

ENDORSED

COPY

STATE OF NEW MEXICO
COUNTY OF CIBOLA
THIRTEENTH JUDICIAL DISTRICT

FILED IN MY OFFICE
DISTRICT COURT CLERK

04 AUG 26 AM 11:30

STATE OF NEW MEXICO, *ex rel.*
State Engineer,

Lisa Bro
BY _____ DEPUTY
CIBOLA COUNTY

Plaintiff,

No. CB-83-190-CV and
CB-83-220-CV (Consolidated)

vs.

**Subproceeding 1 on Past and
Present Use Water Rights of
Pueblos of Acoma and Laguna**

KERR-McGEE CORPORATION, et al.,

Defendants.

FIRST PRE-HEARING ORDER GOVERNING SUBPROCEEDING 1

This matter comes before the Court following the Initial Pre-hearing and Scheduling Conference held in Grants, New Mexico on May 18, 2004. This First Pre-Hearing Order Governing Subproceeding 1 (hereinafter "the Order") governs the initial pre-hearing schedule for the Subproceeding on Past and Present Use Water Rights of the Pueblos of Acoma and Laguna ("Subproceeding 1").

Pursuant to Rule 1-016, NMRA, the Court hereby enters the following Order:

1. Description of the Case

As established by this Court's September 23, 2002, Order Granting Joint Motion To Establish An Expedited *Inter Se* Subproceeding to Adjudicate the Water Rights of Acoma Pueblo and Laguna Pueblo Based on Past and Present Uses of Water, the purpose of Subproceeding 1 is to adjudicate the water rights claims of Acoma Pueblo and Laguna Pueblo that are based on past and present uses of water. This Subproceeding 1 will result in a partial final decree adjudicating the water rights of the Pueblos based on their past and present uses of water, and this partial final decree, subject to appeal, shall be binding on all water rights claimants, known and unknown, within the Rio

San Jose Stream System, regardless of whether they choose to participate as parties in Subproceeding 1. It will not involve the adjudication of other parties' water rights claims or the adjudication of water rights claims of Pueblos that are not based on past or present uses of water. This Order governs certain initial disclosures and pre-hearing proceedings in Subproceeding 1.

2. Parties

Individuals, companies, organizations, partnerships, trusts, and all other water rights claimants in the Rio San Jose Stream System who file *Objections to Water Rights Claimed for Acoma Pueblo and Laguna Pueblo Based on Past and Present Uses of Water*, by September 30, 2004 ("Objections"), are Parties to Subproceeding 1. Hereafter, "Parties" shall refer to Parties to Subproceeding 1, as opposed to parties to the general Rio San Jose Stream System Adjudication. By filing an Objection, a Party affirmatively submits to the jurisdiction of this court.

3. Notice and Service of Pleadings, Motions, and Other Papers

Because Subproceeding 1 involves a substantial number of Parties, the Court finds and hereby adjudges that it is necessary to establish special procedures for service and filing of pleadings, motions, and other papers under Rules 1-005 and 1-016(C)(10), NMRA 2004. Therefore, notice and service of pleadings, motions, and other papers (hereafter "notice and service") shall be accomplished by the Parties as follows:

All Parties (other than the State, the Pueblos, and the United States) who wish to participate actively in Subproceeding 1 shall complete and file with the Court the form attached to this Order and entitled "Statement of Intent to be an Active Party" ("Statement of Intent"). The Parties that file Statements of Intent electing to be Active Parties, as well as the State, the Pueblos, and the United States, are hereafter referred to as the "Active Parties." All other Parties will be referred to as

“Inactive Parties.” Active Parties must fully participate in the litigation and bear all their own costs except as otherwise ordered. The Court may also, to the extent permitted by law, order Active Parties to pay other costs, such as special master compensation. Active Parties may be deposed and may be subject to discovery requests. Active Parties (other than the State, the Pueblos, and the United States) may become Inactive Parties at any time, subject to objection, by filing a Withdrawal from Being an Active Party (form attached hereto) and serving it on all Active Parties. Inactive Parties may not be deposed or subject to discovery requests without leave of the Court, and will not be required to pay any costs associated with this litigation. Notice and service for Active Parties and Inactive Parties will occur as follows:

a) Notice and Service for Active Parties: Active Parties will receive notice and service of all pleadings, motions, and other papers that are filed in Subproceeding 1 by U.S. mail (“mail”) or e-mail, depending on the service option the Active Party selects, provided that a Party that does not have e-mail shall serve all Active Parties by mail. Due to mailing and copying costs, **the Court encourages Active Parties to select notice and service by e-mail.** The State shall mail form Statements of Intent to all Parties currently represented by counsel by September 15, 2004. The State shall mail form Statements of Intent to all remaining Parties by January 31, 2005. Statements of Intent shall be filed with the Court and served on the State no later than February 28, 2005, in order to be included on the Service List that will be generated by the State, as described in Paragraph 3(d). Service of Statements of Intent on the State shall be made by mailing a completed Statement of Intent to:

Susan C. Kery / Craig T. Erickson
Sheehan, Sheehan & Stelzner, P.A.
Post Office Box 271
Albuquerque, New Mexico 87103

b) Notice and Service for Inactive Parties: Active Parties shall serve Inactive Parties with pleadings, motions, orders, and other papers by mailing a copy to the four Document Depositories identified in Paragraph 3(c) below, and by filing with the Court. Any such papers will also be available on the State Engineer's website, at <http://www.seo.state.nm.us/hot-topics/index.html>, with the exception of "Objections to Water Rights Claimed for Acoma Pueblo and Laguna Pueblo Based on Past and Present Uses of Water," "Statements of Intent to be Active Parties," and "Withdrawals from Being Active Parties." Court filings made prior to November 1, 2004 will not be available on the State Engineer's website, except as previously made available at <http://www.seo.state.nm.us/hot-topic/index.html>. Further, starting on September 1, 2004, and within the first five working days of each month, the State will post a copy of the previous month's list of documents filed with the Court in Subproceeding 1 on the State Engineer's website, at <http://www.seo.state.nm.us/hot-topics/index.html>. Inactive Parties may obtain copies of such papers from the Court or the Document Depositories at their own expense. Inactive Parties may become Active Parties at any time by filing the Statement of Intent, and serving it on all Active Parties, after which they shall be deemed Active Parties.

c) Inactive Parties shall receive service and notice of pleadings, motions, and other papers at the Document Depositories at the following locations ("Document Depositories"):

- (i) Office of the Clerk of Court
New Mexico District Court - Thirteenth Judicial District
Cibola County Courthouse
515 West High Street
Grants, New Mexico 87020
- (ii) Laguna Pueblo Tribal Building
Pueblo of Laguna
Laguna, New Mexico 87026

(iii) Office of the New Mexico State Engineer
Legal Division
130 S. Capitol Street
Santa Fe, New Mexico 87501

(iv) Bureau of Indian Affairs
Southwest Regional Office
Division of Natural Resources
1001 Indian School Road, N. W.
Albuquerque, New Mexico 87104
(by appointment only — call (505) 563-3403)

d) The State will compile a list of Active Parties, which shall constitute the “Service List,” and shall file the Service List with the Court, post it on the State Engineer’s website, at <http://www.seo.state.nm.us/hot-topics/index.html>, and serve it on the Document Depositories, as set forth in Paragraph 3(c) of this Order, and on all Active Parties, by March 31, 2005. The Service List shall indicate whether the Active Party has requested service and notice by mail or e-mail.

e) Any change in postal address or e-mail address for Pro Se Parties, and amendments to the manner of receiving notice and service by mail or e-mail by Active Parties and counsel for Parties, shall be filed with the Court and served as provided herein within 30 days of the change.

f) In all cases, service of pleadings, motions, and other papers on Active Parties on the Service List shall be deemed sufficient if mailed or e-mailed (if the Active Party has elected to receive notice by e-mail) to the Active Party’s last designated postal or e-mail address, and service of pleadings, motions, and other papers on all Inactive Parties shall be deemed sufficient if hand-delivered or mailed to the Document Depositories.

g) All pleadings, motions, and other papers required to be served under Rule 1-005 NMRA, shall be served on the Active Parties in the manner indicated on the Service List either by mail or by e-mail, but not by both.

h) The Document Depositories shall be included on the Service List, and copies of all pleadings, motions, and other papers that are filed shall be served on the Document Depositories.

i) The State shall serve this Pre-hearing Order shall be served by January 31, 2005 on all counsel of record in Subproceeding 1 and all Pro Se Parties who timely filed Objections.

j) The Court may adopt further or alternative special procedures for service of pleadings, motions, and other papers under Rule 1-005, NMRA as necessary.

k) All Parties, whether or not on the Service List, shall file with the Court all original pleadings, motions, and other papers that are required to be filed, pursuant to Rule 1-005, and shall effect service on other Parties as provided in this Order.

l) All e-mail concerning this case shall include on the subject line reference to "State v. Kerr-McGee."

4. Answers to the Initial Pleadings

Parties who wish to file a responsive pleading to the State's Subproceeding Complaint, the United States' Answer and Counterclaim (collectively "Answer of the United States"), The Pueblo of Acoma's Answer, Counterclaim, and Cross-Claim, and The Pueblo of Laguna's Subproceeding Supplemental Answer and Cross-Claim (collectively "Answers of the Pueblos") shall do so by April 30, 2005, but no sooner than April 3, 2005. No Party is required to file a responsive pleading to the State's Subproceeding Complaint, the Answer of the United States or the Answers of the Pueblos. Further, if a Party does not file a responsive pleading to the State's Subproceeding Complaint, or the Answers of the United States and the Pueblos, such failure to file will not result in a dismissal of a Party's Objection, a waiver of any Party's defenses, motions or claims, or a determination that any of the claims of the United States or the Pueblos are deemed admitted. No counterclaims or cross-

claims, other than those already filed by the United States and the Pueblos, shall be filed except by leave of the Court.

5. Initial Disclosures

On or before the dates listed below, each Active Party shall make available, as provided in this section, to all other Active Parties:

a) the name, and, if known, the address and telephone number of each individual, including experts, likely to have discoverable information regarding Laguna and Acoma Pueblos' past or present uses of water, including, but not limited to, information concerning the aquifer or aquifers associated with any use of water from an underground source, that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

b) a copy of, or a description by category and location of, all discoverable documents, data compilations, reports of experts, and tangible things regarding the Pueblos' past or present uses of water, including, but not limited to, any such items concerning the aquifer or aquifers associated with any use of water from an underground source, that are in the possession, custody, or control of the disclosing Active Party and that the disclosing Active Party may use to support its claims or defenses, unless solely for impeachment.

c) initial disclosures shall be made available by:

(i) The United States and the Pueblos shall make their initial disclosures by February 28, 2005.

(ii) The State shall make its initial disclosures by April 29, 2005.

(iii) All remaining Active Parties shall make their initial disclosures by July 29, 2005.

(iv) All Active Parties shall make their initial disclosures based on the information in their possession; the deadlines for the Active Parties to make initial disclosures shall not be treated as final deadlines for identification of witnesses or exhibits.

(v) An Active Party is under a duty to supplement at appropriate intervals its initial disclosures if an Active Party learns that in some material respect the information has not otherwise been made known to the other Active Parties during the discovery process or in writing.

d) No Active Party shall be required to mail Initial Disclosures to all other Parties.

e) All Active Parties are required to serve by mail their Initial Disclosures on each of the Document Depositories, and on counsel for the State at the following address:

Susan C. Kery / Craig T. Erickson
Sheehan, Sheehan & Stelzner, P.A.
Post Office Box 271
Albuquerque, New Mexico 87103

Counsel for the State will maintain a list of the Initial Disclosures made by the Active Parties, and post it on the State's website.

f) Any Party may obtain copies of the Initial Disclosures from the State or Document Depositories, at their own cost.

6. **List of Parties**

The State shall: (a) file with the Court a List of all Parties to Subproceeding 1, including their address and their attorney's name and address, if any; and (b) post a copy of the List of Parties on

the State's website, and serve it on the Document Depositories. The State will also provide an electronic version of the List of Parties to those Parties who so request. The State will file the List of Parties no later than January 14, 2005.

7. Entries of Appearance

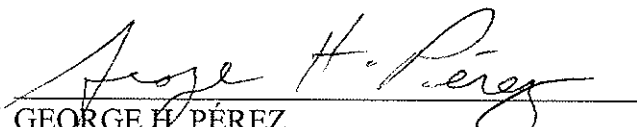
a) All counsel shall file and serve on counsel for the State at the address listed in Paragraph 5(e) updated entries of appearance specifically identifying all parties they represent by August 30, 2004, including the full names and addresses of all parties. If the names of any parties-- corporate entities or other organizations, or individuals--have changed, both the current and all former names shall be included.

b) All counsel who currently represent Parties in this matter, who decide to represent additional, new clients as a consequence of new Objections being filed due to the Amended Notice, shall file and serve on counsel for the State at the address listed in Paragraph 5(e) an Entry of Appearance regarding the new clients no later than September 30, 2004.

8. Pre-hearing Conferences

A status conference will be held before Special Master, George H. Pérez, on November 1, 2004, at 1:30 p.m. at the Large Conference Room at the Cibola County Convention Center, 515 West High Street, Grants, New Mexico.

IT IS SO ORDERED.


GEORGE H. PÉREZ
Special Master

E:\DATA\TXLIB\90300281\pleadings\First^PreHearingOrder^Final.wpd

STATE OF NEW MEXICO
COUNTY OF CIBOLA
THIRTEENTH JUDICIAL DISTRICT

STATE OF NEW MEXICO, <i>ex rel.</i>)	
State Engineer,)	
)	No. CB-83-190-CV and
Plaintiff,)	CB-83-220-CV (Consolidated)
vs.)	
)	Subproceeding 1 on Past and
KERR-McGEE CORPORATION, et al.,)	Present Use Water Rights of
)	Pueblos of Acoma and Laguna
Defendants.)	
_____)	

STATEMENT OF INTENT TO BE AN ACTIVE PARTY

Pursuant to the First Pre-Hearing Order governing Subproceeding 1, Section 3, which provides the option for a Party to choose to be either an Active Party or Inactive Party in Subproceeding 1:

1. I understand that I have the right to choose whether to be an Active Party or an Inactive Party in Subproceeding 1.
2. I understand that if I am an Active Party in Subproceeding 1, I may be subject to discovery activities by the other parties, and may be deposed or served with written discovery.
3. I understand that I must follow the terms and schedules listed in the First Prehearing Order Governing Subproceeding 1.
4. I may withdraw from participation at any time, subject to objection by any Active Party, by filing and serving on the Active Parties a form "Withdrawal from being an Active Party."
5. If I choose not to be an Active Party at this time, I also understand that I may at a later date choose to be an Active Party by filing a Statement of Intent to be an Active Party form.

6. I intend to be an Active Party.

7. By choosing to be an Active Party, I understand that I have the option of receiving notice and service of pleadings, motions, and other papers, by mail or e-mail, but not both. I choose to receive notice and service by (check one):

a) _____ U.S. Mail or _____ E-mail

b) at the following address (list your mailing address AND your E-mail address here, if you have selected e-mail service):

Signed,

PRINTED NAME (please print clearly)

(mailing address)

STATE OF NEW MEXICO
COUNTY OF CIBOLA
THIRTEENTH JUDICIAL DISTRICT

STATE OF NEW MEXICO, *ex rel.*)
State Engineer,)
)
Plaintiff,)
vs.)
)
KERR-McGEE CORPORATION, et al.,)
)
Defendants.)
_____)

No. CB-83-190-CV and
CB-83-220-CV (Consolidated)

**Subproceeding 1 on Past and
Present Use Water Rights of
Pueblos of Acoma and Laguna**

WITHDRAWAL FROM BEING AN ACTIVE PARTY

I _____ (*please print name of Party or counsel*) hereby give notice
of my/my client's(s') (*circle whichever is applicable*) _____ (*name
client(s) here*) withdrawal from active participation and as an Active Party in Subproceeding 1.

Signed,

PRINTED NAME (*please print clearly*)

(mailing address)