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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor, vs. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants. ______________________________ MINERAL COUNTY, Proposed-Plaintiff-Intervenor, vs. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al. Proposed Defendants.	IN EQUITY NO. C-125-RCJ Subproceedings: C-125-B & C-125-C 3:73-CV-00127-RCJ-WGC & 3:73-CV-00128-RCJ-WGC **Proposed SUMMARY OF THE STATUS CONFERENCE HELD OCTOBER 3, 2012**

The United States of America ("United States"), Plaintiff in Case No. C-125 and Subproceeding C-125-B, submits the following summary to the Court of its October 3, 2012 Status Conference. Pursuant to the Court's direction, the United States consulted with the other

Plaintiffs and the Primary Defendants (collectively "Primary Parties") to prepare and submit the following summary of this proceeding

AGENDA ITEMS:

The Court acknowledges receipt of:
a. Proposed Agenda items,
b. Summary of August 22 hearing and Objection to Summary,
c. 2 Proposed Orders in C-125-C case.

1. **Any review and discussion of the *Proposed Summary of the Proceedings of the Status Conference Conducted on August 22, 2012* (Aug. 27, 2012; #1104; #B-1745; #C-613) and *Walker River Irrigation District's Notice of Objections* (Aug. 31, 2012; #B-1747).**

The Court and parties discuss the objections to the description on p. 7, ¶ 2, of the "universe of defendants" in subproceeding C-125-C. The Court states that its request for the added description was unusual, but educational, for the Court. The Court and parties decide to remove this paragraph and the United States will resubmit the summary with "Revised and Finalized" added to the title. The discussion also addresses why there are no groundwater users in C-125-C; Mr. DePaoli states that based upon the Case Management Order in C-125-B and the Order Requiring Service in C-125-C all defendants in the C-125-C should be in the C-125-B, but not all defendants in C-125-B should be in C-125-C.

2. **C-125-B:**
   a. **Completion of Service and Service Issues:**
      i. **Status of remaining personal service efforts and related filings of Proofs of Service.**

The United States asks if there are any objections to its most recent Proof of Service filing (Sept. 20, 2012; Doc. B-1754). No objections are raised and the Court deems that the persons and entities listed on this Proof of Service filing have been properly served. This finding follows language from Court's Order of April 16, 2012.

The United States adds that there are a few outstanding personal serves to be made and that if service is to be made on claimants to dormant riparian rights owners in California, there will be additional personal serves to be made.

ii. **Status of serving the owners of riparian rights in California based on receipt of recent filings of statements of diversion and use.**

As a favor and to facilitate service on users of riparian rights in California, the State of California provided the United States with copies of Statements of Use that were filed but not yet processed. Of those users served by mail on August 17, 2012, three entities had rights located just outside the boundaries of the Walker River Basin. The United States learned of this error on

August 29, 2012, and promptly acted to verify the extent of this error. The United States informs the Court that it intends to file an Errata regarding these three persons/entities, as it has done with prior similar errors. The Court agrees this would be appropriate. The United States voices its appreciation for California's help.

iii. Status update from the United States, State of California and Mono County on possible service on claimants with dormant riparian surface water rights under the laws of California.

Mono County has been assisting the United States with its efforts to compile a list of proposed defendants who may have dormant riparian rights in California. The United States is currently researching proper trust names when the County's information only identifies trustees. At this point, it appears that 412 new defendants will need to be served. This number has increased since the last status conference because Mono County has now identified persons and entities that were previously listed as et al. The United States is in the process of contacting the represented federal agencies to obtain funding for this additional service.

The United States will report back to the Court at the next status conference on its efforts related to this additional service. Mr. DePaoli reiterated that because the Case Management Order separates litigation in C-125-B into phases, it is his understanding that complete service on these additional rights holders should not delay moving forward with the case. The Court agrees that litigation should continue to move forward even though these new parties have not yet been served. The United States voices its appreciation for Mono County's help.

iv. Status updates on the following:

1. **Updating and circulating the draft caption**.

The United States has circulated a revised draft caption that deletes duplicate names and names that should have been removed earlier. The caption remains a draft.

2. **Compiling and circulating a preliminary list of defendants who have filed a notice of appearance, including those defendants represented by counsel.**

The United States has circulated a preliminary list, which it has asked the primary defendants to review. To date, helpful comments have been received from Ms. Ure and Mr. Neville.

3. **Compiling and circulating a preliminary list of persons and entities that were served and have not filed a notice of appearance.**

The United States circulated a preliminary list on October 2, 2012 , for the primary parties to review, along with the draft caption and preliminary list of those who filed Notice of Appearance.

b. Post-Service and Sequencing Issues: Status update on the parties' efforts to narrow the threshold issues.

The United States notes a conflict between the Transcript and the Court Minutes of the prior hearing and the Court states that the prior minutes should be corrected to reflect that a written report was not required on this issue before today's status conference. The Court offers to assist the process of narrowing threshold issues by an out-of-court meeting with the parties.

Mr. DePaoli states that the Nevada defendants have conferred to prepare a narrower list of potential threshold issues and suggests the parties exchange their respective lists and begin by identifying common issues. Mr. DePaoli asks what the Court expects from the parties in this effort. The Court does not want a filed briefing, but would like to conduct a conference call after the parties further refine their lists of threshold issues, so the Court can give its opinion on the identified issues. Ms. Schneider requests that the Nevada parties provide her with their list, so she can respond to it. The Court asks Mr. DePaoli to take the lead on organizing the parties' efforts. The Court also states that he would like to try and make an informal conference with the parties work, but at some point he will just have to determine the list of threshold issues.

3. C-125-C :

a. Completion of Service and Service Issues:

i. Status update from Mineral County/Walker Lake Working Group on service.

Mr. Herskovits reports that the overall process of serving the remaining defendants in C-125-C is moving along as projected. Mineral County sent a certified mailing to these defendants and received waivers for slightly less than 1/3 of this mailing. Some of the returned signed waivers require minor correction (e.g., a person signed as an individual instead of for a trust.). About a dozen defendants refused the certified mailing. Other mailings were returned by the postal service as "undeliverable" and more research will be needed to find the proper party or address. In addition, other defendants received the certified mailing, but have not responded. The Court asks how defendants that refuse the certified mailing will be treated. Mr. Herskovits states they will be personally served.

ii. Status update from Mineral County/Walker Lake Working Group on its effort to compile a list of *pro se* parties.

Mr. Herskovits states that Mineral County has prepared and is maintaining a list of defendants who have appeared, including defendants who are not represented by legal counsel, but has not yet circulated a separate list of *pro se* defendants because it is subject to change as Mineral County completes its service efforts. Mineral County plans to circulate that list once service is complete.

b. Post-Service and Sequencing Issues: Status of two proposed orders regarding: 1. the schedule for briefing Mineral County's Amended Complaint in Intervention (#C-20) and Motion for Preliminary Injunction (#C-22), and 2. any necessary modification of Judge Reed's prior orders related to management of C-125-C.

Mr. Herskovits states that when he began to draft these orders, it appeared to him that only one order was necessary because the schedule and any necessary modification of Judge Reed's prior orders could be in the same document. After filing his proposed Order, Mr. DePaoli filed a revised version that Mineral County had not yet reviewed. The discussion includes whether the citations at the top of page 2 are needed. Mr. Herskovits and Mr. DePaoli will confer , agree upon, and resubmit a revised version. The parties clarify that the relevant scheduling order in C-125-C is dated January 8, 1999 Order (Doc # 247), and is not the Case Management Order in C-125-B. The Court notes that because this Order was signed by Judge Reed, Chief Judge Jones may wish to sign the resubmitted Order. The Court asks that the resubmitted Order be sent to chambers so he can confer with Chief Judge Jones.

Mr. Herskovits requests a clarification of the briefing schedule. Mineral County's revised memorandum is still due on October 31, 2012, even though the proposed scheduling Order is not yet revised or signed. The Court requests that a copy of the revised order be sent to Ms. Davis and Ms. Ogden in his chambers.

4. Issues Common to Both Subproceedings: Continuing problems with the CMECF filing system, website update and e-serve order.

Ms. Griffin gives an update on the continuing difficulties with the CM/ECF system, which incorrectly lists parties as filers of e-served documents. This is causing a lot of extra work for her staff and is frustrating to all involved. There is no indication that the problem will be fixed in the next version of the CM/ECF software.

The Clerk's Office for the Court in Las Vegas has found a way to by-pass PACER and provide a direct link to filed documents. The "work around" will send an e-mail with a notification of a filing and a link to the Court website to all who have provided an e-mail address. Implementation of this approach will require the Chief Judge's approval.

Ms. Griffin discusses basing an e-serve order in these proceedings on the Fallbrook case from the S.D. Ca, which has approximately 32,000 defendants and does not generally serve by mail. A monthly summary of filings is printed in newspapers. To get notice, a party must provide an E-mail address, and can only receive service by mail following verification to the the Court that the party does not have a home or work e-mail account. Ms. Schneider met with Ms. Griffin prior to today's status conference and will redraft the e-serve Order based on Ms. Griffin's comments.

5. Confirmation of next status conference and/or informal meetings.

The next Status Conference is set for Monday November 5, 2012 at 1:30 pm.

Dated: October 26, 2012

Respectfully submitted,

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By /s/ Susan L. Schneider
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Attorneys for the United States of America

APPROVED AND ISSUED
this ___day of ___________, 2012.

____
Hon. William G. Cobb
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 2012, I electronically filed the foregoing **Proposed SUMMARY OF THE STATUS CONFERENCE HELD ON OCTOBER 3, 2012** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses that are registered for this case;

and I further certify that I served a copy of the forgoing to the following non CM/ECF participants by U.S. Mail, postage prepaid, this 26th day of October, 2012:

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