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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BEFORE THE HONORABLE WILLIAM G. COBB, MAGISTRATE JUDGE
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United States of America, : No. 3:73-cv-0125-RCJ-WGC
: 3:73-cv-0127-RCJ-WGC
Plaintiff, : 3:73-cv-0128-RCJ-WGC
:
-vs- : August 22, 2012
:
Walker River Irrigation : United States District Court
District, et al., : 400 S. Virginia Street
: Reno, Nevada 89501
Defendants. :
:
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TRANSCRIPT OF STATUS CONFERENCE

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

14 COUNSEL PRESENT: Gordon DePaoli
Dale Ferguson
15 Attorneys at Law
16 COUNSEL APPEARING Susan Schneider
TELEPHONICALLY: Eileen Rutherford
17 Marta Adams
Simeon Herskovits
18 Therese Ure
Wes Williams
19 George Benesch
Karen Peterson
20 Iris Thornton
Michael Neville
21 Chris Mixon
Stacey Simon
22

23 Proceedings recorded by mechanical stenography produced by
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CALIFORNIA LICENSE NO. 8536

1 Reno, Nevada, Wednesday, August 22, 2012, 11:10 a.m.

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4 THE COURT: Please be seated, everybody.

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

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

12 Counsel present in the courtroom are Gordon DePaoli
13 and Dale Ferguson.

14 Counsel appearing telephonically are Marta Adams,
15 Susan Schneider, Eileen Rutherford, Therese Ure, Wes Williams,
16 George Benesch, Karen Peterson, Simeon Herskovits, Michael
17 Neville, Iris Thornton, and Christopher Mixon.

18 And counsel who just appeared, could you please
19 state your names.

20 MS. SIMONS: Stacey Simons.

21 THE CLERK: Okay. Thank you.

22 THE COURT: Good afternoon, or good morning,
23 wherever you are, everybody. Thank you for appearing by
24 phone.

25 I have received the proposed agenda items for the

1 Status Conference. Unless anyone has any question or
2 suggestions, I'm going to just move ahead with the Status
3 Conference agenda. One thing I would ask is that so many
4 people appearing by telephone, if you do speak, would you
5 please state your name beforehand so that the court reporter
6 can figure out who it is who is speaking.

7 The first agenda item would be the review of
8 the, what we called the Minutes, proposed Minutes of the
9 conference session. And one thing I would like to, perhaps,
10 do first is thank -- is it Ms. Rutherford, who is probably,
11 primarily responsible, with Ms. Schneider, for preparing this
12 summary?

13 MS. SCHNEIDER: Thank you, Your Honor. She's
14 sitting here in the room with me. This is Susan Schneider.
15 She's sitting here with me.

16 THE COURT: All right. Well, I appreciate her
17 thorough work. And, apparently, you've run it by the other
18 principal parties and no one had any objection to them.

19 MS. SCHNEIDER: Your Honor, Susan Schneider
20 again. There are some changes suggested by people, and we
21 included the ones -- we included them, to the extent they
22 seemed to -- we included most of them.

23 THE COURT: One thing that's come to my
24 attention, I don't know if there's any hard or fast rule,
25 but it seems like the Court should still maintain its own

1 Minutes and that's why we did prepare Minutes, probably more
2 extensively than I would like to see down the road if we're
3 going to have Ms. Rutherford's work product here, too. And I
4 was suggesting that maybe what the parties submit be called
5 something like a "Summary of Proceedings," or something to
6 that effect, so that we will have the Court official Minutes,
7 but we'll also have the summary, whatever we end up calling
8 it, that I can approve for filing in these cases.

9 Any suggestion from anyone on that subject?

10 MS. SCHNEIDER: Your Honor, this is Susan
11 Schneider. That is certainly fine with us. And I did
12 want to note, for the record, and for the other parties, that
13 what we did this last time, and would be -- would continue
14 to do is to send a Word copy of what would now be our "summary
15 of the proceedings," to chambers, to try to make compilation
16 of Minutes a little easier, if possible.

17 THE COURT: It certainly would. And I
18 appreciate that.

19 If there is no objection, what I would like to do,
20 and we will rename it before I sign it and uploaded it, to
21 call it "Summary of Proceedings of the Status Conference."
22 Unless you have -- somebody has an objection, speak up now,
23 otherwise that's what we're going to call it.

24 (No response.)

25 THE COURT: All right. It doesn't appear anyone

1 has any objection.

2 The second question is does anybody have any problem
3 with any of the content of the document we're now calling
4 Summary of Proceedings?

5 (No response.)

6 THE COURT: There appears to be no objection,
7 so this document will be executed and uploaded in the three
8 cases, 125, 127, and 128.

9 And, again, Ms. Rutherford, thank you for your work
10 on that, as the Court appreciates it very much.

11 MR. NEVILLE: Your Honor, this is, this is
12 Michael Neville with the California Attorney General's Office
13 representing California state agencies, my -- this is
14 really -- this doesn't need to necessitate a change in those
15 Minutes, but I was out of the office until yesterday on
16 vacation, and I think -- I'm not sure that the Minutes fully
17 reflected the fact that, in my understanding, the Court had
18 given us until yesterday to file our comments on the threshold
19 issues, which we did -- at least we discussed that at the last
20 conference. I'm not certain whether the Minutes reflected
21 that, but I just wanted to clarify that for the record.

22 THE COURT: All right. That's fine. I will
23 note that I have received California's filing on the threshold
24 issues.

25 MR. NEVILLE: Thank you.

1 THE COURT: Next agenda item -- and if we can,
2 counsel, I'd like to try move through these as expeditiously
3 as possible. I do have an Inns of Court meeting that I would
4 kind of like to get to. But, if I don't, that's all right.

5 Ms. Schneider, do you want to take the discussion
6 for us on the C-125B, Item Two?

7 MS. SCHNEIDER: Yes, Your Honor, I will.

8 Under A-1, which is the status of renaming personal
9 service efforts and related filing of Proofs of Service, our
10 status here is that we have not done a filing as we had hoped
11 to do. What has happened is our process server has been out
12 because of a family issue which has delayed him finishing his
13 work; however, he did just send us a spreadsheet of where he
14 is on the service, and there will be some materials coming to
15 us tonight. It looks like there's still a few people who we
16 tried to serve, but could not get a hold of. And so my hope,
17 still, is to try to get some of the additional returns filed
18 this week before I leave on vacation. If not, I'll be in
19 for a couple of days, September 19th and 20th, and then out a
20 little bit after that, but I can try to get them in during
21 September.

22 THE COURT: These are personal service issues
23 unrelated to the dormant or unexercised riparian or ground
24 water rights?

25 MS. SCHNEIDER: Yes, Your Honor; that's

1 correct. That's the second issue on the agenda.

2 As to the owners of riparian rights who would need
3 to be served based on our going -- reviewing the recent
4 filings with the State of California of statements of
5 diversion and use, we identify only a few on that list that
6 weren't served for any other reasons. And we found six
7 riparians, and they had -- we did service by mail on them
8 last Friday.

9 So we would review this, the status of those returns
10 of waivers during the week of September 24th, which gives them
11 30 days, and a little bit more, to have the materials mailed
12 to us. And then we will move to personal service as we deem
13 necessary.

14 THE COURT: Now, are those, is that service upon
15 owners of exercised riparian rights or dormant, unexercised
16 riparian rights, which is Three?

17 MS. SCHNEIDER: These are the exercised ones
18 under Two. And then moving to little three 2A on the
19 agenda, under that category, for number one, the dormant or
20 unexercised riparian surface rights, this is the issue that
21 is causing us the most difficulty, and we were supposed to
22 report to the Court today on the status of our review of the
23 information and the scope of any additional service that we
24 might be able to do.

25 We estimate there were about -- well, there were

1 about 605 or so on the list that Mono County gave us and --

2 THE COURT: Six hundred and five?

3 MS. SCHNEIDER: That's correct. But of the 605,
4 we think it probably would include -- it would involve serving
5 three to 350 -- 300 to 350 persons and entities because of
6 duplicates, duplicate ownerships. And then there are a few
7 that we have served.

8 We could do, we could do this service by mail if we
9 had complete information, and it would take us about three to
10 four weeks to do the mailing, assuming there wasn't any other
11 work that got in the way; and assuming -- and this is the big
12 issue -- that we had enough information to make sure we were
13 serving the right people.

14 The problem is that we are not able -- we haven't
15 been able to get clear identification of the, and complete
16 identification of the owner's names from the assessor's
17 internet database. And we had -- we e-mailed Mono County
18 for help in trying to figure out if we were missing something
19 on the internet. It turns out we weren't, but California law
20 prohibits posting certain types of ownership data on the
21 internet. And so that's where we left things this morning in
22 terms of contacting Mono County. And the question we had for
23 Mono County, and also for the State of California, if there's
24 any way that we can get this information, short of having to
25 send somebody out to research the names.

1 THE COURT: Mr. Neville, are you able to address
2 that?

3 MR. NEVILLE: Uh, you know -- Your Honor, this
4 is Michael Neville at the California Attorney General's
5 Office. I believe that Stacey Simon of Mono County has been
6 working much more closely on that issue. I'm not sure if she
7 has a thought on that.

8 MS. SIMON: This is Stacey Simon with Mono
9 County. And I do believe that we may have other databases
10 that are not available on the internet that could answer those
11 questions, but I don't have a definitive answer than on that.
12 I just became aware this morning that there was an issue. So,
13 I have told Susan Schneider that I will follow-up on that and
14 see if we can't find something to assist her.

15 THE COURT: Is there some filing with any
16 government agency where somebody claims I have dormant or
17 unexercised riparian water rights, or I have unexercised
18 ground water rights?

19 MS. SIMON: No, there's not.

20 THE COURT: Well, this might be an issue that
21 is addressed by service by publication, and to all those
22 who claim that you have dormant or unexercised riparian water
23 rights, or unexercised ground water rights, please take note
24 this case is pending.

25 I guess that takes care of sub-issue A-3.

1 MS. SCHNEIDER: Well, Your Honor, this is
2 Susan Schneider, what I would like to suggest is that we,
3 we keep that, what Your Honor has just suggested for use of
4 publication as an alternative, but that if Ms. Simon can get
5 information to us about any other sources of information that
6 they might have that could help us identify the names of
7 the owners, then we would have -- might be able to pull this
8 together and serve them. And I think -- and I will talk
9 to her and arrange some contacts for her when I'm out of
10 the office for the next few weeks, and that would assist
11 Ms. Rutherford and others in working on the issue while I'm
12 out.

13 MS. SIMON: And if I may, this is Stacey Simon
14 again, just to clarify, the information that we provided to
15 Ms. Schneider does include names. I think it's a finer level
16 of detail as the issues. Some of those names have "et al." in
17 them. And, and I think the United States is just trying to
18 determine which may be the same parties.

19 Is that correct?

20 MS. SCHNEIDER: That's correct.

21 THE COURT: Well, how about if we leave
22 Ms. Simon and Mr. Neville and Ms. Schneider to discuss this
23 issue. Certainly the preference of the Court would be
24 personal service, but if you can't even find out who may
25 be the owner, alleged owner of one of these rights, I don't

1 know what else you do.

2 MS. SCHNEIDER: Well, Your Honor, this is Susan
3 Schneider, another related issue is that some of these, some
4 of these properties are owned in Trust, and we're not really
5 sure how to find the proper Trust or get the proper name.
6 But, again, these are issues -- and I agree with Ms. Simon,
7 it's not necessarily for every one of them, but there are a
8 number of them that are confusing.

9 So what I would like to suggest, then, is that we
10 report back to the Court in October, at our next status
11 conference, on where we are on this issue. Because if
12 this is something that can be solved readily, then it may
13 be something that when I return to the office, the mailings
14 ready to go or has already been done.

15 THE COURT: Sounds like an assignment that
16 you're going to be pedaling off there to poor Ms. Rutherford.

17 MS. SCHNEIDER: That's right.

18 THE COURT: All right. Well, I'll let you
19 attorneys work on that, and report back in October on these
20 topic of dormant or unexercised riparian surface water rights
21 and overlying, unexercised ground water rights.

22 MS. SCHNEIDER: Well, Your Honor, on the second
23 issue, on the ground water rights, I think that we -- the
24 Court had already come to a decision about what to do, and
25 that was that, at this point, there was no reason to serve the

1 owners of overlying unexercised ground water rights. And
2 I had been be directed to submit a proposed order after
3 circulating it for comment.

4 THE COURT: Right. I misspoke then. I do have
5 that in front of me in 127. It's document 1733; the Proposed
6 Order addressing whether claimants with overlying, unexercised
7 water rights, has that Order -- I'm sure that Order has been
8 circulated among everybody.

9 MS. SCHNEIDER: Your Honor, this is Susan
10 Schneider. I did get an e-mail this morning, from
11 Mr. Neville, that he would like, since he's been out, I
12 think that -- I think that, somewhere, that Ms. Mahaney may
13 have looked at it, but he has not. And so he had indicated
14 that he would like to have a day or so to look at the Order
15 and then -- before concurring in it, and asking the Court to
16 approve it.

17 MR. NEVILLE: That's, essentially, correct,
18 Your Honor. This is Michael Neville again with the California
19 Attorney General's Office. I was out until yesterday.
20 I've looked at it. Ms. Mahaney is back from vacation this
21 afternoon, as I understand it, and just wanted a day or two
22 to look at the specific language, and then we can get back
23 to Ms. Schneider and get back to the Court on it, if that's
24 acceptable.

25 THE COURT: Yes. Does anybody else, though,

1 have any objection with the Proposed Order?

2 (No response.)

3 THE COURT: Not hearing any, we'll leave it
4 to Mr. Neville and Ms. Schneider to discuss the form and
5 content.

6 Mr. Neville, who else did you say was involved in
7 that?

8 MR. NEVILLE: That would be my client,
9 Ms. Mahaney, an attorney with the State Water Board in
10 Sacramento.

11 THE COURT: Okay. If your client agrees with
12 the content, would you please send an e-mail to my chambers
13 and copy to the other counsel in this matter, and advise that
14 it passes mustard with you, and we will execute it and sign
15 it and get it uploaded.

16 MR. NEVILLE: Yes, Your Honor. Thank you.

17 THE COURT: And if there is a problem, I'll
18 leave it to you and Ms. Schneider to work out. And if you got
19 to make any changes, then I think it has to be recirculated.

20 MS. SCHNEIDER: Yes, Your Honor.

21 Your Honor, Susan Schneider again, moving on to
22 the next agenda item. And that gets to -- that's little
23 four on page 3. We're supposed to be reporting on the status
24 of, and the schedule to circulate or complete a number of
25 documents. The first one is the draft caption. We circulated

1 a draft of the caption on August 9th. We are still updating
2 it so that there certainly will be some additional drafts to
3 circulate. And as we do the updates, we'll circulate them
4 informally to the parties. We, also, I think we sent that
5 to Ms. Griffin. And if we didn't, we will make sure she gets
6 the next one.

7 The second item is compiling a preliminary list of
8 defendants who filed Notices of Appearance, including those
9 who are represented by counsel. We did that and circulated
10 it. The clerk has requested a change on how the attorney
11 is identified. Apparently, in some instances, we included
12 the law firm name and not the attorney's name. And that
13 is something that we hope to get done this week, and will
14 probably recirculate by the end of the week. We note that
15 that, too, is a document that would be updated periodically.
16 But we also received no comments from -- the only person
17 we received comments from was Ms. Griffin and nobody else.

18 The third item is compiling a preliminary list of
19 persons and entities who were served, but have not filed a
20 Notice of Appearance. That list is done. We haven't
21 circulated it yet. We've been using it to double-check the
22 caption and intend to circulate it this week.

23 THE COURT: Now, that's in the 127 case?

24 MS. SCHNEIDER: That's correct.

25 THE COURT: All right. Or the United States

1 Tribal action?

2 MS. SCHNEIDER: Correct.

3 THE COURT: All right. I'm just clarifying
4 for myself.

5 Any other comment on sub-issue A-4, 1 through 3?

6 (No response.)

7 THE COURT: All right. Not hearing any, we'll
8 move on to subtopic 2-B. We're still in the 127 case, or the
9 B case.

10 MS. SCHNEIDER: Your Honor, this is Susan
11 Schneider. There are three subtopics under the category of
12 Post-Service and Sequencing Issues dealing with the threshold
13 -- identification of the threshold issues and whether any
14 answers are to be filed. I think the parties were supposed --
15 the parties filed on Monday and, also, some filed them
16 Tuesday, the information, the summary and information about
17 the filings for the Court's use. And I'm not sure how the
18 Court wishes to proceed. Certainly if the Court wants --

19 THE COURT: What I want to do is put the
20 threshold issue to the end of the agenda here today and
21 clear up some other things that I have. The agenda issue --
22 I mean the threshold issue is somewhat overwhelming and
23 staggering, as well as the briefing on that issue, the final
24 determination of the threshold issue. So, let's come back to
25 this topic and move on to Topic Three on the C case, or 128.

1 I guess that's Mr. Herskovits.

2 MR. HERSKOVITS: Yes, Your Honor. This
3 Simeon Herskovits from Mineral County speaking. Well, Item
4 3-A on the agenda, and I guess 3-A-1 would be the thing to
5 go to, is continued discussion of Mineral County's service
6 efforts and the schedule for completion. We have, following
7 the August 2nd status conference, we've begun with the
8 mailings. There are a number. They're not completed yet,
9 but they're on their way. Once those are received, people
10 have 30 days to respond. So it would probably be fair to say
11 that we would receive returns, or know in which instances we
12 do not have returns in, and proceed to personal service by the
13 end of September or so.

14 There may be instances, as there have throughout
15 the history of the case, where we may need to research or
16 investigate who has replaced older owners of water rights,
17 and so service will proceed, but there may also be a need to
18 have an investigator go out and assist us with determining
19 who is the proper party to be served in each instance.

20 So, I don't think it realistically changes the
21 picture from when we last discussed this on August 2nd. I
22 think once we have returns from the mailing list going out,
23 we would have a better sense of whether there is not really
24 very much personal service left and, therefore, the -- I think
25 that March 1st date for completion of service could be moved

1 up, realistically on that, with a conservative time, which
2 we thought would allow for complications that I just alluded
3 to that might arise in terms of needing to go forward with
4 personal service but, also, do some more investigative work.

5 THE COURT: Do you suggest a revised date?

6 MR. HERSKOVITS: Well, I think, at this time, it
7 would be premature to. I suspect that by the August 3rd --
8 I'm sorry, the October 3rd status conference, we would perhaps
9 have a better handle on whether we're looking at a lot of
10 personal service to follow, and whether there are any
11 complications or wrinkles with people who we have listed
12 as water right holders that need to be served, having
13 transferred their water rights, and our needing to do any
14 leg work to track down their successors.

15 THE COURT: All right. Let's make that for an
16 agenda item for the October meeting.

17 A question I have is, at the last session, did you
18 discuss that the service, why we needed the extension is
19 because of this issue of the riparian ground water owners?

20 MR. HERSKOVITS: No.

21 THE COURT: Then I must have that confused with
22 the 127 case?

23 MR. HERSKOVITS: I think that's correct, Your
24 Honor, because we do not have riparian or other ground water
25 rights owners in our case. They are not parties. They are

1 not proposed defendants that --

2 THE COURT: Who are the universe of defendants
3 in your case, the claimants that need to be involved to
4 resolve the Walker Lake claim?

5 MR. HERSKOVITS: Well, we discussed this a bit
6 at the last status conference, and I think the simplest way
7 to describe it would be the surface water rights owners to the
8 Walker River system, the Walker River and its tributaries.
9 This would be Decree right owners and, perhaps, also owners
10 not named in the Decree, but who also have a right to divert
11 or appropriate surface waters from the Walker River system.
12 And this was the universe, or set of water rights owners or
13 defendants who were the subject of earlier proceedings in the
14 Court when the service list was agreed to back more than a
15 decade ago.

16 THE COURT: Well, I apologize for repeating
17 myself from the last meeting, you, and everyone else in this
18 case, will probably hear that occur numerous times trying to
19 still get a grip on these cases. But, that helps clarify that
20 position.

21 But, Mr. DePaoli, I kind of recall reading in one
22 of your comments, something about whether ground water right
23 owners should be part of the Walker Lake case.

24 Did I misread that?

25 MR. DEPAOLI: Well, Your Honor, I've probably

1 forgotten, too. It may be somewhere where you did read that,
2 but I, at this point, can't -- was it something you read or
3 something I said?

4 THE COURT: Well, no, it was something that I
5 read in preparation for this hearing today, but I read a fair
6 amount of stuff in preparation for this hearing, and I thought
7 I'd earmarked where I read that because I made a note on the
8 agenda: "Question riparian and ground water owners, DePaoli
9 comment." And I didn't reference anything further.

10 MR. DEPAOLI: The only way I would respond to
11 that, Your Honor, at this point, is I think as the whole issue
12 to what extent the ground water holders become involved in the
13 proceeding, and to what extent the Court ultimately decides to
14 regulate surface and ground water as a single source of supply
15 within the Walker River basin, which is sort of indirectly,
16 at least, one of the issues in the B proceeding, there may
17 come a time when ground water claimants are involved, not only
18 in that, but in any issues related to Walker Lake that, at
19 this point, I -- the service order that Judge Reed entered
20 back in, in 1995, did not include any requirement with respect
21 to ground water users.

22 THE COURT: Would that be the -- and that's your
23 position, Mr. Herskovits, in the C case?

24 MR. HERSKOVITS: Yes, Your Honor; that's
25 correct. When the case was filed, it was really directed

1 at the Decree, to the extent the Decree has always been
2 understood to apply; meaning, really, the surface waters
3 of the Walker River system, there was nothing in it that
4 addressed ground water at all. And, also, to the extent
5 that it asserts and talks about the public trust duty or
6 obligation to maintain flows into the lake, and a certain
7 level and quality of water in the lake, it related only to
8 the scope of the public trust that's commonly recognized to
9 apply to surface waters again. So, I think that's some of the
10 context or background as to why ground water is not involved
11 in the 125-C case.

12 And, of course, Judge Reed's Order, Orders, really,
13 from 1995, the nineties generally, only address and only
14 require a call for service on surface water rights holders.

15 THE COURT: With that in mind, Ms. Schneider,
16 does the Order become superfluous that you and Mr. Neville
17 will be discussing, if the case, the two cases do not extend
18 to ground water rights, in any event, based upon Judge Reed's
19 1995 Order, is it necessary, here, in 2012, to enter this
20 order?

21 MS. SCHNEIDER: Well, we would still need the
22 Order because the scope of persons and entities to be served
23 in the B proceeding is different and larger than what was
24 ordered in C.

25 THE COURT: But it doesn't, in any event,

1 include the holder of ground water rights.

2 MS. SCHNEIDER: It does include holders of
3 certain ground water rights, and --

4 THE COURT: Exercised ground water rights?

5 MS. SCHNEIDER: But the unexercised ones does
6 not seem to be there. But because the Court has the ability,
7 under the Case Management Order, to broaden the nature,
8 broaden the scope of persons and entities to be served,
9 this makes it clear that -- the Order would make it clear
10 that the unexercised -- the owners of unexercised ground
11 water rights in California do not fit under the current Case
12 Management Order. And if they are to be served, it would have
13 to be pursuant to a subsequent order. But I do think that
14 it's a different matter than what, what is being addressed for
15 the scope of the service in the C proceedings. And I do think
16 that the Order that's proposed is something that the Court
17 should be considering. In filing, I also think that Order
18 will give a measure of comfort to the parties in the State of
19 California, and Mineral County, who are seeking to protect the
20 various citizens of their, of the State and County who may
21 have these interests.

22 THE COURT: So the C case does not involve
23 itself with ground water rights whatsoever?

24 MS. SCHNEIDER: That certainly is how
25 Judge Reed left it in 1995 when he issued the Order -- I

1 guess it was 1995 when he issued the Order identifying the
2 scope of service.

3 THE COURT: But the B case does pertain itself,
4 but only as to exercised ground water rights?

5 MS. SCHNEIDER: That certainly appears -- well,
6 no, um, ground water rights, that, certainly, if everybody's
7 reading of the Case Management Order thus far. And that's
8 what we had discussed when we were before the Court last.

9 MS. SIMON: Your Honor, this is Stacey Simon
10 with Mono County. I think it's even more narrow than that.
11 There are holders of exercised ground water rights in
12 California, people who are currently using ground water,
13 who are also not included in the Case Management Order. The
14 Case Management Order is limited to municipal providers in
15 California who currently use ground water, and users of ground
16 water in California for irrigation.

17 MS. SCHNEIDER: Yes; I agree with that. For
18 example, users of ground water in California for domestic use
19 are not included to be served in the Case Management --

20 THE COURT: That's what we went over a few
21 hearings ago about the certain residences or small businesses,
22 but the commercial utilities, or the government utilities are
23 to be included.

24 MS. SCHNEIDER: Right. And then I think that
25 what Judge Reed did was, is he reviewed the basin and tried

1 to figure out the scope of categories and persons and entities
2 he wanted to be served; that is, he moved up into the head
3 waters of the Walker River system, is that he really didn't --
4 he didn't think the smaller users really needed to be
5 included. And I suspect that was what was behind his
6 decision.

7 But, certainly, Ms. Simon is right; there are
8 certain ground water users in California who aren't even to
9 be included at this point. But, again, I think the Order,
10 the Order clarifies what the Case Management Order is
11 including at this point as to ground water rights. And I
12 think it gives a measure of protection for people who have
13 the unexercised rights who might be concerned.

14 THE COURT: All right. Ms. Rutherford, when
15 you prepare your summary of proceedings in conjunction with
16 Ms. Schneider, I would like a summary of this paragraph to
17 maybe have a statement of what was all just discussed in
18 the case; the universe of defendants in the B case, and the
19 universe of defendants in the C case. I think it would be
20 very helpful, not only for myself, but Judge Jones, to try
21 to remember who, exactly, is it we're talking about.

22 MS. RUTHERFORD: Yes, Your Honor. I'll do my
23 best. Eileen Rutherford speaking.

24 THE COURT: That would be helpful for other
25 counsel, too.

1 All right. Please continue on your agenda.

2 MS. SCHNEIDER: Your Honor -- oh, I'm sorry.

3 I'm sorry.

4 MR. HERSKOVITS: I'm sorry. This is Simeon
5 Herskovits again, for Mineral County. I don't think we'd
6 actually finished going through Item 3. Item 3-A(2) reads,
7 compiling a list of pro se parties. And as I had mentioned
8 at the previous status conference, that is something we have
9 done. I think this actually means -- or unless I'm misreading
10 it, and Ms. Schneider can correct me -- pro se parties who
11 have entered, and who have not entered appearances, so that
12 we, um, we have a clear idea of pro se parties who have
13 entered appearances are represented by counsel, are not
14 represented by counsel; and then pro se parties and other
15 parties -- well, I guess any party who hasn't entered an
16 appearance, doesn't have a counsel of record. That is
17 something where I believe we already have those listed, at
18 least in a provisional state. And the question of when we
19 should circulate them to the other parties is related, I
20 think, to our completion of service because they'll change,
21 although probably not by much, once we've completed the
22 remaining service.

23 I'm not sure there's more to say about those right
24 now.

25 THE COURT: All right. Thank you.

1 MR. HERSKOVITS: And then with Item 3-BB, the
2 post-service and sequencing issue, I think this really
3 comes down to the fact that the understanding has been that
4 briefing and resolution of the intervention and merits of
5 the preliminary injunction motion of the Complaint itself
6 would come after the completion of service.

7 Now, Judge Cobb, you had indicated that you
8 and Judge Jones, or Judge Jones might be interested in
9 accelerating the briefing on at least the intervention
10 issues. And I think you had mentioned the possibility of
11 starting it as early as November. I don't believe we had
12 really discussed it very thoroughly at the last status
13 conference, and it may be that since the understanding of
14 previous rulings of Judge Reed on service and sequencing in
15 this case, have been that that would only proceed once the
16 service is actually complete. Maybe we would want to see
17 where we stand on that in the October status conference,
18 and determine whether or not there should be briefing before
19 the completion of service -- although if other parties are
20 interested in addressing it now, or if the Court would like
21 to, that's fine with me, by October 3rd, when we have the next
22 status conference, if the Court were to order briefing as
23 early as November 1st, or in November, there would not be a
24 whole, whole lot of time there prior to briefing.

25 So, maybe we should discuss it a little bit now.

1 THE COURT: Well, how about if we come back to
2 this when we discuss the threshold issues, too?

3 MR. HERSKOVITS: That makes sense, Your Honor.
4 And I think that that does it for Item 3 on the agenda.

5 THE COURT: All right. Thank you.

6 Item 4, Ms. Schneider.

7 MS. SCHNEIDER: Yes, Your Honor, Susan
8 Schneider. The first two issues, the publication of a
9 proposal and finishing the E-service order, I know I had
10 indicated that I was going to try to have them done by today,
11 but I have not gotten to them. I still hope to get the
12 E-service revised and circulated, the E-service order revised
13 circulated before I leave. I might get to the publication,
14 but I'm not sure. I have so many things to get done in the
15 next few days that my head is spinning.

16 On the website update, that is an item that the
17 Court has directed us to provide a report to the Court and
18 parties at the October 3rd status conference. And I believe
19 that also includes provisions and information from RID based
20 on its work with another -- with an outside website provider.

21 THE COURT: I think that was Sunshine.

22 MS. SCHNEIDER: Sunshine; right.

23 What I have done so far is I have reviewed the
24 issue with, with Ms. Rutherford and her supervisor. And it's
25 her supervisor who is going to be in contact for us to work

1 with Ms. Griffin and her staff. I've introduced the two of
2 them by e-mail. And one of his assignments while I am gone
3 will be to follow-up with her and try to assist in however she
4 would like to proceed with reviewing how, if and how the Court
5 might actually put together a website. But I do understand
6 from talking to Ms. Griffin, that this is certainly a matter
7 that she would be looking for information from us, but we will
8 not have access to the Court's website.

9 THE COURT: Well, the website, I think, is
10 maybe some of the least of our problems right now. But you
11 do mention in number 5, continuing problems with the CM/ECF
12 system.

13 What's that about?

14 MS. SCHNEIDER: Uh, what's going on -- we
15 understand, from prior status conferences, that a solution for
16 the filing problems -- and it may not be forthcoming for a
17 while, but it is important to let the Court know what is going
18 on with it.

19 In the past, it has been reported that the system
20 adds many names to the identification of the filer of any
21 document. So that if we file a document, it indicates that
22 we're filing it on behalf of the United States and some number
23 of the other defendants. And when defendants and other
24 parties file, when defendants file documents, they have the
25 same problem.

1 What had happened, see, there's a screen when
2 you file, that requires you to check on whose behalf you're
3 filing any particular document. And that comes up with all
4 of the names already checked.

5 So, in some instances, we have unchecked the names,
6 even though there's still a number of names that get attached
7 somewhere along the proceeding, and they still pop up as being
8 our clients when they aren't. But with the latest agenda
9 filing, for example, there were two boxes that we had to
10 uncheck for the main case. That's not such a problem. There
11 were 222 names that we needed to uncheck in the B case; and
12 1,530 names had to be unchecked for the C case. But it also
13 meant that, in the B and the C cases, some of the names that
14 we needed to uncheck, because they weren't our clients,
15 appeared twice.

16 So whatever is going on, there is, in
17 Ms. Rutherford's opinion, because she's the person who
18 has been doing most of the court filings, is that it seems
19 to be getting worse. We note -- we tried, if you're doing a
20 filing and there's a time deadline, like there was on Monday,
21 we didn't even bother to uncheck any of the names because
22 we just really needed to get the document filed in a timely
23 fashion.

24 So, I just think the Court needs to know this. And
25 I do remember the clerk's office saying that they're aware of

1 the problem and they're working on it.

2 THE COURT: Well, perhaps your office,
3 OMs. Rutherford or someone, could discuss it further with
4 Lia Griffin, the District Court Clerk's Office, and make
5 sure some headway is being made in resolving that problem
6 that you identified.

7 MS. SCHNEIDER: I will ask her to give
8 Ms. Griffin a call, and talk to whoever the appropriate
9 person is and just let her know what her experience is.

10 I think the other parties are probably having
11 similar experiences in doing the E-files. We've seen -- I
12 think one of the filings that came in earlier this week from
13 somebody other than us, had 22 pages of names attached to it.
14 It might even have been more.

15 At any rate, we will try to follow-up on that, and
16 there may be nothing to do on it at this point.

17 THE COURT: Maybe report back in October, too.
18 And I think Ms. Griffin will be attending that hearing.

19 MS. SCHNEIDER: Yes, Your Honor.

20 THE COURT: Anything under number 6, any
21 additional issues before we go back to threshold issues and
22 the briefing of the Complaint in intervention?

23 MS. SCHNEIDER: This is Susan Schneider. Only
24 one item. And that is since we'll be putting together the
25 summary of these proceedings, we will try to do it fairly

1 quickly and circulate it fairly quickly, and ask that the
2 parties get back to me, certainly no later than -- we'll
3 try to get it out by tomorrow. We're going to need to file
4 it on Friday; or, at the latest, it will have to go in Monday
5 after -- when I'm not in the office, but I would need to be
6 making changes over the weekend.

7 THE COURT: All right. In view of the
8 consideration that you're doing these summaries, I would
9 ask everyone to immediately review those summaries when it
10 comes in and get back to Ms. Schneider's office as soon as
11 possible, hopefully, within 48 to 72 hours. And if you
12 can't do it, send an e-mail to our office explaining why you
13 can't and when you're going to be in contact with them.

14 We do have our next conference in October.

15 Is it October 3rd, Ms. Ogden?

16 THE CLERK: Yes, Your Honor.

17 THE COURT: What time?

18 THE CLERK: 1:30.

19 THE COURT: 1:30. That might be a hearing
20 where personal appearances would be encouraged, counsel,
21 although I understand the difficulties in travel, and we
22 certainly accommodate anyone who has to appear by telephone.

23 Now, I don't know what informal meetings will
24 occur between now and then, I doubt there will be any that
25 the Court would be involved in, but certainly go ahead and

1 continue. And what I'm going to discuss now on threshold
2 issues, or momentarily on threshold issues, may involve
3 those informal meetings. But, maybe we can discuss the
4 briefing on Mineral County's Motion to File the Amended
5 Complaint in intervention. I know its already filed a
6 points and authorities on that subject.

7 As I mentioned at the last hearing, Judge Jones
8 wants to get going on this briefing. I think rightfully so.
9 He feels this case has dragged a little bit too much. He
10 makes the observation -- and I don't think I'm speaking out
11 of school here -- that, in many cases, decisions are made
12 that are made before all the parties are involved in a case,
13 or some party may come back in or come into a case after that
14 order has been decided, and it doesn't necessarily prohibit
15 the Court from deciding it, with the possibility that someone
16 else may be in the case. Theoretically, that issue could be
17 revisited. And, theoretically and, say, particularly in
18 Mineral County's action, whether some of these additional
19 parties are now going to be served, will really participate
20 in the briefing schedule, is probably doubtful.

21 So I don't know if you want to come up with a final
22 discussion point on this issue at the October hearing but,
23 Mr. Herskovits, my thought is that we come up with a briefing
24 schedule on your motion either at that hearing or before then.

25 I'd like you and probably Mr. DePaoli, Mr. Ferguson

1 to comment on that.

2 MR. HERSKOVITS: Yes, Your Honor. This is,
3 again, Simeon Herskovits from Mineral County --

4 THE COURT: And let me interrupt. One thing,
5 what it may require, too, is an amendment of the CMO. I think
6 it's paragraph 9 or 11. But, certainly, Judge Jones would
7 have the power to do that, and probably have to do it in order
8 to proceed in this fashion where service is, apparently, not
9 complete yet.

10 MR. HERSKOVITS: Well, if I could just make a
11 quick point -- maybe it's a minor technical detail -- but the
12 CMO to which you're referring, strictly speaking, was entered
13 in and only pertains to the B case, the 125-B case, or case
14 number 127. So, it's more a matter of some older orders of
15 Judge Reed that indicated a sequencing of briefing, or
16 briefing in addressing intervention after the completion of
17 service. There were two orders, I think, in 1995; one in
18 February, and one in September maybe -- or perhaps it was the
19 summer of '95 -- that indicated that order. So --

20 THE COURT: The order being that service has to
21 be complete before the motion is addressed?

22 MR. HERSKOVITS: Yes. But, again, that's,
23 in a sense, that's a technical detail. Judge Jones could
24 certainly enter an order revisiting that issue, or setting a
25 new briefing schedule for an intervention, as you indicated

1 he's inclined to. So in terms of setting a briefing schedule,
2 I think we could certainly address it now. In my looking
3 back over the filings, that are now more than 17 years old,
4 it occurs to me -- if the Court and the other parties are
5 agreeable to this -- it might make sense for Mineral County
6 to start that briefing with an updated briefing targeted
7 specifically just to the intervention issues, the merits of
8 intervention because, I mean, there may have been some
9 change or additional precedent in that time, and it seems to
10 me that the context of the case is a little bit different.
11 So, to me, at least, looking back at those very old filings,
12 it seems natural that we would perhaps make a new filing to
13 start the briefing.

14 The alternative, I guess, would be to have the
15 other parties simply start off by filing their responses or
16 opposition, and then Mineral County would file a reply, in
17 which if there was some sort of updating of our arguments or
18 the law that we felt were supportive, we would simply cover
19 that in the reply.

20 THE COURT: I would be -- I think I would be
21 of the mindset that we start from scratch; file a new motion
22 and memorandum that doesn't just say "adopt by reference and
23 incorporate herein everything that was said in '95;" that it
24 is a document that's complete in and of itself.

25 So, that would be my inclination. We haven't heard

1 from Mr. DePaoli or you on that particular issue.

2 Do you have any visceral problems with that
3 approach, Mr. Herskovits?

4 MR. HERSKOVITS: No. It sounds not too
5 dissimilar from the first of the two alternatives I just
6 mentioned, so I think it would be -- it makes sense, and
7 I think it would be an appropriate way of proceeding, given
8 the amount of time that's passed.

9 THE COURT: All right.

10 Does anyone wish to speak to this issue of the
11 briefing, the revised briefing schedule on the C case?

12 MR. DEPAOLI: Your Honor, Gordon DePaoli. Just
13 a question. Does the new motion and memo, is that limited to
14 just the motion and memo, or does that include a new proposed
15 second amended complaint?

16 THE COURT: Well, Mr. Herskovits didn't mention
17 anything about a new proposed second amended complaint.

18 MR. DEPAOLI: Okay. So, just a briefing on
19 the motion and the points and authorities in support of the
20 motion?

21 THE COURT: Right. I think it's the First
22 Amended Complaint in Intervention which is the operative
23 document right now.

24 MR. HERSKOVITS: That's correct. And so
25 this would be briefing solely directed to the question of

1 intervention? Am I correct in understanding that that is
2 the issue that Judge Jones and you, Judge Cobb, have wanted
3 to tee up first?

4 THE COURT: Yes. So what type of briefing
5 schedule would you propose, Mr. Herskovits?

6 MR. HERSKOVITS: Well, I think it's -- I think
7 it's workable for us, if we start with our brief due sometime
8 in November. I talked with the district attorney, and also
9 with Ms. Thornton, and I think our schedules would permit
10 that, I guess, depending on how -- I didn't think through
11 exactly how briefing would proceed and how much time would
12 be required. I know that we get into the holiday season once
13 we get towards the latter part of Thanksgiving, but I think
14 it would be -- it would work for us to do an opening brief in
15 the beginning of November.

16 THE COURT: How would mid October sound, like
17 the 17th?

18 MR. HERSKOVITS: Mid October is little bit
19 difficult because we have a large filing due in early October;
20 and until that is finished, I'm not sure we would really be
21 able to turn our attention to this.

22 THE COURT: All right. Well, let's tentatively
23 look and see that your filing would be due on October 31 in
24 this matter, which is basically the time frame.

25 Mr. DePaoli, would the Walker River irrigation ditch

1 be the main opposing party, you anticipate?

2 MR. DEPAOLI: It would certainly be one, Your
3 Honor. I don't know what -- about anyone else.

4 THE COURT: All right. I'll let anyone else
5 address it, but how much time would you need to do a
6 responsive pleading, or a responsive memo on that?

7 MR. DEPAOLI: Thirty days, Your Honor.

8 THE COURT: You're probably cutting yourself
9 short, Mr. DePaoli.

10 MR. DEPAOLI: Well, then, I'll take 45.

11 THE COURT: How about, let's say, November 9.
12 That's just sort of a compromise.

13 MR. DEPAOLI: That, that -- you mean December 9,
14 Your Honor?

15 THE COURT: November 9.

16 MR. DEPAOLI: Well, that only --

17 THE COURT: No, excuse me, December 9.

18 MR. DEPAOLI: Oh, thank you.

19 THE COURT: No, that's a Sunday.

20 How about December 7th? Do you want more time than
21 that? I would like to set times right now that we're not
22 getting motions to extend it because that sets everything else
23 out goes cattywampus, too.

24 Do you want until the 14th? That will give you
25 your 45 days.

1 MR. DEPAOLI: The 14th would be fine, Your
2 Honor.

3 THE COURT: All right. Does anyone, who is on
4 the phone, have a different date to propose for a responsive
5 memorandum to be filed relative to Mineral County's opening
6 brief on October 31?

7 (No response.)

8 THE COURT: All right. That will be the date.
9 And, Mr. Herskovits, a reply memo date?

10 MR. HERSKOVITS: Given the holidays, Your Honor,
11 I think I would request a reply date of January 7th -- well,
12 maybe --

13 THE COURT: Why don't you do another week.

14 MR. HERSKOVITS: Okay, yeah, I was just about to
15 say January 14th; so, 30 days would be more helpful.

16 THE COURT: All right.

17 Now, Mr. Herskovits, I am going to ask you to draft
18 a Proposed Order, two Orders: One that has the deadlines for
19 the briefing schedule for the Mineral County complaint in
20 intervention, amended complaint; and another one that, if you
21 believe it is necessary, to modify the two orders that you
22 referred to that Judge Reed entered in 1995.

23 MR. HERSKOVITS: Uh-huh.

24 THE COURT: If those need to be revised, then
25 that would be a submission for the district judge, but submit

1 it to my chambers or -- well, the regular filing, but
2 just indicate it's a proposed order. That might be done
3 simultaneously with your submission of the Proposed Order
4 on this briefing schedule.

5 MR. HERSKOVITS: Okay, Your Honor.

6 THE COURT: Okay. Now, that's on the C case
7 briefing schedule. Does anyone have anything else to add
8 about briefing relative to the C case or 128?

9 MR. DEPAOLI: Your Honor, Gordon DePaoli. I
10 think that one thing that needs to be considered, once that
11 order with the schedule is entered, it probably needs to be
12 served on all of the persons who have appeared thus far.

13 THE COURT: Mr. Herskovits, do you agree? I
14 would think so.

15 MR. HERSKOVITS: Uh, well, Your Honor, I'm just
16 thinking for a moment as to whether it's -- whether service on
17 the primary parties or the principal parties is sufficient. I
18 don't see any reason why we couldn't serve the Proposed Order
19 on all the parties who have entered an appearance to date.

20 THE COURT: I figure it would just be limited to
21 those who have entered an appearance.

22 MR. HERSKOVITS: Right.

23 THE COURT: Those who have been served and
24 haven't entered an appearance, they had their opportunity, as
25 far as I'm concerned.

1 MR. HERSKOVITS: Right.

2 THE COURT: So maybe you should make reference
3 in your briefing schedule as to how that will be handled.

4 MR. HERSKOVITS: Service of the order would be
5 after the order has been entered by the Court.

6 THE COURT: Well, maybe just mention in the
7 order, though, service of this order establishing briefing
8 schedule will be effected upon all those who have entered
9 appearances in the C case.

10 MR. HERSKOVITS: Uh-huh. Very well, Your Honor.

11 THE COURT: Now, anything else on the C case
12 briefing schedule? It seems like we've covered that.

13 Now, our next issue is going back to the threshold
14 issue briefing. I received post-threshold issues from
15 California, RID, Circle Bar M, Mineral County, NDOW, and the
16 United States, and the Tribe.

17 Did I miss anyone who may have submitted one?

18 (No response.)

19 THE COURT: All right. On those threshold
20 issues, it kind of appears, in one form or another, that
21 California has identified one to two;

22 Walker River Irrigation District, about 10;

23 Circle Bar M has about 12;

24 Mineral County has 8;

25 Nevada Division of Wildlife, 6 or so;

1 The U.S. government and the Tribe, depending how you
2 read them, 17 to 20.

3 If you tally that number up, I'm looking at 47 to
4 53 -- 55 threshold issues.

5 As I understand it, it is my duty, as the magistrate
6 judge in this case, to identify what the threshold issues are;
7 however, those threshold issues, when briefed, will be decided
8 by the district judge, since they are mostly dispositive in
9 one form or another, or potentially dispositive. I think
10 Judge Jones would not react favorably to my submitting him
11 55 issues for him to determine before this case can proceed.

12 My thought here is that the -- and this may take
13 more time than the Walker River problem here, is that -- and
14 particularly with people's vacation schedules -- is that
15 you all, either collectively, or form a group, to identify
16 threshold issues on which you can agree by category, such
17 as jurisdiction, service, ground water claims, equitable
18 defenses or whatever. And let's put together a list of
19 categories, in a methodical approach, as to which one should
20 be addressed initially, maybe secondarily, third, and so
21 forth. And then have, under that category, the threshold --
22 the phraseology of the threshold issue on which you can agree.
23 Because although I've identified some 55 threshold issues,
24 there's a lot of repetitiveness that I saw in one form of
25 another, maybe not direct repetitiveness, but some.

1 And so what I'm pushing on counsel is the onus or
2 obligation to get together and bring some focus -- I think is
3 the operative word -- on what the threshold issue should be,
4 and narrow them down. If you don't, I will. And I'm not
5 going to take 55 threshold issues to Judge Jones.

6 So, that's the approach that I'm suggesting here.
7 And I'll just maybe start asking anyone for their comment
8 on what -- on the approach I'm suggesting here. And I would
9 also like you to maybe come up with a time schedule as to
10 when you all might be able to meet to discuss these issues.

11 MS. SCHNEIDER: This is Susan Schneider. I
12 think that's a fine idea. I don't know how we'll -- whether
13 we'll be successful or not, but I think it's appropriate for
14 us to try. I am, basically, out of pocket until sometime -- I
15 will be back in the office for a couple of days, but I'm
16 basically out of pocket until the afternoon of the 25th of
17 September. So I'm happy to meet with anybody who wants to
18 meet during the remainder of that week, and even up to and
19 including the morning of the status conference.

20 THE COURT: Well, I think that's rather
21 optimistic that you all can get it done with your being
22 out of the office, Ms. Schneider. Give it a try, if you can,
23 but let's -- let me ask you this first:

24 Do we have a date for a status conference in
25 November?

1 MS. SCHNEIDER: We do not yet.

2 THE COURT: Let's get a date.

3 Give us an afternoon, non-criminal week.

4 THE CLERK: The week of the 19th?

5 THE COURT: The week of the 19th. I think
6 Thanksgiving is the 22nd. I don't know if that's a great
7 week for you all to travel.

8 Do I have criminal calendar on the 12th?

9 THE CLERK: Yes.

10 THE COURT: How about the 5th?

11 THE CLERK: Yes.

12 THE COURT: Well, maybe what I can do is get
13 Judge McQuaid or someone to take my criminal calendar for that
14 day. Let's stay away from the Thanksgiving week for travel
15 for people.

16 How about the week of November 5 or November -- the
17 12th might be a holiday.

18 Is it?

19 THE CLERK: Yes.

20 MR. HERSKOVITS: No, Your Honor.

21 MS. ADAMS. Your Honor, this a Marta Adams.
22 I'm actually out of town at some meetings during the week of
23 the 5th.

24 THE CLERK: The week of the 26th? We don't have
25 criminal.

1 THE COURT: Well, Ms. Adams, is there somebody
2 who might be able to cover for a hearing if that's convenient
3 to everyone else?

4 MS. ADAMS: I can certainly try. I do have
5 available, actually, it looks like Monday and Tuesday of that
6 week, too.

7 THE COURT: Okay.
8 Everybody, how does Tuesday afternoon, the 6th,
9 look?

10 MS. SCHNEIDER: This is Susan Schneider. That's
11 fine.

12 THE COURT: Just tell me if it's bad for
13 anybody.

14 MR. DEPAOLI: Excuse me, Your Honor, that's
15 election day. I don't know if that impacts -- it doesn't
16 impact us locals, but it impacts others.

17 THE COURT: Oh, maybe, on voting on different
18 things.

19 MS. SCHNEIDER: That is a problem. I probably
20 should be in town.

21 Thank you, Mr. DePaoli.

22 THE COURT: The 5th then?

23 MS. SCHNEIDER: That would be fine.

24 THE COURT: All right. Let's do it the
25 afternoon of the 5th at 1:30.

1 Now, getting back to the threshold issues. I would
2 like to have -- well, I don't know how optimistic it is to
3 have, at the October hearing, to have submitted to the Court,
4 anyway, your proposed agreed upon threshold issues and your
5 proposed separate issues, but categorized and submitted to the
6 Court at that time. And I'm very amenable to a change or
7 revision or how you're going to handle it, but what I envision
8 is something being submitted to the Court, upon meeting of
9 counsel, that we've agreed to identify the following threshold
10 issues by category; appearing under each is the agreed upon
11 threshold issues and any identification of parties' separate
12 issue pertaining to that topic which others may not
13 necessarily agree with. And let's have that for the October
14 hearing, if at all possible.

15 MS. SCHNEIDER: Your Honor, this is Susan
16 Schneider. I know I -- you know, I'm beginning to think it
17 might make sense just to do this for the November -- if that's
18 okay -- do it for the November status instead.

19 THE COURT: All right. You're on. November.

20 MS. SCHNEIDER: Okay. You're right. I think
21 this will take more time.

22 THE COURT: Perhaps, though, you can give me
23 some updates along the way, like maybe an interim report in
24 early or late -- excuse me -- how about, like, mid October,
25 about where you stand, early to mid October, about where you

1 stand on these. And, you know, if you want to do it orally,
2 we can just have a conference call. If you need -- if you
3 want to put something in writing, we can do that; or if you
4 want to have a conference call to discuss how we're going to
5 do a conference, we can do that.

6 MS. SCHNEIDER: This is Susan Schneider. Thank
7 you. I think maybe -- I suggest we put this as an agenda item
8 for our status conference on October 3rd as to how we will
9 implement the Court's requirement.

10 THE COURT: All right. Is there anything else
11 to come before the Court? On this status conference?

12 (No response.)

13 THE COURT: Nothing appearing, we'll be in
14 recess. And, again, thank everyone for your cooperation.

15 MR. DEPAOLI: Excuse me, Your Honor.

16 THE COURT: Sorry. Too late, too late.

17 Go ahead, Mr. DePaoli.

18 MR. DEPAOLI: I just wondered whether the
19 Court intended, or didn't intend, to include the question of
20 Answers, when Answers ought to be required in this, what we're
21 going to be working on here, or if it's strictly limited to
22 the threshold issues.

23 THE COURT: Good point. I think it should
24 include the issue of Answers.

25 MR. DEPAOLI: Okay.

1 THE COURT: You know, when I was going over your
2 parties' briefs and everything, in the 35 plus years I was in
3 private practice, mostly on the defense side, mostly answering
4 complaints, I often wondered if anyone ever read my Answer.
5 That being said, we'll adjourn this hearing.

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7 (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

September 7, 2012

KATHRYN M. FRENCH, RPR, CCR
Official Reporter

DATE