

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: December 13, 2012
)	
)	

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

Deputy Clerk: Katie Lynn Ogden Reporter: Kathy French

Counsel Present: Susan Schneider, Wes Williams, Jr., Gordon DePaoli, Dale Ferguson, Simeon Herskovits, George Benesch, Marta Adams, Chris Mixon, Karen Peterson, David Negri, Stacey Simon, Andrew Guss Guarino

Counsel Appearing Telephonically: Michael Neville

Special Appearance Telephonically: Eileen Rutherford (Paralegal obo United States)

PROCEEDINGS: STATUS CONFERENCE

10:08 a.m. Court convenes.

The court and counsel confer regarding the agenda items as outlined in the Amended United States' Status Report (Doc. #1774 in Case No. 3:73-CV-0127-RCJ-WGC). Counsel present their positions as to each of the items.

I. Preliminary Matters

Agenda Items

1. 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 indicates that there are only a few personal serves left. The United States process server will prepare an affidavit once the most recent service efforts are complete.

MINUTES OF PROCEEDINGS

3:73-CV-0125-RCJ-WGC

3:73-CV-0127-RCJ-WGC

3:73-CV-0128-RCJ-WGC

Date: December 13, 2012

Page 2

- 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 process of serving the owners of riparian rights in California based on receipt of recent filings of statements of diversion and use is complete.

- 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.
 - 1. Address changes to be made on various forms. (Doc. B-###206, 207; Notice of Appearance, Waiver, etc.)
 - 2. Service phases.

Ms. Schneider addresses both subtopics for this agenda item. The United States has mailed service packages to 386 out of approximately 412 names of persons and entities that fit within this category on December 12, 2012. Ms. Schneider indicates that additional research is needed for the remaining 24 names of persons and entities. Ms. Simon indicates the Mono County is available to assist the United States with any further research necessary.

- iv. Status updates on the following:
 - 1. Updating and circulating the draft caption.

Ms. Schneider represents that no action has been taken since the last circulation of the draft was sent; however, the United States has addressed the comments and proposed changes suggested by several of the primary defendants. This process will resume once this last group of persons and entities are served.

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

Ms. Schneider indicates that this list has been circulated and the United States is in the process of updating the list to address some of the comments and suggestions for changes made by other primary parties. Ms. Griffin has also provided the United States with a list of defendants who have appeared, which the United States will use to cross-check the names from each list and further update the primary list.

MINUTES OF PROCEEDINGS

3:73-CV-0125-RCJ-WGC

3:73-CV-0127-RCJ-WGC

3:73-CV-0128-RCJ-WGC

Date: December 13, 2012

Page 3

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 has compiled a preliminary list. The list has not been circulated, but it is a priority and will be done.

- b. Case Management Issues:
 - i. Threshold Issues: Review of attached lists of proposed Threshold Issues.
 - ii. Whether and when Answers are to be filed: Pending motion/briefing. (Doc. B-###1487, 1497, 1498, 1499, 1500, 1501).

The court will address this matter at the February 7, 2013, hearing after the court has had the opportunity to review the parties' briefs concerning the *United States of America's Motion for a Supplemental Case Management Order* (Dkt. #B-1772).

- iii. Discussion of possible changes to CMO and related filing(s).

The court indicates that it is persuaded by the *United States of America's Motion for a Supplemental Case Management Order* (Dkt. #B-1772). Mr. De Paoli anticipates that defendants' response to the motion will be informative and educational to the court with regard to the threshold issues and what District Judge Reed was trying to accomplish in the original Case Management Order ("CMO"). Mr. De Paoli suggests that discussing the topic of threshold issues be delayed until the United States' motion is fully briefed.

The court directs the parties to fully brief the United States' Motion for Supplemental Case Management Order. Response Brief due: Friday, January 11, 2013; Reply Brief due: Friday, January 25, 2013.

2. C-125-C: Completion of Service and Service Issues:
 - a. Status update from Mineral County/Walker Lake Working Group on service.

Mr. Herskovits indicates that the service package mailing was done after the court issued the order regarding completion of service in August of 2012. Currently, a process server is in the process of effecting personal service on those defendants who did not sign and return a waiver. Mr. Herskovits informs the court that Mineral County is encountering a small number of instances

MINUTES OF PROCEEDINGS

3:73-CV-0125-RCJ-WGC

3:73-CV-0127-RCJ-WGC

3:73-CV-0128-RCJ-WGC

Date: December 13, 2012

Page 4

in which the water rights have been transferred or in which some inaccuracy or need for additional research and clarification the proper persons or entities that need to be served. Mineral County anticipates to file a service report to the court either by the end of 2012 or early 2013.

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

Mr. Herskovits indicates that Mineral County has compiled a list of *pro se* parties but continues to add to that list as Mineral County is currently in the process of finishing service. Mineral County will circulate a list of *pro se* parties when service is complete.

3. Issues Common to Both Subproceedings:

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

Currently, and to the extent possible, the United States and Tribe continue to be in the process of effecting personal services. The proposed time frame for which service will be complete is sometime in March or early April. Ms. Schneider suggests that Mr. Guarino prepare a publication proposal, which would be circulated among the primary parties sometime in February, then submitted to the court for approval sometime thereafter so that it can be implemented once service is deemed complete. Mr. Herskovits requests that Mineral County confer with Mr. Guarino regarding the publication proposal because it will apply to the C-125-C case as well. The court has no objection and agrees that both Ms. Schneider's and Mr. Herskovits' suggestions are appropriate and shall proceed as such.

- b. Notification protocol and use in each sub-proceeding: Completion of draft E-service order. A draft *proposed Order Regarding Service and Filing In Subproceeding C-125-B On and By Unrepresented Parties* is attached to this agenda for review and discussion with the Court.

Ms. Schneider represents that there have been no objections made by the parties with regard to the proposed order. The court is inclined to approve the proposed order; however, at this time it appears to be premature. In light of this, the court directs that Ms. Schneider and Lia Griffin (Operations Manager for the USDC, Clerk's Office) meet and discuss possible solutions to perfect the order in such a way that is agreeable with all parties. The court requests that the proposed order be re-filed no later than Friday, December 21, 2012.

MINUTES OF PROCEEDINGS

3:73-CV-0125-RCJ-WGC

3:73-CV-0127-RCJ-WGC

3:73-CV-0128-RCJ-WGC

Date: December 13, 2012

Page 5

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

Lia Griffin indicates that the website is ready to be activated. Ms. Griffin explains that there are two possible ways to access the "Walker River" website. One way is to access the website directly at: www.ecf.nv.uscourts.gov/casedisplay; the other is by selecting the "Walker River" hyperlink on the District of Nevada's official website: www.nvd.uscourt.gov. In order to implement the website however, Ms. Griffin indicates that a General Order would need approval by Chief Judge Robert C. Jones. In light of Ms. Griffin's representation, the court concurs that the website appears to be ready for implementation and directs that a General Order be prepared and submitted to Chief Judge Jones for approval.

The court, Ms. Schneider and Mr. Herskovits request to be included in any "tests-runs" done by the clerk's office to ensure that the website is properly functioning. Ms. Griffin agrees to accommodate this request.

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

The court inquires during the status conference the status of briefing with regard to Mineral County's Motion for Intervention. Mr. Herskovits represents that it appears that the parties are complying with the scheduled deadlines and briefing is almost complete. The court is contemplating serving some type of notice, when briefing is complete, to be served on all defendants. Thereafter, any person of interest may have thirty (30) days to submit any additional comments with regard to intervention.

Mr. Herskovits agrees that this suggestion by the court may be a sensible way to proceed; however, Mr. Herskovits requests that Mineral County be able to file a supplemental reply to any new issues or arguments raised by the new filings submitted by those defendants who respond to the notice. The court explains that this topic may need to be addressed by Chief Judge Jones. In the interim, however, the court directs Mr. Herskovits to prepare a proposed order, which shall be circulated among the primary parties, and then be submitted to the court so that it can be discussed during the next status conference.

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

Next status conference is set for Thursday, February 7, 2013, at 10:00 a.m. Counsel are encouraged to attend the conference in person; however, counsel who wish to appear by telephone shall dial 1-877-873-8017, enter the access code 3416460, and enter the security code 20713, approximately five (5) minutes prior to the hearing.

MINUTES OF PROCEEDINGS

3:73-CV-0125-RCJ-WGC

3:73-CV-0127-RCJ-WGC

3:73-CV-0128-RCJ-WGC

Date: December 13, 2012

Page 6

IT IS SO ORDERED.

12:04 p.m. Court adjourns.

LANCE S. WILSON, CLERK

By: _____/s/
Katie Lynn Ogden, Deputy Clerk