

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

UNITED STATES OF AMERICA,)	IN EQUITY NO. C-125-RCJ
)	Subproceedings: C-125-B and C-125-C
Plaintiff(s),)	
)	3:73-CV-0125-RCJ-WGC
)	3:73-CV-0127-RCJ-WGC
vs.)	3:73-CV-0128-RCJ-WGC
)	
)	
WALKER RIVER IRRIGATION, et al.,)	MINUTES OF PROCEEDINGS
)	
Defendant(s).)	DATED: August 2, 2012
)	
)	

PRESENT: HONORABLE WILLIAM G. COBB, U.S. MAGISTRATE JUDGE

Deputy Clerk: Katie Lynn Ogden Reporter: Donna Davidson

Counsel Present: Susan Schneider, Wes Williams, Jr., Gordon DePaoli, Dale Ferguson, Therese Ure, Simeon Herskovits and Iris Thornton

Counsel Appearing Telephonically: Marta Adams, Karen Peterson, Michael Neville, Chris Watson, Stacy Simon, George Benesch

PROCEEDINGS: STATUS CONFERENCE

10:05 a.m. Court convenes.

The court and counsel confer regarding the agenda items as outlined in the United States' Status Report (Doc. 1723 in Case No. 3:73-CV-0127-RCJ-WGC). Counsel present their positions as to each of the items.

I. Preliminary Matters

The court advises the parties that Lia Griffin, Operations Manager for the United States District Court, will be attending this hearing. Ms. Griffin will discuss the issues on the interrelationship between the service lists, the docket sheet, and CM/ECF when appropriate during this hearing.

The court addresses with counsel the feasibility and/or desirability of having the parties or a designee of one of the parties propose minutes. It is the court's observation that due to the parties' greater familiarity with the complexities of these cases that more detailed minutes (beyond those prepared by the court) or some type of "summary of proceedings" may be beneficial. The parties agreed. Ms. Schneider volunteers to take the lead on preparing the parties minutes and will request

MINUTES OF THE COURT

3:73-CV-0125-RCJ-WGC

3:73-CV-0127-RCJ-WGC

3:73-CV-0128-RCJ-WGC

Date: August 2, 2012

Page 2

her paralegal, Ms. Eileen Rutherford, to undertake this project. The court sets forth its expectations of the draft minutes and asks that they be circulated among primary counsel for their input and revisions. Thereafter the draft minutes shall be filed with the court. The court and parties will revisit this concept at a later date.

II. Status Conference Agenda Items (Dkt. #1723, Case No. 3:73-cv-00127-RCJ-WGC)

1. Transfer of C-125 and its Subproceedings to Chief Judge Jones

The transfer of C-125 and its subproceedings to Chief Judge Robert C. Jones has occurred. The parties have nothing further to address regarding this agenda item.

2. C-125-B – Completion of Service and Service Issues

a. Service Report 17 (Doc B. - #1717): Consideration of this Report and Proposed Order (Doc. B - # 1722).

Ms. Schneider advises the court that Service Report 17 was filed on June 11th and no objections or comments were filed in this regard. The United States of America (“United States”) filed a proposed order in the B case, Dkt. #1722, and requests that the court sign the order. No objections appearing by the parties, the court **APPROVES** the order concerning the *Seventeenth Report of the United States of America Concerning Status of Service on Certain Persons and Entities*.

b. Any remaining personal service issues.

The United States indicates it anticipates submitting a Proof of Service for the parties related to any remaining entities by August 17th or during the week of August 20.

c. Possible updates to California service.

Ms. Schneider believes there are a number of issues regarding California service that need to be clarified. Ms. Schneider proposes that the court calendar a telephonic status conference so that a status check can be addressed regarding California service. The Court agrees and schedules an interim telephonic status conference for **Wednesday, August 22, 2012, at 11:00 a.m.**

d. Addressing persons an entities that were served but never responded or appeared.

The United States circulated a proposed order with the parties and then submitted the order to the court on August 1, 2012 (Dkt. #1726). There are no objections or comments from the other parties. The Court believes that the proposed order is consistent with the case management order, Judge Levitt’s order, and Judge Reed’s order confirming Judge Leavitt’s Report and Recommendation. The court hereby **ADOPTS** the *Order Addressing Notice with Regard to Parties*

MINUTES OF THE COURT

3:73-CV-0125-RCJ-WGC

3:73-CV-0127-RCJ-WGC

3:73-CV-0128-RCJ-WGC

Date: August 2, 2012

Page 3

Who Already Have Been Served but Who Have Not Appeared (Dkt. #1726).

e. Status of efforts by the United States, Walker River Paiute Tribe, State of California and Mono County to address the following service or threshold issue raised by the State of California: whether claimants with dormant or unexercised riparian surface water rights under the law of California and/or claimants with overlying, unexercised groundwater rights are subject to compulsory joinder. See California State Agencies' Supplementary Report (Jan. 30, 2012; B - #1057).

i. Dormant or unexercised riparian surface water rights:

Counsel will report on August 22, 2012, the scope of any possible additional service.

ii. Overlying, unexercised groundwater rights:

The United States will draft a proposed order on the issue of overlying, unexercised groundwater rights. The proposed order shall be reviewed by the Primary Parties before submitting to the court.

f. Status of and Schedule for Completion of Certain Tasks

The court is concerned about how logistically the list is going to blend into, one, the docket sheet and, two, maybe later electronic (CM/ECF) service of these people. The Court asks Ms. Griffin to address the concerns of the Clerk's Office. Ms. Griffin indicates that CM/ECF is very limited in how it functions. With respect to the caption, it is created by an entry of parties. When parties are added that is when, if the information is available, the attorney would be added; otherwise, the party added will be classified as Pro Per. The Clerk's Office will need clarification regarding the status of the threshold issues because in some of the larger water cases, service of everyone on the list doesn't begin until after the case is at the threshold issue. Ms. Griffin indicates that she will need to explore some options within CM/ECF to add people in so that if they are parties to the case, they are included on the caption, and not being served; so they would not appear on the notice of electronic filing.

i. the caption and filing deadline; and

ii. a list of names and addresses of person and entities served who have filed a notice of appearance (to be provided to the Clerk's Office):

The court believes that at this point in the process of service, the caption in C-125-B shall be created and distributed among the primary parties by the end of August; a copy of this list shall be provided to Ms. Griffin as well. Any comments or objects to the list shall then either be filed or provided to Ms. Schneider. Thereafter, the list of parties shall be filed with the court that will satisfy District Judge Reed's court order of 2000, page eight, paragraph nine.

MINUTES OF THE COURT

3:73-CV-0125-RCJ-WGC

3:73-CV-0127-RCJ-WGC

3:73-CV-0128-RCJ-WGC

Date: August 2, 2012

Page 4

The court will address the list filed by the parties at the next status conference. The next status conference will be held on **Wednesday, October 3, 2012, at 1:30 p.m.**

iii. a list of persons and entities served who have not file a notice of appearance:

The court is advised that the this specific list is not finished; however, the United States plans to have the list finished prior to the August 22, 2012, telephonic status conference.

iv. clarification of any persons or entities that have filed an appearance but were not served:

The court is advised that the National Fish and Wildlife Foundation have filed an appearance but were not served. It is the intentions of the National Fish and Wildlife Foundation to us the recently approved substitution documents.

3. C-125-C – Completion of Service and Service Issues

a. Mineral County's Report Concerning Status and Completion of Service and Related Service Package:

i. Consideration of this Report, its attached documents, and related Proposed Order; and

ii. Consideration of file comments and objections:

Mr. Herskovits indicates that Dkt. #604 in Case No. 3:73-CV-00128-RCJ-WGC accommodates all of the comments that the Walker River Irrigation District ("WRID") made in its Comments on Mineral County's Report Concerning the Status and Completion of Service and Related Service Package (Dkt. #601). Therefore, Mineral County submits the revised order for the Court's approval.

With no objection appearing, the court hereby **ADOPTS** the order relating to the completion of service in 125-C (Dkt. 604-2).

iii. Schedule for completing various tasks related to this Report.

The court inquires if there is any opposition to Mineral County's motion to intervene. The court is advised that WRID has not determined if intervention should be granted and does not know if it will object to intervention.

b. Compiling a list of *pro se* parties.

The court is advised that Mineral County is completing a list of *pro se* parties but completion of the list is premature at this time.

MINUTES OF THE COURT

3:73-CV-0125-RCJ-WGC

3:73-CV-0127-RCJ-WGC

3:73-CV-0128-RCJ-WGC

Date: August 2, 2012

Page 5

c. Schedule for completion of service after approval of service package.

As indicated in Dkt. #604 (in Case No. 3:73-CV-00128-RCJ-WGC) the proposed completion date for service is March of 2013.

4. Issues Common to Both Subproceedings

a. Publication:

Ms. Schneider advises that court that a draft of a proposal for service by publication is currently forthcoming and will be circulated to the parties within the next couple weeks. During the upcoming telephonic conference call, Ms. Schneider will update the court concerning publication.

b. Notification protocol and use in each subproceeding:

i. E-service order

1. Establish schedule for completion of lists of names and addresses of persons and entities served who have filed a notice of appearance but who are not represented by counsel.

The completion of the proposed e-service order will be finished by the end of August. For clarification the court notes that the e-service order will advise the parties of the availability of being served by e-mail from the court.

2. Completion of E-Service Order.

The United States is currently in the process of completing a list of the names and addresses of persons and entities who were served, who filed notice of appearance and were not represented by counsel.

3. Establish date for mailing of Notice and Order.

This issue is premature.

ii. Establish schedule for submission of Notice and Order Regarding Election By *Pro Se* Defendants to Receive Service from the CM/ECF System.

This issue is premature.

MINUTES OF THE COURT

3:73-CV-0125-RCJ-WGC

3:73-CV-0127-RCJ-WGC

3:73-CV-0128-RCJ-WGC

Date: August 2, 2012

Page 6

c. Website updates.

i. Status and coordination with Clerk's Office.

The court is advised that the concept of creating a website is still underway. Ms. Griffin notes that although creating a website is possible, there are some concerns. One issue would be whether a website might bypass PACER. Another concern is where is the information coming from. For example, is it a direct feed from CM/ECF? Further issues include, how sealed documents are preserved; how would the website impact the IT department as far as maintenance; at whose expense would the website be maintained, etc. At this point, the decision to create a website concerning these cases will be pending further proposals by the parties.

ii. Schedule for Progress on Timing of Website for this Matter for Access by Pro Se Defendants Who Do Not Elect to Receive Service from the CM/ECF System.

This issue is premature.

5. C-125-B – Post-Service Issue and Discussions of Sequencing Issues

a. Establishment of schedule for any additional briefing and/or oral argument for purposes of a final determination of list of threshold issues.

The court request the parties to be prepared to discuss and identify the threshold issues during the next telephonic hearing in August. The parties shall file their respective lists no later than **Monday, August 20, 2012, at 12:00 p.m.** The August 21st hearing is rescheduled for **Wednesday, August 22, 2012, at 11:00 a.m.**

b. Establishment of schedule for any additional briefing and/or oral argument for purposes of determining whether, and if so, when answers are required.

The court requests that the above filing to be made by August 20, 2012, also provide a reference to prior brief on the question of when Answers should be required.

MINUTES OF THE COURT

3:73-CV-0125-RCJ-WGC

3:73-CV-0127-RCJ-WGC

3:73-CV-0128-RCJ-WGC

Date: August 2, 2012

Page 7

6. C-125-C – Post-Service Issue and Discussion of Sequencing Issues: Briefing and resolution of Mineral County’s Amended Complaint in Intervention (#C-20) and Motion for Preliminary Injunction (#C-22).

At this time, it appears a decision cannot be made regarding the complaint in intervention and the preliminary injunction until after everyone is served. The court notes that it would like to defer briefing on the preliminary injunction until after the outcome of whether the Mineral County complaint in intervention is approved by the court. Should Chief Judge Robert C. Jones rule that it is viable, then the parties can turn to the preliminary injunction. However, should Chief Judge

Robert C. Jones rule that the intervention is not appropriate, than that motion seemingly becomes moot.

7. Any implementation issues regarding Judge Reed’s service-related Order

Ms. Schneider advises the court that there is nothing at this point to discuss related to this agenda item.

8. Such additional issues that may be identified subsequent to the filing of this agenda and/or at the status conference.

Nothing further to be identified as to this agenda item.

9. Scheduling next status conference and/or informal meetings

(1.) Telephonic Status Update hearing scheduled for: Wednesday, August 22, 2012, at 11:00 a.m.

(2.) Status Conference scheduled for: Wednesday, October 3, 2012, at 1:30 p.m.

Counsel appearing telephonically shall dial 1-877-873-8017, enter the access code, 3416460, and enter the security code 82212 approximately five (5) minutes prior to the hearing.

III. Brief review of the Outcome of Today’s Hearing

The court will sign and file the following Orders: (1) Dkt. 604-2 in case no. 3:73-CV-00128-RCJ-WGC – *Order Relating to Completion of Service*; (2) Dkt. #1726 in case no. 3:73-CV-00127-RCJ-WGC – *Order Addressing Notice with Regard to Parties Who Already Have Been Served But Who Have Not Appeared*; and (3) Dkt. #1722 in case no. 3:73-cv-00127-RCJ-WGC – *Order Concerning Seventeenth Report of the United States of America Concerning Status of Service on Certain Persons and Entities*.

Ms. Schneider reminds the court that she has been asked to draft an order regarding the unexercised groundwater uses, and that service will not be required at this point for those users.

MINUTES OF THE COURT

3:73-CV-0125-RCJ-WGC

3:73-CV-0127-RCJ-WGC

3:73-CV-0128-RCJ-WGC

Date: August 2, 2012

Page 8

On a final note, the court requests from the parties to comply with Special Order 109 IV(D). Special Order 109 IV(D) requires any document that exceeds fifty pages in length that is submitted to the court electronically shall also be submitted to chambers in paper form. Furthermore under Local Rule 10-3(a), exhibits submitted in paper form shall also be tabbed accordingly.

12:18 p.m. Court adjourns.

LANCE S. WILSON, CLERK

By: _____/s/_____

Katie Lynn Ogden, Deputy Clerk