

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

UNITED STATES OF AMERICA,)	IN EQUITY NO. C-125-RCJ
)	Subproceedings: C-125-B and C-125-C
Plaintiff(s),)	
)	3:73-CV-0125-RCJ-WGC
)	3:73-CV-0127-RCJ-WGC
vs.)	3:73-CV-0128-RCJ-WGC
)	
WALKER RIVER IRRIGATION, et al.,)	MINUTES OF PROCEEDINGS
)	
Defendant(s).)	DATED: August 22, 2012
)	
)	

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

Deputy Clerk: Katie Lynn Ogden Reporter: Kathy French

Counsel Present: Gordon DePaoli and Dale Ferguson

Counsel Appearing Telephonically: Marta Adams, Karen Peterson, Michael Neville, Chris Mixson, Stacy Simon, George Benesch, Susan Schneider, Wes Williams, Jr., Therese Ure, Simeon Herskovits and Iris Thornton

Special Appearance Telephonically: Eileen Rutherford, Paralegal on behalf of United States of America.

PROCEEDINGS: STATUS CONFERENCE

11:05 a.m. Court convenes.

The court and counsel confer regarding the agenda items as outlined in the United States *List of Proposed Agenda Items* (Doc. 1099 in Case No. 3:73-CV-0125-RCJ-WGC). Counsel present their respective positions as to each of the items.

I. Status Conference Agenda Items (Dkt. #1099, Case No. 3:73-cv-00125-RCJ-WGC)

1. Review and Discussion of the *draft Minutes of the Status Conference Conducted on August 2, 2012* (Aug. 14, 2012; #1098; #B-1732; #C-608).

The court requests that any future minutes of proceedings drafted by the parties be entitled "Summary of the Proceedings of the Status Conference." The parties have no objection and agree to title future documents as such.

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The court requests that the parties address any objections they may have to the United States of America (“United States”) proposed *Minutes of the Status Conference Conducted on August 2, 2012*, draft (Dkt. #1098). No objections appearing, the court approves the draft and directs that the draft reflect the new title of “Summary of Proceedings of the Status Conference” and that it be uploaded to the docket.

The court notes that it has received California State Agencies’ document entitled “California State Agencies’ Identification of Prior Filings Regarding Threshold Issues” (Dkt. #1102).

2. C-125-B

a. Completion of Service and Service Issues:

i. Status of remaining personal service efforts and related filings of Proofs of Service

The United States advises the court that it has not filed proofs of service due to its process server being unavailable; however the United States will attempt to file the returns by Friday, August 24, 2012. Should this be unsuccessful, the United States will then attempt to file the returns on September 19th or September 20th.

ii. Status of serving the owners of riparian rights in California based on receipt of recent filings of statements of diversion and use.

Ms. Schneider indicates that the United States identified six riparian users and that those persons and/or entities were mailed requests for waiver of personal service on August 17, 2012. The United States will review the status of those returns during the week of September 24th and will move to personal service, if necessary.

iii. Status of the efforts to address whether claimants with dormant or unexercised riparian surface water rights under the laws of California and/or claimants with overlying, unexercised groundwater rights are subject to compulsory joinder. See California State Agencies’ Supplementary Report (Jan. 30, 2012; #B-1057).

1. Dormant or unexercised riparian surface water rights: Report by the United States of the status of its review of information provided by Mono County and the possible scope of any additional service on the owners of these rights; and discussion of approaches to address this issue.

The United States indicates that an estimated 300-350 additional defendants are to be served. Ms. Schneider states that service by mail could be accomplished within three to four weeks once the United States has clear and complete identification of the owners, which at this time they do not have.

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The court suggests that this may be a situation where service by publication may be necessary if the identification remains a problem; however, personal service is the preference of the court. Ms. Schneider, Mr. Neville, and Ms. Simon are to discuss this issue and provide a status update at the October 3rd status conference.

2. Overlying unexercised groundwater rights: Review of proposed Order Addressing Whether Claimants with Overlying, Unexercised Groundwater Right in the State of California are Subject to Compulsory Joinder in this Subproceeding (Aug. 16, 2012; #B-1733).

Ms. Schneider indicates that the proposed order has been circulated and thereafter was submitted to the court (Dkt. #1733, Case No. 3:73-00127-RCJ-WGC) for approval. Ms. Schneider notes that Mr. Neville requests to have a chance to review the proposed order before the court approves of the order and files it. The court has no objection and asks that the primary parties email chambers once the order has been reviewed by Mr. Neville and is ready to be executed. Should Mr. Neville propose any changes, the United States agrees to re-circulate and re-file the proposed order.

iv. Status of and schedule to circulate and/or complete the following:

1. Updating the draft caption

Ms. Schneider indicates that the United States circulated the draft caption on August 9, 2012; however, there will be updates to include the recent service by mail of riparian users. The updated drafts will then be re-circulated for review.

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

Ms. Schneider indicates that the United States has circulated the above referenced list. The Clerk's Office Operations Manager, Lia Griffin, has requested that attorneys be identified by their name, not by their law firm name. The United States intends to update the list to accommodate Ms. Griffin's request and hopes to have it re-circulated by Friday, August 24, 2012. Ms. Schneider notes that this document will too be updated periodically.

3. Compiling a preliminary list of person and entities who were served and have not filed a notice of appearance.

Ms. Schneider indicates that this is complete and it will be circulated to the appropriate parties and Ms. Griffin by Friday, August 24, 2012.

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b. Post-Service and Sequencing Issues:

- i. Follow-up regarding the parties' recent filings regarding threshold issues and answers.**
- ii. Establishment of schedule for any additional briefing and/or oral argument for purposes of a final determination of list of threshold issues.**
- iii. Establishment of schedule for any additional briefing and/or oral argument for purposes of determining whether, and if so, when answers are required.**

The court notes that it has received filings regarding the threshold issues from the United States and the Tribe, Walker River Irrigation District, Nevada Department of Wildlife, Circle B N Ranch, California State Agencies and Mineral County. It appears many of these filings address up to fifty-five or so issues, many of which are dispositive. The court instructs the parties to meet informally to identify the threshold issues by category (i.e. jurisdiction, service, groundwater claims, etc.) and prioritize which categories should be addressed first, then second, and so forth.

The court requests that the parties submit a status report before the October 3rd Status Conference that will provide the court with an update as to the progress in narrowing the threshold issues. Although an update is requested for the October 3rd status conference, this item, including all issues related to the issue of filing Answers, will not be due until the November status conference.

3. C-125-C

a. Completion of Service and Service Issues:

- i. Continued discussion of the schedule to complete Mineral County's service efforts.**

Mr. Herskovits represents that, following the August 22, 2012, hearing, Mineral County has begun the mailing process; however, it is not complete. Mr. Herskovits anticipates that by the end of September responses to the mailing will be due. At that time, Mineral County will have a better estimate of instances where personal service will be required. At this time, Mr. Herskovits believes it is premature for a revised date for completion and will update the court at the October 3rd status conference.

- ii. Compiling a list of *pro se* parties.**

Mr. Herskovits represents that this list is in a provisional state at this time and circulation to other parties is related to the completion of service.

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b. Post-Service and Sequencing Issues: Continued discussion concerning potential schedule for briefing and resolution of Mineral County's Amended Complaint in Intervention (#C-20) and Motion for Preliminary Injunction (#C-22).

The court's inclination is to have plaintiff in C-125-C file a new, updated memorandum in support of intervention.

The briefing schedule deadlines are as follows:

- Mineral County / WLWG Memorandum in Support of Intervention due: **Monday, October 31, 2012.**
- Responses to Memorandum due: **Friday, December 14, 2012.**
- Replies to Responses to Memorandum due: **Monday, January 14, 2013.**

The court requests that Mr. Herskovits draft two proposed orders: (1) proposed order regarding the deadlines for the briefing schedule for the Mineral County Complaint and Intervention; (2) proposed order to modify, if necessary, Judge Reed's prior orders related to management of C-125-C.

The court notes that service of the signed Order should be made on all parties that have appeared.

4. Issues Common to Both Subproceedings:

a. Publication:

- i. Scope: general notice and notice to identified but unserved persons/entities.**
- ii. Proposal for publication process.**

Ms. Schneider represents that the publication proposal may not be addressed before she leaves.

b. Notification protocol and use in each subproceeding: completion of E-service order.

Ms. Schneider represents that she intends to have the E-service order revised and circulated before she leaves next week.

c. Website updates: status and coordination with the Clerk's Office

An update regarding this issue will be addressed at the October 3rd status conference.

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5. Continuing problems with the CM/ECF filing system.

Ms. Schneider advises the court that there is a continuing problem with the CM/ECF system not properly identifying the filer of a document that is filed within the system - whether the name of the filer is checked or unchecked or needs to be checked twice. The court asks Ms. Schneider to follow up with Ms. Griffin regarding this problem and report at the October 3rd status conference any resolution, if any, to this problem.

6. Confirmation of next status conference and/or informal meetings.

The next Status Conference is set for Wednesday, October 3, 2012, at 1:30 p.m. Counsel are encouraged to be present for the status conference; however, counsel who must attend via telephone shall dial 1-877-873-8017, enter the access code 3416460, and enter the security code 10312, approximately five (5) minutes prior to the hearing.

Following the October status conference, the next status conference is set for Monday, November 5, 2012, at 1:30 p.m.

12:11 p.m. Court adjourns.

LANCE S. WILSON, CLERK

By: _____/s/_____

Katie Lynn Ogden, Deputy Clerk