

**BEFORE THE OFFICE OF THE STATE ENGINEER  
STATE OF COLORADO**

**IN THE MATTER OF RULES AND REGULATIONS FOR )  
THE DETERMINATION OF THE NONTRIBUTARY NATURE ) 2 CCR 402-17  
OF GROUND WATER PRODUCED THROUGH WELLS )  
IN CONJUNCTION WITH THE MINING OF MINERALS )**

**THIRD PREHEARING ORDER**

**MOTIONS**

1) On October 15, 2009, XTO Energy Inc., Pioneer Natural Resources USA, Inc., and BP America Production Company filed a request to amend the Second Prehearing Order to extend the deadline for filing written witness testimony for CBM alternate proposals to 5:00 p.m. on October 30, 2009. This motion was joined by Colorado Oil & Gas Association.

The motion is granted. Written testimony must be submitted by 5:00 p.m. on October 30, 2009.

2) On October 16, 2009, the Senior Water Users filed a Motion to Strike Rulemaking Proposals or in the Alternative Motion for Declaratory Order Regarding Schedule. This motion was joined by the Colorado River Water Conservation District.

The motion to strike the proposed alternate rules is denied. The motion to enter an alternate schedule is granted insofar as the hearing officer adopts the following revised schedule for written submissions and hearing dates.

**BIFURCATION OF RULEMAKING**

The rulemaking hearing will be bifurcated: the hearing on the Staff proposal and coalbed methane (CBM) alternate proposals will be held for 8 days in December 2009; and the hearing on conventional alternate proposals will be held for 10 days in January 2010.

**SCHEDULE FOR SUBMISSIONS AND HEARINGS**

**1) Staff proposal and CBM production proposed alternate rules**

Modeling and Expert Reports: Due October 16, 2009

Modeling and expert reports must include information required by the State Engineer's Proposed Produced Nontributary Ground Water Rule 17.6.

Prehearing Statements: Due October 23, 2009

Written Witness Testimony: Due October 30, 2009

Modeling Demonstrations: October 26 – November 13, 2009

The parties are requested to meet informally during this period to share information regarding the modeling and expert reports that pertain to coal bed methane producing formations. The objective is to facilitate a direct exchange of information regarding the modeling and expert reports and allow for modeling demonstrations. The staff of the State Engineer's Office will schedule such meeting(s) by contacting the parties' attorneys.

Responsive Prehearing Statements: Due November 20, 2009

Including modeling, expert reports and written witness testimony

Rebuttals: Due November 27, 2009

Hearing Dates: December 2-4, 7-11, 2009

## **2) Conventional oil and gas production proposed alternate rules**

Modeling and Expert Reports: Due November 4, 2009

Modeling and expert reports must include information required by the State Engineer's Proposed Produced Nontributary Ground Water Rule 17.6.

Prehearing Statements: Due November 9, 2009

Written Witness Testimony: Due November 16, 2009

Modeling Demonstrations: November 11- December 8, 2009

The parties are requested to meet informally during this period to share information regarding the modeling and expert reports that pertain to coal bed methane producing formations. The objective is to facilitate a direct exchange of information regarding the modeling and expert reports and allow for modeling demonstrations. The staff of the State Engineer's Office will schedule such meeting(s) by contacting the parties' attorneys.

Responsive Prehearing Statements: Due December 15, 2009

Including modeling, expert reports and written witness testimony

Rebuttals: Due December 22, 2009

Hearing Dates: January 4-6, 11-15, 19-20, 2010

## **CONTENT OF PREHEARING STATEMENTS**

Parties with overlapping proposed alternate rules are requested to work together to present a unified proposal and document submissions. Each prehearing statement is required to contain:

- 1) A cover document that contains an executive summary, in layperson's terms, of the party's general position and the contents of the prehearing statement. The executive summary shall also summarize any voluminous exhibits.
- 2) A reasonable estimate of the time necessary for presentation at hearing.
- 3) A specific statement of the factual and legal issues that arise from the rulemaking proposal, and what position is being taken on each such issue and the basis for that position.
- 4) A list of the issues to be resolved by the State Engineer during the rulemaking hearing.
- 5) Copies of all exhibits to be introduced at the hearing. Maps should be submitted in a format that can be read into Geographic Information System (GIS).

## **WRITTEN TESTIMONY OF WITNESSES**

All testimony to be offered into evidence at the hearing must be provided in writing by each witness. Witness should identify exhibits relied upon, if any. At the hearing, witnesses will be asked to summarize their written testimony and respond to questions.

## **REBUTTAL STATEMENTS**

Rebuttal statements are constrained to address topics raised in the prehearing statements of the parties, and are not to raise new issues or arguments.

## **SUBMISSION REQUIREMENTS**

Expert reports, prehearing statements, written testimony, responsive prehearing statements and rebuttal statements must be submitted by electronic mail to [laura.kalafus@state.co.us](mailto:laura.kalafus@state.co.us) and [casey.shpall@state.co.us](mailto:casey.shpall@state.co.us) and all other parties by 5:00 p.m. on the date they are due.

In addition, three hard copies of these documents must be delivered to the following address: Office of the State Engineer, Produced Water Rulemaking, 1313 Sherman Street, Suite 818, Denver, Colorado 80203.

Dated this 21st day of October, 2009.

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/s/  
Casey Shpall  
Hearing Officer