

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),)	
)	
vs.)	3:73-CV-0127-RCJ-WGC
)	3:73-CV-0128-RCJ-WGC
)	
WALKER RIVER IRRIGATION, et al.,)	MINUTES OF PROCEEDINGS
)	
Defendant(s).)	DATED: February 26, 2015
)	
)	
)	

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

Deputy Clerk: Katie Lynn Ogden **Reporter:** FTR

Counsel Present: Wes Williams Jr., Gordon DePaoli, Dale Ferguson, and Simeon Herskovits

Counsel Appearing Telephonically: Erin Mahaney, Stacey Simon, David Negri, Harry Swainston, Andrew "Guss" Guarino, Jan Zabriskie, Matt Curti, George Benesch, Bryan Stockton, and Karen Peterson

Special Appearances: Eileen Rutherford (Senior Paralegal obo United States of America, Telephonically), Jim Shaw (Water Master)

MINUTES OF PROCEEDINGS: STATUS CONFERENCE

10:07 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 (Doc. # 2174 in Case No. 3:73-CV-0127-RCJ-WGC).

AGENDA ITEMS:

- 1. C-125-B
 - a. Completion of Service and Service Issues.

Mr. Guarino confirms that the United States of America ("United States") has completed its service efforts as to those individuals subject to service pursuant to previous court orders. Mr. Guarino explains the United States has submitted nineteen (19) service reports so far and expects

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its next service report to be filed no later than early next week.

The court inquires whether the latest minute orders entered by the court relative to either motions to withdraw or motions to substitute are being cross-checked with the United States' list of active entities in this matter. Mr. Guarino states that Ms. Rutherford does track the orders entered by the court and updates the United States' list so that they are consistent with the court's record. The court encourages the United States and other parties to contact the United States District Court Clerk's Office Operations Manager Lia Griffin should any discrepancies surface relative to any orders entered regarding an entities property or water rights status.

b. Motion for Publication.

The court clarifies for the record that the "Joint Motion to Allow Service by Publication" (Doc. # 2163) is only considered a "joint" motion between the United States and the Walker River Paiute Tribe ("Tribe").

The court inquires how the motion for publication was served on the parties. Mr. Guarino states that the motion was served pursuant to and complies with the Superseding Service Order (Doc. # 2100).

The court briefly addresses Defendant Walker River Irrigation District's (the "District") response to the joint motion for publication (Doc. ## 2177, 2178). Mr. DePaoli indicates the District does not oppose the motion. However, depending on the developments that may occur as the case proceeds, there may be a need for additional service by publication efforts made by the parties.

For the record, Bryan Stockton on behalf of the Nevada Department of Wildlife states the Department will not be opposing the motion for publication. Additionally, Stacey Simon on behalf of Mono County states Mono County will not be opposing the motion for publication but echos Mr. DePaoli's statement that service by publication efforts may need to be undertaken again in the future.

The court identifies a discrepancy as to the phraseology of the proposed order for publication. At Doc. # 2163-2, page 1, ¶ 1, the court notes sentence 3 appears to have language missing. The parties agree language is missing and that the language should reflect that the notice of appearance and intent to participate would be filed with the court within sixty (60) days of the last publication notice. The United States is directed to submit a revised proposed order correcting the deficiencies identified today as to the missing language.

After hearing from the parties and there being no opposition as to the request for service by publication, IT IS ORDERED the Joint Motion to Allow Service by Publication (Doc. # 2163) is **GRANTED**. The formal order will be entered upon revision of the proposed order.

c. Status update from clerk on E-Service Order and Post Card Notification.

The Clerk filed a notice with the court on January 14, 2015 (Doc. # 2156), which is a PDF version of Unrepresented Parties requesting postcard service. The court makes an observation that

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the list of identified unrepresented parties requesting postcard service does not appear to be the anticipated number of parties originally estimated at the January 6, 2015, hearing (Doc. # 2152). The court directs counsel to confer with Ms. Griffin regarding the list and the number of identified unrepresented parties requesting postcard service.

2. C-125-C

a. Completion of Service and Service Issues.

Mineral County counsel Simeon Herskovits advises the court that the number of remaining California riparian water rights holders that require service is approximately 350. Mr. Herskovits represents the estimated time to complete service has not changed since the last status conference and anticipates service to be completed by late summer 2015. At this time, Mineral County is not seeking any time to extend the deadline to serve the approximate 350 entities. However, Mr. Herskovits explains unforeseen issues regarding service may arise which could potentially force the parties to seek additional time to complete service at a later date.

The court addresses the possibility of a party who might be served after the motion to dismiss and who wishes to respond but the motion is fully briefed or even resolved. Mr. Herskovits explains any party entering into the matter after which time briefing as to a motion to dismiss is expired and/or decision is entered, the new party will be allowed the opportunity to raise any new or related issues on the same jurisdictional or threshold challenges that have or could of been raised.

b. Status on approval from Judge Jones on website.

The court explains the Clerk's Office has developed a separate website for the C-125-C case, which the public will be able to access via the United States District Court, District of Nevada official website (www.nvd.uscourts.gov). The court briefly describes the web page to the parties and explains the current link to the C-125-C web page is titled "Mineral County" and it will be located directly beneath the Walker River link. The court advises that District Judge Jones has determined it would be within the jurisdiction of the U.S. Magistrate Judge to approve the implementation of website for this subproceeding.

Mr. Herskovits requests that, before the court enter its order approving the web site to go live on the United States District Court, District of Nevada's official website, the parties have the opportunity to review the website and offer any suggestions or revisions if necessary. The court agrees the request is appropriate and therefore directs the parties to review the website for additional comments. Mr. Herskovits indicates he will also consult with Ms. Griffin next week regarding the website. After the parties have had a chance to make comment and any revisions are made to the website, the court directs Mr. Herskovits draft and submit a proposed order approving the implementation of the C-125-C website.

At this time, the court and parties defer any action on a proposed E-Service Order in the C-125-C case pending resolution of the motion to dismiss (Doc. # 751).

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3. C-125-B/C:

- a. Status - motions to dismiss pending and status of briefing.

In the C-125-B case, oral arguments on the pending motions to dismiss (Doc. # 2161) are set for Monday, May 4, 2015, at 10:00 a.m., before District Judge Jones.

The court requests counsel to summarize the status of various motions which are pending and being addressed by District Judge Jones.

In the C-125-C case, oral arguments on the pending motion to dismiss (Doc. # 751) were held on October 27, 2014, before District Judge Jones. District Judge Jones advised the parties that the court would not be taking the motion to dismiss in the C-125-C case under advisement until the court holds oral arguments on the motions to dismiss in the C-125-B matter (see Doc. # 2109, in the C-125-B matter).

Mr. Herskovits advises the court that, at the hearing held in the C-125-C case, District Judge Jones indicated the parties shall be allowed the opportunity to submit supplemental briefs on the issues in the C-125-C case prior to the hearing set in the C-125-B case for May 4, 2015. However, the parties are unaware of any established briefing schedule set by the court as to the potential supplemental briefing in the C-125-C case. Mr. Herskovits proposes that he and Mr. DePaoli confer regarding a briefing schedule and submit a stipulation to District Judge Jones for his consideration and approval of the schedule.

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

No additional comments made by the court or counsel.

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

The court schedules a telephonic status conference for Monday, April 20, 2015, at 10:00 a.m. The United States is directed to file either an agenda of topics the court and parties should address during the telephonic status conference or a joint request to vacate the hearing should the parties agree there are no topics to address at the time of the April 20th telephonic status conference. The agenda or request to vacate shall be filed no later than Friday, April 10, 2015. Should the telephonic status conference remain on calendar, counsel wishing to appear telephonically shall dial 1-877-873-8017, enter the access code 3416460, and enter the security code 42015 approximately five (5) minutes prior to the hearing.

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