

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

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

Plaintiff,

v.

No. Civ. 66-06639 WJ/WPL

R. LEE AAMODT *et al.*

Subfiles RG-33483

Defendants,

and

UNITED STATES OF AMERICA,  
PUEBLO DE NAMBÉ,  
PUEBLO DE POJOAQUE,  
PUEBLO DE SAN ILDEFONSO,  
and PUEBLO DE TESUQUE,

Plaintiffs-in-Intervention.

**INITIAL SCHEDULING ORDER,  
SUBFILE RG-33483**

THIS MATTER is before the Special Master, entered pursuant the Order of Reference [Doc. No. 6336], as amended, the Court's Procedural and Scheduling Order for the Adjudication of Surface Water Right Under Domestic Wells Permitted After January 13, 1983 [Doc. No. 6239], the Notice and Order to Show Cause [Doc. No. 6379], the Court's Procedural and Scheduling Order for the Adjudication of Water Rights for Domestic Wells, Including Pre-Basin Domestic Wells, Drilled or Permitted Prior to this Court's Order of January 13, 1983 (No. 641), filed August 2, 2012 [Doc. No. 7736], and Fed. R. Civ. P. 53. The Federal Rules of Civil Procedure and the local rules of the Court

will apply to these claims.

1. The parties, Plaintiff the State of New Mexico and Defendants, Robert C. Habbersett and Katharine A. Palmer, Subfile RG-33483, appearing through counsel or *pro se*, shall “meet and confer” no later than fourteen (14) Days before the initial scheduling conference referenced herein in Paragraph 4. *See* Fed. R. Civ. P. 26(f). The parties will cooperate in preparing a Joint Status Report and Provisional Discovery Plan (JSR) that follows the sample JSR available at the Court’s website.<sup>1</sup> The blanks for suggested dates are to be filled in by the parties. Actual dates will be promulgated by order of the Court. The time allowed for written discovery, including the disclosure of expert reports, will generally be 90 days. The State of New Mexico is responsible for filing the JSR by **May 29, 2015**.

2. Good cause must be shown and the Court’s express and written approval obtained for any modification of the dates in the scheduling order that issues from the JSR.

3. Initial disclosures must be made within fourteen (14) days of the meet-and-confer session. *See* Fed. R. Civ. P. 26(a)(1). The parties are reminded of the language of Fed. R. Civ. P. 26(a)(1)(E): “[a] party must make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party’s disclosures or because another party has not made its disclosures.”

4. A Rule 16 initial scheduling conference will be held by the Special Master by telephone

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<sup>1</sup>Please visit the Court's web site at [www.nmcourt.fed.us](http://www.nmcourt.fed.us), to download the standardized Joint Status Report and Provisional Discovery Plan form.

on **June 1, 2015 at 2:00 p.m.**<sup>2</sup> Counsel or parties *pro se* should be prepared to discuss discovery needs and scheduling, all claims and defenses, initial disclosures, and the timing of expert disclosures and reports under Federal Rule of Civil Procedure 26(a)(2). Counsel or parties *pro se* should also be prepared to discuss the use of scientific evidence and whether a *Daubert* hearing is needed.<sup>3</sup> In addition, we will discuss settlement prospects and alternative dispute resolution possibilities. If a party is represented by counsel, client attendance is not required. If a party is *pro se* and not represented by counsel, attendance is mandatory.

Written discovery in these subfile proceedings, other than initial disclosures, shall be limited to 20 interrogatories per party, including subparts, 20 requests for production, and 20 requests for admission. For good cause shown and with the Court's approval, these limitations may be expanded.

Depositions in these subfile proceedings, either of parties, lay witnesses, or expert witnesses, may take place only with the consent of all parties to the subfile proceeding. If a party objects to the taking of a deposition, the matter shall be brought to the attention of the Court promptly.

If service on all parties is not complete, the State of New Mexico is responsible for notifying all parties of the content of this order.

**THE PARTIES ARE NOTIFIED THAT WITHIN 20 DAYS OF SERVICE** of a copy of this order, report, or recommendations, they may file written objections with the Clerk of the Court pursuant to Federal Rule of Civil Procedure 53(f)(2). **A party must file any objections with the Clerk of the Court within the twenty-day period if that party wants the District Judge to hear their objections. If no objections are filed within the twenty-day period, the District Judge may adopt the order, report or recommendations in whole.**

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<sup>2</sup> Counsel for the State of New Mexico is responsible for coordinating and initiating the call. A reliable long-distance carrier is recommended to ensure sound quality.

<sup>3</sup> See *Daubert v. Merrill Dow Pharm.*, 509 U.S. 579 (1993).

IT IS SO ORDERED.

/s/ Pierre Levy  
Pierre Levy, Special Master

April 13, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that on the date of filing I caused the foregoing to be filed electronically through the CM/ECF system which caused the parties on the electronic service list to be served, as more fully set forth in the Notice of Electronic Filing

/s/ Pierre Levy  
Pierre Levy