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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  
AUGUST 2, 2012

RENO, NEVADA

APPEARANCES:

Counsel Present: SUSAN SCHNEIDER  
WES WILLIAMS, JR.  
GORDON DePAOLI  
DALE FERGUSON  
THERESE URE  
IRIS THORNTON  
SIMEON HERSKOVITS  
  
Counsel Appearing Telephonically: MARTA ADAMS  
KAREN PETERSON  
CHRIS WATSON  
STACEY SIMON  
MICHAEL NEVILLE  
GEORGE BENESCH  
  
EILEEN RUTHERFORD, PARALEGAL  
  
Court Reporter: Donna Davidson, RDR, CRR, CCR 318  
Official Reporter  
400 South Virginia Street  
Reno, Nevada 89501  
(775) 329-0132

1 RENO, NEVADA; AUGUST 2, 2012, 10:05 A.M.

2 --oOo--

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

4

5 THE COURT: Good morning, everyone. Please be  
6 seated.

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

10 This is the date and time set for a status  
11 conference in case number 3:73-cv-125-RCJ-WCG,  
12 3:73-cv-127-RCJ-WCG, and 3:73-cv-128-RCJ-WCG, United  
13 States of America versus Walker River Irrigation, and  
14 others.

15 Counsel present in courtroom are Simeon  
16 Herskovits, Iris Thornton, Wes Williams, Jr., Susan  
17 Schneider, Gordon DePaoli, Dale Ferguson, and Therese Ure.

18 Counsel appearing telephonically are Marta  
19 Adams, Chris Watson, Karen Peterson, George Benesch,  
20 Eileen Rutherford, Stacey Simon, and Michael Neville.

21 THE COURT: Good morning, everybody.

22 I've asked Lia Griffin, who is operations  
23 manager for the United States District Court, to participate  
24 in this hearing. Ms. Griffin will be discussing a lot of the  
25 issues on interrelationship between the service lists that we

1 have, the docket sheet, and CM/ECF at the appropriate time.

2 Maybe just so everyone -- we can go through  
3 the introductions of those who are here, to refresh my  
4 recollection of who represents whom.

5 Mr. Herskovits, I know you're representing  
6 Walker or Mineral County. Go ahead and, everyone,  
7 continue with your introductions if you could.

8 MR. WILLIAMS: Wes Williams, Jr., representing  
9 the Walker River Paiute Tribe.

10 MS. SCHNEIDER: Susan Schneider for the United  
11 States.

12 And there's a DOJ paralegal, Eileen Rutherford,  
13 on the telephone. I asked her to attend to help take notes.

14 MR. DePAOLI: Gordon DePaoli, Walker River  
15 Irrigation District.

16 MR. FERGUSON: Dale Ferguson, Walker River  
17 Irrigation District.

18 MS. URE: Therese Ure, Circle Bar N Ranch, Mica  
19 Farms.

20 THE COURT: And by telephone. Ms. Adams?

21 MS. ADAMS: Marta Adams, Nevada Department of  
22 Wildlife.

23 MR. BENESCH: George Benesch, Lyon County.

24 MS. SIMON: Stacey Simon, Mono County.

25 MR. NEVILLE: Good morning, Your Honor. Michael

1 Neville, California state agencies.

2 MR. WATSON: Chris Watson with the Department of  
3 Interior.

4 MS. PETERSON: Karen Peterson, U.S. Board of  
5 Water Commissioners.

6 THE COURT: Is Ms. Rutherford on the phone?

7 MS. RUTHERFORD: Yes.

8 MR. HERSKOVITS: Your Honor, if I might? This  
9 is Simeon Herskovits on behalf of Mineral County.

10 I just wanted to note for the Court that Iris  
11 Thornton, a colleague of mine who we will be moving to have  
12 admitted pro hac vice within the next week, is also here in  
13 attendance with me.

14 THE COURT: All right. Thank you for that  
15 clarification.

16 And, Ms. Rutherford, whom do you represent  
17 again?

18 MS. RUTHERFORD: U.S. Department of Justice.

19 MS. SCHNEIDER: Your Honor, she's the paralegal  
20 that I asked to attend --

21 THE COURT: Oh, that's right.

22 MS. SCHNEIDER: -- to take notes. Right.

23 THE COURT: Okay. And maybe that is the first  
24 note that we could address.

25 In trying to prepare for this hearing and

1 reading over the transcript of the last matter, it was --  
2 became somewhat apparent to me that with all the new players  
3 in this case, myself, Ms. Ogden, and now Chief Judge Jones,  
4 that the minutes of the proceedings should be a little more  
5 specific to address the agenda items. And that's why I sent  
6 out that order.

7 And, Counsel, just to let everyone know, my  
8 judicial assistant contacted Ms. Schneider's offices  
9 yesterday about this proposal that Ms. Schneider said that  
10 she would not have an opposition or objection to taking the  
11 lead on doing minutes that would conform to the agenda items.

12 And I would ask if someone has any comment, and  
13 particularly any objection to this process?

14 MR. DePAOLI: Your Honor, Gordon DePaoli on  
15 behalf of the Irrigation District.

16 THE COURT: Yes, Mr. DePaoli.

17 MR. DePAOLI: Just a question. Is Your Honor  
18 looking for sort of minutes that have whatever disposition is  
19 reached on an agenda item, or also a good deal of information  
20 about the discussion that takes place --

21 THE COURT: I would like a good deal of  
22 information about the discussion. And that's why after the  
23 minutes are prepared, I would like them to be circulated.  
24 And if we find we're getting into too much detail or minutia,  
25 we can, next time around, abbreviate them.

1           And, Ms. Schneider, maybe you and  
2 Ms. Rutherford could sort of give us an idea of what your  
3 thoughts might be on what these minutes would include.

4           MS. SCHNEIDER: I -- my impression was that they  
5 would have a -- more of a brief discussion about what was  
6 addressed with each issue but then laid out what the Court's  
7 disposition was. I'm not sure that taking copious notes and  
8 doing something in real -- in extreme detail would  
9 necessarily benefit everyone. There are transcripts. And  
10 the parties -- whatever the parties say in court is the best  
11 representation, not my notes.

12           But what I would suggest to the Court is that  
13 we try it and see what happens, and see if that -- if the  
14 amount of information that we put in the minutes is  
15 helpful to the Court and the parties, without my intruding  
16 and, you know, somehow shading -- being perceived as  
17 shading what anyone says.

18           THE COURT: Well, maybe we can shoot for a  
19 middle ground between what I was envisioning and what you and  
20 Mr. DePaoli seem to be envisioning.

21           And I just -- if no one has any objection to  
22 this procedure, I am going to accept Ms. Rutherford's,  
23 quote/unquote, volunteering to do these notes and minutes  
24 for us.

25           And thank you, Ms. Schneider, for allowing her

1 to do that and your office doing that.

2 What I would envision is, after this event  
3 today, that you prepare those and circulate them among the  
4 primary counsel for their input and comment, and then  
5 hopefully they could be then submitted to the Court with a  
6 consensus. And if there are objections, the Court will  
7 take note of those and somehow resolve it.

8 So that's our first momentous issue of the  
9 day. We'll move on to the agenda items.

10 The first one noted is the transfer of C-125  
11 and its subproceedings to Chief Judge Jones. That has  
12 occurred. I don't know if there's any other discussion  
13 that is necessary on this topic.

14 MS. SCHNEIDER: Does Your Honor wish us to take  
15 the podium or --

16 THE COURT: I think it would be much easier if  
17 you all just sat where you are, and -- but just spoke in the  
18 microphones, so we make sure that all the other people  
19 participating by phone can hear.

20 MS. SCHNEIDER: The parties have nothing  
21 specific to raise regarding the transfer of the case, except  
22 to inquire if the Court had anything you wished to raise with  
23 us.

24 And, also, the parties certainly are wishing the  
25 best to Judge Reed.

1           But we put it on the agenda in case there was  
2 anything that the Court wanted to talk to us about.

3           THE COURT: Well, first, the Court very much  
4 appreciates your sentiments on Judge Reed. I think the world  
5 of Judge Reed. And if I were half as smart as Judge Reed, I  
6 would be brilliant.

7           You know, it's a loss to the Nevada judiciary  
8 that he will be retiring. And I think he would appreciate  
9 your sentiments to him. I'll make sure that his judicial  
10 assistant is aware of those. And thank you very much.

11           As far as Judge Jones, he contacted me the  
12 other day to discuss this case, and his words were he  
13 wants to get this teed up. He wants to get this case  
14 going.

15           So I think we're going to be using that as a  
16 guiding principle here, that we just have to have some  
17 finality to a lot of these issues and dates. And the  
18 Chief will probably express that in some status conference  
19 that he may have down the road.

20           And so, as we go through these agenda items,  
21 bear in mind that the Chief Judge has given me my marching  
22 orders to get going on this case.

23           So the next agenda item, number two, is the  
24 completion of service and service issues on the B case,  
25 the tribal case.



1 I don't know whether you wish to address that,  
2 Ms. Schneider or Mr. Herskovits or whom?

3 MS. SCHNEIDER: If I could, Your Honor. Service  
4 Report 17 was filed on June 11th.

5 In the Court's minutes of the status conference  
6 from May 9th, the Court required any objections or comments  
7 about that report to be filed no later than July 13th.

8 The Seventeenth Report itself also identified  
9 this requirement and invited parties to contact the United  
10 States before the deadline to identify any concerns with that  
11 service report.

12 No one contacted me, or anyone else with the  
13 United States, and no objections or comments were filed.

14 We filed a proposed order in document 1722 in  
15 the B case, and we asked that the Court sign this order.

16 THE COURT: And that order has with it  
17 attachment A, which is the list of persons who are dismissed;  
18 and attachment B, which is the list of persons upon whom  
19 service is complete.

20 Now, that's not an exhaustive list, as I  
21 understand it, it's just those whose names have surfaced  
22 in the past few months.

23 MS. SCHNEIDER: That's correct. That's the last  
24 phase of -- well, that's the most recent phase of service.  
25 That has been completed and in addition to any other serves

1 that were completed and filed in the previous 16 reports.  
2 And also with the separate filings of proofs of personal  
3 service.

4 THE COURT: All right. Are there any objections  
5 to the proposed order submitted by Ms. Schneider and the U.S.  
6 Government?

7 None appearing, the Court approves this order  
8 concerning the Seventeenth Report, document 1722, and the  
9 Court's signature will be affixed to that order.

10 MS. SCHNEIDER: Thank you, Your Honor.

11 THE COURT: The other topic under two was any  
12 remaining personal service issues.

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

14 THE COURT: Ms. Schneider.

15 MS. SCHNEIDER: That's the second of, I think,  
16 four or five issues under this item.

17 We still need to file one or more proofs of  
18 service for a group of persons or entities that were  
19 personally served.

20 I had noted to the Court and parties, I  
21 believe, at the last status conference that I had intended  
22 to file that before today. But we encountered a delay  
23 here because, as we were pulling the caption and the last  
24 returns of personal service together, we discovered we  
25 were missing some defendants.

1           And it appears from what we've ascertained  
2 that they were served but that the process server may have  
3 lost the returns when he moved his residence and office.  
4 So he checked ownership again and began to serve or, most  
5 likely, re-serve, re-do the personal service beginning on  
6 July 18th.

7           Now, I notified the defendants in this matter  
8 about this issue by e-mail on July 17th.

9           As I said, my intention had been to file --  
10 get the last returns of service done prior to today's  
11 status conference. There are, however, a few more serves  
12 to go.

13           The process server, who I think is doing this  
14 on his own dime at this point, indicates that we should be  
15 in a position to file this next set of returns by August  
16 17th.

17           And so if the Court sets a deadline, I suggest  
18 some time the following week. And that would finish  
19 service except for some California issues that we have on  
20 the agenda and we'll talk to you about separately.

21           THE COURT: And that's topic C?

22           MS. SCHNEIDER: C and E are the two issues.

23           THE COURT: Okay. Now, would that report be  
24 document 1717 that you're talking about, as far as the  
25 service on certain other persons and entities?

1 MS. SCHNEIDER: The personal serves would be  
2 proof of service five or six. We have numbered those  
3 separately. And those are done in a different format because  
4 we have actually gone out, and we have returns of service  
5 that were filed. And they don't -- we will not -- we do not  
6 make the kind of filing that we've done in the service  
7 reports, where we are generally dealing with people who have  
8 waived service.

9 THE COURT: Does the order, then, that we just  
10 adopted, the 1722 document, address all the issues raised in  
11 the Seventeenth Report, which is 1717?

12 MS. SCHNEIDER: Yes.

13 THE COURT: Okay. That clarifies that for me.

14 MS. SCHNEIDER: I'm sorry.

15 THE COURT: All right. Is there anything else  
16 to address on the remaining personal service issues?

17 MS. SCHNEIDER: Not on personal service issues.  
18 But, as I said, we anticipated filing the proof of service  
19 for the names that were -- the returns that were apparently  
20 lost sometime July -- August 20th or sometime that week.

21 THE COURT: Now, have you served approximately  
22 3,800 defendants? Do I understand that right?

23 MS. SCHNEIDER: I believe so.

24 Ms. Rutherford, who is on the phone, actually  
25 would have a slightly better sense of the numbers.

1 THE COURT: Ms. Rutherford?

2 MS. RUTHERFORD: I don't have that number in  
3 front of me right now.

4 THE COURT: All right. But we're somewhere  
5 around that 3,800 individuals, owners, water right claimants,  
6 whatever?

7 MS. RUTHERFORD: I would say there's more than  
8 that because there's been a lot that were dismissed through  
9 the process. But I think that's about what we have right  
10 now.

11 THE COURT: One thing that has confused me as to  
12 why we have a different number of defendants in the B case  
13 from the C case.

14 MS. SCHNEIDER: The reason for that, Your Honor,  
15 is that Judge Reed issued different orders in each  
16 subproceeding regarding the scope of persons and entities to  
17 be served. And so --

18 THE COURT: Is that in the case management order  
19 or --

20 MS. SCHNEIDER: Yes. It's in my case management  
21 order, and it's in prior orders in C.

22 THE COURT: And what was the rationale behind  
23 that?

24 MS. SCHNEIDER: For the United States, our --  
25 it's the nature of our claims. Because our claims, as

1 amended, include surface and groundwater rights and also are  
2 seeking rights for, not just the Walker River Paiute Tribe,  
3 but also the Yerington Paiutes, who are in Yerington; the  
4 Bridgeport Paiutes in Bridgeport, California; and then a  
5 number of federal agencies stemming from the army -- the army  
6 facility down near Hawthorne, all the way at the end of the  
7 river system; and it extends with a variety of agencies all  
8 the way up to the Marine Warfare Training Center, which is up  
9 in California.

10 THE COURT: Up in Pickel Meadows.

11 Well, maybe Mr. Herskovits can answer this  
12 question. But it would seem that if the goal in the C case  
13 is to increase the flow of water into Walker Lake that that  
14 would involve the same spectrum of claimants to the water.

15 MR. HERSKOVITS: Well, Your Honor, I think that  
16 it may be that down the road there will be a point at which  
17 things in the basin, such as groundwater rights, that are not  
18 covered by the decree, might be considered.

19 The case that was filed by Mineral County back  
20 in the early, mid '90s was a straightforward claim simply for  
21 a reexamination and modification of the decree with regard to  
22 surface flows managed by the court under the decree, taking  
23 account of a previously unacknowledged public trust  
24 obligation to ensure that adequate surface flows reached  
25 Walker Lake.

1           So there were no claims in the papers that were  
2 filed in the C case that in any way attempted to broaden the  
3 scope of water rights or water resources addressed, other  
4 than the interstate stream covered by the decree and  
5 reexamining the administration of the water right -- the  
6 surface water rights to the system under the decree.

7           THE COURT: That's helpful. Thank you.

8           So what you're telling me is that basically the  
9 C case involves the underlying 125 parties.

10          MR. HERSKOVITS: That's correct, Your Honor.

11          THE COURT: Okay.

12          MS. SCHNEIDER: But the B case involves the  
13 underlying decree and more, which is why the judge required  
14 us to serve additional parties and persons and entities.

15          THE COURT: But in the C case will have about --  
16 well, I mean, the B case will have about 2,000 more parties  
17 involved?

18          MS. SCHNEIDER: Approximately, yes. Although we  
19 should -- it should involve the same parties as in the C case  
20 because that's a subset of what we were supposed to serve.

21          MR. DePAOLI: Your Honor, may I be heard on  
22 these questions?

23          THE COURT: Yes. Go ahead, Mr. DePaoli.

24          MR. DePAOLI: Just on the C case, the C case, at  
25 least per the order that Judge Reed entered in 1995,

1 involves, not solely the persons who have water rights  
2 recognized by the decree in C-125, it also included a  
3 requirement to include -- well, all claimants to the waters  
4 of the Walker River, and specifically all persons, et cetera,  
5 who have appropriated water from the Walker River rights  
6 tributaries after entry of the final decree.

7 So it does -- it isn't directed at surface  
8 water, but it does include any appropriations after entry of  
9 the decree.

10 THE COURT: So are all those people who have  
11 appropriations after the entry of decree included in that  
12 service list that I'm seeing in the C case?

13 MR. DePAOLI: At this point, I don't know, Your  
14 Honor.

15 MR. HERSKOVITS: To the best of my knowledge,  
16 Your Honor, I believe it does.

17 The service list was established before I got  
18 involved in the case in the '90s. But my understanding is  
19 that at the time it was established by the court, it  
20 reflected the decree water rights holders on record and all  
21 the additional claimants who were proposed as defendants in  
22 the C case.

23 THE COURT: All right. That's helpful  
24 information. Still a strong learning curve here for the  
25 Court.



1 Ms. Schneider, do you want to move on to C and  
2 the updates to the California service issues?

3 MS. SCHNEIDER: Yes. And what I'd like to do is  
4 talk about C, which is the first of the California issues,  
5 and then skip over to E, which is the second one, and then go  
6 back to D on the list.

7 The first California issue concerns riparian  
8 rights that are currently in use.

9 As we were discussing other service issues  
10 with California and Mono County, the state indicated that  
11 California law regarding the filing of applications for  
12 Riparian rights in use -- and I'm stressing in use because  
13 some of these other rights I'm talking about are not being  
14 used, they're dormant. But the California law regarding  
15 applications for using riparian rights has changed. And  
16 the change established a penalty for people who had not  
17 filed application.

18 So not surprisingly, because of the penalty  
19 now instituted, lots of persons and entities all over the  
20 state have been filing or -- regarding riparian rights  
21 that are in use.

22 Because of the sheer number of such filings  
23 and other resource issues, California's still in the  
24 process of -- is still working on processing all these new  
25 applications. It's certainly -- when we did our service

1 initially, we sent someone to look at files in California,  
2 and we also looked at information that was online to  
3 identify riparian users of water in surface water in use  
4 in California. Now there appears to be potentially others  
5 as well.

6 So what happened then was that the state  
7 offered to review the stack of unprocessed filings, which  
8 it kindly did, and sent us a disk of unprocessed  
9 applications for this general area. Although, it appears  
10 to us that not all of them are for this particular basin,  
11 which we have to double check.

12 Our initial and very cursory review indicates  
13 that of the filings that appear to us to be in the Walker  
14 River Basin, there may only be just a handful of  
15 additional serves that we should make.

16 What we're in the process of starting is that  
17 we're going to be -- in fact, Ms. Rutherford is going to  
18 be doing a thorough review of these materials, to identify  
19 any persons or entities that should be served and that we  
20 didn't serve, and then we would send service by mail to  
21 them.

22 We anticipate getting that done within the  
23 next couple of weeks and would then -- if they don't  
24 return service, would follow up promptly with personal  
25 service if necessary.

1           But that appears to be information on existing  
2 water rights that should be served under the case  
3 management order that has just come to our attention.

4           THE COURT: So what you're saying is that  
5 because of this change in California law, some people have  
6 filed claims for riparian water rights, and, as a result,  
7 they may be proper defendants in this action and should be  
8 served?

9           MS. SCHNEIDER: That's correct. And we will --

10           THE COURT: You hope to clarify that? But you  
11 don't think it's an extensive number of individuals or  
12 claimants?

13           MS. SCHNEIDER: So far it doesn't seem to be the  
14 case. We may have some more questions for California, for  
15 the attorney with the California board who is currently on  
16 vacation.

17           But they sent us an awful lot of applications.  
18 But it just didn't seem to us that they were all from the  
19 Walker River system. And that's one thing we do want to  
20 clarify. And then we'll go through and see which, if any  
21 others, we have to serve.

22           Some people may have been served already in  
23 connection with other water rights. And then we wouldn't  
24 have to serve them again.

25           THE COURT: All right. Is there anything else

1 you wish to add on the California service issue?

2 MS. SCHNEIDER: No, Your Honor.

3 THE COURT: Mr. Neville, is there anything you  
4 wish to bring to our attention on behalf of the California  
5 state agencies?

6 MR. NEVILLE: Your Honor, Michael Neville. No,  
7 I think she's captured the --

8 THE COURT: Okay.

9 MR. NEVILLE: -- part of that on this item.

10 THE COURT: And Ms. Simon, Mono County, same  
11 question?

12 MS. SIMON: The only thing I would do is clarify  
13 that I believe those documents are statements of diversion  
14 and use, which are not technically applications to divert and  
15 use water. They simply notify the state that the individual  
16 is diverting and using the water.

17 THE COURT: I've never seen one of those, but I  
18 would assume if somebody has filed on those that pertain to  
19 the water shed or the Walker River, they should be in this  
20 litigation then.

21 MS. SCHNEIDER: That's correct.

22 THE COURT: And so, Ms. Schneider, those people  
23 who have filed these statements would be those that might be  
24 included.

25 MS. SCHNEIDER: That's correct. And some of

1    them may have been included already.

2                   What I wanted to suggest, moving back from  
3 just this issue, is that there are a number of issues like  
4 this that I think we need to be clarifying. And one  
5 suggestion is that while it makes sense to have a status  
6 conference sometime after this month, but that it might  
7 make sense to have a shorter telephone status conference  
8 with the Court prior to the end of the month, to check up  
9 on the status of a number of these issues.

10                   And this would be one of them that I would  
11 suggest that we -- that we would be prepared to respond to  
12 the Court in more detail. We just got the materials and  
13 are starting through them.

14                   THE COURT: Maybe we ought to calendar that  
15 right now then. That's a good idea to do a telephonic status  
16 conference.

17                   Ms. Ogden, do we have anything available the  
18 28th, 29th, or 30th?

19                   MS. SCHNEIDER: Your Honor, I'm going to be out  
20 of the office beginning the 27th for almost a month. I'll be  
21 in the office a couple days in September. And so I would  
22 like to do this before the 24th, if possible.

23                   THE CLERK: Your Honor, we have available August  
24 23rd at 10:30.

25                   MS. SCHNEIDER: And I have a doctor appointment

1 that morning and cannot. I'm sorry.

2 THE COURT: How can you remember that so  
3 clearly?

4 MS. SCHNEIDER: It's -- that one I know about.

5 THE COURT: Would the afternoon -- could you  
6 accommodate an afternoon hearing, say at 1:30?

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

8 THE CLERK: We currently have a CVB trial at  
9 1:30, your Honor. We can do Tuesday the 21st in the  
10 afternoon or morning.

11 THE COURT: How does that sound? Anyone have  
12 any problems with that? Let's do it at 10:00 a.m. on the  
13 21st.

14 MS. ADAMS: Your Honor, this is Marta Adams. I  
15 have a legislative hearing on the morning of the 21st.

16 THE COURT: Ms. Adams, you know, just for this,  
17 it's going to be a telephonic update on a few things that may  
18 not necessarily involve the Nevada Division of Wildlife  
19 directly.

20 Do you think someone may be able to cover for  
21 you?

22 MS. ADAMS: You know, I can certainly find out.  
23 And certainly I do concur that my participation is not  
24 essential. So I'll do what I can on that.

25 THE COURT: I appreciate that, Ms. Adams. Thank

1 you.

2 So we'll do it the 21st at what time?

3 THE CLERK: 10:00 a.m.

4 THE COURT: All right. And that can be all  
5 telephonic. Anyone who wants to appear here in person,  
6 you're welcome to do so. But if you just want to call in, we  
7 can handle it that way.

8 MS. SCHNEIDER: Thank you, Your Honor.

9 THE COURT: You wanted to move to agenda item E?

10 MS. SCHNEIDER: Yes, I did.

11 THE COURT: Please do so.

12 MS. SCHNEIDER: This issue addresses the efforts  
13 for the United States, the tribes, State of California, Mono  
14 County to address issues that are either -- issue that is  
15 either a service issue or a threshold issue that the State of  
16 California has raised.

17 And it's really a two-part issue, whether  
18 claimants with dormant or unexercised riparian surface rights  
19 under the laws of California and/or claimants with overlying,  
20 unexercised groundwater rights are subject to compulsory  
21 joinder in this case.

22 We've had several discussions about the  
23 matter, and at least one of them including -- we had  
24 another -- other parties to the case. It has seemed to me  
25 that the issue of dormant or unexercised -- I'm sorry, the

1 overlying or unexercised groundwater rights doesn't really  
2 seem to fit within the current terms of the case  
3 management order.

4 The only issues -- potential requirements for  
5 service under the case management order on groundwater  
6 users -- or groundwater rights in California is set out in  
7 paragraphs -- I believe it's 3E, G, and H.

8 But the case management order requires service  
9 on certain categories of users of groundwater in  
10 California. And it seems to me that overlying and  
11 unexercised rights are not being used. And it -- and so  
12 it seems to me that while in the future there may be some  
13 potential for including unexercised groundwater rights  
14 holders, that it -- they simply don't fit under the terms  
15 of the current case management order.

16 I think that the primary concern that the  
17 state and the county have for both of these categories of  
18 currently unused rights is that they be protected somehow.

19 But as to the groundwater rights, the  
20 unexercised groundwater rights, there are many other  
21 categories of water users, including domestic users in  
22 California that Judge Reed did not see fit to include in  
23 the case management order, leaving to the magistrate judge  
24 the authority, when appropriate, if and when appropriate,  
25 to require additional service.



1           And so it's my position that that issue, the  
2 issue of the overlying, unexercised groundwater rights, is  
3 just simply not one that we have to worry about right now.

4           THE COURT: Well, I'm looking at Judge Reed's  
5 case management order of April 2000. And subparagraph three  
6 and subparagraphs under that, D and E, he talks about users  
7 of groundwater who should be named in this action. But he  
8 does say users of groundwater for irrigation.

9           I guess there's a distinction between users of  
10 groundwater for irrigation versus domestic use. But I --  
11 maybe he thought that domestic use would be diminimus in this  
12 case.

13           Does anyone wish to address this? Because  
14 it's my inclination that people who have dormant or  
15 unexercised rights, who have not filed what Ms. Simon  
16 described as being a statement of diversion and use, do  
17 not need to be named in this action. Does anybody wish to  
18 address that topic?

19           MR. NEVILLE: Your Honor, this is Michael  
20 Neville. Just a point of clarification. And I think that  
21 Ms. Schneider was going to get to this because she -- there  
22 are two different things in this category.

23           There's the dormant surface rights, which are  
24 riparian rights under California law. And whether they've  
25 been used or not, they are real and substantial rights. And

1 so that is actually -- we have been the subject of some  
2 discussion between the parties, to try to get an idea of how  
3 many of those folks are, so that those can be either served,  
4 or, if that's not feasible, protected with language, perhaps,  
5 in a modified service order for those folks.

6 Those folks do not, under California law, file  
7 these statements of diversions and use. So --

8 THE COURT: And tell me --

9 MR. NEVILLE: -- that's part of the reason why  
10 they're kind of an unknown.

11 But the other part is the groundwater.

12 THE COURT: Mr. Neville, describe them again.  
13 They're riparian rights who are perfected but dormant?

14 MR. NEVILLE: Yes. They're dormant riparian  
15 surface right holders. And they have that status because of  
16 their riparian situation.

17 Now, in some cases, probably in most, people  
18 would also be appropriators and have appropriative rights  
19 under California law. And it's the latter category only  
20 that does the statements of diversion and use that two  
21 years ago now have penalties if you don't file it. So  
22 that was the nature of the data update there.

23 In some cases they're one in the same person  
24 with both appropriators, appropriative and riparian  
25 rights. But we think there are some riparian rights that

1 are valid and legitimate but -- and probably pretty  
2 diminimus, but -- but they're still there, and they're not  
3 appropriators.

4 And so that's one that we're trying to get at  
5 as well. And I think that Ms. Schneider was going to talk  
6 about that.

7 MS. SCHNEIDER: If I could, Your Honor. There  
8 were two topics. One is the unexercised groundwater rights;  
9 and then the second one is the dormant and unexercised  
10 riparian surface rights.

11 And the only thing I had -- the only issue I  
12 had addressed so far was the groundwater. Because there  
13 are two -- I think they can be reviewed differently. I  
14 agree there are -- it's a more complicated issue with  
15 unexercised riparian surface rights.

16 But as to the unexercised groundwater rights,  
17 I don't think that they fit within the case management  
18 order. Although the Court has the authority at some time  
19 in the future, perhaps, to determine that they should be  
20 joined.

21 THE COURT: So you would say that under  
22 subcategory I those groups should probably be included, and  
23 subcategory double I not included?

24 MS. SCHNEIDER: I'm sorry, I -- oh, I see where  
25 you are. Yes, subcategory double I should not be included.

1 And I think we need to talk about the first one in some -- we  
2 have to talk about that one separately before we make a  
3 decision about whether they should be included.

4 THE COURT: Under dormant or unexercised  
5 riparian rights?

6 MS. SCHNEIDER: That's correct.

7 THE COURT: Which Mr. Neville says are  
8 legitimately recognized in California.

9 MS. SCHNEIDER: Well, let -- and I wanted -- I  
10 jumped to the groundwater right first because I thought that  
11 was the simpler one to take a look at. If you want, I can  
12 address -- I can move on and address the riparian surface  
13 right issue at this point and where we are in our  
14 discussions.

15 THE COURT: Well, is there a consensus here --  
16 let's just ask this one topic -- about the unexercised  
17 groundwater rights for which there has been no statement of  
18 intended use filed?

19 Mr. DePaoli, did you have something you want to  
20 add?

21 MR. DePAOLI: Yes, Your Honor. I wanted to  
22 speak to the dormant groundwater rights.

23 And as far as I know, people in California, it  
24 doesn't matter whether you're exercising or not exercising  
25 groundwater rights, there are no requirements for filing the

1 statements of use. The statements of use relate only to  
2 surface water.

3 As to dormant and groundwater rights, I agree  
4 that, A, they aren't included within the case management  
5 order. Judge Reed -- and, you know, some of the threshold  
6 issues that eventually will be addressed relate to the  
7 question of to what extent will the Court be involved in  
8 groundwater at all.

9 And so for -- until threshold issues are  
10 determined, the need for groundwater users in the case,  
11 beyond what is in the case management order today, is not  
12 determined. Depending on how those get decided, there may  
13 eventually be a need to join groundwater users -- all of the  
14 groundwater users in both states, or there may be no need to  
15 have any of them, or there may be some need to have just some  
16 of them.

17 But for right now, I would agree that the  
18 dormant groundwater users in California do not need to be  
19 served to move forward with the threshold issues phase of  
20 this case.

21 THE COURT: Well, those in the B case that have  
22 been identified as defendants or claimants, do they just have  
23 riparian water rights or deeded water rights or something?

24 MS. SCHNEIDER: They may have a combination of  
25 rights.

1 THE COURT: Groundwater too?

2 MS. SCHNEIDER: They may. Although we have  
3 specifically looked for and served only the groundwater users  
4 that were identified in E, which are users of irrigation,  
5 groundwater for irrigation; G, which are municipal providers  
6 for using -- currently using groundwater; and I, which are  
7 industrial -- or, no, I'm sorry. I doesn't fit here. Those  
8 are the -- I'm sorry. I've gotten this confused here.

9 It's E which is the users of groundwater for  
10 irrigation in California; and H, which are the municipal  
11 providers in California who are currently using groundwater.  
12 The other -- and so those are -- those two categories only  
13 contemplate current uses of groundwater.

14 But, for example, someone in California could be  
15 using groundwater for irrigation who might also have a WRID  
16 surface right or have a riparian surface right, and so they  
17 would have been served for one or -- served for at least  
18 one -- they would have been served once, and that would  
19 encompass all of their uses.

20 THE COURT: I'm glad you clarified that.

21 MS. SCHNEIDER: I hope I clarified it.

22 THE COURT: I'm not so sure I understood what  
23 you just said, but I don't know that we need to make a  
24 decision now.

25 Do I understand correctly that this is not a

1 specific issue before the Court to be addressed today? Or  
2 resolved?

3 MS. SCHNEIDER: Well, I think that as to the  
4 groundwater rights, the Court can -- the overlying,  
5 unexercised groundwater rights, I think that the Court should  
6 determine that those rights do not need to be served under  
7 the case management order at this point.

8 THE COURT: That is my inclination, in reading  
9 what Judge Reed wrote in 2000.

10 Does anyone have any objection to the Court  
11 entering such an order?

12 All right. Ms. Schneider, I think that might  
13 be a good idea, to have that memorialized somewhere in a  
14 written separate order.

15 MS. SCHNEIDER: Okay. I will do that. Yes,  
16 Your Honor.

17 And if the Court is ready, then I would move  
18 on to the -- to item E, which is -- excuse me, the second  
19 part of item E, which is the dormant or unexercised  
20 riparian uses.

21 THE COURT: That may be a bigger issue in  
22 California though.

23 MS. SCHNEIDER: This is a bigger issue in  
24 California. And as I address this issue, the United States  
25 is not taking any position about the merits of any of these

1 claimed water rights. We're not trying to get into that.  
2 But we are trying to make sure that we complete whatever  
3 service the Court requires of us.

4 As we discussed this issue, there seemed to be  
5 three options open to us. One would be to serve these  
6 people.

7 The second would be to craft some language  
8 that would protect these riparian uses, these unused  
9 dormant riparian uses. And that might even include an  
10 amendment of the case management order.

11 And the third might simply be to have all the  
12 parties brief the issue and have the Court make a decision  
13 about whether these persons and entities -- these kinds of  
14 rights should be in the case at this point.

15 As to the question about whether we should  
16 just go ahead and serve them, the parties are initially  
17 looking at how much of an issue it would actually be to  
18 serve them. How many are there? How costly would this  
19 be? How much time would this take?

20 I think that everybody has been -- all of us  
21 who have been discussing this issue, agree that we don't  
22 want to be delaying the litigation of the case. So we're  
23 trying to figure out a way to address this issue with the  
24 least amount of delay possible.

25 Mono County has very kindly given us two



1 spreadsheets of information that it's collected, from its  
2 own files. The first one identifies public lands that are  
3 riparian to the Walker River system in California.

4 And the federal government and the states are  
5 already a party to these proceedings. I think the federal  
6 government owns a considerable amount of the riparian land  
7 up there. And so obviously these are not rights that  
8 would have to be served.

9 The second spreadsheet identifies private  
10 lands that are riparian to the same system. We have just  
11 gotten this, and we are -- have just begun to skim the  
12 information. So far we need to take a closer review.  
13 That will take a few weeks.

14 Now, Ms. Simon --

15 THE COURT: Does that spreadsheet give an  
16 approximation of how many entities or individuals or  
17 claimants are involved?

18 MS. SCHNEIDER: Yes. Ms. Simon's reported to  
19 us, and she's looked over it more closely than we have so  
20 far.

21 She thinks there are about 650 nonfederal  
22 parcels but that a number of the parcels are owned by the  
23 same person so that there may be no more than, say, 350  
24 different names there. But that does not factor in prior  
25 service.

1           And so what we have to do is go through the list  
2 and compare it to our completed serves, to see just how many  
3 of them have already been served and what that actually  
4 leaves for us to do.

5           We are going to be starting that. Or we have  
6 just started to do that. And that is another issue that I  
7 would anticipate reporting to the Court about -- on the  
8 telephone status conference, as to where we are and how we  
9 think we should be approaching the issue.

10           Now, when we figure out -- if we know before  
11 that conference date, if we know of some more specific  
12 information, we'll try to share it with the defendants  
13 because that may -- it may be helpful for us to have a  
14 call amongst ourselves before we report back to the Court,  
15 to see if we can agree upon an approach.

16           Because that might -- if we can't -- if  
17 service is going to be complicated and lengthy, then I  
18 think we would want to look at whether there's some way to  
19 craft language that would somehow deal with -- protect  
20 these parties. And it may be, for example, that the  
21 Court -- the case management order requires -- does not  
22 have any requirement in it for surface rights that are  
23 currently being used. It just says all surface rights.

24           And it may be that's one way. And we haven't  
25 discussed that in detail or come to any consensus. But

1 certainly modifying the case management order in that way  
2 might be -- might address the issue for now and preserve  
3 the rights of the unexercised dormant rights, riparian  
4 rights in the future.

5 THE COURT: When you say protect their rights,  
6 would they -- would the Court be telling them that someone  
7 else here, like Circle Bar M, is representing or advocating  
8 the position of riparian users and therefore you can rely on  
9 Ms. Her to carry this day for you?

10 MS. SCHNEIDER: I don't think that is -- would  
11 be the issue. I think it would be that the Court would make  
12 a determination that the unexercised dormant surface riparian  
13 rights would fall into the same category at this point as,  
14 say, a domestic right up in California, which Judge Reed had  
15 decided didn't need to be served at this point, but might be  
16 served in the future, and that you could take the same  
17 approach with these unexercised rights and make a -- to leave  
18 for a future decision point whether or not they need to be  
19 served.

20 And, again, that's not something that we want to  
21 get into today in detail. But that was certainly something  
22 we were starting to talk about.

23 MS. SIMON: Your Honor, if I may, this is Stacey  
24 Simon on behalf of Mono County. That -- that particular  
25 approach -- and, again, perhaps we're not getting into it in

1 great detail today, as not one that Mono County was  
2 supportive of because we think there's a distinction between  
3 the unexercised groundwater rights and the unexercised  
4 riparian rights. So we weren't supportive of treating them  
5 in the same way.

6 But, again, I think we'll get into that more on  
7 the 21st.

8 MR. NEVILLE: And, Your Honor, this is Michael  
9 Neville. We concur with the county's point on that. I think  
10 our hope is that as a practical matter the number of surface  
11 riparians, dormant riparians will be discrete enough and  
12 small enough that the U.S. will just be able to go ahead with  
13 it and be -- and, you know, and move forward.

14 Because it seems that if that's not the case,  
15 we're going to be talking about protective language, we're  
16 going to be trying to come up with something -- some sort of  
17 supplemental service order, that itself could take quite a  
18 bit of time. And, you know, our sense and our hope is we  
19 could just go ahead and get it done.

20 But we're still trying to get an idea in talking  
21 with the U.S. and the other parties about the scope of the  
22 issue and just how many people we're talking about.

23 THE COURT: Well, thank you, Mr. Neville and  
24 Ms. Simon.

25 And, Ms. Schneider, I'm inclined to follow their

1 position on this case, which is -- I think alternative number  
2 one, is to serve them. If we have actual knowledge of who  
3 these individuals are, I think there's some connotations of  
4 due process involved here, that they should have notice of  
5 this action. And this -- we're talking years and years we're  
6 going along with the service.

7 And I think -- you know, I have my marching  
8 orders from Judge Jones. I think I would rather err on the  
9 side of caution on this. So unless you come up with some  
10 other idea between now and later this month, I think that's  
11 my inclination.

12 MS. SCHNEIDER: If I could ask the Court. I'd  
13 like to see if Mono County and California -- the State of  
14 California, could try to think about what language might  
15 serve their purposes if it proved to be a difficult issue to  
16 serve these people, so they could at least be thinking about  
17 it while we're reviewing the materials they sent us.

18 THE COURT: Well, how is it any more difficult  
19 to serve them than the other 3,800?

20 MS. SCHNEIDER: I think it's just a matter of it  
21 will take some time, and we'll have -- I have to make sure I  
22 have the resources to do it.

23 THE COURT: Well, I know that the government has  
24 spent an immense amount of money. I think I saw the sum of  
25 1.8 million on service efforts to date. I mean, we're into

1 this pretty deep hole here, almost trapped.

2 All right. Let's move on to the next issue  
3 then.

4 MR. DePAOLI: Your Honor, may I be heard on this  
5 issue?

6 THE COURT: Yes, Mr. DePaoli. Go ahead.

7 MR. DePAOLI: And just on the concept of serve  
8 them. I guess I agree that we need to see what the magnitude  
9 of the issue is. The one thing that I would suggest that we  
10 keep in mind is the manner in which this case has been phased  
11 and what is happening in the threshold issue phase versus  
12 what happens later.

13 And the one thing in terms of -- because I don't  
14 think anybody who is not a party, their rights are not going  
15 to be adversely affected by the threshold issue phase at all.

16 I -- what I'm concerned about is that this issue  
17 was raised by California in 2008. It is now 2012 and  
18 we're -- and now there is great concern on their part about  
19 this.

20 It seems to me we ought to be able to figure out  
21 a way -- if we have to serve them, if there's a whole  
22 bunch -- that we can still keep other things moving while  
23 that is taking place, so that by the time they're finished we  
24 can be able to move to the threshold issue phase. So --

25 THE COURT: Well, one --

1 MR. DePAOLI: -- I'd like to keep that open.

2 THE COURT: -- of the issues I want to address  
3 today is getting some deadlines to start -- I know you've  
4 identified threshold issues before, I don't know how current  
5 they are, about how we're going to handle the threshold  
6 issues.

7 I also want to get this complaint in  
8 intervention resolved by Mineral County. And I think the  
9 same argument could be made that the participation of these  
10 other people in the threshold issues and the complaint in  
11 intervention will not have a large bearing or impact on how  
12 the Court rules on those anyway.

13 So I do think we need to start looking at some  
14 deadlines for those threshold issues and the -- getting  
15 the issue of the complaint in intervention resolved.

16 All right. Is there any more discussion of  
17 this subtopic E? And I guess we'll hear more on the --  
18 what date did we land on, the 21st?

19 MS. SCHNEIDER: Yes, Your Honor.

20 THE COURT: Next agenda item?

21 MS. SCHNEIDER: Moving back to D, which is the  
22 issue of addressing persons and entities who are served but  
23 didn't respond or appear. I filed -- I circulated a proposed  
24 order with the parties, and then we filed that order with the  
25 Court yesterday.

1 I didn't get any comments. And I -- so then I  
2 filed the order. But I'm not sure if any of the parties  
3 want additional time to review and comment on the draft  
4 before we ask the Court to consider it.

5 THE COURT: Well, there's a document filed last  
6 night with the Court. It's number 604. I thought that was  
7 in the C case.

8 MS. SCHNEIDER: No, that would not be it. It  
9 is -- I do not have a copy of it with me.

10 Ms. Rutherford, do you know the number?

11 MS. RUTHERFORD: I have that at my desk, and I'm  
12 not there right now.

13 MS. SCHNEIDER: All right.

14 MR. DePAOLI: It's docket 1726, Your Honor.

15 MS. SCHNEIDER: 1726.

16 MS. RUTHERFORD: Thank you.

17 THE COURT: And --

18 MS. SCHNEIDER: I have extra copies of it here,  
19 although my copies are still labeled draft. But that -- as I  
20 said, I circulated it with the parties. I have not gotten  
21 any comments. But, again, I don't know if they want some  
22 more time to look at it before we ask the Court to approve  
23 it.

24 If Your Honor wishes, I can give you a copy of  
25 the order, the proposal.



1 THE COURT: That would be helpful.

2 MS. SCHNEIDER: This still has the draft stamp  
3 on it.

4 THE COURT: This is in the B case?

5 MS. SCHNEIDER: That's correct.

6 THE COURT: Is there any comment on document  
7 1722 in the 127-B case?

8 MS. SCHNEIDER: 1726.

9 THE COURT: Oh, what did I say, 1722?

10 MS. SCHNEIDER: Yes, Your Honor. It's 1726.

11 THE COURT: Well, I think this is consistent  
12 with the case management order, Judge Leavitt's order, and  
13 Judge Reed's order confirming Judge Leavitt's report and  
14 recommendation.

15 Is there any discussion on 1726?

16 All right. Are you submitting it for approval  
17 then, Ms. Schneider?

18 MS. SCHNEIDER: Yes, I am, Your Honor.  
19 Although, as I said, the version I handed you still has a  
20 draft stamp on it.

21 THE COURT: We can correct that, I think.

22 All right. It will be the order of the Court  
23 adopting 1726.

24 Thank you, Ms. Ogden.

25 Next item?

1 MS. SCHNEIDER: It's -- F is the status of and  
2 the schedule to complete a variety of service related issues.

3 The first one is the caption. We were  
4 supposed to be trying to finish the caption. And once we  
5 had finished the caption, it was to be filed with the  
6 Court and the parties -- the parties who were getting  
7 e-service were to have a period of time for any comments  
8 or objections.

9 We have, at this point, circulated a draft  
10 caption to some of the primary defendants, just so that  
11 they could see it. We still need to address the Report 17  
12 changes and need to make sure that we've included the last  
13 of the personal serves which we will be filing in a couple  
14 of weeks. This is apart from any of the California issues  
15 that may add to the caption.

16 And I'm -- the question I have for the Court  
17 is whether we should file and circulate what we have later  
18 this month or wait until we've resolved the California  
19 issues?

20 THE COURT: Any comment by any of the other  
21 parties?

22 Now, would this caption be similar to what  
23 I've seen in the C case, where they have a caption with  
24 all the list of the named defendants in that action?

25 MS. SCHNEIDER: I believe so. Last time we were

1 before the Court, there was a decision made that when we did  
2 the caption we should try to -- we would be listing the names  
3 alphabetically. That's been done with the primary defendants  
4 in the very beginning of the list. And it is just a -- it's  
5 a list of names. It's a caption that goes from margin to  
6 margin. And it's quite a few pages.

7 THE COURT: I would bet it is.

8 MS. SCHNEIDER: Yeah.

9 THE COURT: And it may be longer now, depending  
10 on if this California issue is resolved.

11 I think you ought to start circulating it so you  
12 get -- you know, show we're accomplishing something in the  
13 action. I think the caption would be a pretty good start.

14 MS. SCHNEIDER: All right. What I can do then,  
15 is we can finish the caption, at least this part of it, by  
16 the end of August and file it -- we would file it and then  
17 ask for a period of time for comments. And I suppose the  
18 cover filing should identify that there are still some -- if  
19 there are some holes in it, that we would identify those and  
20 then proceed with the rest of the service, and then perhaps  
21 do a second caption thereafter.

22 THE COURT: Do I assume this task is going to  
23 fall on Ms. Rutherford?

24 MS. SCHNEIDER: Substantially, yes. She's  
25 sitting in my office cringing, I think, at the moment.

1 THE COURT: Yes. You haven't fallen over in a  
2 dead faint have you, Ms. Rutherford?

3 MS. RUTHERFORD: No, I've been working on it  
4 already.

5 THE COURT: All right. Well, I think that's the  
6 way we ought to proceed -- and getting going on the caption.

7 Now, will you have a -- moving here to the  
8 second talk. Do we have like a -- we'll have several  
9 lists, those who have been served and filed notice of  
10 appearance, those who have been served who have not done  
11 any response. Are those the two categories?

12 MS. SCHNEIDER: Those are basically the two  
13 categories, although persons and entities who filed notices  
14 of appearance may in some instances be represented by  
15 counsel. And that's something we have to pull out.

16 Where we are right now on those two items is  
17 that their -- Ms. Rutherford has put together an Excel  
18 spreadsheet of the names and addresses of persons and  
19 entities who have filed notices of appearance.

20 She's not yet put in the Report 17 changes and  
21 some of the other ones that we would see coming based on  
22 the most recent completions of service. But we're  
23 prepared to give it to the clerk's office at any time.  
24 Although we would at first want to -- we first want to put  
25 in the Report 17 changes. We don't know if any of the

1 other parties want to have that list. We could file it,  
2 if the Court wants that, as well.

3 THE COURT: Well, I'm concerned about -- in  
4 discussions with Ms. Griffin yesterday about how logistically  
5 we are going to blend it into, one, the docket sheet and,  
6 two, maybe later CM/ECF service on these people.

7 Ms. Griffin, you noted some issues. Could you  
8 discuss those.

9 MS. GRIFFIN: Well, there's several issues. But  
10 I guess in specific regard to the questions you're asking,  
11 CM/ECF, you all know, is very limited in how it functions.

12 The caption is created by an entry of parties.  
13 So every single party gets entered individually. At the time  
14 that the parties are entered, that's the point at which you  
15 would say you're attached to an attorney, you're not attached  
16 to an attorney, you're representing yourself in pro per.

17 So it's going to depend on what kind of  
18 information we have and when we need to begin serving.

19 So in some of the other larger water cases, for  
20 instance, the service of everyone on the list doesn't begin  
21 until after we're at the threshold issues. So we would --  
22 the clerk's office would need some clarification from the  
23 Court in regard to that.

24 And then I would need to explore some options  
25 within CM/ECF to add people in so that they are parties to

1 the case, they are included on the caption, and not being  
2 served. So they would not appear on the notice of electronic  
3 filing.

4 THE COURT: An issue I want to discuss with  
5 Mineral County here later on their proposed service package,  
6 and I hate to go change anything at this late stage, but  
7 whether we shouldn't have people respond with those who  
8 accept the service without having to have a summons, that  
9 they -- if they want to get service from the Court to provide  
10 their e-mail address at this time so the Court doesn't have  
11 to send out another mass mailing to everybody asking that  
12 same question all over again.

13 And I think we're probably too far down the road  
14 on the B case to start doing that now. But it will be  
15 something we'll do in it future.

16 So does anyone have any questions of  
17 Ms. Griffin as to what we're -- what the court issues are  
18 on the docket sheet versus just named defendants?

19 MS. SCHNEIDER: What I was hoping, perhaps, was  
20 that we could provide the lists that we were in the process  
21 of putting together to Ms. Griffin and have her look at them  
22 and then talk to her a little more about how they would be  
23 used at this point.

24 Certainly, jumping ahead on that agenda, we  
25 are still working on the e-service order. And that should

1 be finished and approved by the parties and the Court, and  
2 then a time identified as to when that order would go out.

3 Because my understanding is that we are still  
4 operating under Magistrate Judge McQuaid's order, and I'm  
5 forgetting the number, but -- of the order, but it is the  
6 order that says that until a certain point the only  
7 service is to be done on -- by e-service to the attorneys  
8 who have registered for e-services who are still operating  
9 under that.

10 THE COURT: Now, is it my understanding that  
11 under the CMO and subsequent orders that everyone is going to  
12 have to get notice of the proposed complaint and intervention  
13 in C and as well as the -- Mr. DePaoli, help me out here --  
14 the threshold issues? Or -- because I kind of thought from  
15 reading over these files again the last couple days that that  
16 was the import of what the decisions have been.

17 MS. SCHNEIDER: I think that while we have C-125  
18 as a case with subproceedings in it is one case, that  
19 subproceeding C and the service of the motion there is  
20 handled separately from whatever goes on in subproceeding B.

21 Because there are fewer defendants to be  
22 served in subproceeding C, it's not necessary, I think, to  
23 be providing any broader service of Mineral County's  
24 motion in B, other than what they're required to do in C.

25 MR. DePAOLI: Your Honor, to -- I think it's

1 easier to talk about what we need to do in B completely  
2 separate from what we need to do in C.

3 THE COURT: I agree. I was pointing that out,  
4 though, about this issue on the electronic service.

5 So, Ms. Griffin, I guess what's going to  
6 happen on B is that you're going to be getting something  
7 from either Ms. Rutherford or Ms. Schneider, with a list  
8 of the parties who have been served. And that would have  
9 addresses? And if they have counsel, that would be noted;  
10 is that correct?

11 MS. SCHNEIDER: We are trying -- we're putting  
12 together, first, a list of names and addresses of persons and  
13 entities who were served who filed a notice of appearance.

14 Then we are also putting together a list of  
15 persons and entities who were served who did not file a  
16 notice of appearance because -- and that's something we're  
17 still trying to clean up.

18 And those are the two -- those are the two  
19 categories --

20 THE COURT: Let me interrupt you again. Just  
21 to -- I'm trying to get a handle on this case that you all  
22 lived with for years and years and years, and I'm the new kid  
23 on the block. Do I recall an order either of Judge McQuaid  
24 or Judge Leavitt or Judge Reed that those who have been  
25 served but have not made an appearance are stuck with



1 whatever happens in this case?

2 MS. SCHNEIDER: That's correct. In fact, that's  
3 the order Your Honor -- there was an order to that effect in  
4 C, in the C subproceeding. And the order Your Honor has just  
5 approved addresses that in the B subproceeding. But that is  
6 consistent with the prior orders --

7 THE COURT: So I should have included me in that  
8 list of judges, huh?

9 MS. SCHNEIDER: That's right. You're there too.

10 THE COURT: All right.

11 MS. SCHNEIDER: Okay.

12 THE COURT: Okay. That answers that question.

13 Does anybody have any problem with  
14 Ms. Schneider or Ms. Rutherford contacting Ms. Griffin  
15 directly to discuss these issues?

16 MS. SCHNEIDER: And the next question -- related  
17 question I have is whether any of the parties would like to  
18 receive a copy of the same list that we're putting together  
19 or whether they believe these are lists that should be filed  
20 at any point?

21 THE COURT: Mr. DePaoli?

22 MR. DePAOLI: Well, it sounds like once it  
23 happens in the -- on the docket sheet, that the list will be  
24 there if anybody needs to see it. So it would be helpful to  
25 have a copy of it. But I don't know --

1 THE COURT: Why don't you send out copies to the  
2 principal players here because we want that -- some consensus  
3 before we start uploading it to the docket sheet.

4 MS. GRIFFIN: And, Your Honor, as an aside, if  
5 parties are not going to be served starting when I get the  
6 list, they will be included on the docket sheet. But there  
7 will be no address. So their address won't be seen on the  
8 docket sheet. I know that's something you're going to  
9 include on your list, so that will be something different  
10 than you're going to see on the docket sheet.

11 MS. SCHNEIDER: All right. The one --

12 THE COURT: Just so I understand it, if Jane Doe  
13 sends back an acknowledgement of service and has Circle Bar M  
14 Ranch Smith Valley, that would show up on the docket sheet?

15 MS. GRIFFIN: No.

16 THE COURT: No?

17 MS. GRIFFIN: It will show Jane Doe on the  
18 docket sheet. Her address will be contained electronically,  
19 but it will not show on the docket sheet until she's turned  
20 on. And when we turn on Jane Doe, then she will come on the  
21 notice of electronic filing, which is what the docket clerks  
22 use to make service. So we don't want to turn on Jane until  
23 it's time for -- it's time for the service to actually begin.

24 THE COURT: All right. We'll leave Jane alone  
25 for now.

1 MS. SCHNEIDER: The only issue that I'm still  
2 trying to figure out is that there may be instances -- there  
3 will be instances where Jane Doe might actually have an  
4 attorney, and we may not have that linked. And so the  
5 only -- the other list that we might want to think about  
6 doing is figuring out what attorneys represent what clients.

7 The other way to do that is to file this --  
8 file these lists at some point, and then the attorneys can  
9 review the lists and see if their clients have been put in  
10 the right category.

11 THE COURT: Well, let's send that around before  
12 we file it. Let's have that input.

13 MR. HERSKOVITS: Your Honor? I'm sorry.

14 THE COURT: Go ahead.

15 MR. HERSKOVITS: I recognize we want to not  
16 muddy the waters too much between B and C, but I did want to  
17 interject that we also are in the process of compiling a list  
18 that's alluded to in the agenda of *pro se* parties amongst  
19 parties who have been served and not entered an appearance,  
20 versus parties who have been served and entered an  
21 appearance.

22 And one of the issues that have occurred to us  
23 already is that in some instances we think we're going to  
24 need to circulate our list at some point of relative finality  
25 to other counsel that we know of in the case, because it

1 appears as though there may be instances where attorneys  
2 represent more parties than we're aware of, or than there  
3 appear to have been clear notices of appearance filed on.

4 And I just think as a practical matter we may  
5 internally want to share these lists and vet them before we  
6 go forward and file something and discover that actually  
7 people are mischaracterized.

8 THE COURT: I was just thinking Clausewitz may  
9 want to do a supplement to his book on *The Fog of War* and  
10 call it the fog of the Walker River litigation.

11 Do we need to discuss this issue anymore? Can  
12 we move on to the next topic?

13 MS. SCHNEIDER: Could I --

14 MR. DePAOLI: One question, Your Honor. It  
15 seem -- what we really need in B is a list of persons who  
16 have appeared --

17 MS. ADAMS: Excuse me, Your Honor. We can't  
18 hear Mr. DePaoli.

19 MR. DePAOLI: What we need in -- what we really  
20 need in B, at some point, is a list of persons who have  
21 appeared but who are not represented by counsel because  
22 that's -- at some point we've got to figure out how we're  
23 going to get notice to those people and how we're going to  
24 ask those people if they'd like to sign up for the e-service.

25 And it's not exactly clear to me, from the

1 discussion we've just had, is at what point we get to that  
2 list.

3 THE COURT: It was my understanding, though,  
4 that Ms. Schneider clarified with me that I just entered an  
5 order or agreed to an order where these people who have been  
6 served but not appeared will be bound by what proceedings  
7 occur hereafter.

8 Why, then, do we have to go one step further and  
9 say do you want to get notice --

10 MR. DePAOLI: It's not -- those are the people  
11 who have not appeared. The persons I am talking are -- and  
12 there are quite a few in the B case, who have appeared but  
13 who are not represented by counsel.

14 THE COURT: I see.

15 MR. DePAOLI: That's the list I -- it's not  
16 clear how we get to that --

17 MS. SCHNEIDER: I agree. We --

18 THE COURT: I think --

19 MS. SCHNEIDER: -- that's part of the list.

20 THE COURT: -- what Ms. Griffin and I talked  
21 about is maybe having the Court send out a notice to them  
22 about the availability of electronic service and that they  
23 can get copies of any filings.

24 Ms. Griffin, could you elaborate?

25 MS. GRIFFIN: Yes, Your Honor. But that would

1 not apply to those folks who are represented by counsel.

2 THE COURT: Right. But I mean --

3 MS. GRIFFIN: So I --

4 THE COURT: -- I think Mr. DePaoli is talking  
5 about those who have been served, entered an appearance, but  
6 are not represented by counsel.

7 MS. GRIFFIN: And I think Mr. DePaoli is talking  
8 about seeing if those people want to be represented by  
9 counsel?

10 MS. SCHNEIDER: I think we just need a list of  
11 them. And then when we finish --

12 THE COURT: Make sure you all speak into the  
13 microphone --

14 MS. SCHNEIDER: I'm sorry.

15 THE COURT: -- everyone else on the phone can  
16 hear.

17 MS. SCHNEIDER: I think we just need to -- I  
18 mean, I agree with Mr. DePaoli. In doing the lists when I --  
19 the item on the agenda says a list -- item little two says a  
20 list of names and addresses of persons and entities served  
21 who have filed a notice of appearance.

22 And that really is intended to identify persons  
23 and entities who are not represented by counsel who have  
24 filed a notice of appearance. And I think that takes care of  
25 Mr. DePaoli's concern. But that list would be, then, the

1 list of people that the Court would send the e-service order  
2 to once we finish the e-service order.

3 MS. GRIFFIN: And functionally that's -- those  
4 are the people you would see on your notice of electronic  
5 filing who would have physical addresses instead of e-mail  
6 addresses. So that's how they would be identified --

7 MS. SCHNEIDER: All right. What I wanted to  
8 propose was that we will work on the preliminary lists and  
9 send them to the primary defendants, then, and also to  
10 Ms. Griffin and review them with her. And if there are  
11 parties who want to be a part of the review, they should let  
12 me know.

13 But then I also wanted to jump back a second,  
14 if I could, to the issue of the caption. If we file a  
15 caption as to wherever we are by the end of August, I --  
16 that would serve to satisfy the requirement of the case  
17 management order that the parties, as clarified by the  
18 Court, to mean the parties receiving e-service have an  
19 opportunity to review and comment on service.

20 And so what I would like to propose, then, is  
21 that I file the caption with a requirement that perhaps I  
22 would give the Court a proposed order that comments are to  
23 be -- any comments should be either filed or provided to  
24 me -- filed, by, say, the end of September. And -- but  
25 also we would be adding the note that there may be some

1 additional California serves and those would come out at a  
2 later time.

3 THE COURT: Well, for now I don't see a need to  
4 file that. I think I would just distribute it among counsel  
5 for their input.

6 MS. SCHNEIDER: On the caption?

7 THE COURT: Right. I mean, I don't see a need  
8 to file that right now.

9 MS. SCHNEIDER: Okay. Because I think that that  
10 was one of the deadlines we were looking to address because  
11 that would meet one of the requirements in the case  
12 management order.

13 THE COURT: Was there a specific -- the case  
14 management order back in 2000 said we had -- by 2012, we had  
15 to file a caption?

16 MS. SCHNEIDER: No. No. It -- as the Court and  
17 the parties had interpreted paragraph nine on page eight, it  
18 says that --

19 THE COURT: Just a second. Paragraph nine?

20 MS. SCHNEIDER: I'm sorry?

21 THE COURT: Paragraph nine, page eight?

22 MS. SCHNEIDER: Yes, Your Honor. And it said  
23 that after the United States and the tribe have received the  
24 information and compiled a list of parties whom they intend  
25 to serve, that list and a description of the procedures by



1 which it was compiled shall be filed and provided to the  
2 parties, who shall have such period of time as the magistrate  
3 judge shall determine, to file objections indicating whether  
4 the list is complete and includes all such water rights'  
5 claimants within the categories described in paragraph three  
6 above who can reasonably be identified.

7 And as --

8 THE COURT: Yeah. I don't have a problem with  
9 that. I understand what it's saying. I'm just saying I  
10 think you're at the stage where you've still got drafts that  
11 you need to work on among yourselves, first, and then go  
12 ahead and file something that satisfies paragraph nine. And  
13 the parties can object. And we can address it at another  
14 status conference.

15 MS. SCHNEIDER: All right. I will do that, Your  
16 Honor.

17 THE COURT: Now, you said you're going to be out  
18 all of September?

19 MS. SCHNEIDER: I am in the office the 18th  
20 and -- no, excuse me, the 19th and 20th of September. And  
21 then I would be back in, I think, by the 26th.

22 THE COURT: Well, how about we go ahead and get  
23 another status conference on calendar for the first week of  
24 October.

25 MS. SCHNEIDER: Yes, Your Honor.

1 THE CLERK: Your Honor, we can do October 1st at  
2 10:00 a.m.

3 MS. SCHNEIDER: Could we do -- I could do that  
4 by telephone, but for me to travel from one fiscal year to  
5 the next is a problem. And so it would be easier to do  
6 either --

7 THE COURT: Tell us the date that works for you,  
8 Ms. Schneider.

9 MS. SCHNEIDER: Yes.

10 THE COURT: You come from Denver, do I recall?

11 MS. SCHNEIDER: I do, Your Honor, yes.

12 THE COURT: Having just been there, it takes you  
13 as long to go from downtown Denver to DIA as it does from DIA  
14 to Reno.

15 MS. SCHNEIDER: Pretty much, yes. I can do the  
16 2nd, the 3rd, the 4th.

17 THE COURT: Does anybody have any problem with  
18 either one of those three dates, the 2nd, 3rd, or 4th?

19 MS. SCHNEIDER: The 5th. Every day is open  
20 except October 1st.

21 THE COURT: How about the 3rd, a Wednesday?

22 THE CLERK: We can have a hearing at 1:30.

23 THE COURT: All right.

24 All right. So the plan here on the caption on  
25 the B case is that you're going to still disseminate some

1 drafts. And after you've gotten to the final draft format,  
2 go ahead and file that. And we can discuss it then and  
3 satisfy paragraph nine of the CMO.

4 MS. GRIFFIN: Your Honor?

5 THE COURT: Yes.

6 MS. GRIFFIN: Would it be acceptable for me to  
7 be included in that distribution, the preliminary  
8 distribution that's going out to counsel? That would allow  
9 my staff some time to begin the process of going through and  
10 adding those appropriate, without including them on to the  
11 docket.

12 THE COURT: What are you adding them to?

13 MS. GRIFFIN: I would be putting them into my  
14 program wherein I could then electronically dump it when it  
15 became appropriate.

16 THE COURT: All right. Yes, if you would copy  
17 Ms. Griffin on that.

18 MS. SCHNEIDER: Yes.

19 THE COURT: Do you have a card you can give at  
20 the end of this proceeding?

21 MS. GRIFFIN: I do, sir.

22 THE COURT: Thank you.

23 Next item. Are we on to C now, number three?

24 MS. SCHNEIDER: There's just one more item, and  
25 that was little Roman numeral four. It's the clarification

1 of any persons or entities that filed an appearance but  
2 weren't served.

3 This seems to be the National Fish and Wildlife  
4 Federation. I've talked to their attorney. And they're  
5 probably going to use the motion to substitute that was part  
6 of Magistrate Leavitt's and Judge Reed's orders. And so that  
7 would satisfy that issue.

8 And then the next item would be item three,  
9 which deals with C-125-C. And that's Mr. Herskovits' case.

10 THE COURT: All right. Unless anyone has any  
11 objection, we're moving to item three, the completion of  
12 service and service issues on the report.

13 Mr. Herskovits, I've received document 604,  
14 which I think incorporated some of Walker River Irrigation  
15 District's comments.

16 MR. HERSKOVITS: Yes, Your Honor. Document  
17 number 604 actually incorporates all of the requested  
18 modifications of language that the Walker River Irrigation  
19 District made in its comments and also in a less formal way  
20 through correspondence in a phone conversation prior to their  
21 comments being filed.

22 So it's our understanding that this now reflects  
23 or accommodates all of the comments that the Walker River  
24 Irrigation District made.

25 And we would submit that the revised order is

1 now -- now reflects any concerns that were expressed by any  
2 of the defendants and is ready for the Court's approval, for  
3 your signature.

4 THE COURT: Now, I have some questions about  
5 certain of the attachments.

6 MR. HERSKOVITS: Yes.

7 THE COURT: Does anyone have any comment on the  
8 proposed order that accompanies 604?

9 Okay. Then I will move to some questions I had.  
10 I had a question about the March 2013 date. That's the  
11 deadline for what?

12 MR. HERSKOVITS: March 2013 date, Your Honor, is  
13 the date that we've proposed for the final completion of  
14 service in the C case. And that was recognizing that there  
15 would be a series of steps between the outcome of today and  
16 actually truly finishing service in the case.

17 THE COURT: You know, I don't know how that  
18 squares with Judge Jones' tee-it-up instruction.

19 Is there any way we can accelerate that?

20 MR. HERSKOVITS: Well, I think --

21 THE COURT: Is it going to take -- you only have  
22 109, isn't it, on the list of --

23 MR. HERSKOVITS: -- that's right, Your Honor.

24 THE COURT: -- persons to be served?

25 MR. HERSKOVITS: That's correct.

1 THE COURT: It takes six --

2 MR. HERSKOVITS: It's just a little over a  
3 hundred.

4 THE COURT: It takes five or six months to get  
5 those other --

6 MR. HERSKOVITS: Well, I would hope not, Your  
7 Honor. And when we thought about what kind of a date to  
8 present to the Court, we shied away from an earlier date  
9 because we could anticipate, based on previous experiences,  
10 that we will mail these out to the full list of a hundred  
11 plus proposed defendants who haven't been served yet.

12 A certain number of them we will receive back  
13 waivers from the people who have been served. A certain  
14 number of other ones we may receive information that they no  
15 longer own the water rights that they had owned previously  
16 that led to their being included. There will have to be  
17 follow-up if that's the case.

18 And if they don't accept the mailing we send  
19 out, we'll have to have them personally served. And I think  
20 from our experience in the past, that may lead to us needing  
21 to build in an additional couple of months for that, sort of  
22 receiving mail back, getting personal service attempted but  
23 then anticipating that some -- hopefully very small number,  
24 but still some number will have to be updated, and we'll have  
25 to go through that process again with them.

1           We anticipated that it would take a number of  
2 months. I think -- I don't remember exactly how we ended up  
3 with the March date. But I think it was what we felt was a  
4 conservative date that would not need to be postponed.

5           We certainly would anticipate returning to the  
6 Court with reports and proposals to ratify service on as  
7 many of these remaining parties as we can, as quickly as  
8 possible. We just did not want to propose a date that,  
9 based on past experience, would then simply need to be  
10 extended again.

11           THE COURT: Is it my understanding that it's the  
12 position of the parties that the Court cannot consider or  
13 entertain the Mineral County intervention documents until  
14 that service is completed?

15           MR. HERSKOVITS: Yes, that's my understanding as  
16 well, Your Honor.

17           THE COURT: Why is that? I mean, is it just a  
18 matter of fairness that these other 109 should be given an  
19 opportunity to voice their opinion about whether the  
20 complaint in intervention should or should not be granted?

21           MR. HERSKOVITS: It's my understanding, Your  
22 Honor, that earlier on in the history of the case Judge Reed  
23 established in his orders concerning service and the handling  
24 of the C case, 125-C, that he would consider the complaint in  
25 intervention after service had been completed and not until

1 that point in time.

2 That's why we have taken that as a given in the  
3 case. If you're asking us to -- sort of on the merits,  
4 whether that should or shouldn't be required, we've  
5 actually -- not in my time on the case, which is now quite a  
6 number of years -- never argued or disputed that.

7 THE COURT: Well, I think Judge Jones is keenly  
8 interested in resolving the intervention issue so we can  
9 allow it, one way or the other, to move forward.

10 Would you all agree that that's Judge Jones'  
11 bailiwick, and not mine, about the complaint in  
12 intervention? Or I'm not quite sure. He might want me to  
13 handle it as a report and recommendation to him.

14 MR. HERSKOVITS: You mean, the ruling on the  
15 actual complaint in intervention?

16 THE COURT: Yes.

17 MR. HERSKOVITS: It's always been our  
18 understanding that judge -- when he was still assigned to the  
19 case, Judge Reed intended to rule on that and did not assign  
20 that, along with the service and other procedural matters, to  
21 the magistrate judge to consider.

22 So I guess it's been our running understanding  
23 that that actual decision would be made by the -- by  
24 originally Judge Reed, and we've assumed that that would be  
25 Judge Jones now.



1 THE COURT: Do you have the citation in the CMO  
2 about Judge Reed's reference on -- or timetable for deciding  
3 the merits of the complaint in intervention?

4 MR. HERSKOVITS: Well, the CMO, Your Honor, I  
5 believe, only pertains to the C-125-B case.

6 THE COURT: Oh, that was -- right. It was  
7 filed six years before this came along.

8 MR. HERSKOVITS: Yes. So I believe it's in the  
9 1995 orders that Judge Reed address the sequence in which he  
10 would address issues and actually reach the merits of the  
11 complaint in intervention.

12 THE COURT: 1995 or 2005?

13 MR. HERSKOVITS: No, these were -- I'm thinking  
14 of the two service-related orders that Judge Reed entered in  
15 1995.

16 THE COURT: Without committing to anybody right  
17 now, and maybe you could tell me yourself, is there  
18 opposition to the complaint in intervention proceeding in  
19 this matter?

20 This is sort of like a plebiscite and doesn't  
21 bind anyone anyway?

22 Mr. DePaoli?

23 MR. DePAOLI: Your Honor, yet we have not thus  
24 far turned our attention to whether --

25 MS. ADAMS: Excuse me. We can't hear him again.

1 MR. DePAOLI: Sorry. Your Honor, we have not  
2 turned our attention to the question of whether intervention  
3 should or should not be granted, and therefore at this point  
4 I cannot say, one way or the other, whether we will oppose  
5 the motion to intervene or not.

6 THE COURT: So I think we're bound by what Judge  
7 Reed says, that the merits of the complaint in intervention  
8 will only be considered after all service has been affected  
9 in the C case. Is that a proper understanding?

10 MR. HERSKOVITS: That has been our  
11 understanding, Magistrate Judge Cobb.

12 THE COURT: All right. How about the -- what  
13 we've called the preliminary issues? Are those things that  
14 are supposed to wait until after service as well?

15 MR. HERSKOVITS: When you refer to preliminary  
16 issues, Judge Cobb, are you referring to the threshold issues  
17 that were discussed --

18 THE COURT: Threshold issues, excuse me.

19 MR. HERSKOVITS: The threshold issues in the B  
20 case are largely not present in the C case. The one  
21 threshold issue that I think everyone agrees on in the C case  
22 is this complaint in intervention, the fundamental question  
23 of does Mineral County have standing to intervene, to assert  
24 this public trust claim that it raised in 1994 and '5.  
25 That's the only one that I'm aware of.

1           And so I don't think the same question of  
2 phasing that's been at issue in the B case is an issue in  
3 the C case, at least not at this stage. But I think it's  
4 a much narrower and simpler claim that's ultimately at  
5 issue, too.

6           THE COURT: I see. Okay. That helps me  
7 understand that better. Thank you.

8           We have your report. And I was asking -- I said  
9 I had some questions. Is attachment 17 duplicative to  
10 attachment 16, or that's the numbering system that we have  
11 and that's -- looks like we have two H's. And I know there's  
12 a problem with -- you had to file your errata to the earlier  
13 motion.

14           MR. HERSKOVITS: Your Honor, I believe that if  
15 you look at the first page after the cover page of attachment  
16 16, you'll see that there's a slight red-line change to the  
17 initials on the case docket number at the end of the first  
18 paragraph.

19           THE COURT: Yes.

20           MR. HERSKOVITS: And I think the difference  
21 between 16 and 17 is that 17 is what we refer to as the clean  
22 version of that, the one that doesn't include that.

23           THE COURT: Oh, okay.

24           MR. HERSKOVITS: That's why it's hard to see a  
25 difference.

1 THE COURT: All right. I didn't discern that.  
2 Thank you for the clarification.

3 The Court has before it the order relating to  
4 completion of service. Its proposed order right now is  
5 docket 604-2. Is there any objection to the execution of  
6 this order?

7 None appearing, the Court will adopt the order  
8 relating to completion of service in 125-C.

9 Is there anything else under agenda item three  
10 that you wish to discuss at this time?

11 MR. HERSKOVITS: Yes, Your Honor. Although I  
12 believe it is fairly limited.

13 As we alluded to previously, we are compiling a  
14 list of *pro se* parties who have entered appearances in the  
15 course of trying to ensure that we have a proper  
16 categorization of all of these parties.

17 I think that obviously it can be said to be  
18 premature in C, because we haven't finished service yet, but  
19 I think at this point we have a pretty good handle on it.  
20 It's not likely to be a very large category of people who  
21 fall into *pro se* defendants who have entered an appearance.

22 So I imagine that that will be manageable for  
23 the Court and for the parties. And I would hope that as we  
24 move as expeditiously as possible through finishing service  
25 that that list doesn't grow very much. Certainly it couldn't

1 grow by more than 109, and presumably fewer than that.

2 THE COURT: Are you providing that information  
3 to Ms. Griffin's offices?

4 MR. HERSKOVITS: Well, I believe we've begun to.  
5 And we've also begun to try and see if the list or docket  
6 information that Ms. Griffin and the clerk's office have in  
7 any way differ from what our latest information is; that we  
8 harmonize those and make any corrections on either side of  
9 that disconnect that there may be.

10 I do -- it's my understanding that you --  
11 well, I think you alluded to the possibility of modifying  
12 one of the attachments to the order that you've signed to  
13 call for people to submit an e-mail address. I think that  
14 without complicating things by amending an attachment that  
15 we already have in the service package, that we're dealing  
16 now with a discrete enough number of people that it will  
17 be easy enough to follow up and obtain e-mail addresses  
18 and transmit those to the clerk's office without a form.

19 If Your Honor thinks that we should submit a  
20 different form, then --

21 THE COURT: I don't want to go changing it now.

22 MR. HERSKOVITS: Okay.

23 THE COURT: It was just a thought I had earlier.  
24 And I discussed it with Ms. Griffin a little bit about this.  
25 But, I mean, just sitting here, in retrospect, to go back and

1 have all this redone, it's not palatable.

2 So I think the procedure will be that down the  
3 road if we adopt the process, as I believe it was done in the  
4 Orr Ditch case, to allow people to receive notices  
5 electronically, we'll just handle that when we reach that  
6 point.

7 MR. HERSKOVITS: Your Honor, there's one more  
8 point of clarification that I'd like to ask, which is that  
9 it's been my understanding, perhaps since some time when  
10 Magistrate Judge McQuaid was still handling the case, and  
11 certainly under more recent orders from yourself and  
12 Magistrate Judge Leavitt, that it -- for the filings we're  
13 making now and for some of these preliminary filings while  
14 we're finishing the service process, they're only going out  
15 to the principal parties, so to speak, or the people who are  
16 on the CM/ECF system already, or if they're not, who will  
17 fall within that limited group of people who are -- have been  
18 considered the principal parties or the principal defendants.

19 That's essentially doing the same thing as has  
20 been done in the B case during the time that we've been  
21 making these filings. And I want to make sure that that is  
22 clear, or that if there's any disagreement about that, that  
23 that is made clear.

24 THE COURT: Does anybody have any disagreement  
25 with that process, or continuing that process?

1           There are no objections. I guess there's your  
2 answer.

3           MR. HERSKOVITS: Thank you, Your Honor.

4           THE COURT: And that will be the opinion of the  
5 Court too.

6           MR. HERSKOVITS: I think there's nothing more  
7 under item three that -- for the 125-C case. I think that  
8 covers it.

9           THE COURT: All right.

10          Ms. Schneider, you have in this topic four there  
11 issues common to both subproceedings relating to publication.

12          MS. SCHNEIDER: Yes, Your Honor.

13          THE COURT: Starting first, anyway, with  
14 publication.

15          MS. SCHNEIDER: The first issue is publication.

16          THE COURT: Could you speak more into the  
17 microphone.

18          MS. SCHNEIDER: I'm sorry. The first issue is  
19 publication.

20                 I intended to work with the other parties on  
21 putting together a proposal for publication, and I did --  
22 just did not get to it because of other matters, but wanted  
23 to propose that I circulate a draft to the parties within the  
24 next couple of weeks so that we can at least report to the  
25 Court, on the August telephone call, as to where we are on

1 that effort.

2 THE COURT: Why are we doing -- or what's the  
3 criteria for service by publication for unserved parties?  
4 Just those you can't locate or don't have an address for?

5 MS. SCHNEIDER: That is -- would be pursuant to  
6 statute in the federal rules and also as set forth, I think,  
7 in the state rules.

8 For the parties that we can't find, we would  
9 actually be filing something with the Court, to ask that they  
10 be served by publication. In the past, in the C case, there  
11 have been -- there were motions filed by prior counsel for  
12 Mineral County and the Walker Lake working group seeking  
13 approval for specific parties for publication. And the Court  
14 ruled on those orders.

15 We would anticipate filing a motion but for --  
16 with fewer parties. Certainly, as I've mentioned before, I  
17 know that one person we haven't found is someone for whom  
18 there is an arrest warrant pending. And he has made himself  
19 scarce to many sources who are looking for him. But I don't  
20 know how far it goes beyond that individual. Our process  
21 server has found an awful lot of people.

22 But then that would -- we still do need to do  
23 publication. And I think the other thing that we need to  
24 talk about amongst ourselves, which we've mentioned at the  
25 other status conferences with the Court, is that there may



1 be other purposes to be served by publication. And that's  
2 what I think we need to try to see if we can come to an  
3 agreement on and suggest to the Court.

4 THE COURT: So it's premature to make any  
5 specific determination now, in that you're going to be  
6 working with the other parties to identify the scope of  
7 publication and how it might be utilized?

8 MS. SCHNEIDER: That's correct. I had  
9 anticipated doing so before today. And I apologize. I've  
10 had other things on my plate.

11 THE COURT: Okay. Do you want to move to your  
12 next topic then.

13 MS. SCHNEIDER: The next issue is the  
14 notification protocol. This takes us back to completing the  
15 proposed e-service order that we started to work on a number  
16 of months ago. And that is something I think that we can  
17 finish this month as well.

18 The first item under the e-service order is --  
19 identifies a list of -- to identify -- excuse me -- is to  
20 establish a schedule to complete a list of the names and  
21 addresses of persons and entities who were served, who filed  
22 notices of appearance, and were not operated -- not  
23 represented by counsel.

24 That's the same list that we talked about  
25 previously. And we are getting -- trying to get that

1 finished, although there may be some updates in the future.  
2 That can be done, at least as far as we can get it so far.

3 THE COURT: When you talk about the e-service  
4 order, are you talking about something like was used in Orr  
5 Ditch, where you advise the parties of the availability of  
6 being served by e-mail from the Court?

7 MS. SCHNEIDER: That's correct. We began to  
8 draft an order using Orr Ditch as a partial template. I  
9 think the Court's seen a draft of it, but it's been months.  
10 And we also went over it with Ms. Griffin in, I think, March  
11 and have some of her comments. And I want to get that in a  
12 position where the Court can approve it but, again, want to  
13 circulate it to the other parties.

14 I also -- and this is jumping ahead a little bit  
15 into website -- the website issue. But because there's a  
16 similar order from the court in Southern District of  
17 California in the Fallbrook case -- this is the case that  
18 actually has a website on the federal district website.

19 And I want to go through this order, as well,  
20 because it has a variation of the e-service order. And so I  
21 wanted to go through that and see if we want to make any  
22 edits to what we have so far. But that, again, is something  
23 I anticipate getting to hopefully next week.

24 THE COURT: Well, those are two discrete  
25 concepts, the e-service and the website.

1 MS. SCHNEIDER: Yes, they are. In Fallbrook  
2 they appear to have merged them somewhat. But there is some  
3 language there that I think is -- might be simpler than some  
4 of the language that I put in the prior draft. And I think  
5 the simpler an order is, the -- that I draft, the better.

6 So I -- what my intent here is to send something  
7 to the parties next week, and then maybe we can have  
8 something to prepare -- submit to the Court before the next  
9 status conference by phone.

10 THE COURT: And that's on the e-service issue.  
11 And that would be generic to both B and C cases?

12 MS. SCHNEIDER: It could be. But I defer to  
13 Mr. Herskovits.

14 THE COURT: Ms. Griffin, do you know any reason,  
15 from what you've heard, why it cannot be utilized similarly  
16 in both cases?

17 MS. GRIFFIN: No, none at all. It's merely a  
18 matter of timing. If we want to do it in one mailing or two  
19 mailings, if we want to include the 109 people that are still  
20 a little bit in flux on the C case, it's just a matter of  
21 timing. And it's certainly something --

22 THE COURT: Well, wouldn't it --

23 MS. GRIFFIN: -- we could do more than once.

24 THE COURT: -- actually be mailing to 4,000 plus  
25 from both -- well, those who are represented by counsel will

1 be excluded. But all those who have entered appearances,  
2 definitely they would have to receive this.

3 And -- well, maybe, Ms. Schneider, would that  
4 e-notice be going out to those who have been served and for  
5 whom we have address but haven't entered appearance?

6 MS. SCHNEIDER: No, they would not.

7 THE COURT: So that they're -- by sticking their  
8 head in the sand, they're going to have to live with this?

9 MS. SCHNEIDER: That's what the Court's orders  
10 indicate.

11 THE COURT: All right. Okay.

12 MS. SCHNEIDER: I think --

13 THE COURT: I'm on board with that concept.

14 So it would be an e-service order that would  
15 allow those who have entered -- or responded to the service  
16 of process, where they have an ability to say they would like  
17 to receive notices from the Court? Right?

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

19 THE COURT: Okay. Is there anything else, then,  
20 on the CM/ECF issue?

21 MS. SCHNEIDER: No, Your Honor.

22 THE COURT: Now, on this website. The only case  
23 that you're aware of that -- where they've done something  
24 like this is the Fallbrook case out of the Southern District?

25 MS. SCHNEIDER: That's correct. And I do have a

1 copy of the -- that's the only federal court. State courts  
2 have done it. But I have a copy of the order in that case,  
3 if the Court wishes to see it. I've circulated it to the  
4 parties as well.

5 THE COURT: Yeah, I think we would like to see  
6 it. And I think Ms. Griffin, in particular.

7 Tell us -- well, go ahead and give us that  
8 first.

9 MS. SCHNEIDER: Pardon me?

10 THE COURT: Go ahead and give us that, if you  
11 have a copy of it.

12 MR. HERSKOVITS: Your Honor, while Ms. Schneider  
13 is handing that out, I just wanted to clarify. It's my  
14 understanding from your exchange with Ms. Griffin that what  
15 Ms. Schneider was describing in terms of a notification  
16 protocol or procedure regarding CM/ECF service can apply to  
17 both the B and the C cases, and will be?

18 THE COURT: That's my understanding, yeah.

19 MR. HERSKOVITS: Okay. I just wanted to make  
20 sure I understood that clearly myself.

21 THE COURT: Do you see a problem with that?

22 MR. HERSKOVITS: No. I agree completely. I was  
23 going to volunteer that, and then I thought that had been the  
24 outcome, and I just --

25 THE COURT: You were going to volunteer to do it

1 or to --

2 MR. HERSKOVITS: No, volunteer that that was my  
3 understanding.

4 THE COURT: All right. I presume this is just  
5 more informational right now. And maybe it's Ms. Thornton  
6 who addressed it with Ms. Griffin about the website? Is  
7 that -- am I mistaken?

8 MS. GRIFFIN: Ms. Schneider actually.

9 THE COURT: Oh, Ms. Schneider you talked to.  
10 Okay.

11 All right. Where are we going right now on  
12 this website issue?

13 MS. SCHNEIDER: My understanding is that  
14 Ms. Griffin still needs to look into the issue some more.  
15 She's making various contacts and is trying to figure out how  
16 this might work and probably needs some more time to do that.

17 MS. GRIFFIN: Your Honor, I need to know if this  
18 is something we're planning on moving forward with.

19 I've contacted the IT department, and Chris says  
20 that he will look into it.

21 The website by the Southern District of  
22 California is actually maintained by somebody who used to  
23 work for the District of Nevada. So we have a really good  
24 contact there.

25 Clearly it's possible. There are some concerns

1 about bypassing PACER. There are some concerns -- I have  
2 some concerns about where the information is coming from: Is  
3 it a direct feed from CM/ECF? How are any -- you know,  
4 sealed documents preserved? Is it a one-way street? Some  
5 things like that.

6 And then, of course, the personnel, what that  
7 would -- how that would impact the IT department as far as  
8 maintenance goes. If it's an application of a button that  
9 sits there for ten years, that would be fabulous; but, as is  
10 often the case, there may be unintended consequences from  
11 adding something to our external website.

12 THE COURT: What would you, Ms. Schneider,  
13 envision this website to be used for?

14 MS. SCHNEIDER: We would suggest that it be used  
15 for -- to keep another place for filings to be found. It is  
16 a --

17 THE COURT: So it would be parallel to what's on  
18 CM/ECF?

19 MS. SCHNEIDER: I believe so. It would be,  
20 although perhaps not always maintained there. I think that  
21 the Southern District of California's website keeps filings  
22 there for a limited period of time.

23 There are also some forms in all the proceedings  
24 that it might be helpful to have there, such as notices of  
25 appearance or motions to substitute. Things like that might

1 be helpful to have them there on a longer basis -- I mean, on  
2 a permanent basis, as well as perhaps the complaints in the  
3 various subproceedings.

4 THE COURT: I could see this being a burden on  
5 our one IT person that we have up here up north on trying to  
6 maintain this and make the decision -- who makes the decision  
7 of what gets posted and what doesn't get posted.

8 I mean, it sounds like a great idea but I'm  
9 concerned with the old phrase about the devil and the details  
10 on this. But I guess we await a more specific proposal from  
11 your offices on this. Is that what's going to occur?

12 MS. SCHNEIDER: Well, I think there are a number  
13 of things. One would be -- my understanding is that the  
14 decision to have a website would not be Ms. Griffin's, that  
15 it needs to be made by someone that -- one of the judges, if  
16 I'm correct, from our prior discussion.

17 The other thing is that we certainly would be  
18 willing to talk to the IT people and to Ms. Griffin about  
19 what we had envisioned and how much time we thought that  
20 might -- it might involve.

21 We had -- because we were trying at one point  
22 to do one through DOJ, which proved to be an impossibility  
23 because of ADA requirements. Our folks had figured out, I  
24 think, what might be involved. And they thought that the  
25 initial issue really would be in setting it up, and that



1 the other materials -- the other requirements would  
2 basically mean that someone would just have to drop  
3 filings from the CM/ECF system into the website --

4 THE COURT: Do you need a --

5 MS. SCHNEIDER: -- on a periodic basis.

6 THE COURT: I'm sorry to interrupt you. Go  
7 ahead.

8 MS. SCHNEIDER: No, that's all I had to say.

9 THE COURT: Do you need a password to get into  
10 this Fallbrook website?

11 MS. SCHNEIDER: I don't think so. I looked at  
12 it once. I don't think you do.

13 MS. GRIFFIN: No, Your Honor, you don't. I'll  
14 send you the link.

15 MS. SCHNEIDER: One of the other things that  
16 this does for all of these proceedings is that for people  
17 who -- even though we have the orders from the Court about  
18 service and dealing with those successors, is that it  
19 certainly aids the Court and all the parties with the issue  
20 of notice because it would then be available for people to  
21 take to look at the site.

22 But I believe the Southern District of  
23 California keeps documents there for only a few months and  
24 then takes them off.

25 MS. GRIFFIN: Actually I accessed the website

1 yesterday. And it takes a little time to download, but you  
2 can pull the entire docket sheet, and it has all the docket  
3 links on the docket sheet. I didn't see any restriction at  
4 all to that.

5 THE COURT: You go to the Southern District  
6 website, and then there's a link to this thing? Is that how  
7 it goes?

8 MS. GRIFFIN: Yeah. They have a big button with  
9 the case name on it, and it drops right in.

10 MS. SCHNEIDER: And I believe they have several  
11 cases that they have done that for. This is not the only  
12 case on the docket that they have --

13 MS. GRIFFIN: As an aside, Ms. Schneider,  
14 something that you mentioned, if I may. Forms that would be  
15 assistant to the case is something that I think would be an  
16 easy thing to get permission to post on our website, if that  
17 would be something helpful for the Court to be able to refer  
18 to, or parties to refer to: If you need this form, you can  
19 go to the form section on our website.

20 If that would be helpful to the Court --

21 THE COURT: We might have --

22 MS. GRIFFIN: -- that's pretty easy.

23 THE COURT: -- a sub-tab under forms where we  
24 would list all the Walker River forms.

25 MS. GRIFFIN: Yes.

1 THE COURT: But, you know, for somebody to, one,  
2 find the district court website; and, two, find forms; and,  
3 three, find this might be somewhat complicating.

4 What is the website for the Southern District?

5 MS. GRIFFIN: I have the link, Your Honor, if  
6 you'd like me to send it to you. [www.scad](http://www.scad).

7 THE COURT: Say that again.

8 MS. GRIFFIN: Scad? Do you have it,  
9 Ms. Schneider? Southern District --

10 MS. SCHNEIDER: I don't have it. I've always  
11 just Googled Southern District and found it.

12 THE COURT: I'll do that. It is  
13 [casd.uscourts.gov](http://casd.uscourts.gov).

14 You'll be pleased to know that the weather in  
15 San Diego is 72 degrees, but it's 100 out in El Centro.

16 I'm just looking. I don't see any quick link to  
17 this case. Maybe I'm overlooking it. We don't need to do it  
18 right now, anyway.

19 But you'll be working with interfacing your IT  
20 people; Ms. Griffin, our IT people, about the concepts for  
21 this website?

22 MS. SCHNEIDER: Yes, I will.

23 THE COURT: All right. Can we move to item  
24 five.

25 MS. SCHNEIDER: Yes. Well, the last item,

1 pardon me, on the website is to schedule for progress on  
2 timing of the website and then dealing with *pro se* defendants  
3 who might not elect to receive service from the CM/ECF  
4 system.

5 I think it's premature to talk about that, but  
6 except to note that -- I don't know whether this -- how the  
7 Court would feel about this, but I do want to note that in  
8 Fallbrook it appears that the Court notified everyone that  
9 their service was to be pursuant to the website and that they  
10 were not going to be doing service.

11 That's very different than what Judge Reed has  
12 required and what Judge George has required. But I did want  
13 to point that that -- point out that that appears to be the  
14 way that that court went.

15 THE COURT: Well, there is no website in the Orr  
16 Ditch case, is there?

17 MS. SCHNEIDER: Correct. No, actually there is  
18 one now. But it's not through the court.

19 MR. DePAOLI: There is, Your Honor, it's through  
20 Sunshine Litigation Services.

21 THE COURT: Is that privately paid by the  
22 parties?

23 MR. DePAOLI: Yes, it is, Your Honor.

24 THE COURT: Has anyone looked at the Orr Ditch  
25 Sunshine as a template for what we might do?

1 MS. SCHNEIDER: We have. And we've talked about  
2 it. We've looked at some of the costs involved. And they  
3 seem to be extensive and seem to be beyond the kinds of costs  
4 that our contractor had indicated that they thought it would  
5 cost. So that's why we started to take another look at the  
6 issue. So that's why we started to take another look at the  
7 issue.

8 MR. DePAOLI: Part of the cost, Your Honor, will  
9 depend on how many do not sign up for the -- to receive  
10 service through the court system. If it's a huge number,  
11 then cost may be a big problem. If it's not so huge a  
12 number, it may be less of a problem.

13 THE COURT: Well, I thought the -- how many  
14 people are in Orr Ditch, Mr. DePaoli?

15 MR. DePAOLI: Off the top of my head, Your  
16 Honor, I can't recall. But it's -- there's -- as I recall,  
17 there's several hundred to maybe a thousand or more who have  
18 not signed up to receive service through the court system, to  
19 the extent necessary can depend on that website.

20 MS. GRIFFIN: Your Honor, we mail out about 400  
21 envelopes when we get orders on the Orr Ditch, if that's  
22 helpful.

23 THE COURT: That's, you know, maybe going to be  
24 one-tenth of what we're looking at in this case. But yet  
25 you're saying the -- going with a website would be

1 prohibitively expensive. The Court itself could probably  
2 effect a savings by not -- if you got around having to mail  
3 out 300 --

4 MS. GRIFFIN: It comes from different budget  
5 funds.

6 THE COURT: Oh, well --

7 MS. GRIFFIN: Mail versus IT. However, it -- I  
8 mean, money's always something to explore because there's  
9 always temporary funds -- well, there's no funds available,  
10 but there may be some options in that regard.

11 Specifically after we get some firmer idea on  
12 the numbers, that makes a better proposal as far as these  
13 things go, if we need to expend the IT time versus  
14 saving --

15 THE COURT: Ms. Schneider, between --

16 MS. GRIFFIN: -- hundreds of --

17 THE COURT: -- now and the 21st, are you going  
18 to have enough time to give us an update or a report on the  
19 concept of a website? Or is that something better for the  
20 October agenda?

21 MS. SCHNEIDER: It's probably better for  
22 October. But I'll have to see what we -- I'll ask the people  
23 involved what their schedules are.

24 THE COURT: All right. I'm kind of thinking  
25 it's an October issue. And maybe between then whoever is

1 taking the lead on it can talk to Sunshine and see what kind  
2 of costs are involved, what are we talking about, and talk to  
3 Ms. Griffin, and also Mr. Hahn here at the courthouse. And  
4 Ms. Griffin can coordinate that.

5 MS. GRIFFIN: Yes, Your Honor.

6 THE COURT: Let's get going here. It's a little  
7 after 12:00. Next?

8 MS. SCHNEIDER: The next item is number five,  
9 which is post-service issues and sequencing issues in B.

10 I don't know whether any of this is timely at  
11 this point, but certainly one of the items that we still have  
12 on our -- to consider is -- two of the items. They're  
13 just -- it's scheduled for any additional briefing, oral  
14 argument, and decisions about making a determination of list  
15 threshold issues, and then, also, dealing with the issue of  
16 whether our if-so-when answers are required.

17 THE COURT: It's my understanding what you told  
18 me, though, is that Judge Reed's order in this case, or  
19 orders, had said the threshold issues will not be addressed  
20 and whether parties have to file answers until service has  
21 been completed.

22 MS. SCHNEIDER: That's correct. So then I think  
23 that 5-A is probably premature to talk about at this point.

24 5-B --

25 THE COURT: Well, let me ask you this.

1 Does anybody participating in this hearing today  
2 think that we can set a schedule for doing the threshold  
3 issues and whether answers have to be filed now, or do we  
4 have to wait, appears to be the case, until after everyone is  
5 served in B?

6 MR. DePAOLI: Your Honor, actually Judge Reed's  
7 order and a prior order by Judge McQuaid, just before he  
8 recused himself, I don't think there was any limitation on  
9 when a decision was to be made on whether answers were or  
10 were not going to be required.

11 And I'm not necessarily suggesting that we ought  
12 to proceed with that right now either because that creates  
13 its own set of problems in terms of notifying people that an  
14 answer is, in fact, required.

15 As to the threshold issues, what the judge --  
16 what Judge Reed did was to say that the final  
17 determination on what the threshold issues would be would  
18 not be made until all necessary parties are joined, which  
19 does indicate service. However, the order does allow for  
20 the magistrate judge to make a preliminary determination  
21 of what the threshold issues should be prior to that time.

22 THE COURT: Well, in the educational briefing  
23 you gave me before, you provided me some identification of  
24 threshold issues, which I think were first identified years  
25 and years ago. Is that the same list today, or do we --



1 MR. DePAOLI: They were identified -- as I  
2 recall, we probably completed that briefing some time in  
3 2008, Your Honor. This may be something to have a  
4 conversation on the 21st.

5 It seems to me there are really two parts to the  
6 question: Does anyone feel that with the passage of time  
7 there has been a need to either add to or subtract from what  
8 everybody has said thus far about threshold issues; and then  
9 the second question is if -- assuming everybody is satisfied  
10 that those are what we want to argue about, the question is  
11 when do we want to move to at least get the preliminary list  
12 of threshold issues done. And that is something we can  
13 discuss.

14 I'm not aware of any -- anything that -- at  
15 this point, that would likely change our point of view of  
16 what should be threshold issues. But I can't say that  
17 I've really looked to see what's happened since 2008 on --  
18 in the areas of law that relate to some of this.

19 THE COURT: I am somewhat inclined to have us  
20 start moving on the -- that the Court would at least identify  
21 the threshold issues when and -- when they're to be briefed  
22 and decided is maybe a little more problematic. But I really  
23 doubt the threshold issues will be changed following  
24 completion of service on all the other water right holders on  
25 this case.

1           So I think you probably have a pretty good list  
2 right now that won't be altered. And it could always be  
3 amended if somebody else came up with something.

4           So how about on the 21st you each, again,  
5 identify for me your threshold issues. And I think most  
6 of those, if Mr. Herskovits told me is right, just pertain  
7 to B and not to C, and the threshold issue in C is whether  
8 Mineral County can maintain this type of action on behalf  
9 of its citizenry.

10           MS. SCHNEIDER: Does Your Honor want the parties  
11 to file their respective lists so that you have a concise  
12 list in front of you?

13           THE COURT: Right. Just the list.

14           MS. SCHNEIDER: The list.

15           THE COURT: Not -- you don't need to argue it,  
16 but just something to -- maybe an identification issue and a  
17 brief summary of it.

18           MS. SCHNEIDER: Okay. The -- there certainly  
19 have been many, many filings on these issues, and there is a  
20 wide disparity among the parties in the B cases as to what  
21 they think should be the threshold issue. So that's  
22 certainly at least something to sort through.

23           THE COURT: I guess that's what I'm paid the big  
24 bucks then for, huh?

25           MS. SCHNEIDER: And I don't know whether Your

1 Honor -- well, we can talk to Your Honor on the 21st as to  
2 whether you want to hear argument on that issue in October  
3 or --

4 THE COURT: I think we'll probably have any  
5 argument maybe even separate from that October hearing. But  
6 I don't know. I'd like to see what the threshold issues are,  
7 and I just may embrace them all and say brief every one of  
8 them and not narrow them down. I don't know. I remember  
9 looking at them, and they were disparate somewhat. But let's  
10 have a list at the August hearing.

11 MS. SCHNEIDER: Yes, Your Honor.

12 MR. NEVILLE: Your Honor, this is Michael  
13 Neville. I'm about to leave. I'll be out of town on  
14 vacation until the 21st. When would you like the list?

15 And if it's prior to that, is it possible that  
16 that hearing might be put off for maybe just one day? If  
17 we're going to be filing, for example, the day before. Just  
18 a little problematic in terms of trying to -- my schedule in  
19 terms of getting that to you.

20 THE COURT: Did we address the 22nd or 23rd on  
21 your calendar --

22 MS. SCHNEIDER: The 23rd is not available to me.  
23 But I think the 22nd is.

24 And how many days before our status conference  
25 would the Court want the parties to file their respective --

1 THE COURT: Could you do it by Monday of that  
2 week? How would that accommodate you, Mr. Neville?

3 MR. NEVILLE: Well, I'm still -- I'm still  
4 probably driving back from Oregon on Monday. But I could  
5 certainly do it on Tuesday the 21st. I'll be back that day.  
6 And I'm free any time -- I realize that Ms. Schneider has  
7 some constraints that week, but I'm free pretty much for a  
8 hearing any day that week.

9 THE COURT: What's the 22nd look like?

10 THE CLERK: We could start at 1:00. We do have  
11 a calendar call at 3:00 that day.

12 THE COURT: Could I see that?

13 Can everybody make it in the morning? 11:00,  
14 since we're doing it by telephone?

15 11:00 on 22 August, which is a Wednesday.

16 MR. DePAOLI: That's the status -- telephone  
17 status conference?

18 MS. ADAMS: Excuse me, Your Honor. This is  
19 Marta Adams. I think I'm confused because there was a little  
20 bit of audio difficulty on that.

21 THE COURT: Our hearing in August has been moved  
22 from the 21st to the 22nd at 11:00 a.m.

23 MS. ADAMS: Okay.

24 THE COURT: And that will be an update of  
25 certain issues on this case, to include presentation to the

1 Court of the list of threshold issues. And it's just mainly  
2 to bring it to the Court's attention.

3 I'm not going to bind you to that date. If  
4 somebody comes up with something after that, we'll still  
5 consider it.

6 MS. ADAMS: All right. Thank you.

7 MR. DePAOLI: And, Your Honor, was there a date  
8 by which you wanted that list filed in advance?

9 THE COURT: Monday noon if you can. So I can  
10 have those to start looking at.

11 All right. And I think that takes care of  
12 both A and B here under five.

13 MS. SCHNEIDER: Does Your Honor wish to have  
14 that list address B or not?

15 THE COURT: I couldn't hear you.

16 MS. SCHNEIDER: Does Your Honor wish to have the  
17 filing on the 20th of August address the issue of answers?

18 That's also been briefed, but that's briefed  
19 separately.

20 THE COURT: Yes, I would.

21 MS. SCHNEIDER: I think the --

22 THE COURT: And if you have the briefs already  
23 on files on these issues --

24 MS. SCHNEIDER: Yes.

25 THE COURT: I've just read so much on this case,

1 I can't remember at this point in time. And my recollection  
2 is you do. Maybe just reference to it previously briefed  
3 under document 500 and refer me there, and I can get it.

4 Okay. Topic six. I think we've already  
5 addressed this, Mr. Herskovits, by saying that we can't  
6 decide this, the briefing and resolution of the viability  
7 of the complaint in intervention, preliminary injunction  
8 until after everyone is served.

9 MR. HERSKOVITS: That's correct, Your Honor.

10 THE COURT: That's what concerned me about that  
11 May date that --

12 MR. HERSKOVITS: March, yes.

13 THE COURT: March date. So we may address this  
14 how you're doing in our October conference, because we may  
15 want to accelerate having briefing on that issue. And I  
16 think you should plan that briefing will commence on that  
17 issue perhaps November 1st on the motion so we can get going  
18 on that. I'm sure it's going to take a lot of time for your  
19 motion and reply.

20 And if anyone wants to start earlier, at least  
21 have the briefing going, and we can allow supplemental  
22 briefing after everyone gets served. But it seems like a --  
23 more of a threshold issue than any other here in these two  
24 cases. It's almost like a motion to dismiss in a way.

25 MR. HERSKOVITS: I see the jurisdictional

1 question that I think maybe you have in mind in analogizing  
2 it to a motion to dismiss.

3 Your Honor, if you're thinking that briefing  
4 on the complaint in intervention and the motion for  
5 preliminary injunction should begin on November 1st of  
6 this year that -- maybe we should include it on the  
7 calendar for the October status conference to talk about  
8 what sequence of briefing seems appropriate or should be  
9 planned for in response to those old filings.

10 THE COURT: Why -- is there some problem in  
11 segregating the briefing on the propriety of the complaint in  
12 intervention versus the preliminary injunction?

13 MR. HERSKOVITS: I don't think there's a problem  
14 with separating them, no.

15 THE COURT: I mean, I would like to defer  
16 briefing on the preliminary injunction until after we see  
17 whether the complaint's viable. And if the Court were to  
18 rule that it is, then you could turn to it. And if the Court  
19 rules that your intervention is not appropriate, then that  
20 becomes moot.

21 Am I oversimplifying that?

22 MR. HERSKOVITS: No, I don't believe you are,  
23 Your Honor.

24 THE COURT: Maybe we ought to discuss it, then,  
25 on the August agenda. I mean, if we're just talking about

1 scheduling.

2 MR. HERSKOVITS: On the August 21st telephonic?

3 THE COURT: 22nd now, isn't it?

4 MR. HERSKOVITS: 22nd, yes, Your Honor. That  
5 would be fine.

6 I'm not sure whether the parties have considered  
7 what they are intending to file; the defendants in  
8 particular.

9 THE COURT: Well, I see probably it's -- maybe I  
10 should not have analogized it to a motion to dismiss. But I  
11 think it's consideration of your motion to file the complaint  
12 in intervention which dates back now to, what, 1994?

13 MR. HERSKOVITS: '95, I think, your Honor.

14 THE COURT: The amended complaint in  
15 intervention?

16 MR. HERSKOVITS: The amended one. Yeah.

17 THE COURT: Okay.

18 Are we on number seven?

19 MS. SCHNEIDER: Yes, these are any  
20 implementation orders regarding Judge Reed's service orders.

21 We do not have anything at this point. We  
22 simply put it here as an agenda item in case there were any  
23 issues.

24 THE COURT: This has been my favorite agenda  
25 item.



1 Next one?

2 MS. SCHNEIDER: And the same with the next one.  
3 I don't have anything else to identify.

4 We've already addressed number nine, which is  
5 scheduling the next conferences.

6 THE COURT: Okay. All right. Now, just to make  
7 sure that I'm signing everything I'm supposed to be signing  
8 here. Attached to document 604 in the C case is the order  
9 relating to completion of service. That will be signed by  
10 the Court.

11 There's an order in the B case addressing  
12 notice with regard to parties who have already been served  
13 but have not appeared. That's document 1726. That will  
14 be filed.

15 And we're approving the order concerning the  
16 Seventeenth Report of the United States of America,  
17 document 1722.

18 Do I have -- all of them have been properly  
19 identified? Any others that come to mind?

20 MS. SCHNEIDER: There's nothing other -- else,  
21 except that you have asked me to draft an order on one other  
22 issue. Oh, dealing with the groundwater, the unexercised  
23 groundwater uses, that they don't have to be served at this  
24 point. But that's an order that I will draft, circulate, and  
25 provide to the Court.

1 THE COURT: And then we can make sure it's on  
2 the agenda for the 22nd and get that.

3 MS. SCHNEIDER: Yes.

4 THE COURT: All right. Thank you.

5 Ms. Schneider, is there anything else to come --

6 MS. SCHNEIDER: I think that I will put together  
7 the minutes and try to circulate them and then file them with  
8 the Court. And I'm wondering whether I should be doing a  
9 separate -- I guess I will also do a separate agenda for the  
10 22nd --

11 THE COURT: Please.

12 MS. SCHNEIDER: -- of August.

13 THE COURT: And I want to thank Ms. Rutherford,  
14 too, for her assistance.

15 And if, Counsel, it turns out that this is  
16 totally unnecessary to do, we can revert to the old format.  
17 But let's give it a try.

18 And you will be in contact, then, with  
19 Ms. Griffin on the website issues?

20 MS. SCHNEIDER: Yes, Your Honor.

21 THE COURT: All right.

22 Okay. Mr. Herskovits, is there anything else?

23 MR. HERSKOVITS: No, Your Honor.

24 THE COURT: All right. I don't mean to exclude  
25 anybody else. It's mainly been you two and Mr. DePaoli.

1 Mr. DePaoli, anything else?

2 MR. DePAOLI: No, Your Honor.

3 THE COURT: Counsel here present or on the  
4 phone, is there anything else to come before the Court at  
5 this time?

6 MR. NEVILLE: No, Your Honor. Thank you.

7 THE COURT: All right. Thank you, all.

8 I'd like to thank our court reporter for putting  
9 up with this long hearing too.

10 Just give me one second. Oh, one thing I wanted  
11 to note. Under special order 109, which is the one which  
12 adopted CM/ECF, any document that is -- exceeds 50 pages in  
13 length is to be filed in paper format with the chambers, or  
14 to be served on chambers.

15 And under Local Rule 10-3(a), those are to be  
16 tabbed. And that would be of great convenience to the Court.  
17 And that was the only other thing I needed to add.

18 MS. SCHNEIDER: Your Honor, in the past we  
19 were -- we'll be happy to do that. It's just we haven't done  
20 it because chambers -- previous chambers had indicated it  
21 wasn't -- they didn't want it. But we'll be happy to do it.

22 THE COURT: I would really like it.

23 As you can see here, we've got a huge stack of  
24 stuff and -- we're going through, and trying to tab things  
25 and correlate things. So, yes, I would appreciate that.

1 I'm sorry to put the additional burden on you,  
2 but I think it would be helpful.

3 All right. Is there anything else to come  
4 before the Court?

5 We'll be in recess. Thank you, all.

6 (The proceedings were concluded at  
7 12:18 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.



8/8/12

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

Date