

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).	)	DATE: March 13, 2013
	)	
	)	

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

Deputy Clerk: Katie Lynn Ogden Reporter: Kathy French

**Counsel Present:** Wes Williams, Jr., Gordon DePaoli, Dale Ferguson, Simeon Herskovits, George Benesch, Marta Adams, Karen Peterson, David Negri, Andrew Guss Guarino, Therese Ure, Harry Swainston

**Counsel Appearing Telephonically:** Michael Neville, Susan Schneider, Stacey Simon, Michael Hoy, Christopher Watson

**Special Appearance:** Eileen Rutherford (Paralegal obo United States, telephonically) and Jim Shaw (Watermaster)

PROCEEDINGS: STATUS CONFERENCE

1:11 p.m. Court convenes.

The court and counsel confer regarding the agenda items as outlined in the United States of America's List of Proposed Agenda Items for the Status Conference Scheduled for March 13, 2013 (Doc. #1131 in Case No. 3:73-CV-00125-RCJ-WGC; Doc. #1848 in Case No. 3:73-CV-00127-RCJ-WGC; and Doc. #681 in Case No. 3:73-CV-00128-RCJ-WGC). Counsel present their positions as to each of the items.

**Agenda Items**

**1. C-125-B:**

- a. Completion of Service and Service Issues:

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- i. 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.

Mr. Guarino informs the court that additional funding has been provided to the United States of America (“United States”) for both personal service and research. The United States is hopeful that the funding will be sufficient to address issues associated with the remaining and most recent personal service and research. Should funding become an issue, the United States will continually search for funding to complete service.

With respect to the remainder of service that was initiated in December 2012, to date the United States has received approximately 160 waivers of service, 55 Notice of Appearance, 25 disclaimers of interest, 5 notice of change of ownership and 6 return packages whose materials were improperly filled out.

As represented during the last status conference, subsequent to the mailings in December 2012, the United States identified some records received by Mono County that reflected a number of property owners who were actually adjacent to irrigation ditches and were not necessarily riparian owners. After researching this matter further there appears to be approximately 88 parcel that appear to be pieces of property that are adjacent to an irrigation ditch and not an actual stream course. Mr. Guarino represents the United States is fairly confident that those parcel can be removed from that group of people that the United States have been providing service to.

The United States is estimating that 157 owners of property will need to be personally served. Within two weeks the process of initiating this service should take place; however, the time in which to complete this service is unknown at this time. Mr. Guarino indicates that the United States will keep the court informed of the progress for this service.

1. Status of additional research needed to compete service of dormant riparian surface water rights holders.

And

2. Service phases.

Mr. Guarino indicates that there remains 41 parcels that will require further research to address the matters of ownership which shall be completed within two (2) weeks. Subsequent to that process will be the re-mailing of the service package to those 41 property owners. 30 days thereafter, the United States will be able to proceed with any personal service that may be required.

- ii. Status updates on the following:

1. Updating and circulating the draft caption.

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The United States has not updated the list since the last appearance before this court; however the United States indicates that it is following up on comments received by counsel since the last circulation of the draft caption. The United States intends to update and re-circulate the draft caption once the service process the United States is currently engaged in is complete.

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

And

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 will update the list once the mailing process they are currently engaged in is complete.

b. Proposed Supplemental Case Management Order

The court is in receipt of the two competing proposed orders filed by the United States (Dkt. #1849) and Walker River Irrigation District (“WRID”) (Dkt. #1850). The court requests both the United States and WRID to e-mail the courtroom administrator their documents (in word format). Thereafter, the court will assemble portions from each order into a separate document, then submit the document as a proposed document for discussion purposes. The court schedules a telephonic status conference to discuss the proposed document and address any revisions that need to be made. The telephonic conference is set for Thursday, April 11, 2013, at 9:00 a.m.

The court requests that the parties solicit a response memoranda from both the United States and WRID and include any comments regarding the proposed document.

**2. C-125-C:**

a. Completion of Service and Service Issues.

Mineral County filed its “Final Report Concerning Completion of Rule 4 Service on Final List of Proposed Defendants” (Dkt. #672). Mr. Herskovitz indicates that personal service has been complete and requests that the court sign the proposed order (Dkt. #673) finding that personal service is complete as to all identified defendants (this does not include service by publication).

The court requests that Mineral County file two proposed orders; One order shall include all proposed defendants that are addressed in Dkt. #672 and a separate order that indicates that Rule 4 Service is complete.

The court suggests that the two orders be included as discussion topics for the next status conference.

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

The final part of service will be publication with regard to this matter. Mr. Herskovits informs the court that, although it has been the intention of Mineral County to proceed, progress has not been made because he has been ill recently.

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

The final list will be circulated within thirty (30) days so that any recently service entities have the opportunity to appear.

- d. Consideration of draft Order Setting Supplemental Briefing Schedule for Defendants Appearing after Initial Briefing Schedule on Motion to Intervene Was Established.

The court has expressed its reservation with regard to extending the time for briefing to the newly served parties because to date only the principal parties have filed documents related to this topic. Furthermore, the court and parties have agreed that it is highly unlikely that any of the newly served parties are going to file any briefing as to the Motion for Intervention.

Mr. Herskovitz confirms with the court that briefing on the Motion for Intervention is complete. The court informs the parties that the Proposed Order Setting Supplemental Briefing Schedule has been submitted to Chief Judge Robert C. Jones.

**3. Issued Common to Both Subproceedings:**

- a. Publication: Status of proposed Orders.

Mr. Herskovitz and Mr. Guarino indicate they plan to discuss the topic of publication within the next thirty (30) days.

- b. Notification protocol and use in each sub-proceedings: Draft E-Service Order (submitted and pending decision)

The court notes that the Proposed E-Service Order has been submitted to Chief Judge Jones.

- c. Website updates: Status update from Clerk's Office

The court explains that the web site is dependant on execution of the E-Service Order; therefore, at this time, there is nothing to report as to the website.

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

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The court notes that it has not received the United States' Summary of the Status Conference held on February 7, 2013. Ms. Schneider explains that the document was intended to be filed on Monday, February 4, 2013, but must have inadvertently not been filed. Ms. Guarino indicates that his office will file the document today.

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

The court schedules a telephonic (only, no appearance required) conference to discuss the two *Proposed Order Modifying the Case Management Order* (filed a Dkt. #'s 1849 and 1850 in Case No. 3:73-cv-00127-RCJ-WGC) for Thursday, April 11, 2013, at 9:00 a.m. Parties wishing to attend this telephonic conference shall dial **1-877-873-8017**, enter the access code **3416460**, and enter the security code **41113** approximately five (5) minutes prior to the conference.

The court schedules a further Status Conference for **Wednesday, May 1, 2013, at 10:00 a.m.**, in Reno Courtroom No. 2, before Magistrate Judge William G. Cobb. Parties wishing to attend this hearing telephonically shall dial **1-877-873-8017**, enter the access code **3416460**, and enter the security code **50113** approximately five (5) minutes prior to the hearing.

**IT IS SO ORDERED.**

2:27 p.m. Court adjourns.

LANCE S. WILSON, CLERK

By: \_\_\_\_\_/s/  
Katie Lynn Ogden, Deputy Clerk