

IGNACIA S. MORENO
Assistant Attorney General
Greg Addington, Assistant U.S. Attorney
Susan L. Schneider, Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Div.
999 – 18th Street, Suite 370
Denver, Colorado 80202
(303) 844-1348
susan.schneider@usdoj.gov
Attorneys for the United States of America

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,)
) IN EQUITY NO. C-125-RCJ
) Subproceedings: C-125-B & C-125-C
)
) Plaintiff,) 3:73-CV-00127-RCJ-WGC &
) 3:73-CV-00128-RCJ-WGC

WALKER RIVER PAIUTE TRIBE,)
)
)
) Plaintiff-Intervenor,)

vs.)

WALKER RIVER IRRIGATION DISTRICT,)
)
) a corporation, et al.,)
)
) Defendants.)

**Proposed REVISED AND FINALIZED
SUMMARY OF PROCEEDINGS OF THE
STATUS CONFERENCE CONDUCTED
ON AUGUST 22, 2012**

MINERAL COUNTY,)
)
)
) Proposed-Plaintiff-Intervenor,)

vs.)

WALKER RIVER IRRIGATION DISTRICT,)
)
) a corporation, et al.)
)
) Proposed Defendants.)

The United States of America (“United States”), Plaintiff in Case No. C-125 and Subproceeding C-125-B, submits the following summary to the Court of its August 22, 2012 Status Conference. Pursuant to the Court’s direction, the United States consulted with the other Plaintiffs and the Primary Defendants (collectively “Primary Parties”) to prepare and submit the

following summary of this proceeding. There may be some disagreements among the parties regarding certain portions of this summary, including the recitation under paragraph 3.a.2. Counsel for the United States has attempted to include other parties' edits to the following summary, but has not heard from all parties if changes proposed by one party are acceptable to the others. Undersigned counsel for the United States, who will be on leave beginning on August 27, has informed the other primary parties that if disagreements remain regarding the following summary, they should file a notice of disagreement with the Court.

PROCEEDINGS: STATUS CONFERENCE

Court convenes: 11:05 a.m.
Court recesses: 12:18 p.m.

PRESENT:

HONORABLE WILLIAM G. COBB, U.S. MAGISTRATE JUDGE
Court Administrator/Deputy Clerk: Katie Lynn Ogden
Reporter: Kathy French

Counsel Present: Gordon DePaoli and Dale Ferguson (Walker River Irrigation District).

Counsel and Others Appearing Telephonically: Susan Schneider (United States), Wes Williams Jr. (Walker River Paiute Tribe), Simeon Herskovits and Iris Thornton (Mineral County and Walker Lake Working Group), Marta Adams (State of Nevada), Stacey Simon (Mono County), Michael Neville (State of California/California State Agencies), Karen Peterson (U.S. Board of Water Commissioners), Chris Mixson (National Fish and Wildlife Federation), George Benesch (Lyon County), Therese Ure (Mica Farm; Circle Bar N Ranch and others), Eileen Rutherford (Paralegal for the United States).

PRELIMINARY MATTERS:

Counsel who appear telephonically are reminded to identify themselves when they speak to assist the Court Reporter.

AGENDA ITEMS:

- 1. Any 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 states the United States should produce and circulate a proposed "Summary of the Proceeding of Status Conference" prior to its submittal to the Court and that the Court will

produce a separate official “Minutes of the Proceeding”. Ms. Schneider states the United States will e-mail a Word copy of each summary to the court’s chambers for its use.

The Court states it will approve and enter the Summary of the August 2, 2012 status conference, unless there are any objections. No objections are stated. Mr. Neville, however, notes the draft Summary for the August 2nd Status Conference did not reflect that because he had been on leave, the State of California was allowed to file its submittal regarding Threshold Issues on Tuesday August 21, 2012, which he did on behalf of the California Agencies. The Court acknowledged receipt of this submission.

Ms. Schneider requests that the parties review the draft summary of today’s hearing promptly because she will be on leave, beginning on Monday, August 27. Judge Cobb asks parties to review the proposed summary in a timely manner.

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.

Ms. Schneider states her anticipated filing of proofs of service has been delayed because the process server has been unavailable due to a family issue. She hopes to file some of the returns by Friday, but if not, they should be able to be filed when she is in the office on September 19 and 20.

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 reports that the United States’ review of these materials identified six persons and entities that had not been served previously. These persons and entities were mailed requests for waiver of personal service on August 17, 2012. The United States will review the returns of any waivers of personal service during the week of Sept. 24 and, if necessary, initiate personal service.

iii. Status of 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 on 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.

Ms. Schneider states that after review of the materials provided by Mono County, the United States estimates there would be 300-350 additional potential defendants to be served. Once the research is completed to identify all owners and their addresses, the United States estimates it can mail requests for waiver of personal service in another 3-4 weeks. The United States has been unable to obtain the names of all such owners from the Mono County Assessor's Internet database. Ms. Simon confirms that California law prohibits posting certain types of ownership data on the Internet. Ms. Simon is looking into additional avenues for the United States to confirm the legal names of parcel owners. The court notes this may end up being an issue for publication, although he prefers personal service. Ms. Schneider states that if, with Mono County's assistance, it obtains this information quickly, it may be able to complete efforts to request the waiver of personal service shortly after her return. The court states that Ms. Schneider and Ms. Simon should work together to solve the ownership issue. Ms. Schneider will provide an update on the status of this issue at the October 3 status conference.

2. Overlying, unexercised groundwater rights: Review of *proposed Order Addressing Whether Claimants With Overlying, Unexercised Groundwater Rights In The State Of California Are Subject To Compulsory Joinder In This Subproceeding (Aug. 16, 2012; #B-1733)*.

The United States submitted a proposed Order after circulating it for comment. Mr. Neville has not had a chance to review the proposed Order and asks for a few days to do so. The Court agrees and asks that an email be sent to chambers and the primary parties if the proposed Order is ready to go and he will sign it. If Mr. Neville has comments and proposed changes, the United States will re-circulate the proposed Order and re-file it when all parties agree.

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

1. Updating the draft caption.

The United States circulated the draft caption on August 9, 2012. No comments have been received. The United States is updating the caption to include the recent service by mail of riparian users and will re-circulate the draft caption as appropriate.

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

The United States has circulated this preliminary list to the primary parties and Operations Manager Lia Griffin. Ms. Griffin has requested that the manner in which a representing attorney is identified be changed to identify counsel consistently and not just the law firm. This change is not yet completed, but will be done shortly. The United States will then re-circulate this list, possibly this week, and will then update the list periodically. No comments were received from anyone other than Ms. Griffin.

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

This preliminary list is complete. The United States will circulate it to the primary parties and Ms. Griffin later this week.

b. Post-Service and Sequencing Issues:

The court defers these issues until the end of the Status Conference and then addresses them as follows:

- 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 states that filings were made by the United States and the Tribe, Walker River Irrigation District, Nevada Department of Wildlife, Circle Bar N Ranch, California State Agencies, and Mineral County. Without accounting for duplication and overlap, the filings appear to address between 53-55 issues, most of which are dispositive. The Court states it will not present 55 separate issues to Chief Judge Jones and directs the primary parties to meet informally to review and organize these issues by categories (*e.g.*, jurisdiction, service) and priority and encourages them to reduce the collective list. In doing so, the primary parties should produce two lists: 1) Issues and their phraseology on which they agree, and 2) all others.

Ms. Schneider requests that this be an item due for the November Status Conference. Judge Cobb agrees and also requests an update from the parties at the October 3 Status Conference, including a report from the parties on how they intend to implement the court's directive set forth in the previous paragraph. Mr. DePaoli clarifies with the Court that this task also includes all issues related to the issue of filing Answers.

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 states that final service mailing has started, but is not yet complete. He estimates that all responses will be due by the end of September. At that time they will know how many personal serves will be required and if any property transfers occurred that will require additional research. In addition, they may be able to make a better estimate than f the

March 2013 date to complete service can be moved up. Mr. Herskovits will address this issue further at the October 3rd conference.

The Court asks if any riparian owners impact the C-125-C subproceeding. A discussion ensues regarding the differences in the service lists between C-125-B and C-125-C. Thereafter, the court asks the United States to include summary statements of the universe of defendants in the C-125-B subproceeding and the universe of defendants in the C-125-C subproceeding in the parties' Status Conference summary. The following is an attempt by the United States and Mineral County/the Walker Lake Working Group to summarize the parties' statements to the court in the Status Conference, but goes beyond these discussions to include relevant Orders:

1. Defendants in Subproceeding C-125-B:

The *Case Management Order* (Apr. 19, 2000; #B-108) listed nine categories of defendants to be served:

- (a) The successors in interest to all water rights holders under the Decree (Apr. 14, 1936), as modified by the Order for Entry of Amended Final Decree to Conform to Writ of Mandate (Apr. 24, 1940);
- (b) All holders of surface water rights under the laws of the States of Nevada and California in the Walker River Basin who are not presently parties to this adjudication;
- (c) All holders of permits or certificates to pump groundwater issued by the State of Nevada and domestic users of groundwater within Sub Basins 107 (Smith Valley), 108 (Mason Valley), 110A (Schurz Subarea of the Walker Lake Valley), and 110B (Walker Lake Subarea of the Walker Lake Valley);
- (d) All holders of permits or certificates to pump groundwater issued by the State of Nevada within Sub Basins 106 (Antelope Valley), 109 (East Walker), and 110C (Whiskey Flat-Hawthorne Subarea of Walker Lake Groundwater Basin);
- (e) All users of groundwater for irrigation in California in the Walker River Basin;
- (f) All holders of "vested rights" to the use of groundwater under the laws of the State of Nevada within the walker River Basin;
- (g) All municipal providers in Nevada within the Walker River Basin who currently use groundwater;
- (h) All municipal providers in California within the Walker River Basin who currently use groundwater; and
- (i) All industrial users in Nevada within the Walker River Basin who currently use groundwater.

2. Defendants in Subproceeding C-125-C:

The Court's February 9, 1995, *Order Requiring Service of and Establishing Briefing Schedule Regarding the Motion to Intervene of Mineral County* (#19, at 2) listed the categories of defendants to be served in the C-125-C subproceeding as follows:

Mineral County shall serve Mineral County's Intervention Documents on all claimants to the waters of the Walker River and its tributaries, which claimants include: (a) all persons, corporations, institutions, associations, or other entities, which are shown by the records of the United States Board of Water Commissioners to presently hold a water right determined and adjudicated by the Final Decree entered in this action on April 14, 1936, as amended April 24, 1940; and (b) all persons, corporations, institutions, associations, or other entities who appropriated water from the Walker River or its tributaries after entry of the Final Decree in this action; and [(c)] all persons, corporations, institutions, associations, or other entities who have intervened or been named as respondents in this action after entry of the Final Decree.

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

Mr. Herskovits states they have assembled a preliminary list that will be circulated after the remaining service is completed.

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 defers these issues until the end of the Status Conference and then addressed them as follows:

The Court states that Chief Judge Jones asserts that some decisions may be made without all parties having been brought into the case and would like to accelerate briefing on the issue of intervention. This approach may require modification of Judge Reed's 1995 orders governing case management in C-125-C.

The Court and parties discuss whether briefing on the issue of intervention should begin with responses to the original motion to intervene. The court prefers that Plaintiffs in C-125-C file a new, updated memorandum in support of intervention. Mr. Herskovits concurs in this approach. Mr. DePaoli clarifies with the court that this filing will not include a new Complaint.

The briefing schedule for the issue of intervention follows:

- October 31, 2012: Mineral County/ WLWG to file Memorandum in Support of Intervention.
- December 14, 2012: Responses due.

- January 14, 2013: Reply due.

The Court asks Mr. Herskovits to draft:

- 1) a proposed Order setting forth the above briefing schedule; and
- 2) a proposed Order to modify, if necessary, Judge Reed's prior orders related to management of C-125-C, to sanction this briefing schedule.

Mr. DePaoli comments that a proposed Order concerning the briefing schedule would need to be served on all parties who have appeared. Mr. Herskovits asks Judge Cobb to clarify if the briefing schedule order should be made on all parties that have appeared or just on the principle parties. Judge Cobb states that service of the signed Order should be made on all parties that have appeared.

4. Issues Common to Both Subproceedings:

a. Publication:

Ms. Schneider states she has not gotten to this issue yet. The court states it is not an immediate priority.

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

Ms. Schneider states she has not gotten to this issue yet but still intends to do so, if possible, before she leaves next week.

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

Ms. Schneider states she has initiated this effort by identifying the persons in her office who will coordinate with Ms. Griffin and her staff. DOJ staff will work on this issue while Ms. Schneider is on leave. An update is due to the Court at the October 3rd Status Conference, which will also include information from Mr. DePaoli relating to Sunshine Litigation services.

5. Continuing problems with the CMECF filing system.

Although the United States understands a solution for ongoing problems with the CMECF system may not be forthcoming very soon, it informed the court that the problems appear to be worsening. The system attaches additional names of other parties to the identification of the filer of any document, even if the filer takes the time to uncheck names on the filing screen. For example, with the latest agenda filing, the United States unchecked 222 names in C-125-B and 1,530 names in C-125-C; in both subproceedings, many names needed to be unchecked twice. The court requests the United States to contact the Clerk's Office and obtain an update regarding fixes to the system and report back at the October 3rd Status Conference.

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

The next Status Conference is October 3, 2012 at 1:30 pm. Although counsel may call-in, the court prefers that counsel appear in person.

The following Status Conference is set for Monday November 5, 2012 at 1:30 pm.

Dated: October 4, 2012

Respectfully submitted,

IGNACIA S. MORENO
Assistant Attorney General

Greg Addington, Assistant United States Attorney
Susan L. Schneider, Trial Attorney
U.S. Department of Justice
Environmental and Natural Resources Div.
999 – 18th Street, Suite 370
Denver, Colorado 80202
(303) 844-1348
susan.schneider@usdoj.gov

By /s/ Susan L. Schneider
SUSAN L. SCHNEIDER
Attorneys for the United States of America

APPROVED AND ISSUED
this ___ day of _____, 2012.

Hon. William G. Cobb
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2012, I electronically filed the foregoing **Proposed REVISED AND FINALIZED SUMMARY OF PROCEEDINGS OF THE STATUS CONFERENCE CONDUCTED ON AUGUST 22, 2012** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses that are registered for this case;

and I further certify that I served a copy of the forgoing to the following non CM/ECF participants by U.S. Mail, postage prepaid, this 4th day of October, 2012:

Athena Brown, Superintendent
Western Nevada Agency
Bureau of Indian Affairs
311 E. Washington Street
Carson City, NV 89701-4065

Allen Biaggi/Leo Drozdoff
Dept. of Conservation & Natural Res.
State of Nevada
901 S. Stewart St.
Suite 1003
Carson City, NV 89701

State Engineer - Division of Water
Resources
State of Nevada
901 S. Stewart St., Suite 202
Carson City, NV 89701

Dist. Attorney for Lyon County
31 South Main Street
Yerington, NV 89447

William J. Shaw
Brooke & Shaw, Ltd
P.O. Box 2860
Minden, NV 89423

George M. Keele
1692 County Road, Ste. A
Minden, NV 89423

Arthur B. Walsh
Los Angeles City Attorney's Office
PO Box 51-111
111 North Hope Street, Suite 340
Los Angeles, CA 90054

/s/ Eileen Rutherford
Senior Paralegal, USIS for
United States Department of Justice