

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: September 6, 2013
)	
)	

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

Deputy Clerk: Katie Lynn Ogden Reporter: Donna Davidson

Counsel Present: Wes Williams Jr., Gordon DePaoli, Dale Ferguson, Therese Ure, Andrew Guss Guarino, Bryan L. Stockton

Counsel Appearing Telephonically: David Negri, Marta Adams, Annadel Almendra, George Benesch, Simeon Herskovits, Michael Neville, Stacey Simon, Karen Peterson

Specially Appearing Telephonically: Eileen Rutherford and Jim Shaw

PROCEEDINGS: STATUS CONFERENCE

10:04 a.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 September 6, 2013*, (Doc. # 1186 in Case No. 3:73-CV-125-RCJ-WGC; Doc. # 1924 in Case No. 3:73-CV-127-RCJ-WGC; and Doc. # 721 in Case No. 3:73-CV-128-RCJ-WGC). Counsel present their respective positions as to each of the items.

Agenda Items

1. C-125-B

a. Completion of Service and Service Issues:

I. Status update from the United States on service on possible claimants with dormant riparian surface water rights under the law of California.

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The United States of America (“United States”) has secured additional funds that will be sufficient to complete personal service. At this time, the process server has been instructed to complete service as to the approximate forty (40) parties who remain unserved.

2. C-125-C

a. Completion of Service and Service Issues:

- I. Update from Mineral County concerning discussions with counsel for Mono County and California State agencies on possible claimants with dormant riparian surface water rights under the laws of California.

The parties agree there is a substantial question whether or not the potential claimants with dormant riparian surface water rights under the law of California need to be added as parties and served as to the C-125-C case, and the impact this may cause to the case should the claimants be added.

Mr. Herskovits indicates after the resolution of the questions of intervention, jurisdictional matters and *res judicata*, but before any resolution of the merits, the parties will make a final determination as to whether or not those claimants with dormant riparian surface water rights under the law of California need to be added to the C-125-C case. Should the determination favor adding said claimants, than those entities will be added to the caption and service will be initiated.

- ii. Update from Mineral County on revised service report and proposed orders concerning completion of service on identified proposed defendants.

Service is complete on the identified proposed defendants in the C-125-C case. Within the next week, the revised documents, which will reflect the parties discussions regarding the unresolved question of whether the particular class of potential water rights claimants should be added and served to the C-125-C case, will be circulated to counsel representing the principal parties. Thereafter, the documents will be filed with the court.

3. Issues Common to Both Subproceedings

a. Publication: Status of proposed Orders

Personal service is complete as to all identified proposed defendants in the C-125-C case. Mineral County is moving forward with submitting a Motion for Publication.

Subsequent to finalizing personal service in the C-125-B case, the United States anticipates to proceed with service by publication.

The court and parties discuss the timing of filing the motions for publication simultaneously as to the C-125-B and C-125-C cases. No decision is made with regard to simultaneously filing the motions for publication.

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The court notes that, in the original Case Management Order (“CMO”) (C-125-B, Doc. # 108), Judge Reed addressed the concept of service by publication and it seems like the analogy would carry over to the C-125-C case. The court and parties clarify that service by publication would only be initiated after personal service is complete.

b. E-service orders

- I. Report by the United States and WRID concerning efforts to develop modifications to the E-Service Order (Doc. # 1874) as outlined by the court on July 25, 2013.

The court reviews the proposed “Order Superseding Order Regarding Service and Filing in Subproceeding C-125-B On and By Unrepresented Parties” (C-125-B, Doc. # 1185-1). The Court suggests the following comments are to be considered and addressed by the parties in the next draft of the proposed order:

- (1) The title of the order should reflect that it is a “Superseding Order.” Furthermore, the word superseding order should be consistent throughout the document when referencing the operative document.
- (2) Footnote 1 (pg. 2 of 8) shall clarify what Rule 4 service of process pertains to (i.e. complaint, service package, etc).
- (3) The superseding order should reflect that it is imperative the recipient respond, in some fashion, to the superseding order.
- (4) The issue of expense shall be emphasized at page 3 (pg. 3 of 8) to include language regarding how the mode of service affects everyone involved, including counsel, pro se litigants, tax payers and the court. The failure of a party to respond to the superseding e-service order will unfortunately increase the cost of litigation to all litigants.
- (5) The parties should consider clarifying footnote 3 with regard to F.R.C.P. 5(a)(2) and contemplate whether the footnote should reference F.R.C.P. 5(c)(1)(c) and/or F.R.C.P. 5(c)(1)(a).

The court notes that FRCP(a)(2) eliminates the requirement of service on parties who did not respond to a summons and are in default, but that the CMO (pg. 12, ¶ 13) precludes entry of default on a party who does not respond to the service package. The parties need to address how this might be resolved.

- (6) With regard to service by postcard, the order should specifically state who is going to receive service and how that entity will receive service (i.e. USPS, electronically via email, or electronically via website, etc.)

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Mr. DePaoli has a slight recollection of a prior order in the C-125-B case that parallels the language of the current e-service order, which essentially states, if a party fails to respond, such entity would be deemed to have been provided satisfactory notice. If Mr. DePaoli is able to locate the order he is referring to, he shall provide notice to the court and the principal parties.

Overall, the court instructs the parties to confer and attempt to modify the language regarding service so that it is clear what the implications are should a party fail to respond to the superseding e-service order (i.e., waiving certain due process rights).

- (7) Paragraph 5, pg. 5 of 8, "Motions," should be consistent with LR 7-5 provisions pertaining to *ex parte* motions.
- (8) Paragraph 6, pg. 5 of 8, line 24, should not reference the word "pleading," but instead refer to "filing."
- (9) Counsel need to determine what facilities (i.e. Post Office, community centers, etc) might be willing to be a designated venue to keep record of the filings in these matters, and possibly access to a copy machine for any copy requests individuals may have for specific documents. The court further notes that a party may request a copy of a document from the clerk's office but that this will likely involve a fee, something which could be avoided if a party were to elect service by email.
 - ii. Report by Mineral County concerning a Case 125-C E-Service order in light of the court's comments of July 25, 2013.

Mineral County has a working draft of an e-service order prepared. It is Mineral County's intention to await the results of the proposed modifications of the e-service order in C-125-B so that the C-125-C order conforms to the superseding order before submitting a proposed order. Furthermore, it seems most efficient to defer submitting an e-service order until the court resolves the motion to intervene.

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

- a. Case 125-B - ongoing discussion concerning the procedural/timing by which initial motions, responses, and reply will be rescheduled and presented.

The court and parties agree that the e-service issue will need to be resolved first before further discussion is had as to this topic. Service issues will have to be finalized before ligation of any "threshold" issues (or substantive motions) can be addressed.

