

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: October 3, 2012
)	
)	

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

Deputy Clerk: Katie Lynn Ogden Reporter: Donna Davidson

Counsel Present: Gordon DePaoli, Dale Ferguson, Marta Adams, Therese Ure, Karen Peterson, Susan Schneider, Simeon Herskovits, and Wes Williams, Jr.

Counsel Appearing Telephonically: Stacy Simon, Brad Johnston, and Michael Neville

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

PROCEEDINGS: STATUS CONFERENCE

1:39 p.m. Court convenes.

The court and counsel confer regarding the agenda items as outlined in the United States *List of Proposed Agenda Items* (Doc. 1111 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. #1111, Case No. 3:73-cv-00125-RCJ-WGC)

1. Any review and discussion of the *Proposed Summary of the Proceedings of the Status Conference Conducted on August 22, 2012* (Aug. 27, 2012; #1104; #B-1745; #C-613) and *Walker River Irrigation District's Notice of Objections* (Aug. 31, 2012; #B-1747).

The court will sign and file the *Proposed Summary of the Proceedings of the Status Conference Conducted on August 22, 2012* (Dkt. #1104) after the deletion of the language in question. Page 7, paragraph 2, will be omitted from the summary, as counsel for WRID disagrees with inclusion of that paragraph.

MINUTES OF PROCEEDINGS

3:73-CV-0125-RCJ-WGC

3:73-CV-0127-RCJ-WGC

3:73-CV-0128-RCJ-WGC

Date: October 3, 2012

Page 2

2. C-125-B:

a. Completion of Service and Service Issues:

i. Status of remaining service efforts and related filing of Proofs of Service.

The United States filed a proof of service on September 20, 2012. There are no objections made by the parties present at this hearing with respect to the Affidavit of Proof of Service (Number Six) (Dkt. #B1754). The court approves this Proof of Service and deems that the persons and entities listed have been properly served.

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

The United States will file an errata to clarify on the record that the persons of riparian rights in California, who are out of basin, and who have filed disclaimers, do not appear in this case.

iii. Status update from the United States, State of California and Mono County on possible service on claimants with dormant riparian surface water rights under the laws of California.

The United States indicates that it appears there are about 412 new dormant riparian holders and at this time the United States is looking into the issue of serving these defendants. The United States will provide the court with an update with respect to service at the November status conference.

iv. Status updates on the following:

1. Updating and circulating the draft caption.

The United States indicates that a draft caption was circulated prior to the last status conference held in August. Since then the United States has been checking the caption against other lists in efforts to delete a number of duplicates and also people who were found to have been dismissed in earlier stages of the service review but who had not been removed from caption. Although the caption is an on-going process right now, it has been re-circulated to the primary parties and Lia Griffin, Operations Manager, United States District Court.

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

The United States indicates that it has distributed two excel spreadsheets. The first spreadsheet contains a list of parties who have filed a notice of appearance but are not represented by counsel. The second spreadsheet contains a list of parties who have filed a notice of appearance who are represented by counsel. The United States refers to this as a preliminary list, which is not

MINUTES OF PROCEEDINGS

3:73-CV-0125-RCJ-WGC

3:73-CV-0127-RCJ-WGC

3:73-CV-0128-RCJ-WGC

Date: October 3, 2012

Page 3

ready for the clerk's office use. At this time, the preliminary list is being verified by the primary parties and any comments made will be addressed in the next draft.

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

The United States circulated a copy of the list of persons/entities that have been served but have not filed a notice. At this time the United States will wait to receive comment back on this list to address any problems or concerns.

- b. Post-Service and Sequencing Issues: Status update on the parties' efforts to narrow the threshold issues.

The court acknowledges that the minutes of proceedings from the last hearing erroneously stated that the parties were to submit a status report prior to today's hearing regarding the topic of threshold issues. The court notes that the parties were only to address this topic during today's hearing to discuss the progress that parties have made regarding the topic of narrowing the list of Threshold Issues.

The United States indicates that, at this time, the parties have not had the opportunity to narrow the threshold issues. Mr. DePaoli indicates that the local Nevada parties have met and have been able to narrow the list; however, this is a work in progress and the list has not been circulated. Mr. DePaoli suggests that at some point the parties exchange the narrowed lists with the Tribe, the United States, and Mineral County, and once that occurs, then the parties should meet, either personally or by telephone, to agree or disagree with the list. Once the list has been reviewed and any comments addressed, then at that time the parties would submit to the court what the parties have agreed on regarding the threshold issues. The court indicated that these issues be identified sooner than later so that they may be addressed during the next status conference in November. The court also suggests that if the parties need, the court is amendable to having an informal discussion with parties if they feel it may benefit the process of identifying these issues.

3. C-125-C:

- a. Completion of Service and Service Issues:

- i. Status update from Mineral County/Walker Lake Working Group on service.

Mr. Herskovits indicates that there was a mailing that went out to all the remaining listed defendants either personally or served by mail. Less than a third of the service packets produced waivers. Mr. Herskovits notes that there appears to be possible flaws in some of the waivers so follow up with some of the defendants to correct any mistakes made will need to occur so that the waiver is effective. Mr. Herskovits states that there appears to be certain number of defendants who were served with the service packet by certified mail but had refused to sign receipt for the packet. It also appears there are a large number of defendants that have received and signed for the service

MINUTES OF PROCEEDINGS

3:73-CV-0125-RCJ-WGC

3:73-CV-0127-RCJ-WGC

3:73-CV-0128-RCJ-WGC

Date: October 3, 2012

Page 4

packets but did not sign and return a waiver, so these defendants will now have to be personally served. Furthermore, there are some instances in which the service packages have been returned as undeliverable and follow up research will need to be done to locate the defendants or their successors. Mr. Herskovits continues to anticipate that this process will take a few months before being finalized.

- ii. Status update from Mineral County/Walker Lake Working Group on its efforts to compile a list of *pro se* parties.

Mr. Herskovits indicates that there is a list of defendants who have been served and who made appearances in the case, which includes the *pro se* parties. As this case moves forward, Mr. Herskovits indicates that there will be more of these defendants being served who will make appearances *pro se*. Mr. Herskovits does not anticipate that the list will be challenging to update or maintain on a current status.

- b. Post-Service and Sequencing Issues: Status of two proposed orders regarding: (1) the schedule for briefing Mineral County's Amended Complaint in Intervention (#C-20) and Motion for Preliminary Injunction (#C-22), and (2) any necessary modification of Judge Reed's prior orders related to management of C-125C.

Mr. Herskovits indicates that only one proposed order has been drafted and circulated. Mr. DePaoli filed and circulated a revised proposed order because of some changes Mr. DePaoli wanted to make. Mr. Herskovits indicates that there is no objection to the revised order other than the request to strike the citation to case document numbers (page 2, line 1, Dkt. 624); the parties agree that it is unnecessary to have such citation in the order. Furthermore, the proposed order shall include a signature block for the appropriate judge who will be signing this order. The appropriate judge will be pursuant to whether the magistrate or district judge signed the previous order. (Dkt. #247). A copy of the proposed order shall be sent to Ms. Ogden (katie_ogden@nvd.uscourts.gov).

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.

The United States reports that publication has not been addressed but that it is becoming more of a priority and will be addressed soon.

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

Ms. Griffin indicates that an order from the *Fallbrook* case out of the Southern District of California District Court is being reviewed for possible ideas as to how to fashion an order that will

MINUTES OF PROCEEDINGS

3:73-CV-0125-RCJ-WGC

3:73-CV-0127-RCJ-WGC

3:73-CV-0128-RCJ-WGC

Date: October 3, 2012

Page 5

encourage parties to sign-up for E-service. Ms. Griffin notes that the *Fallbrook* order is designed to encourage service via email rather than service by mail. Ms. Griffin further states that there is a monthly publication in specific California newspapers that advises the public of what has been filed, that documents have been filed in the *Fallbrook* case and that the publication directs the party to access the website to secure relevant documents.

Ms. Schneider acknowledges that it will be the responsibility of the United States to use the information provided by Ms. Griffin to redraft the E-service order and circulate the draft among the primary parties.

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

The Las Vegas clerk's office has developed a link on the Nevada U.S. District Court home page that will allow the public to retrieve the docket sheet without any of the extra information contained on a typical docket sheet that would appear on the PACER system (i.e., caption, list of all parties). This link will by-pass the PACER system; however, in order for the link to be published, approval must be provided by Chief Judge Jones.

Ultimately, when a party elects to provide the clerk's office with their email address, the party will be notified when a document has been filed and they may secure the document by going to the court's website and clicking on the case hyperlink.

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

There continues to be problems with regard to filing documents in the CM/ECF filing system. Specifically, the CM/ECF filing system apparently selects "all parties" when the filer selects a specific party(ies) when identifying on whose behalf the document is being filed. Ms. Griffin indicates that although the next version of CM/ECF will be out soon there is no assurance that the problem will be remedied. At this time the clerk's office, and with help from the programmer in Las Vegas, is addressing the problem to attempt to resolve the issue.

6. Such additional issues that may be identified subsequent to the filing of this agenda and/or at the status conference.

The briefing schedule for Mineral County's Amended Complaint in Intervention (#C-20) and Motion for Preliminary Injunction (#C-22) remains as scheduled in the previous hearing held in August. The court requests that the parties move expeditiously to submit the revised proposed order as mentioned in Agenda Item No. 3(b). Mr. Herskovits or Mr. DePaoli shall submit the proposed order directly to Ms. Ogden and Ms. Davis via email. The court will then provide Chief Judge Jones with a copy of the proposed order for his review and approval.

MINUTES OF PROCEEDINGS

3:73-CV-0125-RCJ-WGC

3:73-CV-0127-RCJ-WGC

3:73-CV-0128-RCJ-WGC

Date: October 3, 2012

Page 6

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

The next Status Conference is set for Monday, November 5, 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 11512, approximately five (5) minutes prior to the hearing.

2:55 p.m. Court adjourns.

LANCE S. WILSON, CLERK

By: _____/s/_____

Katie Lynn Ogden, Deputy Clerk