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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BEFORE THE HONORABLE WILLIAM G. COBB, MAGISTRATE JUDGE

UNITED STATES OF AMERICA, :
 :
Plaintiff, : IN EQUITY NO. C-125-ECR
vs. : Subproceedings:
 : C-125-B and C-125-C
WALKER RIVER IRRIGATION :
DISTRICT, et al., : 3:73-CV-0125-ECR-WGC
 : 3:73-CV-0127-ECR-WGC
Defendants. : 3:73-CV-0128-ECR-WGC
 :
_____ :

TRANSCRIPT OF STATUS CONFERENCE
MARCH 13, 2012

RENO, NEVADA

APPEARANCES:

Counsel Present: SUSAN SCHNEIDER
WES WILLIAMS, JR.
NICO DePAOLI
GORDON DePAOLI
DALE FERGUSON
THERESE URE
GEORGE BENESCH
SIMEON HERSKOVITS

Counsel Appearing Telephonically: MARTA ADAMS
KAREN PETERSON
SIMEON HERSKOVITS
STACEY SIMON
MICHAEL NEVILLE

Court Reporter: Donna Davidson, RDR, CRR, CCR 318
Official Reporter
400 South Virginia Street
Reno, Nevada 89501
(775) 329-0132

1 RENO, NEVADA; MARCH 13, 2012; 1:33 P.M.

2 --oOo--

3 P R O C E E D I N G S

4

5 THE COURT: Good afternoon, everyone. Please be
6 seated. Thank you.

7 THE CLERK: This is the date and time set for a
8 status conference in case numbers 3:73-CV-125-ECR-WGC,
9 3:73-CV-127-ECR-WCG, and 3:73-CV-0128-ECR-WGC, United States
10 of America versus Walker River Irrigation and others.

11 Counsel present in the courtroom are Therese
12 Ure, George Benesch, Nico DePaoli, Dale Ferguson, Gordon
13 DePaoli, Wes Williams, Jr., and Susan Schneider.

14 Counsel present telephonically are Marta
15 Adams, Karen Peterson, Simeon Herskovits, Michael Neville,
16 and Stacey Simon.

17 THE COURT: Thank you, Ms. Cotter.

18 If we could just do -- preliminarily go over who
19 is here, and tell me who you represent again, so I've got my
20 cheat sheet right.

21 MR. WILLIAMS: Wes Williams, Jr., representing
22 the Walker River Paiute Tribe.

23 MS. SCHNEIDER: Susan Schneider representing the
24 United States.

25 MR. DePAOLI: Gordon DePaoli, representing the

1 Walker River Irrigation District.

2 MR. FERGUSON: Dale Ferguson representing the
3 Walker River Irrigation District.

4 MR. DePAOLI: Nico DePaoli representing the
5 Walker River Irrigation District.

6 MS. URE: Therese Ure representing Circle Bar N
7 Ranch and Mica Farms.

8 MR. BENESCH: George Benesch representing Lyon
9 County.

10 THE COURT: You're hiding over there in the
11 corner, Mr. Benesch. I didn't see you.

12 Thank you, all. Two things I want to bring to
13 the parties' attention in trying to get up to speed on
14 this case.

15 First, I notice that one of the named
16 defendants was George Swainston. And I just want to alert
17 everyone who doesn't know that George Swainston was my
18 former partner. He passed away, I'm guessing now, about
19 four or five years ago.

20 I don't see that that presents any type of
21 conflict. I don't really have -- I don't take cases of
22 members of the firm. George hasn't been a member of the
23 firm for even longer than that. But I just wanted to
24 bring it to everyone's attention.

25 The other one is one of the attorneys in this

1 case is Louis Test of Hoffman, Test, Guinan & Collier.

2 Louis Test, and probably the firm, are on my
3 recusal list because I represented the firm in a matter
4 and have been close personal friends with Louis Test for
5 50 years.

6 I understand that Mr. Test is going to be
7 withdrawing from representation of the parties in this
8 case and that Mr. Benesch has apparently been contacted
9 about possibly representing the four or five entities that
10 Mr. Test represents now.

11 Mr. Benesch, can you shed any light on that?

12 MR. BENESCH: That's correct. I did have a
13 discussion with Mr. Test the other day on the subject.

14 THE COURT: But there's been no substitution
15 affected yet?

16 MR. BENESCH: That's correct.

17 THE COURT: All right. I don't know if anyone
18 has any objection to my proceeding on this case until that
19 technical conflict is resolved. If so, would you speak up at
20 this time.

21 All right. Thank you. If you don't mind my
22 drinking water, I've got some things going on here where I
23 need to keep hydrated.

24 I have received the United States of America's
25 list of proposed agenda items. I appreciate the work that

1 went on with that list and the work of counsel on that as
2 well.

3 And as you can see, I try to come up to speed
4 on all these issues that are presented by this agenda.

5 Ms. Schneider, do you wish to proceed? What's
6 the standard protocol at these events?

7 MS. SCHNEIDER: Usually what I've done is walk
8 through the agenda with the Court as the Court wishes us to
9 proceed. And then when there are matters that other
10 attorneys need to be heard on, then I've just sat back until
11 the next item comes up.

12 THE COURT: All right. And you know, Counsel, I
13 think with all these documents, why don't you all just sit
14 down for this proceeding and don't feel compelled to stand.
15 I appreciate the recognition, but I think it might be more
16 convenient to everybody. And we also might get a better
17 record with the audible recording.

18 Well, Ms. Schneider, why don't you just -- why
19 don't we just proceed through your agenda item by item,
20 and if something comes up, we'll be discussing those, I
21 presume.

22 MS. SCHNEIDER: Yes, Your Honor. The first item
23 on the agenda is the status of service in C-125-B. And some
24 of this is reiterating what I think we've told the Court
25 before and put into our -- the status report that we filed in

1 January. But I think it's helpful to start out with a
2 summary of where we are in C-125-B.

3 The service for mail -- the service by mail with
4 a request for waiver of personal service was substantially
5 complete at the end of 2008. But cleanup has continued since
6 then. Personal service for persons and entities that did not
7 waive service continued into 2009 and was substantially
8 complete by 2010, with some lingering serves to be completed.

9 Our last collection of returns of personal
10 service was filed in November of 2011.

11 At this point, there are several hundred
12 notices that we've gotten of transfers. But we also
13 suspect there have been other sales that have occurred
14 where people haven't bothered to notify the Court.

15 We have filed 16 service reports at this
16 point. We have signed orders in 15 of them. And the
17 proposed order for service report 16 is before the Court.

18 We have a number of dismissals and some
19 notices of appearances and address changes that we have
20 accumulated since filing the Sixteenth Report. And we
21 would be putting those into a Seventeenth Report.

22 We had held off on filing the Seventeenth
23 Report because it seemed to us that the resolution of the
24 Sixteenth Report might affect what we put into the
25 Seventeenth Report.

1 But depending on what the Court does today, we
2 would be prepared to start to go ahead and put together
3 the Seventeenth Report, even if we hold some of the issues
4 in the Sixteenth Report aside. I don't know what the
5 Court's going to do with that today.

6 THE COURT: The Sixteenth Report, as I
7 understand it, has to determine whether certain entities or
8 persons should be dismissed because they're not -- they're
9 either not municipal users or they're not groundwater users
10 or something like that?

11 MS. SCHNEIDER: That's correct, Your Honor.

12 THE COURT: And would the Rosachi, Walker
13 General be contained in the Seventeenth Report or the
14 Sixteenth?

15 MS. SCHNEIDER: Well --

16 THE COURT: If we went ahead with them.

17 MS. SCHNEIDER: That's the next item on the
18 agenda. And that is the request for removal from the mailing
19 list; one by Mary Rosachi, and the other one by Walker
20 General.

21 It causes me to note that for some reason both
22 of these defendants are on the certificate of service
23 despite the Magistrate Judge McQuaid's order in February
24 of 2008. It's document 1300, that --

25 THE COURT: Only the attorneys get served.

1 MS. SCHNEIDER: Pardon me?

2 THE COURT: Only the attorneys get served and
3 only electronically?

4 MS. SCHNEIDER: That's correct. That there was
5 to be some restriction and service to the primary parties
6 until service was finished.

7 So as a practical matter, they shouldn't have
8 been on the list and receiving materials at this point.

9 So there are a couple of options for the
10 Court. One would be to just simply omit them from service
11 now until all the other -- until we retreat from document
12 1300; that is, we put it to the side and try to figure out
13 what broader service has to be made once the preliminary
14 case management orders -- case management issues are
15 resolved.

16 What I should also say is that Mrs. Rosachi
17 filed a notice of appearance. So she would be getting
18 notice of possible future use of e-serve.

19 The other thing is that for Walker General,
20 they had waived service and disclaimed an interest. And
21 they are one of the persons and entities that's caught up
22 in the pending issues of -- set out in report number 16.

23 But I also note from a footnote in our filing
24 in our report 16 that it was our assessment that Walker
25 General was really more akin to being a domestic user, and

1 we had intended to ask the Court to dismiss them.

2 So that's where we stand with those two right
3 now.

4 THE COURT: Now, I understand Walker River
5 Irrigation District has some concern about the proposed
6 dismissals called for by the Sixteenth Report and order.
7 Should we turn to that at this time, Ms. Schneider?

8 MS. SCHNEIDER: I think we can. It's not Walker
9 River Irrigation District that filed something, it was
10 actually the --

11 THE COURT: Oh, the --

12 MS. SCHNEIDER: -- it was the U.S. Board of
13 Water Commissioners.

14 THE COURT: Water Commissioners.

15 MS. SCHNEIDER: The pending issue that we put
16 before the Court in --

17 MR. DePAOLI: Excuse me, Your Honor. Gordon
18 DePaoli on behalf of the Walker River Irrigation District.

19 I did want to comment on the item 1-B on the
20 agenda, the Mary Rosachi and Walker General, if I could,
21 before you go to the next one.

22 THE COURT: Well, I wasn't done with the first
23 one, A or B, 1-A or B, but if --

24 MR. DePAOLI: Oh, I'm sorry.

25 THE COURT: -- want to -- if it's an appropriate

1 time to add it in, go ahead.

2 MR. DePAOLI: Well, what I was going to add to
3 that, Your Honor, is it seems to me that it would make sense
4 to expand Judge McQuaid's order, which is docket number 1300.

5 At least the way I read the order, it was
6 written to apply only to the clerk and not necessarily to
7 attorneys appearing for parties in the case. And I think
8 that if perhaps that order was expanded so that all of us
9 could simply rely on the attorneys who have appeared to
10 receive service electronically until we get further down the
11 road with some of these other issues, then perhaps issues
12 like what Ms. Rosachi has and Walker General could be avoided
13 for a while.

14 It does not -- and I noted that Ms. Rosachi
15 basically said she'd like to be deleted for now but if she
16 decided that she wanted to be back on, she would let
17 everybody know. And I'm not sure in a case like this one
18 that's going to work very well. So maybe we could cover
19 it that way with Judge McQuaid's order for now and then
20 see where we are later.

21 THE COURT: Well, what about the proposal that
22 Ms. Schneider has, that we just go ahead and remove them from
23 the mailing list, and they shouldn't have been on there to
24 begin with, and we just follow Judge McQuaid's order. It
25 wouldn't need any amendment and that the only -- clerk's

1 office is limiting its service, and expand that to the
2 attorneys involved in the case, only to those who are on that
3 document 1300 list. How would that work?

4 MR. DePAOLI: That would be fine, Your Honor.

5 THE COURT: Ms. Schneider, do you want to
6 include that in a revised order on Sixteenth Report, and we
7 could -- rather than waiting for the Seventeenth Report, and
8 we can take care of that issue?

9 MS. SCHNEIDER: I will do that.

10 THE COURT: All right.

11 Does anyone else have anything to say about the
12 issue about Rosachi and Walker General?

13 And I think what we would do down the road when
14 we get to this issue about the electronic notification and so
15 forth that, at that time, she can opt in or opt out.

16 But maybe somebody could give Ms. Rosachi and
17 Walker General a call, just to tell them what we've done here
18 today, so they have some better understanding. Tell them
19 we've relieved them from being on the mailing list and they
20 shouldn't be getting anything. But they will be getting
21 something in the future, who knows when, from the Court about
22 electronic service and filing in this case.

23 MS. SCHNEIDER: Okay. If I could, Your Honor.
24 I'll send them a letter. Would that be better?

25 THE COURT: I think that's an excellent idea.

1 MS. SCHNEIDER: We'll send them a letter. And
2 that way there will be a record of what we told them.

3 THE COURT: All right. Does that then take care
4 of agenda items 1-A and B?

5 MS. SCHNEIDER: I believe so, Your Honor.

6 And then that would bring us to the Sixteenth
7 Report of the United States and how to resolve that issue
8 at this point.

9 The pending issue is whether the Court --
10 there are actually two questions. Whether the Court
11 intends that the persons and entities that we've
12 identified in that report should be parties to the
13 question -- excuse me, parties to the case.

14 First of all, the question is whether the
15 Court -- whether these persons and entities fit within any
16 of the nine categories of persons and entities identified
17 in the case management order; and, secondly, whether the
18 Court intended in any way to include these persons and
19 entities. And basically what -- the case management order
20 requires service in California on groundwater users who --
21 on municipal users of groundwater.

22 These persons and entities aren't technically
23 municipal users. Some categories within various offices
24 have classified them at quasi-municipal. And that's why
25 we've put them in as -- out of an abundance of caution.

1 But they're very, very small users.

2 And, in fact, in our Sixteenth Report, we
3 noted that there were five of them that, as we looked
4 closer at them, we thought that they really were much more
5 like domestic users but that they all seemed to be small
6 users.

7 So we put the issue out some time ago to the
8 primary parties. We tried to work out -- get an
9 understanding about what various positions were, as to
10 whether they were part of the case management order,
11 whether they should be in or not, and we got no -- we had
12 no resolution on the matter, and so we filed the Sixteenth
13 Report.

14 And I tried to -- the best that I could, to
15 identify the various positions that we had heard at the
16 time, concerns expressed by Walker River Irrigation
17 District in a couple of e-mails, and concerns expressed by
18 Mono County in its e-mails. Mono County and I think,
19 also, California are taking the position that these people
20 are not municipal users. And so the issue -- that's the
21 issue presented in Report 16.

22 When we were here last, the Court directed me
23 to prepare a proposed order that would dismiss them. And
24 we did that and then served it, as well, on what I believe
25 is 15 persons and entities total.

1 We then -- the Court had designated a period
2 of time for any parties to respond if they had concerns
3 with the order. And the U.S. Board filed a request asking
4 that this matter be addressed at this particular status
5 conference.

6 And then we responded expressing some concerns
7 about the U.S. Board's moving into filing -- actually
8 filing a substantive filing, as opposed to dealing with
9 anything that would be more procedural and our concern
10 because they're not a party -- among other things, that
11 they're not a party to the case.

12 THE COURT: Ms. Peterson, do you wish to address
13 those comments?

14 MS. PETERSON: Yes, Your Honor, I do. Thank
15 you. And I apologize that I'm not there in person today.

16 And, also, Mr. Jim Shaw, the Water Master, I
17 believe he's in the audience too. He would have more
18 information on the facts that were set forth about the 15
19 persons or entities that are listed in our request.

20 But Judge Reed's 1990 order in the C-125 case
21 says that the Board acts as a special master in C-125
22 cases. And historically, and as I documented in the
23 request that we filed, document 1693, the Board has filed
24 documents or pleadings in this proceeding. No objections
25 had been made -- to my knowledge, no objections had been

1 made to the filings. And to my knowledge, special masters
2 can file documents with the Court.

3 I don't know of any prohibition or order in
4 this case that says the Board acting as a special master
5 cannot file pleadings with the Court. I assume the Court
6 gives the pleadings, you know, filed by the Board, the
7 merit or the credence that the Court deems appropriate.

8 So in the request that the Board filed, the
9 Board provided information to the Court that hadn't been
10 provided by the main parties to this action. It was --

11 THE COURT: Ms. Peterson, let me -- if I may
12 interrupt you for a second.

13 What you've just addressed is something that
14 Ms. Schneider also mentioned about whether Walker River Board
15 of Commissioners, Water Commissioners has what we might call
16 standing in this action.

17 And I went back and read that 1990 order, as did
18 you, and it -- they may not be a party in this case, but they
19 are -- they certainly are what might be called a player. And
20 it seems to me that we should receive filings, whether it's
21 substantive or procedural, from your client in this action.

22 And I would ask -- I'll ask the parties to
23 address that issue. Does anyone else besides Ms. Schneider
24 have a comment on this subject about the Board of Water
25 Commissioners? Yes?

1 MR. WILLIAMS: Yes, Your Honor. Wes Williams,
2 Jr. --

3 THE COURT: Mr. Williams.

4 MR. WILLIAMS: -- Walker River Paiute Tribe.
5 This is an issue that the Tribe has had a concern about for a
6 number of years. It had filed some pleadings in the past
7 regarding the representation of the Board and the same
8 attorney representing the parties in the case. And because
9 of that, the Court entered its order --

10 THE COURT: Separating --

11 MR. WILLIAMS: -- separating the two.

12 But it did note that the Board is a
13 quasi-judicial entity and is subject to the rules of judicial
14 conduct.

15 And based on that, I think there's a -- there's
16 a line there somewhere, and we're not exactly sure where it's
17 at.

18 THE COURT: This case has quite a few lines that
19 are blurred.

20 MR. WILLIAMS: Yes.

21 THE COURT: I found that out in a hurry.

22 MR. WILLIAMS: In asking about that issue, we
23 did raise it with the Board just recently. There was a Board
24 of Water Commissioners meeting last week where the Tribe had
25 submitted a letter asking about this specific issue and

1 trying to get the views of the Board on this issue.

2 We have not received a response from that yet.
3 We understand that -- we're hoping that we will be getting
4 something soon.

5 THE COURT: Was the question that you posed to
6 them about whether they are a party or should be a party or
7 not? Or is it on something else?

8 MR. WILLIAMS: There were a number of different
9 issues. But that was part of it. And basically a general
10 question of what they viewed their role as.

11 And what prompted the letter was in a proceeding
12 before the state engineer that's going on right now, that the
13 Board had submitted a pleading to the state engineer arguing
14 a position against the application. And because of that, it
15 appeared that they were basically taking sides on that
16 application. And if they're doing that, then they are
17 violating the Code of Judicial Conduct, where they're
18 supposed to be an impartial party -- or impartial entity.

19 So if that's the case --

20 THE COURT: Well, that's a different issue,
21 though. The issue is whether we should allow them in this
22 case to file documents and address issues that they deem
23 relevant to the case.

24 And I note that they've been served sometimes,
25 and sometimes they haven't. And I note sometimes that they

1 have actually served documents, some without objection. And
2 I just wanted to clarify their role as a colorable party to
3 this case, however we want to call it.

4 And my inclination is to allow Walker River
5 Board of Water Commissioners to have that status in this
6 case. Not a party. But I'm just saying that I'd like them
7 to be served in this action. And by the -- under Judge
8 McQuaid's order, to add them to the list and to allow them to
9 file documents.

10 Now, if they have some constraints on them on
11 how they file, they're not supposed to take positions, that's
12 a different issue, and somebody can object to that.

13 But I just want to procedurally clarify that
14 let's get this issue out of the way and get them into this
15 case for filing and non-filing purposes.

16 MS. SCHNEIDER: Your Honor, they are on the
17 e-file list, and they are served. And that's been
18 traditional. I don't think they have not been served with
19 documents.

20 MR. WILLIAMS: Yes, I agree with that.

21 THE COURT: Well, I was looking through -- I
22 think Ms. Griffin and I were trying to find, the other day --
23 or somebody and I were looking, and we couldn't -- there was
24 some service list that they were not on there.

25 MS. SCHNEIDER: They were at one point

1 represented by Linda Bowman, not Karen Peterson.

2 THE COURT: Well, the list I was looking at --
3 and I'm sorry I can't identify right now, the certificate of
4 service had the parties whom the attorneys represented, and
5 it didn't include them.

6 MS. SCHNEIDER: I'm --

7 MS. PETERSON: Your Honor?

8 THE COURT: Yes.

9 MS. PETERSON: This is Karen Peterson. I think
10 from maybe the U.S.'s perspective, the issue, when you ask
11 the parties to file something, they are taking the position
12 that the U.S. Board is not a party, and so we're not entitled
13 to file something.

14 And so I don't know if you need to say in the
15 future, you know, parties and the U.S. Board, or how that
16 should be clarified. But I -- you know, if you say, like you
17 did in your minute order, that the U.S. is supposed to get
18 together with the major plaintiff parties and major defendant
19 parties to go over the agenda, they would not include us in
20 that discussion because they don't think that we're a party.

21 MS. SCHNEIDER: There is a -- there are --
22 there's an express statement in more than one place that the
23 U.S. Board is not a party.

24 THE COURT: And maybe where I got confused is
25 that where you list the service by mail, you had Mr. Shaw

1 getting served. And I didn't notice Ms. Peterson's name at
2 that time. But I see that she's on the e-mail list.

3 MS. PETERSON: Everything that's filed with the
4 Court I get.

5 THE COURT: Well, maybe we just leave that to
6 rest right now, until somebody raises the issue of whether
7 you have standing or the ability to file something on a
8 particular matter. Does that issue exist at the present
9 time?

10 MR. WILLIAMS: No, Your Honor. Depending on how
11 the Board responds to the Tribe's letter, then we'll decide
12 if we need to bring something up with the Court or not.

13 THE COURT: Are there any other motions or
14 issues --

15 MS. SCHNEIDER: I think it --

16 THE COURT: -- pending?

17 MS. SCHNEIDER: Well, I think it does exist at
18 this point. Let me mention a couple things here.

19 First of all, procedurally, on page 14 of the
20 case management order, it states that any party may move to
21 modify the case management order.

22 The U.S. Board's not a party to any portion of
23 the proceedings, whether it's C-125-B -- C-125, or
24 subproceedings B or C. And then page 14 of the case
25 management order also sets out a standard of good cause shown

1 to modify the case management order.

2 And there's been -- that -- assuming that the
3 U.S. Board has -- is able to file anything here, which
4 they shouldn't be doing because they're not a party, they
5 haven't met or even addressed the standards in their
6 filing.

7 The other thing is that -- because what they
8 seem to be doing here, I think, is asking the Court to
9 amend the case management order and require service on
10 some category of persons or entities that seem to be
11 represented, to some extent, by the persons and entities
12 identified by Service Report Sixteen.

13 It seems to me that if -- because I don't
14 think anybody is -- I haven't heard anyone yet say that
15 they believe that the persons and entities identified in
16 Report Sixteen fit within the boundaries of the case
17 management order as municipal providers of groundwater.

18 And if that is the case, then the next
19 question would be whether there should be some sort of
20 modification of the case management order to do that. But
21 I don't see that that's actually been addressed.

22 The other thing is that I also noted that the
23 15 persons and entities involved in Report Sixteen were
24 not served with the U.S. Board's filing. We served them.
25 And so the last I heard from anyone was receiving the

1 order that we filed with the Court proposing their
2 dismissal.

3 And so that concerns me. So here we have
4 their -- the Board's not a party, it didn't file a motion
5 and hasn't met the standard, and it hasn't served anyone.

6 It's also -- moving to a second issue. I
7 would like to hear from the Board about its authority to
8 make this filing and that it should identify how this
9 decision was made; that is, to identify all the members of
10 the U.S. Board with whom this filing was discussed and
11 identify who approved filing this -- making this filing.

12 Because, among other things, the Tribe is
13 actually a member of the Board. And it's a minority
14 member and, I suspect, has been outvoted pretty
15 consistently over the years.

16 But I'd like to know whether the -- you know,
17 which members of the Board this particular action was
18 discussed with and who approved its filing.

19 THE COURT: Well, we're not going to get into
20 that today. I mean, I don't know that that's the issue that
21 I'm trying to raise here. I'm trying to talk about a
22 procedural mechanism where we ensure that the Walker River
23 Board of Water Commissioners gets served and that they serve
24 people and have status in this case to file documents.

25 Whether they should or have not filed the

1 document is a beef that you have with the Board itself. And
2 whether you represent the Tribe, or Mr. Williams does, or
3 somebody can address it through those channels.

4 I'm just talking about today the service -- or
5 including the Walker River Board of Water Commissioners in
6 the chain of what's going on in this case. And I was kind
7 of surprised that it hasn't been raised before this date.

8 When you talk about the case management order,
9 I'm looking at page 8, under lines 18 through 26, Judge
10 Reed stated that the magistrate judge shall receive
11 recommendations of the parties for procedures for
12 scheduling and for the efficient management of the
13 litigation given the number of parties to the case. Such
14 procedures may include the use of common counsel, special
15 procedures for service of pleadings, or other mechanisms
16 deemed likely to reduce the burdens on the parties and the
17 court in a case of this magnitude.

18 And for the time being, unless something comes
19 up that they are absolutely without standing, my
20 suggestion is that we include the Walker River Board of
21 Water Commissioners -- or the U.S. Board, I keep calling
22 them Walker Board, the U.S. Board of Water Commissioners
23 in the service list or loop.

24 Let me ask first Ms. Peterson whether she has
25 any objection to this approach?

1 MS. PETERSON: No, Your Honor.

2 THE COURT: Do you think it's a wise idea or not
3 a wise idea to do this? And I don't mean to put you on the
4 spot. You can be critical of me. If you don't think we
5 ought to be going down this slippery slope, let me know.

6 MS. PETERSON: Your Honor, historically we have
7 tried to provide input and information to the Court as we
8 thought it was important for the Court to receive. And so I
9 think that's probably important on a going-forward basis.

10 But we just need to know. Because we have
11 provided that information in the past. It hasn't been
12 objected to. The judge -- I mean, in the other case, the C
13 case, document 210, the judge specifically relates that the
14 U.S. Board of Water Commissioners filed a pleading, a
15 substantive pleading in that case, and goes through and
16 summarizes all the parties' position and the U.S. Board's
17 position.

18 So I think Judge Reed thinks it's important that
19 we're here.

20 THE COURT: All right. That is going to be the
21 order of the Court going forward. The U.S. Board of Water
22 Commissioners has -- I'm going to call it standing to serve
23 documents in these actions and should be served with matters
24 in these actions and may file, whether it's called a pleading
25 or a report or status position or whatever, in all of the

1 cases. So that will be going forward.

2 Now we need to turn to the issue about the
3 proposal of the U.S. Attorney about dismissing certain
4 parties in this action under the Sixteenth Report.

5 Ms. Schneider, I have received the United
6 States' report on this matter.

7 And I've reviewed the document you filed,
8 Ms. Peterson, where you expressed concern that you don't
9 want to have someone objecting as to finality down the
10 road. I recognize that concern; however, I think that we
11 will proceed with the dismissal of those entities
12 identified by the U.S. Government, the United States of
13 America.

14 Ms. Schneider, does that sufficiently address
15 the issue about the nine service categories and the plans,
16 whether these parties fit in any of those nine groups?

17 MS. SCHNEIDER: Yes, it does, Your Honor.

18 THE COURT: All right. Now, is that going to be
19 also included in this revised report on the Sixteenth Report?

20 MS. SCHNEIDER: I will prepare a revised order
21 for the Court for Report 16 --

22 THE COURT: All right.

23 MS. SCHNEIDER: -- and address that.

24 THE COURT: Will you include my comments about
25 the U.S. Board of Water Commissioners in that as well?

1 MS. SCHNEIDER: Yes, Your Honor. I -- well, I
2 will -- the best -- to the best that my notes allow me to do
3 so, I will do that, Your Honor.

4 THE COURT: All right. If you wish to
5 disseminate a draft first to everyone and bring it to the
6 Court's attention, I would be happy to review it as quickly
7 as possible.

8 MS. SCHNEIDER: I will do that, Your Honor.

9 THE COURT: And if you do, tell everyone they
10 have got to get an objection or comment in to the Court
11 within five days.

12 MS. SCHNEIDER: Okay.

13 THE COURT: Is there anything else on item 1-A
14 about the Sixteenth Report before we turn to the Rosachi and
15 Walker General issue?

16 Mr. DePaoli?

17 MR. DePAOLI: Yes, Your Honor. Along the
18 lines -- if I understood correctly, Ms. Schneider is going to
19 be preparing a new order relating to this dismissal. I think
20 it would be useful in that order to indicate to these parties
21 that the fact that they're being dismissed without prejudice
22 may mean that down the road they may have to become -- they
23 may be joined as a party later --

24 My concern is that I think these parties
25 probably don't completely understand the way the case

1 management order is structured and the fact that -- depending
2 on how some of the threshold issues get decided, they may get
3 dismissed today; but depending on how the threshold issue
4 concerning the relationship between surface and groundwater
5 gets decided, they may get joined again later.

6 And I think that maybe to whatever extent we can
7 alert them to the fact that they are out for now but things
8 may change might preclude some issues coming up down the
9 road.

10 THE COURT: I think Mr. DePaoli makes a good
11 suggestion, Ms. Schneider. Do you have any comments?

12 MS. SCHNEIDER: I can do something like that.
13 The Court had already asked me to make that dismissal without
14 prejudice. But I can put a sentence in to that effect.

15 THE COURT: I think that's well advised, so
16 people don't get surprised if, down the road, they're brought
17 back in.

18 MS. SCHNEIDER: I'll do that.

19 THE COURT: All right. I don't know how Judges
20 Leavitt and McQuaid did in the past on these hearings, but my
21 thought is to just go down the agenda item and ask if there's
22 anything else, first, on 1-A that we need to address. And if
23 not, we'll turn to 1-B.

24 All right. We'll turn to 1-B. No comments.
25 And that's the Rosachi and Walker General. And I think maybe

1 we've already addressed that in our precedent discussions,
2 that they will be eliminated from the mailing list.

3 And you're going to do a letter to them,
4 Ms. Schneider?

5 MS. SCHNEIDER: I will, Your Honor, yes.

6 THE COURT: All right. So that takes care of
7 that.

8 And I think what we just discussed on the report
9 of the United States concerning the status of service in 1-C
10 has also been addressed then.

11 MS. SCHNEIDER: Yes, Your Honor.

12 THE COURT: All right. Now --

13 MS. SCHNEIDER: The next -- I'm sorry.

14 THE COURT: Go ahead.

15 MS. SCHNEIDER: The next item is whether there
16 are any issues regarding the most recent filed proof of
17 service.

18 I noted this earlier, that our last filing of
19 personal service made by a process server was done on
20 November 30th, 2011. It's document 1670 in the B case.

21 As with past such filings, I had simply put them
22 on the agenda to see if there were any concerns by any of the
23 parties. And there had been none expressed at prior times.
24 But I thought that since we had done the same thing with the
25 earlier proofs that I would add that on the agenda here, to

1 see if there were any comments or questions.

2 THE COURT: Are there any comments or questions
3 from anyone, agenda item 1-D?

4 Then there appears to be no comments or
5 questions.

6 MS. SCHNEIDER: And at this point, Your Honor, I
7 think the prior minutes of Magistrate Judge McQuaid on these
8 issues referenced that he had deemed them served on the
9 record, or somehow he had formally acknowledged the filing
10 and accepted it. And I would ask that the Court do the same
11 now.

12 THE COURT: Okay. Give me the magic words that
13 I'm supposed to say.

14 MS. SCHNEIDER: I believe -- and I could add
15 this into Report Sixteen, if you want me to. But my
16 recollection is the minutes from prior sessions include that
17 the Court had deemed the persons and entities listed on the
18 proof of service to be served.

19 THE COURT: The Court deems the persons and
20 entities listed on the proof of service to have been properly
21 served. And if you would note that in the order.

22 MS. SCHNEIDER: I will.

23 THE COURT: Did I say that right?

24 MS. SCHNEIDER: I'll go back and check my notes.
25 It sounds good.

1 THE COURT: When you redo your notes, make it
2 sound like I said the right thing.

3 MS. SCHNEIDER: Okay.

4 THE COURT: Anything else on the issue of most
5 recent proofs of service? I think I called that action 1-E.
6 I think that was 1-D, actually, as in David.

7 Do you want to address -- go ahead now?

8 MS. SCHNEIDER: I will. The next item under 1-E
9 is completing service. I have two subitems here. The first
10 is the need for finalized caption. And what I wanted to note
11 with the Court is with each approval of service report
12 internally, we have been updating the caption. We have
13 not -- there are no successors listed on that caption because
14 they're not formally in the case at this point. That issue,
15 of course, is still pending in front of Judge Reed.

16 And at some point -- today's not the time, I
17 think, to decide that, but at some point we would be
18 wanting to determine on -- with the Court, how to finalize
19 the caption in the case. That's the first item.

20 THE COURT: Do you have to do that on C as well
21 as B?

22 MS. SCHNEIDER: I believe that would happen in
23 the C case, as well, although I would defer to
24 Mr. Herskovits, who is on the telephone.

25 MR. HERSKOVITS: Yes. That is going to be

1 necessary for the C case as well.

2 MS. SCHNEIDER: We've also noticed that there
3 are a handful of people who have filed appearances, who are
4 not people we have actually served. So we're going to be --

5 THE COURT: Gluttons for punishment?

6 MS. SCHNEIDER: It is an interesting
7 arrangement.

8 I think a couple of them may be successors, and
9 we'll track them down and try to clarify that with them. But
10 that's something we already have on our radar screen to deal
11 with.

12 THE COURT: I would have to assume they are
13 successors in some fashion. Because why in the world else
14 would somebody in their right mind voluntarily get into this
15 lawsuit?

16 MS. SCHNEIDER: I agree. I believe that's the
17 case. At least it certainly was one of them. And it may be
18 that they're not wholly successors. They may have succeeded
19 to only a portion of a water right. But we will be tracking
20 that down and try to figure it out.

21 The next item, which is one that I think that
22 Mr. DePaoli had identified to me, is one that he also
23 wanted to make sure that we address today, was to deal
24 with addressing any challenges to service.

25 The Court -- we touched on this very briefly

1 at the last status conference. And Your Honor had
2 suggested that I make a filing saying -- indicating that
3 service was complete. And that's something I've certainly
4 been thinking about.

5 But I think there's a question as to how we do
6 that in conjunction with the requirements of the case
7 management order and where something like that is done in
8 terms of the sequence of completing the preliminary case
9 management issues.

10 The paragraph that addresses that in the case
11 management order is paragraph 9. I --

12 THE COURT: That's -- doesn't that --

13 MS. SCHNEIDER: I'm sorry.

14 THE COURT: -- preclude this case really from
15 going forward with the identification issues, until service
16 has been completed?

17 MS. SCHNEIDER: That's -- there was also -- let
18 me move to the right page here. Paragraph 9 says that after
19 we've compiled the list of parties that the United States and
20 Tribe intend to serve, the list and a description of the
21 procedures by which it was compiled has to be filed and
22 provided to the parties who shall have such period of time as
23 the magistrate judge shall determine to file objections
24 indicating whether the list is complete and includes all such
25 water rights claimants within the categories described in

1 paragraph 3 who can reasonably --

2 THE COURT: Paragraph 3 is the one with the nine
3 subcategories?

4 MS. SCHNEIDER: That's correct, Your Honor.

5 THE COURT: Okay.

6 MS. SCHNEIDER: And then it says that the
7 magistrate judge shall consider and rule on all such
8 objections. And then corrections -- and addresses how and
9 when corrections to the list of intended parties would be
10 made.

11 A number of years ago I filed -- I did a
12 filing with the Court to identify what it was we were
13 doing to try to identify parties. And I don't have the
14 finding in front of me, but I believe the Court basically
15 accepted it for what it was. But I think that the
16 question arises now as to how we deal with any objections
17 to service.

18 And I don't -- I'm looking at Mr. DePaoli,
19 because I think this was an issue that he also had wanted
20 to address.

21 THE COURT: Mr. DePaoli?

22 MR. DePAOLI: Yes, Your Honor. And I wish my
23 memory were better about this. But as I read what paragraph
24 9 says, it seemed to me that it contemplated that all that
25 would happen either before service started or well after

1 service started but while it was taking place. And we must
2 have at some point decided not to do that quite that way.

3 I think really in order to deal with what's in
4 paragraph 9, we need to see, I guess, a caption of who all is
5 in the case. And I don't know to what extent it's necessary
6 or not necessary to identify why they're in the case. But I
7 think at this point, just having that caption will give us an
8 indication as to whether anybody has been missed at least up
9 to this point in time.

10 And I think that given where we are, we
11 probably -- and part of this may depend on how Judge Reed
12 handles the objections to the other orders. But it seems to
13 me that whatever is on that list, it ought to be adequate for
14 us to try to move forward with getting the threshold issues
15 identified and moving along. And then if there's something
16 else that needs to happen at some point later, it can be done
17 then.

18 But I'm thinking that based on what has taken
19 place to date, there is -- there should not be a lot to do
20 in terms of what paragraph 9 has to say, which really was
21 designed to make sure we had a fairly comprehensive list
22 of who the United States and the Tribe were going to
23 attempt to serve.

24 THE COURT: What document was it that I was
25 looking at, if you could think of -- read my mind, that had a

1 list of all the defendants? Was it the amended complaint of
2 Mineral County in C?

3 MR. DePAOLI: That has the C. But the caption
4 in this case will be considerably larger than that. There
5 is --

6 THE COURT: I think they have 3,850 service
7 packages mailed out, and 1,500 personally served.

8 MS. SCHNEIDER: That's right. It's a fairly
9 long caption, and we've been --

10 THE COURT: Looking at 3,000 defendants in B.

11 MS. SCHNEIDER: Approximately, yes, Your Honor.

12 THE COURT: And you think all those people,
13 entities, holders have been served now?

14 MS. SCHNEIDER: What we were tasked to do was to
15 identify the persons and entities who fit within those
16 categories and then go out and serve them. And so what we
17 did was to go and look at a variety of sources, whether it
18 was cards of -- the WRID cards of persons and entities
19 holding rights under the Walker River Irrigation District,
20 the U.S. Board's cards for other decreed rights holders. We
21 have been into offices -- the state engineer's offices in
22 Nevada. We've been into similar offices in California.
23 We've been into a variety of counties and had people do a
24 fair amount of research. And so we certainly came to the
25 conclusion that we had looked everywhere that we needed to

1 look.

2 One of the things that we also did was that in
3 filing the service reports, we provided a certain amount
4 of identification on every person and entity that we
5 served. We identified the categories that we thought they
6 fit into, although we caveated each filing saying that,
7 you know, there might be more -- it may not be complete,
8 it may not be everything.

9 And we identified whether they had attorneys.
10 We identified their addresses, the names of the persons
11 and entities and so forth. And so that information, along
12 with the backup information, as exhibits, was provided to
13 the Court. And it was provided to -- we served every one
14 of the defendants -- the proposed defendants who were
15 addressed in each such service order.

16 And we served each of those served persons and
17 entities with the backup information that we had on them.
18 Just for themselves. And then we made that information
19 available to the primary defendants. It was filed with
20 the Court and e-filed as the Court moved into using the
21 e-service, the computer docket.

22 But then we -- the Court gave the primary
23 parties -- and I think Ms. Peterson looked at them
24 sometimes for questions of whether trusts were addressed
25 properly. And Mr. Ferguson looked at most of them as

1 well. And so if they had objections, they were to be
2 raised at the time that each service -- each service
3 report was addressed. And that's how the Court went at it
4 at the time.

5 THE COURT: So are we in position now in, let's
6 start with B, to identify all the named defendants, in that
7 we believe this list is fairly complete and accurate?

8 MS. SCHNEIDER: We are trying to pull that
9 together now.

10 One thing I think that might help here, and
11 following what Mr. DePaoli has said, looking at paragraph
12 9 on page 8 of the case management order, the fourth line
13 states that the -- this information is to be provided to
14 the parties. And that would mean all 3,000.

15 And I'm not sure whether the Court intends
16 that and whether it's information that would be provided
17 to the primary parties such as those such as WRID that
18 have been following this matter closely and would be the
19 ones who would be doing the review of who is a party and
20 who is not.

21 THE COURT: What was the language of paragraph 9
22 that you had trouble with?

23 MS. SCHNEIDER: It's line 9. It indicates that
24 it's to be provided to the parties who get a period of time
25 to file objections as to whether the list is complete.

1 THE COURT: So you're concerned about sending
2 that out to 3,000 people in B?

3 MS. SCHNEIDER: Right. And I'm wondering if the
4 Court -- and if the Court would -- if the Court thinks that
5 that should be interpreted to be less than all of the parties
6 but the primary ones who have been doing the work on the
7 case.

8 And, again, the record's not going to reflect
9 this, but I'm looking at Mr. DePaoli right now to see if he
10 has a position on this matter.

11 THE COURT: Why can't we assume that Judge
12 McQuaid's order modified paragraph 9, that the service is
13 only on the attorneys --

14 MS. SCHNEIDER: Very well, Your Honor.

15 THE COURT: -- what this refers to.

16 MS. SCHNEIDER: Yes, Your Honor. That, I think,
17 would do it.

18 THE COURT: Does that take care of it?

19 MS. SCHNEIDER: I think that works it.

20 THE COURT: Mr. DePaoli?

21 MR. DePAOLI: Yes. I really think Judge Reed
22 had in mind that this was going to happen while the number of
23 parties were very small because the purpose was to identify
24 all the other parties who were going to be served and brought
25 in later, so that the reference there was to the parties who

1 were participating at the time and who were charged with
2 helping to identify who all the other parties ought to be.
3 So I think that's fine.

4 My main concern is to understand what it is
5 we're going to be challenging here at this point in time.

6 THE COURT: I think we'll be challenging the
7 list that Ms. Schneider is going to be preparing of
8 defendants A through Z. Is that what you're going to be
9 doing?

10 MS. SCHNEIDER: We will be -- we will start to
11 put that together.

12 THE COURT: And then she'll distribute that list
13 among the counsel who are getting service in this action and
14 probably bring it up with the next report or the appropriate
15 time to say this is the list. And then I think we've made
16 some progress toward getting to the point where we can then
17 turn to the threshold issues when service has been completed.

18 As I understand, under the CMO that's a
19 pre-condition to addressing the threshold issues which you
20 all identified, what, three, four years ago now?

21 MR. DePAOLI: Yes.

22 MS. SCHNEIDER: It also seemed to me that if
23 there are any outstanding issues on this -- and maybe the way
24 we've resolved this right now it's not going to be a concern.
25 But my notes indicate that I was thinking that if there were

1 any other service issues, some of the -- that is an issue
2 that we might also think about addressing, to some extent, in
3 the -- whatever it is that we publish when we do publication.

4 That's all that I have on item number one, all
5 the subparts.

6 THE COURT: Anyone else have anything to address
7 in 1-E?

8 I don't think there's probably too much on two,
9 but go ahead if that's your next problem.

10 MS. SCHNEIDER: I turn to Mr. Herskovits.
11 That's his case.

12 THE COURT: Oh, the Mineral County case?

13 MS. SCHNEIDER: That's correct.

14 THE COURT: Mr. Herskovits.

15 MR. HERSKOVITS: Yes, Your Honor. This is --

16 THE COURT: Could you speak up a little bit,
17 please.

18 MR. HERSKOVITS: Yes. Can you hear me now?

19 THE COURT: Yes.

20 MR. HERSKOVITS: Okay. Sorry.

21 THE COURT: Thank you.

22 MR. HERSKOVITS: This is Simeon Herskovits on
23 behalf of Mineral County. I think your assessment is
24 correct, Your Honor. We really -- the status of service has
25 not changed. And a lot of it hangs or turns on the

1 resolution of the pending objections before Judge Reed.

2 I would point out that there were a number of
3 issues that had been raised in WRID's objections to
4 Magistrate Judge Leavitt's order that may well be, in fact,
5 resolved by Mineral County's response to those objections.
6 And I think once we receive an order from Judge Reed on the
7 two or so fundamental questions that may remain outstanding,
8 we would incorporate all of the issues in any agreement or
9 consensus that we've reached with WRID over those issues into
10 the service report or status of service report that we would
11 file after Judge Reed's order.

12 There's really nothing more to report. As has
13 already been mentioned, the caption in 125-C is part of what
14 is before Judge Reed right now. And I think that once we
15 have that order, we'll have a clear roadmap towards the
16 finalization of the caption in 125-C as well.

17 THE COURT: All right. Thank you.

18 Does anyone have any comment on agenda item two?

19 Ms. Schneider.

20 MS. SCHNEIDER: Moving on to item three, Your
21 Honor?

22 THE COURT: Yes.

23 MS. SCHNEIDER: This addresses the status of
24 work on the notification protocol. At the last status
25 conference, the Court directed the primary parties in B case

1 to -- and also in C, to try to begin to discuss a variety of
2 methods to use to do notification here.

3 The first issue that we talked about and focused
4 on is a proposed order and -- notice and order regarding the
5 use of electronic service. We elected to focus on the B case
6 and not the C case at this point because the B case seems to
7 be a little closer to moving into the -- into that kind of
8 order. C doesn't seem quite ready for it. And if we can put
9 something together in the B case that is acceptable to the
10 Court, then I think we can certainly do the order for the C
11 case fairly rapidly thereafter.

12 THE COURT: Does this agenda item coincide with
13 item number 6 as well? Should we take these together?

14 MS. SCHNEIDER: Yes, Your Honor. It does, to a
15 degree.

16 THE COURT: You know what I might -- Lia Griffin
17 from the clerk's office is here. And I would ask her to
18 maybe sit here at the witness stand, if you want, because I
19 think she and her office are going to be a key player in this
20 matter. And we'll need her participation on these issues,
21 particularly as to the electronic service.

22 MS. SCHNEIDER: And what I did was I used the
23 first order in the Orr Ditch Decree on the use of e-service
24 for persons who were not represented by counsel who had filed
25 notices of appearance.

1 THE COURT: I noticed some similarity of
2 language --

3 MS. SCHNEIDER: Yes. And --

4 THE COURT: -- between the two.

5 MS. SCHNEIDER: -- the parties had several calls
6 on it. And drafts were exchanged. And we still have a draft
7 document with some questions that we need to still discuss.

8 But what I did in conjunction with today's
9 status conference was to contact Ms. Griffin and send a
10 copy of the draft to her.

11 And I also contacted Mr. DePaoli to let him
12 know that I had done so.

13 And I was asked and set up a meeting with her
14 this morning. And so Mr. Ferguson and I met with
15 Ms. Griffin this morning to talk about a variety of
16 issues, beginning with the proposed -- the draft e-service
17 order and notice.

18 She gave us several comments and observations
19 and some suggested changes and edits. And I'll be working
20 on that. And my intent is to send a revised draft out to
21 the various attorneys who are working on this so that we
22 can try to bring that draft to a position where we can
23 think about how it is that we would like to present it to
24 the Court.

25 Now --

1 THE COURT: You know what. Let me interrupt a
2 second. I had a couple meetings with Ms. Griffin this
3 morning as well. And I think we might ask her to comment on
4 it.

5 But I think she perceives that the Orr Ditch
6 Decree was mainly a mechanism to receive filings by e-mail,
7 while what you're proposing is both sending -- or filing and
8 receiving.

9 MS. SCHNEIDER: I intended to draft the order
10 only for receiving and not for filing. I think we're on the
11 same page. But, clearly, the way she read the order, I
12 hadn't written it clearly enough.

13 THE COURT: She had a suggestion, too, though,
14 so what you could do by non-attorney filers.

15 Ms. Griffin, would you address that, of the
16 court clerk's office filing in it for them.

17 MS. GRIFFIN: We spoke about it --

18 THE COURT: Would you speak into the microphone
19 there so we can get --

20 MS. GRIFFIN: Yes. Counsel and I discussed it
21 this morning. And it would closely mirror what's going on
22 with the Orr Ditch Decree in that when pro se filers need to
23 file a document, they would still send it into the clerk's
24 office, rather than filing it electronically.

25 That way when the clerk's office docketed that

1 item, we can make sure that it's properly electronically
2 connected where it needs to be, so that it's submitted to the
3 court in the usual fashion.

4 In the Orr Ditch Decree, the scheduling
5 order -- the briefing scheduling order on the motion to
6 amend goes into a description on how, then, the documents
7 that the pro se filers are filing with the court would be
8 disseminated to all the other parties, in order that the
9 pro se filers aren't having to endure that large postage
10 fee of what did we calculate, about \$500 just to file any
11 documents.

12 So in the Orr Ditch Decree, I understand, and
13 Mr. Ferguson is probably more conversant about this, that
14 it's done through a postcard method. And it's done
15 periodically, not at each filing. No?

16 THE COURT: Mr. Ferguson, do you wish to address
17 it?

18 MR. FERGUSON: Thank you, Your Honor. I think
19 the way it has been done so far is --

20 THE COURT: You can go ahead and be seated,
21 Mr. Ferguson.

22 MR. FERGUSON: -- for each filing there has been
23 a postcard that has gone out.

24 THE COURT: For each filing?

25 MR. DePAOLI: Excuse me, Your Honor. Gordon

1 DePaoli. There is -- to my knowledge, there is no notice
2 given of pro se filings to anyone who is not signed up for
3 electronic service.

4 THE COURT: At the present time, there isn't?

5 MR. DePAOLI: At the present time in Orr Ditch.
6 The only postcard --

7 THE COURT: Oh, in Orr Ditch?

8 MR. DePAOLI: Yes. In Orr Ditch the only
9 postcard notice goes when one of the parties represented by
10 counsel does a filing.

11 In other words, pro se filings by respondents
12 are e-filed by the clerk -- or are filed by the clerk, and
13 that goes to everyone electronically. But there is no
14 postcard notice that I'm aware of that gives notice of that
15 filing to other respondents. Or in this case, that would be
16 to other defendants.

17 THE COURT: So if somebody in that case, pro se
18 filer were to file a motion for summary judgment, that
19 doesn't get served on everybody?

20 MR. DePAOLI: It does not get served on the pro
21 se parties. But that's an unusual proceeding, Your Honor,
22 because the only -- what is going on there is a motion to
23 amend the decree under Rule 60. And so it's a very limited
24 sort of pleadings that are going to get filed; whereas here,
25 it is something that I think we do need to consider, in terms

1 of what should or should not happen when a pro se party makes
2 a filing -- pro se defendant makes a filing.

3 And there's a number of options that I think we
4 could consider here. One is to deal with or to look at Rule
5 5, which would allow for exempting any service by defendants
6 on defendants. That may or may not work. I think the other
7 thing that we could consider at some point is whether a pro
8 se filing would get some kind of a postcard notice to go out.
9 But that's, I think, a bridge we can maybe have to cross
10 later.

11 THE COURT: Well, this is all in a work in
12 progress stage, is it not?

13 MR. DePAOLI: Yes.

14 THE COURT: All right. I just tell you that the
15 clerk's office would be very accommodating, and I'll do what
16 I can, as well, to work on this issue, about a good way for
17 service, both filing and service of documents, and any other
18 questions, whether a website may or may not work. But I can
19 assure you, we will have the cooperation of the court system
20 on this.

21 MS. SCHNEIDER: I appreciate that, Your Honor.

22 There are a couple of other things that we had
23 talked to Ms. Griffin about today as well.

24 We're in the process of starting to put together
25 an Excel spreadsheet with the names and addresses in various

1 categories of the persons and entities who filed notices of
2 appearance. And we are prepared to give that to the clerk's
3 office, to assist them, because they don't have such a filing
4 prepared, I think, at this point. And we could get it -- we
5 could make it available. We could just file it so that all
6 the other parties have it as well. It would be taken from
7 the information that we have. Certainly there will be
8 mailings that bounce back.

9 But as we think about moving beyond Magistrate
10 Judge McQuaid's order, number 1300, which is the one
11 limiting service, we need -- that's part of what we have
12 to think about in how we open up and broaden service. So
13 we're prepared to do that.

14 And it's the same clerk who is working -- same
15 paralegal working on that who I would be asking to put
16 together the -- make sure we have an updated case caption.
17 And she would probably be working on the two together.

18 I think it's -- if nobody -- she's doing both
19 tasks. If there was no interruption, she would probably
20 do it in about five weeks or so. But knowing my office,
21 there are going to be interruptions for her. So it's
22 going to take her a period of time to get this put
23 together. But it's something that we're prepared to make
24 available to the Court and others once we finish --

25 THE COURT: So what you're assembling are two

1 different things. One is just a list of all the defendants.

2 MS. SCHNEIDER: That's correct.

3 THE COURT: And now what you're proposing here
4 is a list of those defendants who have responded with the
5 notice of appearance. And we would have their address or
6 e-mail, or whatever information is on that notice; and then
7 those who have not -- who have been served and who have not
8 responded?

9 MS. SCHNEIDER: That's correct. And I think we
10 also were thinking about making a category of persons and
11 entities who we think have -- for which there are notices of
12 successors. And there may be another category that she was
13 thinking about as well.

14 But I had indicated to Mr. Ferguson and
15 Ms. Griffin that I would be in contact with them as we moved
16 ahead on this, to see if it was -- to see how it could help
17 the Court and the parties.

18 THE COURT: One of the -- sort of a collateral
19 issue to this, something that I was thinking about when
20 Ms. Peterson raised the question about concern about total
21 finality of any order here. I mean, if somehow the -- as I
22 call it, the Rocking R Ranch slipped through the cracks and
23 never got -- we never knew that they were water rights
24 holder, and never got served with anything, and having them
25 come in down the road and saying we object to this because we

1 weren't served, didn't have notice.

2 What about doing some type of notice by
3 publication that these lawsuits -- and, Mr. Herskovits,
4 that would probably pertain to the C case too. Something
5 along the lines that notice -- there's a lawsuit pending
6 which affects the water right holders, the Walker River,
7 the Walker River Basin, whatever is an appropriate
8 description, and that the lawsuits are pending. We have
9 served everyone we believe who are bona fide water right
10 holders, and this decree will be final and bind you. If
11 you have not been served, you are obligated, by order of
12 the Court, to contact so and so. Or something along those
13 lines.

14 And I'm just bringing this up as a
15 consideration as one way to ensure that we have some type
16 of finality, and another way to ensure that everyone is in
17 this case who should be in this case.

18 MS. SCHNEIDER: I -- thank you, Your Honor. I
19 think that's an excellent suggestion. And it goes beyond
20 what I -- similar to but goes beyond it and gives more detail
21 on what I had been thinking of as well.

22 It seems to me that in doing the traditional
23 publication, as we have -- you know, we haven't been able to
24 serve so and so, that that publication can be used more
25 broadly.

1 I also think that in -- to accomplish what Your
2 Honor is suggesting. And it also seems to me that that is
3 also something that could be done periodically in conjunction
4 with implementation of Magistrate Judge Leavitt's order, if
5 that's what Judge Reed decides to affirm.

6 And so I -- what I -- so I'm jumping ahead here
7 a couple of items. But what I wanted to suggest to the Court
8 is that United States do -- continue some discussions with
9 the primary defendants about publication but that either this
10 next -- our next status hearing or the one after, that we
11 present you with a proposal on how we would go about doing an
12 initial publication, and see if that meets the Court and
13 parties' approval.

14 THE COURT: Would it be helpful to have a more
15 informal meeting outside of the formal trappings of the
16 courtroom, where we could sit around a conference table and
17 discuss it?

18 MS. SCHNEIDER: I think that would be fine as
19 well, yes, Your Honor.

20 I think that what would be helpful -- what I
21 have right now are a number of examples of publication in
22 other cases in this area and also can get ahold of
23 publications that have been done in some water cases. And
24 so I was going to use those examples as a way of putting
25 something together.

1 Again, having jumped to publication, when we
2 were talking on the phone; that is the primary parties the
3 other week, we do have an agreement that the newspapers
4 that we would publish in would be the same that are used
5 by the U.S. Board for its annual budget report. So we at
6 least know where we would be publishing it.

7 And then -- obviously, then, the next question
8 is, you know, what exactly we would be publishing.

9 THE COURT: I'm trying to think of the name of
10 the newspaper in Yerington. And Judge Reed would probably
11 kill me by not remembering. Who Walther -- what was it,
12 Sage -- Mr. DePaoli, help me here.

13 MR. DePAOLI: Walther Cox.

14 THE COURT: Cox, yes. Okay. So have we -- I
15 think you kind of embraced that idea about some type of
16 notice about this lawsuit that may or may not be legitimate
17 but certainly helps us proceed down that road.

18 MS. SCHNEIDER: Yes, I agree with that, Your
19 Honor.

20 I think it also raises a question that we talked
21 with Ms. Griffin about today, and that is -- and I don't
22 think -- and I think the parties need to talk about this some
23 more and think about it, and that is the sequencing of what
24 we do.

25 When the primary parties were talking the last

1 few weeks, we were focusing on the e-file order. And
2 Ms. Griffin has pointed out that that may be a little bit
3 premature, to put that out first. Because once we put
4 that out, the Court is going to be serving everybody. And
5 that would seem to bring an end to the effect of
6 magistrate judge orders, document 1300.

7 And so I think another issue for us to talk
8 about some more is what is our sequence here? And it may
9 be, I think, that publication might come -- would come
10 before that.

11 THE COURT: I would tend to agree. What is your
12 recommendation for the sequence?

13 MS. SCHNEIDER: Right now I'm thinking that
14 publication should come first. But I also want to try to put
15 as many of these different protocols into place, or have them
16 drafted, or close to being drafted, so that matters can move
17 fairly quickly.

18 I also think that an awful lot of what we do
19 maybe would very likely be impacted by whatever order
20 Judge Reed comes down with on the objections that are
21 pending in front of him. That may cause us to back up and
22 do a few different things here.

23 I mean, for example, if he sustains Magistrate
24 Judge Leavitt's order, then I think that the notice on
25 publication might want to address the issue of successors

1 and identify, you know, if you are a successor, you know,
2 you might want to check with -- you should be checking
3 with your predecessor, to see if they were served with
4 your party, or something like that, that would be a way to
5 flag that.

6 The other thing -- well, it would be nice to
7 do that from the beginning. But if we are talking about
8 doing periodic notices, then certainly that could be done
9 in the future. But it would be better to do it from the
10 start.

11 THE COURT: And the sequence after the notice
12 would then come the filing of all the parties in case the
13 notice flushes out some other people? Or would you go ahead
14 and do that and then amend it if necessary?

15 MS. SCHNEIDER: I think I would file -- I would
16 probably want to file -- start out by filing what we think is
17 the current caption and the addresses at the same time that
18 we're working on publication. That probably would go first.
19 Because if there are corrections, then the sooner we get
20 them, the better.

21 THE COURT: Okay.

22 MS. SCHNEIDER: And I -- well, I'm sorry.

23 THE COURT: Mr. Ferguson, do you have any
24 comments?

25 MR. FERGUSON: No, Your Honor.

1 THE COURT: Where was I -- oh, Mr. Ferguson over
2 here. I'm sorry. I meant Mr. Williams. I'm sorry.

3 MR. WILLIAMS: No, Your Honor, I don't.

4 THE COURT: Okay.

5 And, Mr. Ferguson, you had some experience with
6 that, with the Orr Ditch case?

7 MR. FERGUSON: Yes, Your Honor.

8 THE COURT: So I presume your experience in that
9 will be very helpful on trying to figure out something here,
10 what we're doing?

11 MR. FERGUSON: Yes, Your Honor.

12 THE COURT: Do they do that general type of
13 notice or publication notice that I have talked about?

14 MR. FERGUSON: No, Your Honor. Not in the
15 motion to amend that you're speaking of.

16 THE COURT: Mr. DePaoli, did you have something
17 to add?

18 MR. DePAOLI: I guess I'm still trying to think
19 about the sequencing issue. And I guess I'm -- I'm focused
20 on two things, really, right now, Your Honor.

21 One is how we get to a point where we can
22 finalize or even get a preliminary determination of the
23 threshold issues; and, second, how we can get decided the
24 question of whether answers are going to be required. And I
25 think that, particularly as to the latter, we need to think

1 about that in the context of what we're talking about.
2 Because if there's a determination made that answers are
3 going to be required, then there's going to have to be --
4 people are going to have to be notified of that and given
5 time and opportunity to do all of that.

6 Right now, up to this point, everyone has been
7 served with something that says answers are not required
8 and will only be required on further order of the Court.
9 And --

10 THE COURT: Could we do something with an order
11 of the Court that says answers are required and those who
12 wish to do so may do so, those who don't file are deemed to
13 just deny the principle averments of the complaint, amended
14 complaints, whatever?

15 MR. DePAOLI: And I think that we have divergent
16 views on whether answers ought to be required at this point.
17 I don't think answers should be required at this point. I
18 think that --

19 THE COURT: Well, I'm not even suggesting that
20 I'm going along answers are required now. I think that's
21 premature. I think that's for discussion on another day,
22 actually. Because I'm wondering whether some people might
23 have motions that they would want to litigate first, 12(b)
24 motion, perhaps.

25 MR. DePAOLI: I think that's the threshold --

1 purpose of the threshold issues, really, was to get some of
2 those litigated first.

3 And in terms of sequencing -- and I understand
4 we need to think about when we do the notice to everyone
5 to elect to receive service under the court system or
6 somewhere else may trigger some other things.

7 But in order to figure out what it's really
8 going to cost to have a website and to have in place
9 somebody to do postcard notice filings and that sort of
10 thing, it's going to be really helpful to know how many
11 people actually do sign up for the service through the
12 court system.

13 And so I don't think we have to decide all of
14 this today, but I do think that -- based on the
15 conversation that Ms. Schneider and Mr. Ferguson had with
16 the clerk, that we need to get our heads back together and
17 sort of figure this out in a way that will work for
18 everyone.

19 THE COURT: Can we defer, then, just to counsel
20 to brainstorm this issue and come back at the next status
21 conference with the report and what the proposals are?

22 MR. DePAOLI: I think that would be a good idea
23 to do that.

24 THE COURT: My thought is that we wait on -- as
25 far as sequencing, get this notice done, get this list of

1 who's in this case done. And then maybe we turn to the
2 threshold issues to include whether answers are filed or
3 whether we address first -- do answers, and then identify the
4 threshold issues. But I think that's for another day.

5 Is there any other comment on this protocol
6 that we've been discussing about the general notice and
7 clarifying the list of defendants?

8 MS. SCHNEIDER: Not on that. There's also the
9 website issue. I don't know whether Your Honor wants to
10 discuss that right now.

11 THE COURT: Yes, I would like to.

12 MS. SCHNEIDER: We still have been talking about
13 a website. We need to review some proposals that we've
14 gotten. Mr. DePaoli got one from one entity. I have some
15 general information from back when I was trying to put
16 together a website. And I think there are some cost issues
17 that we need to definitely spend some time talking about.

18 And we also talked to Ms. Griffin today about
19 a variety of options that we might take a look at as to
20 whether or not -- how we could get information out to
21 parties through the use of website or otherwise.

22 I think that there are -- I understand that
23 there are some -- there are potentially some obstacles for
24 the federal court to do it, and we need to explore that a
25 little more and try to understand it. I think that --

1 THE COURT: I think maybe Ms. Griffin might
2 address that issue because right now we might be precluded to
3 giving anyone any more than one-shot look at the documents.

4 Ms. Griffin?

5 MS. GRIFFIN: The Judicial Conference directs
6 that the court's per-page fee, which is your PACER fee, it's
7 eight cents a page. And that is required by the Judicial
8 Conference.

9 I am -- I told Ms. Schneider that I would look
10 into any exceptions to that, or if there have been exceptions
11 made by other courts in the Ninth Circuit, to see if they
12 have cases published on their websites or their external
13 websites without charge. So I will look into that and report
14 back.

15 THE COURT: I like the idea of a website myself.
16 But I can see some obstacles, one of which is who is going to
17 maintain it and the cost of doing so and disputes about what
18 information may or may not be on the website. We could also
19 be opening up a huge can of worms.

20 MS. SCHNEIDER: It could be. I think in the
21 long run, it might be helpful to -- for administration of the
22 decree and for any other water management issues in the
23 basin. But that certainly goes beyond the litigation. I
24 think one of the things that we should talk back among
25 ourselves would be the scope of any initial website that

1 would focus just on the litigation.

2 My contractors, who unfortunately we can't do
3 the website through the Justice Department, had indicated
4 that they had thought that the initial year would be the
5 most costly, and that simply populating it with documents
6 and dealing with storage in the subsequent years would be
7 a lot -- would be significantly less.

8 And I think that that's something that -- and
9 that's in contrast to, I think, the proposal that WRID
10 obtained. So we need to sit down and talk about it and
11 maybe see if we want to talk to some other providers or go
12 back to WRID's provider with some additional requests.
13 But I think we're all looking for something that is as
14 cost effective as possible.

15 THE COURT: And I'm sure Ms. Griffin will let
16 you know if she finds out anything in another -- any other
17 federal court cases, perhaps in class action lawsuits or
18 something where this has been utilized.

19 MS. GRIFFIN: Yes, Your Honor.

20 MS. SCHNEIDER: Right. And I -- we had looked
21 at -- for it at one point. And I will have to go back and
22 check the notes and files on that to see if we found anything
23 in any other courts. We certainly had found the bankruptcy
24 websites.

25 But I believe it was Mr. Ferguson pointed out

1 that in working on Orr Ditch, they discovered that there were
2 some exceptions, by rule or statute, for bankruptcy courts to
3 do this kind of thing.

4 THE COURT: You know, Mr. Benesch worked
5 extensively on websites when he was in high school back in
6 the '60s, and he was very clairvoyant and knew what was going
7 on in advance. He could probably do that for you.

8 MR. BENESCH: Not a chance.

9 THE COURT: All right.

10 What's your next agenda item?

11 MS. SCHNEIDER: We talked about publication
12 already. So the next item is to update the certificate of
13 service in the three cases. This has been a continuing issue
14 for the Court.

15 And I know that people in the clerk's office
16 have done a lot to try to update some of these matters
17 recently. There's also some -- when we saw the sheets, I
18 don't know what you call them, but the sheets that were
19 outside the courtroom last time we were here, they had the
20 attorneys in all different categories that weren't
21 necessarily correct.

22 So I just -- this is something we filed, I've
23 been talking to Ms. Griffin about. And to the extent that
24 the clerk's office would like us to take a look at any of
25 these lists, we would be happy to do so and get back to her

1 on it.

2 THE COURT: Very good.

3 MS. GRIFFIN: If I might, Your Honor?

4 THE COURT: Yes.

5 MS. GRIFFIN: The challenge to -- there is a
6 potential solution to that. The challenge is that in order
7 to have everyone matched up on the correct side of the aisle,
8 if you were plaintiffs, defendants, counterdefendants, the
9 clerk's office would have to essentially re-docket every item
10 ever, period, in the case.

11 If I were to change the United States from one
12 side of the aisle to the other, you would have to create a
13 whole new entity, United States, file every single document
14 the United States ever filed, and then delete the old United
15 States. So the clerk is not in favor of that option.

16 MS. SCHNEIDER: Understandably.

17 THE COURT: It doesn't sound like a palatable
18 option. At least to the clerk's office.

19 MS. GRIFFIN: Yes.

20 MS. SCHNEIDER: But I think Ms. Griffin had a
21 suggestion as to how that could be fixed, at least for the
22 Court's use.

23 THE COURT: All right.

24 Any other comments on this subject?

25 MS. SCHNEIDER: The next item is the treatment

1 of served defendants who have not filed notices of
2 appearance.

3 It's our position that if we serve people and
4 they didn't file a notice of appearance that that's it.
5 And we think -- and they don't -- neither the United
6 States nor the Tribe nor the Court has any duty to go and
7 find them.

8 Certainly publication, if we -- however we
9 put -- whatever we put in publication notice might give
10 them another opportunity to get involved if they want to.
11 But we do think that we just need something on the record,
12 and we can include this in publication -- in the
13 publication, that persons and entities who did not file
14 notices of appearance are going to be deemed to be -- will
15 be deemed to be -- will be deemed to have -- to be
16 involved in the case but -- and to have received
17 everything, but to have received all the documents even if
18 they haven't filed a notice even if they -- because they
19 haven't done anything. I'm not being very -- I'm sorry.
20 I haven't said that very clearly.

21 But I'm trying to track the language that was
22 used in the C-125-C order that Judge Reed did some time
23 ago that basically said that people who didn't file a
24 notice of appearance would be deemed to be served from
25 thence forth.

1 THE COURT: Well, they're deemed to be served
2 because, in fact, service was effected upon them.

3 MS. SCHNEIDER: They were served. And --

4 MR. HERSKOVITS: Yes.

5 MS. SCHNEIDER: But they have decided not to
6 participate. And they were bound by any of the results of
7 the proceeding.

8 THE COURT: Mr. Herskovits, did you want to add
9 something?

10 MR. HERSKOVITS: Yes. I'll just clarify that.
11 I believe that in C-125-C order that Ms. Schneider is
12 referring to, Judge Reed said that defendants who had been
13 served and who do not appear or respond are, nevertheless,
14 deemed to have notice of subsequent orders of the Court or
15 other filings or pleadings in the case.

16 So I think that that's what Ms. Schneider is
17 basically requesting in the 125-B case. I think it should be
18 noted that that is an issue that's before Judge Reed right
19 now.

20 WRID has taken a different position with regard
21 to what Judge Reed meant in the order back in 1995. There
22 are actually a couple of orders in 1995 in which Judge Reed's
23 basically reiterated that point.

24 But essentially if Magistrate Judge Leavitt's
25 order is upheld by Judge Reed, then I think there would be no

1 reason not to do as Ms. Schneider is suggesting in the 125-B
2 case.

3 MS. SCHNEIDER: Your Honor, the docket --

4 MR. HERSKOVITS: And I think it only makes sense
5 that if the defendant is, in fact, served the process
6 properly then and does not -- you know, makes the choice not
7 to cooperate or participate and in no way makes any
8 appearance, then I think it's only appropriate that the Court
9 deems that defendant to have notice of further proceedings.

10 THE COURT: And that's what you're saying Judge
11 Reed did in C?

12 MR. HERSKOVITS: Yes. But I --

13 THE COURT: All right. Mr. DePaoli, did you
14 have --

15 MR. HERSKOVITS: -- think that -- I apologize,
16 Your Honor.

17 THE COURT: No, go ahead.

18 MR. HERSKOVITS: I was just going to say that
19 that issue is disputed by WRID. And it's before Judge Reed
20 right now. Whether my description or my interpretation of
21 what Judge Reed ordered is correct.

22 MS. SCHNEIDER: Your Honor, the order that I'm
23 looking at, and I finally found it, is document 48 in the C
24 case. And it's paragraph 5 on page 4. And it says that
25 persons, corporations, institutions, associations, or other

1 entities who waive service or are served who do not appear
2 and respond to Mineral County's Motion in Intervention shall
3 nevertheless be deemed to have notice of subsequent orders of
4 the Court with respect to the motion in intervention, answers
5 or other responses to the proposed complaint-in-intervention
6 or responses to the motion for preliminary injunctive relief.

7 And I think a version of that would be
8 appropriate for application in C-125-B.

9 THE COURT: And what would that go in?

10 MR. HERSKOVITS: If I could --

11 THE COURT: Just one second, Mr. DePaoli.

12 And if we did agree to do that, what would that
13 go into, another --

14 MS. SCHNEIDER: I think we could put it into the
15 order that Your Honor has asked me to draft. But I also
16 think that it could go on -- in the publication too.

17 THE COURT: I think I would rather address it
18 when we get to the publication issue, rather than the revised
19 order on the Sixteenth Status Report.

20 MS. SCHNEIDER: All right.

21 THE COURT: Mr. DePaoli, go ahead.

22 MR. DePAOLI: Yes. What I wanted to say is we
23 do have a disagreement as to what Judge Reed intended back in
24 1995. And so 125-C, we'll have to wait to see what he does
25 there.

1 As far as B goes, there really is no need
2 to -- that I can see, to have -- to do anything. Judge
3 McQuaid before the -- there's a difference between how
4 service progressed in C and D.

5 But before any service started in B, Judge
6 McQuaid, in his orders and in the notice in lieu of
7 summons, specifically indicated that persons were required
8 to -- who were served or who waived service, were required
9 to file a notice of appearance, I believe within 20 days
10 of having been served, and that if they failed to do so,
11 they would nonetheless be deemed to have notice of all
12 future orders of the Court in the proceeding. So that
13 was, if I'm recalling this --

14 THE COURT: Well, isn't that what they're saying
15 occurred in C, as well, and you're just disputing that Judge
16 Reed said that?

17 MR. DePAOLI: That occurred --

18 THE COURT: Meant that?

19 MR. DePAOLI: -- in the -- and Judge McQuaid
20 made that order in C and sometime in -- I've lost track of
21 when that was. But it's sometime in 2000 or 2001 or 2002.

22 The argument in C has to do with what -- Judge
23 Reed and Ms. Schneider read it. Judge Reed said persons
24 shall appear and respond to the motion to intervene. And
25 that order started off with a specific date for when a

1 response was due.

2 So persons -- the time for their appearance and
3 the nature of their appearance was in response to the motion
4 to intervene. That timeframe got changed, got modified, and
5 ultimately got completely done away with in that proceeding,
6 and so the issue is going to be for those people who have
7 never been given a precise date for when they were supposed
8 to respond to the motion to intervene, are they not entitled
9 to any further notice. And that's the difference.

10 But what Judge McQuaid did in B and what he
11 did in C, beginning in -- sometime in 2000 or 2001, was
12 all people who got served were served with something that
13 says you shall appear within 20 days by filing this notice
14 of appearance; and if you don't, you're deemed to have
15 notice of all subsequent orders of the Court.

16 THE COURT: Well, what was kind of confusing to
17 me, though, he then went ahead and said in 1300 that the only
18 ones who were going to be served with anything are the
19 attorneys. So what difference did it make, as a practical
20 matter, whether an individual defendant signed that form and
21 sent it back in or didn't. He or she's still not getting any
22 notice.

23 MS. SCHNEIDER: Well, no, it matters in that
24 they would have -- they sent back waivers of service and that
25 they -- we didn't have to go serve them personally. And at

1 the same time they would have to file a notice of appearance.
2 And the same information, at least a notice of appearance,
3 was given to the people that we ended up having to serve
4 personally.

5 So at this point, I think the issue really is
6 the people we don't have to serve right now are persons
7 who have -- persons and entities who have filed notices of
8 appearance but are pro se. And that's really what we're
9 talking about here.

10 And then the other group of people we're
11 talking -- the other category that we started to talk
12 about here, were people who were served who -- or even
13 people who waived service, who did not file notice of
14 appearance.

15 I think, though, that based on what
16 Mr. DePaoli has said, it sounds like we're in agreement on
17 what should be done here. I need to go back and take a
18 look at the service package that was sent out. I didn't
19 think that it stated everything as strongly as Mr. DePaoli
20 just stated it, but I will go back and double check and
21 report to the Court at the next status conference on that.
22 And Your Honor had also said you wanted to leave that
23 issue go, anyway, until we got into publication.

24 THE COURT: That's correct. So is there
25 anything else we need to address on this -- or that the Court

1 needs to decide or give you guidance on on this particular
2 topic at this time?

3 MS. SCHNEIDER: It sounds like nothing at this
4 time then, Your Honor.

5 THE COURT: We've been going for a little over
6 an hour and a half. I don't want to kill our court reporter
7 here.

8 Ms. Reporter, do you need a recess?

9 THE COURT REPORTER: No, Your Honor.

10 THE COURT: All right. Well, then, why don't we
11 proceed then.

12 MS. SCHNEIDER: The next item is the status of
13 the order limiting service pending completion of service.
14 We've already talked about this item. So I think we can move
15 on.

16 The next was just any other notification
17 protocol issues. I don't know of anything else, and I had
18 nothing else on item three.

19 THE COURT: Anyone else on item 3-H?

20 All right. Please proceed, Ms. Schneider.

21 MS. SCHNEIDER: The next item number four is the
22 status of the objections that are pending before Judge Reed.
23 We've already addressed that, that they're still pending.

24 And then the next issue on number five was just
25 to flag some of the upcoming issues.

1 I simply moved these into this list because I
2 know that there are things that are coming up in the future.
3 But they really aren't issues that I think we need to resolve
4 today.

5 THE COURT: One of which was the filing of an
6 answer, when answers need to be filed, which Mr. DePaoli
7 raised earlier.

8 MS. SCHNEIDER: That's correct.

9 THE COURT: All right. Is that -- it would seem
10 to me that we don't identify the threshold issues unless and
11 until we get the service issue done and out of the way.

12 MS. SCHNEIDER: Correct, Your Honor.

13 THE COURT: Which is what the CMO said anyway.

14 MS. SCHNEIDER: That's correct.

15 THE COURT: All right. And we're not going to
16 address today, or make a ruling today, either, as to when
17 answers are going to be required, or whether answers are
18 required, or might be some other type of Rule 12 motion or
19 something.

20 MS. SCHNEIDER: Yes, Your Honor.

21 THE COURT: Is there anything else under item
22 5-B?

23 MS. SCHNEIDER: I have nothing under -- nothing.

24 THE COURT: Does anybody else wish to address
25 anything else on item 5-B?

1 Ms. Schneider, please proceed.

2 MS. SCHNEIDER: The next item would be the
3 briefing and resolution of Mineral County's motion. And that
4 certainly is premature to talk about that today too.

5 But, again, that's Mr. Herskovits' case.

6 MR. HERSKOVITS: We would agree that it's
7 premature at this point to be addressing that. Obviously
8 that can't go forward until service is complete.

9 THE COURT: All right.

10 Does anybody else have anything to address on
11 item 5-C?

12 Item number six I believe we addressed earlier
13 under item three, I believe.

14 MS. SCHNEIDER: There's only --

15 THE COURT: Is there anything else that will
16 come forward on this issue?

17 MS. SCHNEIDER: Excuse me, Your Honor. Yes,
18 there was one other issue. And we talked to Ms. Griffin
19 about it as well.

20 As the Court probably knows, there are problems
21 with doing e-filing these days, that when anybody files a
22 document that, for some reason, a group of other parties are
23 attached as being the filers. And we had been told in my
24 office that this was supposed to have been fixed in a
25 software upgrade in February. But it didn't fix it.

1 And so my understanding, from talking to
2 Ms. Griffin, is the problem's ongoing, everybody knows about
3 it, and that we should just simply understand that there
4 won't be any fix anytime soon, but that the court's aware of
5 it.

6 THE COURT: Ms. Griffin, I don't think I
7 understand the problem sufficiently. Could you elaborate.

8 MS. GRIFFIN: When one files in CM/ECF -- when
9 the attorney files a document in CM/ECF, he or she would
10 select the parties to whom that document would -- I mean, who
11 they are representing as the attorney. And then it would
12 populate as part of the docket entry. Then your document is
13 attached. It's filed under the case file for you to see.

14 What the -- we got upgraded. We moved into a
15 new CM/ECF. Mandatory. We had to do that. And one of the
16 problems, of which the Administrative Office is very well
17 aware, is there's a glitch with cases that came in from older
18 systems. And this, of course, happens to be an older case,
19 so it came in from an older system.

20 Now, if Ms. Schneider, for instance, were to
21 file a document, it says she's filing it on behalf of all the
22 parties. So since there's lots and lots of parties, they
23 make for pretty voluminous case filings.

24 The quality control department in the clerk's
25 office goes through, after the filing is made, and cleans up

1 the docket sheet to reflect what they believe is the correct
2 filing, which would be Ms. Schneider is filing on behalf of
3 the United States, to remove all those extra parties. So
4 that tomorrow you would look at the docket sheet, and the
5 docket indication would be as correct as the clerk could make
6 it.

7 But the initial filing comes through -- when the
8 notice of electronic filing goes through to all of the other
9 attorneys, it comes through, erroneously, that she is filing
10 on behalf of all of the parties.

11 There is an MRN. It's part of the national
12 system. We're hoping that it gets fixed in the next
13 version. But we are not optimistic.

14 THE COURT: MRN?

15 MS. GRIFFIN: An MR is a -- it's a request
16 for -- a modification request in a computer system.

17 THE COURT: Okay.

18 MS. GRIFFIN: And our local dictionary
19 specialist is aware of it. And she will work on it. So if
20 there's anything we can do locally, she's very good.

21 THE COURT: And who is that?

22 MS. GRIFFIN: Amber Freeman.

23 THE COURT: Oh, Amber.

24 MS. GRIFFIN: Yes.

25 THE COURT: Anything else, Ms. Schneider?

1 MS. SCHNEIDER: I have nothing else on item six.
2 And I have nothing else on the agenda.

3 THE COURT: Okay.

4 Mr. DePaoli or Mr. Ferguson, do either of you
5 have anything to add?

6 Does anybody else on the telephone have any
7 other issues to address?

8 MR. HERSKOVITS: No, Your Honor.

9 THE COURT: I'm debating whether to set a time
10 now for the next status conference or to wait and see what
11 happens on Judge Reed's rulings. But I'm thinking that maybe
12 we do another status conference at this time, if that's the
13 usual procedure how it's done. Are they typically reset at
14 the time of the last status conference?

15 MS. SCHNEIDER: Yes, Your Honor. What I might
16 suggest is that the Court set a status conference perhaps six
17 to eight weeks out, maybe six weeks. And perhaps it could
18 simply be a telephone status conference with the Court, for
19 the parties just to check in on where matters are and to
20 notify the Court of how -- of what progress we've made at
21 that point on the notification protocol and any other issues.

22 THE COURT: You know, if you do make progress on
23 this notice by publication that I've been talking about, I'd
24 almost like to have a telephonic status conference earlier on
25 that. Because it seems to me that might be one of the things

1 that we should accomplish as soon as possible so we can
2 complete that service list.

3 So if you, maybe, could move that to the head of
4 the line of things to be done in this case. And then if you
5 wanted to have that informal conference, we can do that by
6 telephone, if you like. Of course, notify everybody if they
7 wanted to participate. But just to discuss some preliminary
8 issues on that, if that arises, I'd be happy to assist. And
9 if that's causing problems or would not be productive, don't
10 do it.

11 MS. SCHNEIDER: Yes, Your Honor. Thank you.

12 I think that's -- how we would proceed there
13 is something I would want to talk to the other -- to the
14 defendants about and to Mr. Williams. And if we could get
15 back to the Court if we see that there's something we
16 could do in a timely manner. Would that be how you would
17 want to proceed?

18 THE COURT: I would. But, I think, let's go
19 ahead and get a six-week date out because everyone's
20 calendars are going to be filling up right away anyway.

21 THE CLERK: Your Honor, Wednesday May 9th, at
22 1:30 p.m.

23 THE COURT: Does anybody have any problem with
24 that date?

25 All right. The next status conference will be

1 Wednesday, May 9th, at 1:30 p.m.

2 And you are going to get me a revised order.
3 First you're going to circulate it among the parties for
4 the Sixteenth Report, Ms. Schneider?

5 MS. SCHNEIDER: Your Honor, could I do two
6 orders; one just dealing with the Sixteenth Report, and one
7 dealing with the other matters?

8 THE COURT: You know, just as you mentioned it,
9 I think that's a good idea.

10 MS. SCHNEIDER: Okay.

11 THE COURT: Can we -- is this the existing
12 proposed report?

13 MS. SCHNEIDER: It is, Your Honor. In fact,
14 that could stand by itself.

15 THE COURT: I mean, the order?

16 MS. SCHNEIDER: Yes.

17 THE COURT: Can I just sign this order then?
18 Does anybody have any problem with the language other than
19 has been addressed already?

20 All right. I will go ahead and execute document
21 1689 which will -- when filed, will be a different case
22 number.

23 MR. DePAOLI: Your Honor, sorry. I thought that
24 we were going to maybe change that to alert these parties to
25 the fact that, although they're being dismissed now, there's

1 a chance that they might --

2 THE COURT: I think Ms. Schneider is going to do
3 a letter to them. But do you want to change the language in
4 this proposed order to say that although they have been
5 dismissed, they are subject to being re-called?

6 MR. DePAOLI: This is the order that deals with
7 the folks who have the non -- the transient non-community
8 water systems. The letter was to deal with the --
9 Ms. Rosachi and Walker General I think.

10 MS. SCHNEIDER: I would be fine to do that. I
11 forgot about what Mr. DePaoli has suggested. What I can do
12 is give the Court modified proposed rule -- order on Report
13 Sixteen, that includes the suggestion that Mr. DePaoli had.
14 And then deal with everything else in a separate order.

15 THE COURT: Does anybody else care to look at
16 that revision before it gets filed?

17 Then, Ms. Schneider, I didn't hear any comment.
18 Why don't you and Mr. DePaoli just work out the language and
19 submit a revised proposed order that will just address that
20 subject. Then you're going to do another proposed order that
21 should be circulated among everybody about these other
22 matters that we've addressed today.

23 MS. SCHNEIDER: Yes, Your Honor.

24 THE COURT: And I appreciate your doing that.
25 Thank you very much for your assistance. That is very

1 helpful.

2 Is there anything else to come before the Court?

3 MS. SCHNEIDER: Will Your Honor also want to
4 have a proposed agenda before the next status conference?

5 THE COURT: Do I want to have one? Yes.

6 MS. SCHNEIDER: Okay.

7 THE COURT: We will continue with the agenda
8 before. And that's very helpful to me because I can become
9 more familiar with the documents that are relevant to those
10 agenda items. And it's my understanding that you work with
11 other counsel to formulate that agenda?

12 MS. SCHNEIDER: Yes, Your Honor.

13 THE COURT: Does anyone have any problem with
14 that? Because it does seem to be how things were done in the
15 past. And we'll continue that protocol.

16 Now, is there anything else?

17 MS. SCHNEIDER: Nothing, Your Honor.

18 THE COURT: Very good. Thank you, all. Very
19 informative hearing on a very interesting but complicated
20 case. And I continue to try and get up to speed on it. Work
21 in progress. We'll be in recess. Thank you.

22 (The proceedings were concluded at
23 3:16 p.m.)

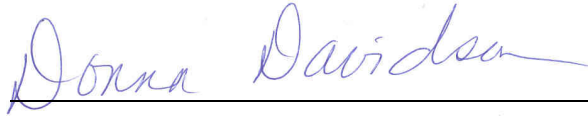
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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.



3/23/12

Donna Davidson, RDR, CRR, CCR #318
Official Reporter

Date