And the second is to
16 provide more of general service, so that people could -- might
17 realize that maybe they should be a part of the case. It
18 seems to me, that we need to put together a proposal for
19 whatever process we're going to use for publication. I had
20 hoped to try to get to work on that in the last month or so,
21 but I've not been able to. I, I think -- I wanted to suggest
22 that we try to submit a proposal for how we would handle
23 publication that we can discuss at the next status conference.
24 I think that's the thing that we have (inaudible).

25 Then I think the only other question is whether this

1 is something that the United States should put together, or
2 whether any of the other parties want to be involved in that
3 preparation.

4 THE COURT: Well, it seems like the United
5 States has taken the lead on other service issues, and you
6 might want to do so here.

7 Do you expect that there will be objection to the
8 publication issue and the general notice and notice to
9 identify unserved persons?

10 MS. SCHNEIDER: I do not know.

11 THE COURT: Mr. DePaoli, or Mr. Ferguson,
12 Mr. Benesch? I don't mean to leave anyone out over here.

13 MR. DEPAOLI: Gordon DePaoli, Your Honor. A
14 couple of things. The Case Management Order, in paragraph
15 5 -- and I'm speaking just now of subproceeding (b), and I
16 think -- I'm not addressing in subproceeding (c). I don't
17 know to what extent publication is contemplated there. But,
18 the Case Management Order in paragraph 5 deals with service
19 by publication. And it was limited to a publication as to
20 persons who are not identified and who are unknown, and
21 that would be -- was to proceed pursuant to Rule 4, which
22 would contemplate a motion for publication. I don't know to
23 what extent that is to be included in this.

24 The whole concept of publishing, I understand the
25 potential rationale for the idea of a publication of notice

1 to identify but unserved persons, but it's sort of an
2 inconsistent concept in the sense that the case law is
3 fairly clear that if you have identified someone and know
4 where to find them, publication is not going to be adequate.

5 In light, however, of Judge Reed's order that, at
6 least as to unserved successors -- and I don't know if we're
7 talking -- I assume when we talk about identified but unserved
8 persons and entities, we are talking only about successors
9 to people who are already served. Because if we're talking
10 about people who are identified but who are not successors,
11 and they have never been served, they deemed to be served like
12 the other folks. I'm assuming we're talking about unserved
13 successors.

14 THE COURT: Well, I think that's something
15 that, in her title, Ms. Schneider there says the scope of
16 publication. And I presume that is something you all will
17 be addressing when you meet to come up with your proposals
18 on publication. And maybe that's something I have to
19 resolved if the U.S. government says they can serve anyone
20 by publication, versus your approach that a known party
21 should be served in accordance with Rule 4.

22 MR. DEPAOLI: And I'm not necessarily saying
23 that. I think Judge Reed has pretty well made it clear that
24 known successors don't need to be served by Rule 4. But, I
25 think one of the things that we can discuss that ought to be

1 considered is whether, if we're trying to give some kind
2 of notice to identify the successors, that it may be more
3 economical to do it by mail than by publishing a 21-page
4 caption in several newspapers. But, we certainly can have
5 a discussion about that. But, I do think that if we can't
6 reach an agreement, then there ought to be a motion.

7 MS. SCHNEIDER: It seems to me, that it would
8 be helpful to have discussion amongst the primary parties
9 before any motions are filed. That the Case Management
10 Order contemplates a motion right away, but if there is a
11 way to get some resolution here, it would avoid some of
12 the back and forth on motions practice that seems to take
13 forever.

14 THE COURT: And I would almost prefer something
15 along the lines of just simultaneous briefing on the issue.
16 You know, identify the issue, like your -- the brief the
17 United States has filed on April 1st; the brief of the
18 District is filed April 1st; and then maybe a brief reply or
19 something.

20 But, right now, it's my understanding that the
21 parties will address this publication issue, which I think
22 is more related to -- well, I guess it's not related to C.
23 It's both B and C.

24 MR. HERSKOVITS: Yes, Your Honor. This is
25 Simeon Herskovits for Mineral County. I just wanted to join

1 in just because of a remark that Mr. DePaoli had made, to
2 say that I do believe publication has been contemplated for
3 quite some time in the C proceeding, in the subproceeding, as
4 well as the B subproceeding. There, obviously, will be some
5 differences, but I think it pertains to both.

6 THE COURT: All right. Well, hopefully, you
7 can all come up with a magic solution on the publication
8 question.

9 MS. SCHNEIDER: Right. The other thing, Your
10 Honor -- this is Susan Schneider again -- it seems to me
11 that it's not timely to do motions right now on publication,
12 which is why I thought it would make sense to try to figure
13 out if we could agree on a process first.

14 THE COURT: I concur.

15 MS. SCHNEIDER: The next item on the agenda, if
16 the Court's ready to proceed --

17 THE COURT: Yes. Number five.

18 MS. SCHNEIDER: Number five is notification
19 protocol and how it might be used in each subproceeding.
20 The first item is the E-service order that we had started to
21 draft and circulated with the parties, and talked to the
22 clerk's office about. That order needs to be finished, but
23 we certainly can't do anything with it until we have a
24 complete list of persons and entities who were served and
25 filed a Notice of Appearance, and are not represented by

1 counsel. But I think that it's time to try to at least move
2 the draft order to, to conclusion. And I think we could try
3 to do that by the next status conference as well.

4 THE COURT: Well, is your plan then to discuss
5 it more thoroughly, or between counsel, as to the form and
6 content of an E-service order?

7 MS. SCHNEIDER: I would do that and, at the
8 same time, share it with the clerk's office again, because
9 the comments were particularly helpful from Ms. Griffin.

10 So, that would be in the E-service order. And I
11 think that it's too early, at this point, to establish a date
12 to mail it out. It's just way too early. And as well, the
13 protocol section identifies establishing a schedule to submit,
14 for pro se defendants who want to use the E-service system, to
15 submit their notice and order. And, again, I think it's too
16 early to talk about that just yet.

17 THE COURT: It may also, as you point out,
18 require another appearance by Lia Griffin to give the Court
19 some input on how that could be handled.

20 MS. SCHNEIDER: That's correct.

21 The next item is the website --

22 MR. DEPAOLI: Excuse me, Your Honor. Before we
23 leave that, may I ask a question?

24 THE COURT: Certainly.

25 MR. DEPAOLI: What's critical to that is

1 completion of the list. And I, I don't -- did we -- have
2 we established a date by which that list will be complete?

3 THE COURT: Well, that's one of the questions
4 I had about C in particular, because I think there's going to
5 be several months, apparently, before that list is complete.
6 It sounds like B might be done in the near future.

7 MS. SCHNEIDER: Your Honor, I don't think, as I
8 said earlier, I don't think we can finish a list until we
9 finish Service Report 17. Once Service Report 17 is finished,
10 then I think it's relatively easy to set a deadline then.

11 THE COURT: Right. But it's my understanding
12 that Service Report 17 will be filed on or before the 4th of
13 June.

14 MS. SCHNEIDER: That's right -- well, I think
15 Your Honor changed it to the 11th of June.

16 THE COURT: Oh, the 11th. You're right.

17 MS. SCHNEIDER: But if we, if we discuss and
18 resolve Service Report 17 at the next status conference,
19 that's when I think we can set a deadline for the filing
20 of this list. But the other point to make in conjunction
21 with this, is that -- and Ms. Griffin stressed this to me
22 and Mr. Ferguson in March when we met with her -- is that we
23 have currently Order, document number 1300 in the B case
24 that limits the service at present. And she suggested very
25 strongly that we try to get as much done and finished before

1 moving beyond the Order, where we have to start serving
2 everyone.

3 So I can see -- I think it makes sense to finish
4 the E-service order and get things ready to tee it up for
5 action, but I'm not -- I think we need to think about when
6 we want to actually move beyond the boundaries of service
7 Order 1300.

8 THE COURT: Well, I don't disagree with that
9 analysis as all, so -- but I don't know that you need any
10 order from me on that, do you?

11 MS. SCHNEIDER: No, we don't right now. But I
12 guess that's really just to respond to Mr. DePaoli and to try
13 to talk about the sequencing issue.

14 The next item, unless there's anything else, is the
15 website. And one of the questions that we have yet to follow
16 up on -- Ms. Griffin was going to check on the -- a little bit
17 more about the Court's ability to do a website. And we need
18 follow-up with her and continue our internal discussions,
19 and see if there's some way that we can setup a website.

20 THE COURT: Was the website setup in the Orr
21 Ditch Decree case?

22 Mr. DePaoli, you're in that one, aren't you?

23 MR. DEPAOLI: Yes. It was not setup by the
24 Court. It's setup with Sunshine Litigation Services.

25 MS. SCHNEIDER: And what we had mentioned last

1 time -- this is Susan Schneider again -- was that we were --
2 my office was starting to prepare what they thought were
3 varying cost proposals to do an outside website. And it had
4 seemed to us that there might be a way to do a website a
5 little more affordably than with Sunshine. And that, I think,
6 is something we, the parties have not followed up on in the
7 last month. But, we should be doing that.

8 MR. DEPAOLI: One of the -- this, again, gets
9 back to the, the completion of the Service Report 17, the
10 list; getting the order out to everybody to see how many
11 people actually signup for the service under the Court's
12 electronic system. Because the more people that get -- that
13 signup for that, the less people that are going to be needing
14 to go to a website, which I think will help us make getting --
15 if we have to get it from an outside source, make that a
16 cheaper proposition.

17 So, it's difficult to really pin down an outside
18 source when you tell them we could have anywhere between,
19 somewhere up to a couple thousand people who will need access
20 to it, to who knows how many signup for the other. So, I
21 agree we have to be looking at this, but we really need to get
22 some of those other things done before we can really pin it
23 down, at least with the outside stuff.

24 MS. SCHNEIDER: This is Susan Schneider. Then
25 it seems to me, then, that the website is probably not

1 something for further discussion immediately. Perhaps we
2 can come back to it at the next status conference. But,
3 certainly, I will contact Ms. Griffin.

4 THE COURT: All right. We will defer to you
5 all and plan on discussing it further in July.

6 MS. SCHNEIDER: The next item, Your Honor, is
7 post-service issues in C-125-B. It seems to me that these
8 issues are still premature. There are issues that we need to
9 have, but they are on the horizon.

10 THE COURT: Well, I think particularly in light
11 of the, I don't want to say delay, necessarily, but the
12 service issues in 125-C, because that's going to be several
13 more months, is the way Mr. Herskovits described it -- am I
14 right in that, Mr. Herskovits?

15 MR. HERSKOVITS: Well, I think that is the
16 more conservative, safe assumption, Your Honor. I think we
17 will endeavor to complete service as soon as possible. And
18 because it's a small number, relatively speaking, but I think
19 it's fair to characterize it as a fairly small number of
20 remaining defendants to serve, there isn't that much more
21 that would be added to a list because I can't say with
22 absolute certainty that we would be able to complete service
23 sooner than at least a few months after the July status
24 conference. I think you're correct in building in those
25 extra months that it could take.

1 MR. DEPAOLI: Uh --

2 MS. SCHNEIDER: Your Honor, this is Susan
3 Schneider. The post-service issues are discussed in agenda
4 items six and seven. Seven is dealing with the C-125-C
5 subproceeding, and six focuses on the C-125-B subproceeding.
6 I don't think that there is a need to holdup C-125-B for
7 completion of service in C-125-C.

8 THE COURT: I would agree. My concern was more
9 about when we start addressing the threshold issues.

10 MS. SCHNEIDER: And the threshold issues in
11 C-125-B, while I don't think it's proper to -- it's premature
12 right now to try to figure out a schedule for additional
13 briefings on the two issues noted under item C, I do think
14 that that's -- will be on the horizon for the parties sooner
15 than those issues might necessarily be on the horizon in
16 C-125-C.

17 MR. DEPAOLI: Your Honor, may I be heard on that
18 question?

19 I do not believe that -- and these threshold issues
20 are related strictly to B. They are covered by the Case
21 Management Order in B. I would agree with what Mr. Herskovits
22 said that the motion to intervene is the issue that has to
23 come after service is complete in C. But, in B, we do not
24 believe that these are post-service issues. The Case
25 Management Order, and Judge Reed's recent order on service

1 cutoff date, it seems to me, relate moving these issues
2 forward, and are based upon joinder. And it's my
3 understanding, at least, that the United States has
4 completed service. We're waiting to get service reports.
5 But the Case Management Order, paragraph 11, did two
6 things:

7 "One, it specifically indicated that as soon as
8 convenient after entry of this order" -- and the Case
9 Management Order was, was entered, uh, in April 19th,
10 2000 -- "and upon appropriate notice to the parties presently
11 appearing in the case" -- meaning the primary parties --
12 "that the magistrate judge shall consider and make a
13 preliminary determination of the threshold issues to be
14 addressed at the outset of the litigation on the U.S.,
15 Tribe set counter-claims. Scheduling of such consideration
16 shall go forward, notwithstanding other proceeding provided
17 for in this order."

18 And Judge McQuaid was moving in that direction until
19 he recused himself. That's why we have all the briefing that
20 we had back then.

21 THE COURT: Is that back in 2010; do I recall
22 that?

23 MR. DEPAOLI: Uh --

24 THE COURT: See, I have a binder that I pulled
25 out the threshold issues, and it's rather thick. So is that

1 when the parties started talking about this?

2 MR. DEPAOLI: We actually -- I've actually lost
3 track of when we did that, Your Honor. I think it was in,
4 somewhere in -- it was before judge -- it was probably 2008,
5 2009 when we, when we did the briefing on that because I
6 think Judge Leavitt became involved in 2010.

7 So, it's clear that a preliminary determination can
8 be made immediately, that can move forward and ought to move
9 forward.

10 The Court then went on to indicate that the list
11 would not be finally resolved and settled by the magistrate
12 judge until all appropriate parties are joined. And if
13 service of process is complete, the parties are joined.
14 We're not going to be joining any new parties through anything
15 that will happen by way of publication. But so it, it seems
16 to me that we can move forward, at least to get a preliminary
17 determination, if not a final determination of the list of the
18 threshold issues, and that we ought to do that, as the Court
19 says in the Case Management Order: "So that the action may
20 proceed as promptly as possible upon conclusion of service of
21 process."

22 THE COURT: Promptly as possible --

23 UNIDENTIFIED SPEAKER: Excuse me, Your Honor --

24 THE COURT: -- and this case are almost a
25 contradiction in terms.

1 MS. SCHNEIDER: This is Susan Schneider. I
2 think, uh, that we're getting still a little ahead of
3 ourselves here. Paragraph 11 says: "As soon as convenient
4 after the entry of this order, and upon appropriate notice to
5 the parties presently appearing in the case."

6 We have a lot of parties who have appeared in the
7 case who are not getting -- will not be getting notice until
8 we move beyond service Order 1300.

9 MR. DEPAOLI: But, but --

10 MR. WILLIAMS: Your Honor, excuse me. This is
11 Wes Williams for the Walker Paiute Tribe.

12 THE COURT: I'm sorry. It was Mr. Williams?

13 MR. WILLIAMS: Yes. I wasn't sure if somebody
14 else was trying to speak.

15 THE COURT: No. Go ahead.

16 MR. WILLIAMS: I guess my recollection of
17 what Magistrate McQuaid's actions were are different from
18 Mr. DePaoli. When the parties submitted pleadings with the
19 Court regarding the threshold issues, at the end of that
20 process, from what I recall, Magistrate McQuaid stated that
21 the determining --

22 THE COURT: Just --

23 MR. WILLIAMS: -- what the threshold issues --

24 THE COURT: Mr. Williams, it's Magistrate Judge
25 McQuaid. The term magistrate went out in 1990.

1 MR. WILLIAMS: Okay. I apologize, Your Honor.

2 THE COURT: All right.

3 MR. WILLIAMS: But at the end of that process,
4 he, he stated that that issue would be held until the parties,
5 until all parties have been joined. And I believe there's
6 an order on that. I've been trying to find it quickly on my
7 computer, but I haven't been able to. But I think if we go
8 back and look at those pleadings, we can determine what
9 happened at that time pretty easily.

10 MR. DEPAOLI: Your Honor, Gordon DePaoli. I,
11 I don't think that's what happened, but I think -- I want to
12 respond to it. You have to keep in mind that paragraph 11
13 was written in April of 2000. And what the judge was talking
14 about there was "upon appropriate notice to the parties
15 presently appearing in the case" -- meaning, in April of
16 2000, not -- and he goes on to say, "that such consideration
17 shall go forward notwithstanding other proceedings provided
18 for in this order. And the other proceedings provided for
19 in the order was the service that we were talking about, so I
20 don't --

21 THE COURT: But he also goes on to say: "The
22 claims will not be finally resolved and settled by the
23 magistrate judge until all appropriate parties are joined."

24 MR. DEPAOLI: He does. And believe if service
25 is complete, all appropriate parties are joined. We are --

1 and that's for the final determination, but --

2 THE COURT: But we don't know that until we get
3 Service Report Number 17?

4 MS. SCHNEIDER: Your Honor, this is Susan
5 Schneider. If the Order that Mr. Williams was referencing is
6 order 489, and it's the Minutes of the Court from December
7 3rd, 2008, on preliminary -- or proposed preliminary threshold
8 issues, it reads:

9 "The Court advises the parties that according to its
10 interpretation of the Case Management Order, the threshold
11 issues cannot be decide until service is completed and all
12 parties are joined. When a date has been determined, when
13 service will be completed, the Court will hear oral argument
14 in addition to the briefing already done regarding the
15 threshold issues."

16 THE COURT: That's, uh --

17 MS. SCHNEIDER: It's --

18 THE COURT: -- that was December 3, 2008?

19 MS. SCHNEIDER: That's correct, Your Honor.

20 THE COURT: And what's that docket number?

21 MS. SCHNEIDER: It's 489.

22 It seems to me that service, to complete service
23 means finishing publication. So I think that this is -- what
24 Mr. DePaoli is suggesting is something that we should talk
25 about when we are getting publication over with. That's part

1 of service.

2 THE COURT: Well, unless you want to establish
3 a schedule for the Court to start wading into the threshold
4 issues today, it's also probably premature to get into it
5 now. But, my interpretation is that we shouldn't start
6 deciding the threshold issues until everyone gets served,
7 which what, I think, is expressed by Ms. Schneider, and what
8 seems to be expressed by Judge Reed in the scheduling -- year
9 2000 scheduling order, at lines 11 through 13, and then what
10 appears to be in document number 489.

11 So I think we're getting ahead of ourselves about
12 any thought about -- or having resolution of these threshold
13 issues right at this time. We can discuss it again at the
14 July status conference, but it's also -- enlighten me here,
15 everybody. The Case Management Order did not pertain to 125-C
16 because was 125-C not around at that time?

17 MR. HERSKOVITS: It was in existence at that
18 time, Your Honor, but the Case Management Order was only
19 issued in and only addressed the parties and issues within
20 the 125-B subproceeding.

21 And I apologize for not identifying myself to begin
22 with; this is Simeon Herskovits.

23 THE COURT: Was there any reason that anyone
24 knows of why Judge Reed it did not extend it to 125-C?

25 MR. DEPAOLI: It --

1 MR. HERSKOVITS: Well, I think that there are
2 a whole set of issues relating to ground water rights and
3 then, therefore, additional categories of parties that may
4 need -- may have needed to be served. And there may also be
5 issues relating to some of the claims on behalf of the Walker
6 River Paiute Tribe, other tribal entities, and other federal
7 agencies that may be so distinct from the single issue in
8 125-C, that it just didn't seem as though this particular
9 order, or the issues it addressed really pertained to that
10 125-C.

11 I'm speculating to some degree, Magistrate Judge
12 Cobb, because I was not participating in the litigation at
13 that time.

14 THE COURT: My thought is that when we get
15 around to resolving threshold issues, or even identifying
16 them, that we should be doing it in C as well as B, and
17 vice versa. Does anyone have any great problem with that
18 process, or that scheduling or sequencing?

19 Mr. DePaoli, you look a little perplexed there.

20 MR. DEPAOLI: I'm perplexed on a couple of
21 things, and I'll come back to them. I'm looking at the
22 docket from C-125-B and, in 2008, it's docket number 1468,
23 and Judge McQuaid indicated that he was going to hold oral
24 argument on whether answers would be required at the next
25 status conference on March 30th, 2009; and then later he

1 recused himself. But I think, Your Honor -- and this is
2 something that, going back to the first part of this, these
3 subproceedings, I think, need to be treated separately.
4 We have gotten in the habit of filing three identical
5 filings: One in the C-125, which pertains to the
6 administration of the Walker River Decree; an identical
7 one in C-125-B; and an identical one in C-12-C. Judge Reed
8 separated these proceedings, when they commenced, for
9 docketing purposes at a minimum, in order to not have, in
10 one file, matters that pertained only to something in the
11 other file.

12 I don't know whether there are any threshold issues
13 beyond whether Mineral County is allowed to intervene. I
14 think that is the first threshold issue, is whether Mineral
15 County is allowed to intervene and file their complaint in
16 intervention, or amended complaint. After that, there will
17 be --

18 THE COURT: Let me interrupt you for a second
19 though. What would you say is the ultimate threshold issue
20 in this case or these cases? Isn't it who gets the water?
21 And, doesn't that relate to everyone in all, in all three
22 cases?

23 MR. DEPAOLI: Yeah, I -- no, I --

24 THE COURT: Am I oversimplifying this?

25 MR. DEPAOLI: I don't see that as a threshold

1 issue. I sort of see that as the final issue.

2 THE COURT: Well, I call it the ultimate
3 issue here.

4 MR. DEPAOLI: It's the ultimate issue; without
5 question, it's an ultimate issue. I think, you know, there
6 may be issues that come up once there's a determination that
7 Mineral County can intervene. But whatever those are, they're
8 going to be things that are probably different than the
9 threshold issues that we have to deal with in B. And so
10 without saying that there shouldn't be some consideration of
11 that at some point in C, I just think that we need to think
12 about these matters separately, and I think we need to, at
13 some point, get back to making filings that pertain to B in
14 in B; and filings that pertain to C in C, and not burdening
15 the main administration file at all with, with all of these
16 papers. And I think that will help us think about these
17 status conferences.

18 I actually would suggest that we have a separate
19 agenda. I have no problem, I think it makes good sense to
20 have these status conferences on the same day at the same
21 time because of all the overlap with counsel. I just think
22 it would be very useful if we separated the agenda by this is
23 the B agenda, this is the C agenda. And it would be easier
24 for all of us to keep track of what's going on. So --

25 THE COURT: You know, I think Mr. DePaoli's

1 suggestion is well-advised.

2 Does anyone have any problem with segregating the
3 agenda items from the B case to the C case; noting, however,
4 that there may be some overlap of issues?

5 MS. SCHNEIDER: This is Susan Schneider. I
6 can certainly see not filing the agenda items in the main
7 case. We had begun our status conferences with Your Honor
8 in all three; the main case and the two sub-proceedings, so
9 that's why some of those filings were made in all three. I
10 think, though, that we've always had one agenda that we've
11 worked off of. I think the issue, really, is just to separate
12 them out, perhaps, a little more than we did so far in this
13 particular agenda. But the reason that the agenda was setup
14 the way it is, was, is because there are so many issues of
15 overlap right now. As we move along, there will not be as
16 many.

17 But, I do think that it makes a lot of sense to
18 keep them all in the same filing. I agree that we can
19 separate them out better in the future.

20 MR. HERSKOVITS: This is Mr. Herskovits again.
21 I want to, for the most part, agree with what Ms. Schneider
22 just said. I think practicality is what should really,
23 probably, inform how the Court proceeds most on this. And
24 it seems to me that if -- the fact of the matter is that
25 there are some significant overlapping issues that pertain

1 to both B and C. And so it seems as though a single agenda
2 is fine, if it's the most efficient way to show the
3 overlapping issues, and then also separate out the issues
4 for the agenda that pertain to B and C. I'm not sure, at
5 the end of the day, it makes an enormous difference. And
6 I'm not sure that we're really talking about a significant
7 burden on (inaudible) in terms of whether we separate the
8 agendas in one or another way. But I do think that we've
9 been doing it the way we have because, in this procedural
10 phase of the case, particularly as it pertains to service,
11 there has been a great deal of overlap, as evidenced by the
12 whole set whole set of successors in interest issues and the
13 orders and objections that it gave rise to.

14 THE COURT: Okay. Let me -- I'm not going
15 to interject myself into that issue, and I'm going to let
16 counsel, maybe proceed with the status quo, and not issue any
17 edict on that order.

18 I do have a question about how much more time
19 you think it's going to take for seven, eight, nine and
20 ten, because we've been going over here, a little over an
21 hour-and-a-half, and I think we're going to burn out the
22 court reporter unless we take a little break.

23 MS. SCHNEIDER: Your Honor, this is Susan
24 Schneider. I think we have already discussed eight in the
25 context of other matters.

1 THE COURT: All right.

2 MR. HERSKOVITS: I think that is true of number
3 seven, too, Your Honor. This it Mr. Herskovits.

4 THE COURT: Well, I don't know that we have
5 addressed the briefing of the amended complaint and the
6 intervention. Does that have to wait? Is the consensus
7 that it has to await getting all the parties involved or
8 served?

9 MR. HERSKOVITS: I'm not sure I heard Your
10 Honor's question.

11 THE COURT: Well, my question --

12 MR. HERSKOVITS: I think it has to wait until
13 service --

14 THE COURT: It says the issue is the briefing
15 and resolution of Mineral County's amended complaint and
16 resolution of motion for a preliminary injunction. The
17 question is does that have to await completion of service?

18 MR. HERSKOVITS: Yes, Your Honor. I think
19 that what Ms. Schneider was intending to do with this item on
20 the agenda was to designate that that was the, one, really,
21 issue next for the Court after service is complete in C.

22 THE COURT: Well, according to what I've
23 read in the Case Management Order and that document that
24 Ms. Schneider cited, I think that's probably the way to
25 proceed. Was that document 489?

1 MS. SCHNEIDER: That was the document dealing
2 with the threshold issues in C-125-B, but it was also a joint
3 status conference. It seems to me, like, as with other items
4 on the agenda, that -- while I'm not counsel in the case --
5 but that the briefings addressed in item seven, that that's
6 premature at this point to talk about further.

7 THE COURT: Does anyone else wish to address
8 item seven then?

9 (No response.)

10 THE COURT: All right.

11 We've said we've addressed item eight already, is
12 that correct?

13 MS. SCHNEIDER: That's correct.

14 THE COURT: And then we need to -- I don't
15 know that we need to add any more issues that we haven't
16 already addressed.

17 Does anybody have an issue to raise that we need to
18 identify?

19 Mr. DePaoli.

20 MR. DEPAOLI: I just have a question, Your
21 Honor. I -- what -- which -- what proceeding is docket 489
22 filed in?

23 THE COURT: I think she said B.

24 MR. DEPAOLI: It's definitely not B.

25 UNIDENTIFIED SPEAKER: Your Honor --

1 MS. SCHNEIDER: Well --

2 MR. WILLIAMS: Your Honor, this is Wes Williams,
3 489 is in C case. The same pleading that's filed in the B
4 case is 1468.

5 THE COURT: So it's 489 in C; and 1468 in B?

6 MR. WILLIAMS: Yes.

7 MS. SCHNEIDER: Thank you. I'm sorry. I
8 have a notebook of orders, but I don't put them in for every
9 subproceeding.

10 THE COURT: Did that answer your question,
11 Mr. DePaoli?

12 MR. DEPAOLI: Yes, it did.

13 THE COURT: All right. We need to schedule a
14 date in July then for our next status conference, and I just
15 need to get something out of chambers. Just stay seated.

16 So, enlighten me again. What's going to be
17 filed on or before June 11?

18 MR. HERSKOVITS: This is Mr. Herskovits. In
19 C-125-C, we will file a Service Report with an updated caption
20 and service package.

21 MS. SCHNEIDER: And this is Susan Schneider.
22 In C-125-B, we will file Service Report 17.

23 THE COURT: Now, was there something that
24 Mr. DePaoli needed to address as to B or C, with those
25 captions on June 11?

1 Mr. DePaoli or Mr. Ferguson.

2 MR. DEPAOLI: Your Honor, I think we should
3 have a deadline by when anyone wishing to file any objections
4 or comments, or whatever related to either the filing in
5 C-125-C or the filing in C-125-B, should file that by. And
6 that would be --

7 THE COURT: What date would you suggest?

8 MR. DEPAOLI: Sometime, perhaps, a week before
9 the next status conference.

10 THE COURT: You know, I think we might have
11 it a little bit sooner than that.

12 MR. HERSKOVITS: Your Honor, this is
13 Mr. Herskovits. I would like to make a suggestion. I
14 don't know if this will work for other parties, but I was
15 going to suggest that perhaps the status conference could
16 be scheduled for Monday, July 23rd. And then sometime,
17 perhaps, before that for the deadline for comments and
18 objections.

19 MS. SCHNEIDER: This is Susan Schneider. I
20 can't make it the 23rd. I have a doctor's appointment.

21 MR. DEPAOLI: I'm not available that day either,
22 Your Honor.

23 MS. SCHNEIDER: But during the prior week, I am
24 available, I think, most days.

25 MR. NEVILLE: Your Honor, this is Michael

1 Neville. I apologize, but I was just cutoff momentarily for
2 about the last two minutes.

3 THE COURT: We just --

4 MR. NEVILLE: What was that July --

5 THE COURT: We just entered an order dismissing
6 California, so that's all right.

7 THE WITNESS: So I don't need to worry
8 about it?

9 THE COURT: No. You're out of here.
10 We were talking about trying to setup a status
11 conference in July, and one suggested date was July 23,
12 which doesn't work because I'm going to be at a magistrate
13 judge conference in Denver. So, we either have to go to the
14 preceding week or the following week. And I'm kind of --

15 MR. NEVILLE: Thank you.

16 THE COURT: And I'm kind of -- I'd prefer to do
17 it the week of the 16th.

18 MR. HERSKOVITS: That is a problem for me, as I
19 ex --

20 THE COURT: Is that your mother's birthday?

21 MR. HERSKOVITS: Yes.

22 THE COURT: Could you appear telephonically from
23 back east, wherever you're going to be?

24 MR. HERSKOVITS: I could do that. I would
25 prefer, actually, to attend in person for the next status

1 conference. It seems as though we'll have quite a bit of
2 meaty subject matter to discuss, but I don't --

3 THE COURT: Well, Ms. Schneider, do you intend
4 on appearing in person next time around?

5 MS. SCHNEIDER: I will try to attend in person.

6 THE COURT: Then why don't we look at the week
7 of July 30.

8 MS. SCHNEIDER: Then that, that causes me a
9 problem unless it's near the end of the week. I have, uh, a
10 family reunion at my house for -- until the 31st. But I
11 could come, I could do it later in the --

12 THE COURT: What about Thursday, the 2nd?

13 MS. SCHNEIDER: I think that's a possibility;
14 that could work.

15 THE COURT: How about if we, -- I presume you're
16 in Denver, right?

17 MS. SCHNEIDER: Yes, Your Honor.

18 THE COURT: And Mr. Herskovits, where are you
19 traveling from?

20 MR. HERSKOVITS: I'll be traveling from
21 New Mexico.

22 THE COURT: All right. Then probably you would
23 have to travel the night before anyway, so maybe we could set
24 this at ten o'clock on Thursday the 2nd.

25 MR. HERSKOVITS: That certainly will work for

1 my schedule.

2 MS. SCHNEIDER: That should work for me, too.

3 THE COURT: Okay. In that case then, if we're
4 filing those reports on June 11, there doesn't seem to be
5 great rationale to have them filed much earlier than, say --
6 the objections, much earlier than, say, July 14.

7 When do you think you'll have your agenda then,
8 Ms. Schneider?

9 MS. SCHNEIDER: I would -- oh, let's see. I
10 would probably -- I'm going to aim to try to do an agenda
11 somewhere around the 20th or 23rd, simply because I have to
12 take some time off with all my relatives.

13 THE COURT: You know, I would appreciate that
14 myself because it may be that I elaboration of some of the
15 agenda items in writing, with a memorandum of some kind.
16 So if you set a deadline then for the next agenda for July
17 what?

18 MS. SCHNEIDER: Um, I could try -- what about
19 the 20th; would that help? That's weeks in advance.

20 THE COURT: I think that works.

21 MS. SCHNEIDER: Okay.

22 THE COURT: When you do the agenda, in
23 addition to filing it, would you e-mail it to chambers
24 for me, please.

25 MS. SCHNEIDER: I will.

1 THE COURT: And I presume this will be one of
2 the joint agenda again, like we've had before?

3 MS. SCHNEIDER: Yes. Yes.

4 THE COURT: All right. Okay.

5 MS. SCHNEIDER: And I wanted to ask the
6 parties to put a tickler on their own calendars to contact
7 me in early July with agenda items that they would like to
8 see on.

9 THE COURT: Again, thank you for taking the lead
10 on the agendas, Ms. Schneider. It's very helpful and much
11 appreciated.

12 Is there anything else to come before Court at this
13 status conference?

14 MR. DEPAOLI: Your Honor, the 14th date turns
15 out to be a Saturday, so it could be either the 16th or the
16 13th maybe.

17 THE COURT: In July?

18 MR. DEPAOLI: Yes.

19 THE COURT: I think July 13th is -- what were
20 you talking about the 14th?

21 MR. DEPAOLI: Yes.

22 THE COURT: July 13th is a Friday.

23 MR. DEPAOLI: Yeah. I thought I heard the 14th,
24 but maybe I misheard.

25 THE COURT: Oh, that's the deadline for

1 objections, isn't it? And you may have heard the 14th as
2 the 13th.

3 And the agenda, Ms. Schneider, is what day; the
4 20th?

5 MS. SCHNEIDER: Yes. Yes, Your Honor.

6 THE COURT: All right. Thanks for bringing that
7 to the attention for the Court to clarify those.

8 Anything else?

9 (No response.)

10 THE COURT: All right. I believe this matter,
11 then, we can consider it adjourned.

12 Thank you all.

13 (Court Adjourned.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Kathryn M. French

June 6, 2012

KATHRYN M. FRENCH, RPR, CCR
Official Reporter

DATE