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

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

--oOo--

P R O C E E D I N G S

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

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

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

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

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

THE COURT: Good morning, everybody.

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

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

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

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

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

MS. SCHNEIDER: Susan Schneider for the United States.

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

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

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

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

THE COURT: And by telephone. Ms. Adams?

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

MR. BENESCH: George Benesch, Lyon County.

MS. SIMON: Stacey Simon, Mono County.

MR. NEVILLE: Good morning, Your Honor. Michael

Neville, California state agencies.

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

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

THE COURT: Is Ms. Rutherford on the phone?

MS. RUTHERFORD: Yes.

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

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

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

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

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

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

THE COURT: Oh, that's right.

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

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

In trying to prepare for this hearing and

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

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

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

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

THE COURT: Yes, Mr. DePaoli.

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

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

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

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

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

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

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

And thank you, Ms. Schneider, for allowing her

to do that and your office doing that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. SCHNEIDER: Thank you, Your Honor.

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

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

THE COURT: Ms. Schneider.

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

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

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

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

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

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

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

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

THE COURT: And that's topic C?

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

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

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

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

MS. SCHNEIDER: Yes.

THE COURT: Okay. That clarifies that for me.

MS. SCHNEIDER: I'm sorry.

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

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

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

MS. SCHNEIDER: I believe so.

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

THE COURT: Ms. Rutherford?

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

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

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

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

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

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

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

THE COURT: And what was the rationale behind that?

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

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

THE COURT: Up in Pickel Meadows.

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

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

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

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

THE COURT: That's helpful. Thank you.

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

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

THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: All right. Is there anything else

you wish to add on the California service issue?

MS. SCHNEIDER: No, Your Honor.

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

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

THE COURT: Okay.

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

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

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

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

MS. SCHNEIDER: That's correct.

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

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

them may have been included already.

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

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

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

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

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

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

MS. SCHNEIDER: And I have a doctor appointment

that morning and cannot. I'm sorry.

THE COURT: How can you remember that so clearly?

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

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

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

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

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

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

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

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

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

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

you.

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

THE CLERK: 10:00 a.m.

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

MS. SCHNEIDER: Thank you, Your Honor.

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

MS. SCHNEIDER: Yes, I did.

THE COURT: Please do so.

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

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

We've had several discussions about the matter, and at least one of them including -- we had another -- other parties to the case. It has seemed to me 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.

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

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

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

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

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

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

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

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

THE COURT: And tell me --

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

But the other part is the groundwater.

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Under dormant or unexercised riparian rights?

MS. SCHNEIDER: That's correct.

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Groundwater too?

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

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

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

THE COURT: I'm glad you clarified that.

MS. SCHNEIDER: I hope I clarified it.

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

Do I understand correctly that this is not a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mono County has very kindly given us two

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

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

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

Now, Ms. Simon --

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

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

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

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

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

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

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

And it may be that's one way. And we haven't 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

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

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

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

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

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

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

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

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

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

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

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

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

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

this pretty deep hole here, almost trapped.

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

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

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

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

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

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

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

THE COURT: Well, one --

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

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

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

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

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

MS. SCHNEIDER: Yes, Your Honor.

THE COURT: Next agenda item?

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

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

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

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

Ms. Rutherford, do you know the number?

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

MS. SCHNEIDER: All right.

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

MS. SCHNEIDER: 1726.

MS. RUTHERFORD: Thank you.

THE COURT: And --

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

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

THE COURT: That would be helpful.

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

THE COURT: This is in the B case?

MS. SCHNEIDER: That's correct.

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

MS. SCHNEIDER: 1726.

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

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

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

Is there any discussion on 1726?

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

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

THE COURT: We can correct that, I think.

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

Thank you, Ms. Ogden.

Next item?

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

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

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

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

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

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

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

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

THE COURT: I would bet it is.

MS. SCHNEIDER: Yeah.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

And those are the two -- those are the two categories --

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

whatever happens in this case?

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

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

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

THE COURT: All right.

MS. SCHNEIDER: Okay.

THE COURT: Okay. That answers that question.

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

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

THE COURT: Mr. DePaoli?

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

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

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

MS. SCHNEIDER: All right. The one --

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

MS. GRIFFIN: No.

THE COURT: No?

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

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

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

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

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

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

THE COURT: Go ahead.

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

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

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

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

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

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

MS. SCHNEIDER: Could I --

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

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

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

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

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

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

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

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

THE COURT: I see.

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

MS. SCHNEIDER: I agree. We --

THE COURT: I think --

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

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

Ms. Griffin, could you elaborate?

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

not apply to those folks who are represented by counsel.

THE COURT: Right. But I mean --

MS. GRIFFIN: So I --

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

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

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

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

MS. SCHNEIDER: I'm sorry.

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

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

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

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

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

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

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

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

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

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

MS. SCHNEIDER: On the caption?

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

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

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

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

THE COURT: Just a second. Paragraph nine?

MS. SCHNEIDER: I'm sorry?

THE COURT: Paragraph nine, page eight?

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

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

And as --

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

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

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

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

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

MS. SCHNEIDER: Yes, Your Honor.

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

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

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

MS. SCHNEIDER: Yes.

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

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

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

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

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

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

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

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

THE COURT: All right.

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

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

MS. GRIFFIN: Your Honor?

THE COURT: Yes.

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

THE COURT: What are you adding them to?

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

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

MS. SCHNEIDER: Yes.

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

MS. GRIFFIN: I do, sir.

THE COURT: Thank you.

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

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

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

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

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

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

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

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

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

And we would submit that the revised order is

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

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

MR. HERSKOVITS: Yes.

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

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

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

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

Is there any way we can accelerate that?

MR. HERSKOVITS: Well, I think --

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

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

THE COURT: -- persons to be served?

MR. HERSKOVITS: That's correct.

THE COURT: It takes six --

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

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

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

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

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

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

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

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

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

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

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

that point in time.

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

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

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

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

THE COURT: Yes.

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

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

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

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

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

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

THE COURT: 1995 or 2005?

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

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

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

Mr. DePaoli?

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

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

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

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

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

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

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

THE COURT: Threshold issues, excuse me.

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

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

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

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

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

THE COURT: Yes.

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

THE COURT: Oh, okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. HERSKOVITS: Okay.

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

have all this redone, it's not palatable.

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

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

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

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

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

MR. HERSKOVITS: Thank you, Your Honor.

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

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

THE COURT: All right.

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

MS. SCHNEIDER: Yes, Your Honor.

THE COURT: Starting first, anyway, with publication.

MS. SCHNEIDER: The first issue is publication.

THE COURT: Could you speak more into the microphone.

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

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

that effort.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Well, wouldn't it --

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

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

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

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

MS. SCHNEIDER: No, they would not.

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

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

THE COURT: All right. Okay.

MS. SCHNEIDER: I think --

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

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

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

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

MS. SCHNEIDER: No, Your Honor.

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

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

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

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

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

MS. SCHNEIDER: Pardon me?

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

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

THE COURT: That's my understanding, yeah.

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

THE COURT: Do you see a problem with that?

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

THE COURT: You were going to volunteer to do it

or to --

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

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

MS. GRIFFIN: Ms. Schneider actually.

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

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

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

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

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

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

Clearly it's possible. There are some concerns

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Do you need a --

MS. SCHNEIDER: -- on a periodic basis.

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

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

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

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

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

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

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

MS. GRIFFIN: Actually I accessed the website

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

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

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

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

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

If that would be helpful to the Court --

THE COURT: We might have --

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

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

MS. GRIFFIN: Yes.

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

What is the website for the Southern District?

MS. GRIFFIN: I have the link, Your Honor, if you'd like me to send it to you. Www.scad.

THE COURT: Say that again.

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

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

THE COURT: I'll do that. It is casd.uscourts.gov.

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

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

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

MS. SCHNEIDER: Yes, I will.

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

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

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

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

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

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

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

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

THE COURT: Is that privately paid by the parties?

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

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

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

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

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

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

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

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

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

MS. GRIFFIN: It comes from different budget funds.

THE COURT: Oh, well --

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

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

THE COURT: Ms. Schneider, between --

MS. GRIFFIN: -- hundreds of --

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

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

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

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

MS. GRIFFIN: Yes, Your Honor.

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

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

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

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

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

5-B --

THE COURT: Well, let me ask you this.

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Right. Just the list.

MS. SCHNEIDER: The list.

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

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

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

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

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

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

MS. SCHNEIDER: Yes, Your Honor.

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

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

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

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

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

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

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

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

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

THE COURT: Could I see that?

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

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

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

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

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

MS. ADAMS: Okay.

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

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

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

MS. ADAMS: All right. Thank you.

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

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

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

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

THE COURT: I couldn't hear you.

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

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

THE COURT: Yes, I would.

MS. SCHNEIDER: I think the --

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

MS. SCHNEIDER: Yes.

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

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

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

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

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

MR. HERSKOVITS: March, yes.

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

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

MR. HERSKOVITS: I see the jurisdictional

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

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

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

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

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

Am I oversimplifying that?

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

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

scheduling.

MR. HERSKOVITS: On the August 21st telephonic?

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

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

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

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

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

THE COURT: The amended complaint in intervention?

MR. HERSKOVITS: The amended one. Yeah.

THE COURT: Okay.

Are we on number seven?

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

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

THE COURT: This has been my favorite agenda item.

Next one?

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

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

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

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

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

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

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

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

MS. SCHNEIDER: Yes.

THE COURT: All right. Thank you. Ms. Schneider, is there anything else to come --

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

THE COURT: Please.

MS. SCHNEIDER: -- of August.

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

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

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

MS. SCHNEIDER: Yes, Your Honor.

THE COURT: All right.

Okay. Mr. Herskovits, is there anything else?

MR. HERSKOVITS: No, Your Honor.

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

Mr. DePaoli, anything else?

MR. DePAOLI: No, Your Honor.

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

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

THE COURT: All right. Thank you, all.

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

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

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

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

THE COURT: I would really like it.

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

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

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

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

(The proceedings were concluded at 12:18 p.m.)

* * *

-o0o-

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

Donna Davidson 8/8/12

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