

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,) IN EQUITY NO. C-125-RCJ
) Subproceedings: C-125-B
Plaintiff,) 3:73-cv-00127-RCJ-WGC
vs.)
)
WALKER RIVER PAIUTE TRIBE,)
)
Plaintiff-Intervenor,) MINUTES OF THE COURT RE:
) NOTICE OF SUBMISSION OF
vs.) PROPOSED SUPPLEMENTAL
) CASE MANAGEMENT ORDER
)
WALKER RIVER IRRIGATION DISTRICT,) March 15, 2013
a corporation, et al.,)
)
Defendants.)

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

DEPUTY CLERK: KATIE LYNN OGDEN REPORTER: NONE APPEARING

COUNSEL FOR PLAINTIFF(S): NONE APPEARING

COUNSEL FOR DEFENDANT(S): NONE APPEARING

MINUTE ORDER IN CHAMBERS:

The court provides notice and submits herewith a proposed Supplemental Case Management Order ("Supplemental CMO"). Interested parties shall submit their comments, suggestions or recommendations with respect to the proposed Supplemental CMO on or before March 26, 2013.

At this court's status conference on Wednesday, March 13, 2013, the court stated it would conduct a telephonic hearing concerning the form and content of the proposed Supplemental CMO on April 11, 2013, at 9:00 a.m. Depending on the nature and extent of any comments the court may receive on the proposed CMO, the court may vacate the April 11, 2013 hearing. At present, however, the hearing will remain on calendar.

IT IS SO ORDERED.

LANCE S. WILSON, CLERK

By: /s/ Deputy Clerk

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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 Plaintiff,)
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 WALKER RIVER PAIUTE TRIBE,)
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 Plaintiff-Intervenor,)
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 WALKER RIVER IRRIGATION DISTRICT,)
 a corporation, et al.,)
 Defendants.)
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IN EQUITY NO. C-125-RCJ
Subproceedings: C-125-B
3:73-cv-00127-RCJ-WGC

**[PROPOSED]
SUPPLEMENTAL CASE
MANAGEMENT ORDER
(NO. 1)**

This matter is before the court on the United States of America's Motion for a Supplemental Case Management Order and Memorandum of Points and Authorities in Support (Doc. # 1772) and the Oppositions thereto (Doc. ## 1814, 1815, 1816, 1823). Arguments of counsel on the United States' motion were initially heard on February 7, 2013 (Doc. # 1852), and subsequently on March 13, 2013 (*see* Doc. # 1854).

Upon consideration of the motion, the opposition memoranda and arguments of counsel, and with good cause appearing, the court hereby adopts and enters the following Supplemental Case Management Order ("Supplemental CMO"). This Supplemental CMO updates and supplements the original Case Management Order ("CMO") entered on April 18, 2000. (Doc. # B-108). To the extent this Supplemental CMO changes, modifies or adjusts the CMO, the court finds that such changes are appropriate and within its authority. (CMO at 14 ¶ 19.)

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1 The court enters this Supplemental CMO so that all parties may anticipate the steps and needs
2 associated with this complex litigation so that the court may resolve the parties' claims efficiently,
3 expeditiously and as fairly as possible.

4 **1. Modification of Timing of Bifurcation of Claims in C-125-B**

5 Due to the "enormity and complexity of the issues pending with respect to the First Amended
6 Counterclaims filed by the United States and the Walker River Paiute Tribe," the CMO determined that
7 "some sort of bifurcation would be helpful in processing the action." (CMO, at 1-2.) Thus, the CMO
8 bifurcated the claims of the Walker River Paiute Tribe ("Tribe") and the claims of the United States of
9 America ("United States") for the benefit of the Tribe (collectively defined as the "Tribal Claims") from
10 all other claims raised by the United States (the "Federal Claims"). (CMO at 2 and 4 ¶1.) The court
11 continues to believe that bifurcation is appropriate and hereby identifies the next steps in an on-going
12 process to streamline litigation, address the merits of the Tribal Claims, move the Tribal Claims and all
13 other claims in C-125-B to resolution, and manage this subproceeding in a manner consistent with the
14 Federal Rules of Civil Procedure.

15 **2. Completion of Service**

16 The United States is in the process of completing service as required by the CMO. (CMO at 4-8
17 ¶¶ 3-8.) This service effort applies to the litigation of all claims in Subproceeding C-125-B. Although
18 the CMO recognized that additional parties may need to be joined in later phases of this litigation (CMO
19 at 13 ¶14), well over 3,000 parties have now been joined to this case, some 1,100 of whom have
20 expressed an interest to participate by returning an acknowledgment of service and intent to participate.
21 If and when additional parties are joined in the future, the court will address how any such parties will
22 be incorporated into the litigation.

23 **3. Phase I: Motions Contemplated by Federal Rule of Civil Procedure 12 (b)**

24 The CMO originally divided the proceedings concerning the Tribal Claims into two phases.
25 Phase I consisted of the disposition of "threshold issues as identified and determined by the Magistrate
26 Judge." Phase II was to "involve completion and determination of the merits of all matters relating to
27 [the] Tribal Claims." (CMO at 11 ¶12(a).) The list of threshold issues was not to be finally established
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1 until all appropriate parties were joined. (CMO at 9 ¶11.) Participating parties were to submit proposed
2 threshold issues prior to that time and certain participating defendants have done so. (Doc. # 1770-1.)

3 However, the court has subsequently determined that proceeding with identification and briefing
4 of threshold issues is not necessarily consistent with the Federal Rules of Civil Procedure. Experience
5 has shown that the threshold issue concept does not promote the scope and purpose of Rule 1, *i.e.*, to
6 “secure the just, speedy and inexpensive determination of every action and proceeding.” The court has
7 therefore determined identification and briefing of threshold issues should be eliminated and replaced
8 by traditional concepts of dispositive motion practice contemplated by Rule 12(b), as follows:¹

9 **a.** Once the United States and the Tribe have completed service (including publication) and
10 at a date to be identified by the court, defendants shall submit any motion authorized by Rule 12(b) of
11 the Federal Rules of Civil Procedure that they wish to file. Such motions shall address all Tribal and
12 Federal claims asserted by the United States and Tribe in the First Amended Counterclaim of the United
13 States of America (July 31, 1997; Doc. # B-59) and the First Amended Counterclaim of the Walker
14 River Paiute Tribe (Doc. B-58).

15 **b.** When motion practice is commenced, Defendants shall coordinate their filings to the
16 extent possible so that the court is not overwhelmed by redundant or overlapping filings.

17 **c.** Once any such motions have been filed, the court will promptly meet with the parties and
18 determine the briefing schedule(s) for these motions, based, in part, on the number of motions filed and
19 the number of issues raised. No responsive memoranda to any such motions shall be required until the
20 court conducts a status conference and issues a scheduling order with respect to such motions.

21 **d.** If a defendant files a motion that the movant asserts requires the development of
22 discovery by the defendant, such motion shall be accompanied by a separate motion seeking leave to
23 conduct discovery in furtherance of a defendant’s motion. The motion shall identify with specificity the
24 discovery for which leave is requested.

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28 ¹ Accordingly, ¶12 of the CMO is deleted in its entirety.

1 **4. Bifurcation**

2 Except to the extent identified in paragraph 3, above, the Tribal Claims remain bifurcated from
3 the remaining Federal Claims. (CMO at 2.)

4 **5. Stay of Litigation**

5 The CMO directs that once defendants are served, they must file a timely notice of appearance
6 and intent to participate, but that “[n]o answers or other pleading will be required except upon further
7 order of the Magistrate Judge entered thereafter.” Answers, discovery and proceedings on the Fourth
8 through Eleventh Claims for Relief in the First Amended Counterclaim of the United States of America
9 (July 31, 1997; Doc. # B-59) shall continue to be stayed until further order of the court. The CMO’s
10 provision that “[n]o default shall be taken for failure to appear” is unchanged. (CMO at 12 ¶13.)

11 **6. Subsequent Litigation Phases**

12 Upon completion of Phase I and subject to further orders of the court, the court will address the
13 additional necessary steps that must be taken to address the merits of the Tribal Claims. At a time that
14 the court determines appropriate, the court will address such issues as the timing for filing answers to
15 the Tribal Claims as well as counterclaims/crossclaims, discovery, dispositive motions, and trial. The
16 court will also subsequently address the additional phases of the proceedings necessary to encompass
17 and address the Federal Claims.

18 **7. Motions**

19 Except as otherwise described in this Supplemental CMO and until further order of the court,
20 no motion shall be filed without leave of court and without a certificate that the movant has conferred
21 with opposing counsel in a good-faith effort to resolve the matter without court action.

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1 **8. Miscellaneous**

2 **a.** The court notes that additional supplemental case management orders will likely be required
3 in the future to address further litigation steps in this matter.

4 **b.** Except as provided for in this Supplemental Case Management Order, the original Case
5 Management Order entered April 18, 2000 (Doc. # B-108), remains in full force and effect.

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7 **IT IS SO ORDERED.**

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10 DATED this ____ day of _____, 2013.

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WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE