

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

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|----------------------------------|---|-------------------------------------|
| 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). |) | DATE: May 1, 2013 |
| |) | |

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

Deputy Clerk: Katie Lynn Ogden Reporter: FTR

Counsel Present: Gordon DePaoli, Dale Ferguson, George Benesch, Karen Peterson, David Negri, Andrew Guss Guarino

Counsel Appearing Telephonically: Michael Neville, Susan Schneider, Stacey Simon, Christopher Watson, Marta Adams, Wes Williams, Jr., Wyatt Rolfe, Christopher Mixson, Iris Thornton, and Simeon Herskovits

Special Appearance: Jim Shaw (Watermaster)

PROCEEDINGS: STATUS CONFERENCE

10:07 a.m. Court convenes.

The court and counsel confer regarding the agenda items as outlined in the United States of America’s List of Proposed Agenda Items for the Status Conference Scheduled for May 1, 2013, (Doc. #1151 in Case No. 3:73-CV-00125-RCJ-WGC; Doc. #1868 in Case No. 3:73-CV-00127-RCJ-WGC; and Doc. #684 in Case No. 3:73-CV-00128-RCJ-WGC). Counsel present their positions as to each of the items.

Agenda Items

1. C-125-B:

a. Completion of Service and Service Issues:

i. Status update from the United States on service on possible claimants with dormant riparian surface water rights under the laws of California.

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Mr. Guarino indicates the United States has secured funding for service and approximately 140-146 entities who need to be personally served. The United States have engaged with a process server to begin personal service and the latest report indicates that 52 individuals have been served and approximately 90 individuals still need to be served. There has been some difficulty in serving a number of individuals because they do not live in the Walker River basin and access to some of these individuals is hampered because of gated communities.

1. Status of additional research needed to complete service of dormant riparian surface water rights holders.

and

2. Service phases.

The United States expects to distribute another round of approximately 50 mailing packages, which is a result of further research that the United States has undertaken within the last month to compile more accurate contact information with regard to dormant riparian surface water rights holders. Overall, Mr. Guarino reports that service is progressing at a reasonable pace and anticipates service to be complete by late June, early July 2013.

ii. Status update on the following:

1. Updating and circulating the draft captions

No new status on this item at this time; the draft caption will be updated when service is complete with respect to dormant riparian surface water rights under the laws of California.

Mr. Guarino represents that the United States will immediately circulate the draft captions when service is complete.

The court inquires whether the draft caption should be submitted as a final caption at the same time the United States has a report on the completion of service. Mr. Guarino has no objection to the court's request and indicates that such a request is reasonable.

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

and

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

No new status on these two items at this time; the lists will be updated when service is complete with respect to dormant riparian surface water rights under the laws of California.

Mr. Guarino indicates that when service is complete the United States will produce a delineated final report for both a list of defendants who have filed a notice of appearance, including those defendants represented by counsel, and a list of persons and entities that were served and have not filed a notice of appearance. At the court's request, Mr. Guarino will advise Ms. Griffin when the report is complete to receive any feedback or suggestions she may have with regard to the lists of defendants.

2. C-125-C:

a. Completion of Service Issues:

Rule 4 personal service on identified proposed defendants is complete in C-125-C. Mr. Herskovits indicates that Mineral County is in the process of preparing revised Proposed Orders regarding completion of service and also regarding the one outstanding issue which concerns changing the precise name of the California state governmental defendant that owns certain water rights. Mineral County anticipates that the Proposed Order will be circulated within the next few days to the principal parties in this matter and thereafter filed with the court within the next week.

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

Mineral County is finalizing a list of *pro se* parties and will circulate that list among the primary parties. Mr. Herskovits explains that the list will include the following categories: (1) parties who are represented by counsel; (2) parties who have responded and are appearing *pro se*; and (3) parties who have not responded whatsoever. The court suggests that it may be of some utility to also discuss these lists with Ms. Griffin. Mr. Herskovits has no objection of doing so and will include Mr. Guarino in these discussions as well.

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c. Consideration of draft Order Setting Supplemental Briefing Schedule for Defendants Appearing after Initial Briefing Schedule on Motion to Intervene was Established.

The court reiterates its position that it does not embrace the request to establish further briefing deadlines concerning the Motion to Intervene for those parties who were served after the motion was originally submitted and briefed. The court informs the parties that it has submitted such a recommendation to Chief Judge Jones; however, the court believes the request is within the jurisdiction of and may be resolved by the Magistrate Judge.

The parties have no objection to the Motion for Proposed Briefing relative to the Motion to Intervene being reviewed and decided before the Magistrate Judge. Therefore, in view of the court's original inclination as stated above and its consideration, it is the court's opinion that briefing is complete and does not require further briefing. The court also notes that in view of the history of this case, it is extremely unlikely anyone other than the principal parties would actively brief these issues. Allowing any parties at this state to brief the issues relative to Mineral County's Motion to Intervene would serve to delay resolution of the motion.

Nevertheless, the court would receive and consider a request by anyone serve subsequent to the completion of briefing who may wish to submit a memorandum regarding this particular motion. In that regard, Mr. DePaoli and Mr. Herskovits agree that notice might need to be given to the parties who were served after the start of the original briefing schedule concerning the opportunity to respond to the Motion to Intervene. Mr. Herskovits suggests that Mineral County be assigned to prepare such a notice so that it can then be issued by the court and served electronically via CM/ECF along with the very limited number of physical mailings that would be required.

Therefore, the court directs Mineral County to draft a Proposed Order that provides those parties who were served subsequent to the original briefing of the Motion to Intervene twenty-one (21) days from receipt of the court's notice to request leave of court to file a memorandum of points and authorities as to the Motion to Intervene. The court suggests that the Proposed Order be circulated to the principal parties in this case before submitting it to the court. The parties are asked to make any comments or suggestions within five (5) days of receipt of the Proposed Order so that Mr. Herskovits may, thereafter, promptly submit it to the court.

Mr. Herskovits requests that Mineral County be afforded the opportunity to respond

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to newly filed memoranda regarding this sub category of defendants. The court suggests that this issue be addressed after the unlikely occurrence a party will seek leave to respond to the Motion to Intervene.

The court requests to receive a copy of the draft Proposed Order when Mineral County circulates it to the primary parties.

3. Issues Common to Both Subproceedings:

a. Publication: Status of proposed Orders

Mr. Guarino states that the parties are actively preparing for service by publication. Mr. Guarino indicates that afer service is complete in both C-125-B and C-125-C, both the United States and Mineral County anticipate filing a Motion for Service by Publication, which will ultimately complete the service process.

The court briefly clarifies that the utility of service by publication is to advise any defendants and potential water rights holders who might not have been served that there is litigation in progress which may impact their water rights. Mr. Guarino agrees with the court's characterization of the necessity to proceed with service by publication.

b. Notification protocol and use in each sub-proceeding: Draft E-service order (submitted and pending decision)

and

c. Website updates: Status update from Clerk's Office

The court confirms, at this time, the E-service order is under submission before Chief Judge Jones for his review and decision (Dkt. #1779-1, Case No. 3:73-CV-127-RCJ-WGC). The court notes that this order only pertains to the Sub-proceeding C-125-B case but may have some application to the C-125-C case in the future. Furthermore, it appears that a new deadline will now need to be scheduled by which the parties will have to file their responses to the "Notice Selecting Method of Service" (see ¶ 14, Dkt. #1779-1, Case No. 3:73-CV-127-RCJ-WGC).

Mr. Herskovits indicates that Mineral County will, prior to the next status conference, draft a Proposed E-Service and Website Order with respect to the Sub-proceeding C-125-C, which will be patterned after the Proposed E-Service Order in the C-125-B case. The court suggests that Mineral County coordinate with Ms. Griffin regarding this topic. Mr. DePaoli requests to also participate in any

