

1 Middlegrounds Landfill Site, 171 F.3d 1044, 1046-47 (6th Cir. 1999) (“Evidence that throws a
2 different, greater, or additional light on a key issue might well ‘prevent a failure or delay of
3 justice.’”). With respect to all witnesses except Ms. Giardina, petitioner also demonstrates that
4 their testimony may become unavailable if it is not obtained soon. See Penn Mutual, 68 F.3d at
5 1375.

6 Respondent has not established that permitting the perpetuation of testimony at this stage
7 of the proceedings is inappropriate. Cf. Cullen v. Pinholster, 118 S. Ct. 1388, 1411 n. 20 (“[W]e
8 need not decide . . . whether a district court may ever choose to hold an evidentiary hearing before
9 it determines that § 2254(d) has been satisfied.”) Nor has respondent established that resolution
10 of the merits of petitioner’s claims or their procedural issues is a necessary precursor to
11 permitting the perpetuation of testimony. Finally, it should be noted that by permitting the
12 perpetuation of testimony at this point, this court is making no decision about the admissibility of
13 each witnesses’ testimony in any evidentiary proceeding.

14 Accordingly, and good cause appearing, IT IS HEREBY ORDERED as follows:

- 15 1. Petitioner’s March 13, 2015 Motion to Perpetuate the Testimony of Dr. Albert Globus
16 (ECF No. 143) is granted.
- 17 2. Petitioner’s April 15, 2015 Motion to Introduce Declarations in Lieu of Testimony
18 and/or to Perpetuate Testimony (ECF No. 146) is granted with respect to witnesses
19 Marjorie Comer, Joanne Wells, Shirley Garrett, Timothy Jayne, Fairman Jayne, and
20 David Kurtzman. The motion is denied with respect to witness Marijo Giardina.
21 Within thirty days of the filed date of this order, the parties shall meet and confer
22 regarding the method for taking the testimony of these witnesses.

23 Dated: May 28, 2015

24 
25 _____
26 CAROLYN K. DELANEY
27 UNITED STATES MAGISTRATE JUDGE