

This rule was filed as 19 NMAC 7.3.

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 7 MINING GENERAL PROVISIONS
PART 3 CONSOLIDATION OF MINING PROPERTIES

19.7.3.1 ISSUING AGENCY: New Mexico Energy, Minerals and Natural Resources Department.
[10-31-96; Recompiled 12/31/01]

19.7.3.2 SCOPE: Section 8 applies to all persons seeking to consolidate mining properties pursuant to Section 69-9-1 through 69-9-10 NMSA 1978. Section 9 applies to Kerr-McGee Corporaion and the owners of all tracts of land in Section 19, Township 14 North, Range 9 West, N.M.P.M., McKinley County, New Mexico.
[10-31-96; Recompiled 12/31/01]

19.7.3.3 STATUTORY AUTHORITY: Section 69-9-4 NMSA 1978.
[10-31-96; Recompiled 12/31/01]

19.7.3.4 DURATION: Permanent.
[10-31-96; Recompiled 12/31/01]

19.7.3.5 EFFECTIVE DATE: October 31, 1996, unless a different date is cited at the end of a section or paragraph.
[10-31-96; Recompiled 12/31/01]
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

19.7.3.6 OBJECTIVE: The objective of Section 8 of Chapter 7 Part 3 is to establish regulations addressing the application for consolidation of mining properties. The objective of Section 9 of Chapter 7 Part 3 is to outline the conditions and requirements of a consolidation of mining properties in Section 19, Township 14 North, Range 9 West, N.M.P.M., McKinley county, New Mexico, and to order said consolidation.
[10-31-96; Recompiled 12/31/01]

19.7.3.7 DEFINITIONS: [RESERVED]
[10-31-96; Recompiled 12/31/01]

19.7.3.8 APPLICATION FOR CONSOLIDATION: Order adopting rules and regulations for administration of Chapter 33, New Mexico Laws of 1967 concerning consolidation of mining properties. Pursuant to Section 4 of Chapter 33, New Mexico Laws of 1967, the state geologist of New Mexico hereby adopts the following rules and regulations:

A. Filing of application; form. Any person, firm or corporation desiring to make application to the state geologist for consolidation of mining properties under Chapter 33, New Mexico Laws of 1967, shall file three copies of the application, and three copies of all exhibits thereto, with the state geologist, state land office building, Santa Fe, New Mexico. The application shall contain all of the information required by law and may contain any additional information that the applicant deems pertinent.

B. Notice of hearing. Upon receiving an application for consolidation, the state geologist shall set a time and place for hearing and immediately shall notify the applicant thereof. The applicant shall give notice of hearing in accordance with law and shall file with the state geologist an affidavit of publication, and an affidavit of mailing showing in detail the date and manner of giving notice and to whom notice was given. All return receipts from certified mailing of notice of hearing shall be filed with the state geologist.

C. Record: The state geologist shall cause an official record to be made of all proceedings in connection with the application, including a transcript of all testimony and exhibits offered with respect thereto.

D. Order: notice of order: At the conclusion of the hearing on an application, the applicant shall submit a proposed order to the state geologist. Any order of the state geologist shall be made part of the official record, and notice of the order shall be given to the applicant or to the applicant's attorney of record.

E. Procedure upon petition for approval by district court. Upon the filing of a petition in district court for approval of an order of consolidation pursuant to Section 9, Chapter 33, New Mexico Laws of 1967, the state geologist shall certify the record made before him and transmit it to the clerk of the district court.

F. Payment of costs. The expenses of any proceeding on an application for consolidation, including the cost of giving notice of hearing and the fees and expenses in connection with preparation of the record, shall be borne and paid directly by the applicant.

G. DONE at Santa Fe, New Mexico, this 6th day of July, 1967.
[07-06-67, 10-31-96; Recompiled 12/31/01]

19.7.3.9 KERR-MCGEE ORDER OF CONSOLIDATION: In the matter of the application of Kerr-McGee Corporation for consolidation of all small tracts or interests in Section 19, Township 14 North, Range 9 West, New Mexico Principal Meridian, McKinley County, New Mexico, pursuant to Chapter 33, New Mexico Laws of 1967.

A. This cause came on for hearing at 9:30 a.m. on March 19, 1968, at Santa Fe, New Mexico, upon the Application of Kerr-McGee Corporation (hereinafter called "Kerr-McGee") praying for an order of consolidation of all small tracts or interests in Section 19, Township 14 North, Range 9 West, N.M.P.M., McKinley County, New Mexico (hereinafter called "Section 19"), pursuant to Chapter 33 of the New Mexico Laws of 1967.

B. After an examination of the files in said cause, the undersigned finds said Application was filed with the undersigned on the 19th day of December, 1967, and that on said date the undersigned set the Application for hearing at 9:30 a.m. on March 19, 1968, at Santa Fe, New Mexico; that due notice of this hearing has been given by publication in the Gallup Independent on February 7, 14, 21, and 28, 1968, as shown by affidavit of publication filed herein, and by mailing, as shown by affidavit of mailing filed herein.

C. The undersigned, having heard and considered the evidence concerning the said application, and being fully advised in the premises, Finds:

(1) The state geologist of the state of New Mexico (appointed pursuant to Section 65-3-1 New Mexico Statutes Annotated, 1953 Compilation) has jurisdiction of this cause and the subject matter thereof.

(2) Kerr-McGee is a corporation organized under the laws of the state of Delaware, qualified to do business in the state of New Mexico, and is presently engaged in the exploration, development, mining and processing of ore, and the production and marketing of uranium in concentrate, in the Ambrosia lake area of McKinley county, New Mexico.

(3) Section 19, containing 645.50 acres, is comprised wholly of contiguous small tracts, each containing two acres or less. Such small tracts were created by the subdivision of Section 19 by a plat of subdivision filed with the county clerk of McKinley county, New Mexico, on November 30, 1933, as Reception No. 2162, and recorded in Book 6 of Miscellaneous Records, page 586.

(4) Kerr-McGee has made extensive, diligent and good faith effort to identify and locate every person owning an interest in each small tract in Section 19, and, as to each owner who has been identified and located, has made extensive, diligent and good faith effort to purchase, lease or otherwise acquire mining rights covering such interest for the purpose of exploring, developing, mining, producing, marketing and/or processing uranium and uranium ore. As a result of these efforts, Kerr-McGee presently holds mining rights covering in excess of 85 percent of the entire mineral estate in Section 19. Despite the efforts that have been made by Kerr-McGee to identify, locate and acquire mining rights from all owners of interest in Section 19, there remain owners of small tracts or interests therein whose addresses are unknown, or from whom Kerr-McGee has not acquired mining rights.

(5) The lack of exploration and development on Section 19 up to the present time makes it impossible to ascertain that all or any portion of Section 19, or any small tract therein, definitely contains uranium ore on all sides of Section 19, and other geologic evidence, indicates that each small tract in Section 19 probably will be productive of uranium ore. The entirety of Section 19 therefore composes an appropriate unit for consolidation.

(6) Kerr-McGee proposes to conduct exploratory operations on, and to develop, mine, produce, save, remove, market or process uranium ore and other associated minerals mined therewith from Section 19. The proposed operations are feasible and in accord with good industry practices.

(7) The exploration and mineral development of the small tracts in Section 19 on a separate and individual basis would be uneconomic and impractical, and the consolidation of Section 19 is needed to induce mineral exploration and potential mineral development in order to avoid waste of natural resources and to protect the correlative rights of all owners in Section 19.

(8) Due to the diversity of ownership of the small tracts in Section 19, and due to the inability of Kerr-McGee to obtain mining rights from some of the owners, and in order to insure the development of Section 19,

all small tracts or interests in said Section 19 should be ordered consolidated in the manner provided by Chapter 33, New Mexico Laws of 1967.

D. It is therefore ordered: that all small tracts or interests therein in Section 19, Township 14 North, Range 9 West, N.M.P.M., McKinley county, New Mexico, be, and the same hereby are consolidated pursuant to Chapter 33 of the New Mexico Laws of 1967. As to each small tract or interest therein in Section 19 on which Kerr-McGee does not otherwise hold the mining rights, a mining lease thereon is hereby effectuated to Kerr-McGee under which it shall have the exclusive right and privilege, by such means and methods as it shall determine, to explore for, develop, mine (by underground, strip, solution or any other mining methods), extract, store, remove, own, market or process, for its benefit and use, any uranium ore and other associated minerals mined therewith, in, upon or under the said tracts or interests therein, and to use so much of the surface of each of said small tracts and of the water and appurtenant water rights as it shall deem necessary or desirable for such operations, including, but not by way of limitation, the right to construct and maintain buildings, roads, openings, ditches, stockpiles, dumps and other improvements and facilities thereon, being hereby given all such rights and privileges as may be necessary or convenient in connection with the foregoing, as well as the right to mine and remove ore from any of said tracts in Section 19 through or by means of shafts, haulage ways or by other facilities located in or on other tracts in said Section 19 or other lands, upon the following terms and conditions;

(1) The mining leases effectuated by this order shall be effective as of February 7, 1968, and shall remain in force for a term of ten years from this date, and as long thereafter as such ores are being produced, saved and removed from, or any mining operations are being conducted on, said Section 19. Mine development or other operations preparatory to mining, as well as actual mining and operations for or in connection therewith, shall be considered to be mining operations. Mining operations shall be deemed continuous so long as such operations are not suspended for any period of longer than ninety consecutive days and despite interruptions in such operations of whatever duration (whether or not in excess of ninety days) caused by force majeure or by reason of lack of a satisfactory market for ores from Section 19.

(2) If mining operations are being conducted anywhere on Section 19, it shall be considered such operations are being conducted on each small tract within Section 19.

(3) Uranium ore and other associated minerals mined therewith, produced, saved and removed from any part of Section 19, (hereinafter called "area production"), shall be considered as though production of ore is had from each small tract within Section 19, and there shall be allocated to each such tract as its share of the area production that part of the area production which bears the same ratio to the whole amount of such area production, as the area that the number of surface acres in said small tract bears to the total number of surface acres of 645.50 acres in Section 19.

(4) Kerr-McGee shall pay a bonus of \$10.00 to each owner with respect to the mining leases effectuated by this order upon small tracts or interests therein as to which Kerr-McGee does not otherwise hold the mining rights. This bonus shall be due and payable when this order becomes final and effective.

(5) Royalty:

(a) Kerr-McGee shall pay a royalty of ten per cent of the "mine value" of the ore produced, saved and removed from Section 19. The "mine value" shall be the value of such ore at the mouth of the mine in the crude state in which produced, saved and removed, and shall be determined as follows:

(i) The mine value of any such ore taken by Kerr-McGee for processing in its uranium processing mill shall be an amount determined and computed by: (a) multiplying the number of pounds of U_3O_8 contained in said ore by the "unadjusted value per pound" thereof as determined, on the basis of the "grade" (i.e., percentage of contained U_3O_8) of said ore, in accordance with the following schedule:

Grade of Ore Uranium (U_3O_8) Content	Unadjusted Value per Pound of Contained U_3O_8
0.10%	\$1.50
0.11%	\$1.70
0.12%	\$1.90
0.13%	\$2.10
0.14%	\$2.30
0.15%	\$2.50
0.16%	\$2.70
0.17%	\$2.90
0.18%	\$3.10
0.19%	\$3.30

0.20% or more

\$3.50

and (b) then adjusting the result so obtained by multiplying such result by a fraction having a denominator of \$8.00 (which is the price being received for U₃O₈ in concentrate produced at Kerr-McGee's mill and sold to the AEC during calendar year 1966) and a numerator equal to the weighted average price per pound received for all sales of U₃O₈ in concentrate made by Kerr-McGee during the twelve month period ending with the month in which said ore was processed and (c) finally then deducting from the adjusted result so obtained the cost of transporting said ore from the mine to Kerr-McGee's mill and also any sales, severance or similar taxes levied or assessed on or in connection with said ore.

(ii) The mine value of any such ore sold by Kerr-McGee before processing shall be the actual net proceeds received by Kerr-McGee from the sale of said ore, less the cost of transporting said ore from mine to point of its sale and less any sales, severance or similar taxes levied or assessed on or in connection with said ore or the sale thereof.

(b) The above specified royalty on ore produced, saved and removed by Kerr-McGee from Section 19 shall be due and payable on or before the 25th day of the month following the calendar quarter-year in which such ore is processed or sold by Kerr-McGee, and said royalty, computed and determined as above provided, shall constitute the sole and total royalty for such ore, and all components and constituents thereof.

(c) Bonus and royalty payments to the owners of each small tract or interest therein may be made by mailing or delivering Kerr-McGee's check to such owners at their respective addresses as shown on the records of Kerr-McGee, or if address is unknown, such payments shall be made to the state treasurer of the state of New Mexico, at Santa Fe, New Mexico, for the use and benefit of such owner, as provided by Section 10, Chapter 33 of the New Mexico Laws of 1967.

(d) Royalty payments shall be conclusively deemed to have been truly and correctly determined, computed and made if no exception and claim for adjustment is made, with respect to the particular payment involved, by written notice given within twenty-four months from the end of the calendar quarter-year for which such payment was made.

(6) Kerr-McGee's operations shall be carried on in a miner-like fashion and in compliance with applicable laws and governmental regulations. Kerr-McGee shall have the right to deposit waste material and overburden on Section 19, and to mine and remove such pillars as it may elect from any underground working area it may wish to abandon; however, Kerr-McGee shall not be liable for subsidence or other damages done to the surface of the lands comprising Section 19, or the improvements thereon.

(7) Uranium ore and other associated minerals mined therewith, produced from Section 19, will not be commingled with ores mined and produced from other lands, unless procedures, consistent with good practice in the industry, are adopted and employed to determine the quantity and grade of the ore produced from Section 19.

(8) Kerr-McGee shall have the right at any time during the continuance hereof, or within one year after the termination hereof as herein provided, to remove any machinery, fixtures, buildings or other structures or property placed on Section 19.

(9) Kerr-McGee may, if it so elects, pay any mortgage, taxes or other liens or encumbrances on Section 19, and in the event of such payment, Kerr-McGee shall be entitled to reimburse itself therefor out of any royalties becoming due to any tract owner, and shall also be fully subrogated to the rights of the holders of the liens and encumbrances so paid; provided, however, Kerr-McGee shall not be entitled to seek reimbursement for taxes paid by it for the year 1968 or any prior years.

(10) In case of any dispute or question regarding ownership of Section 19, or any royalties payable hereunder, Kerr-McGee shall be entitled to withhold, without interest, payment of royalties until such dispute or question has been properly settled and appropriate proof (such as original or certified copy of the settlement instrument) has been submitted to Kerr-McGee.

(11) If the estate of any tract owner is assigned (and the privilege of assigning in whole or in part is expressly allowed), the covenants hereof shall extend to their heirs, devisees, executors, administrators, successors and assigns, but no change or division of ownership or in the royalties payable hereunder shall be binding upon Kerr-McGee for any purpose until fifteen days after Kerr-McGee shall have been furnished with the original recorded instrument or instruments, or duly certified copies thereof, properly evidencing the same and neither shall any such change or division or ownership ever operate to enlarge the obligations or diminish the rights of Kerr-McGee.

(12) Failure of Kerr-McGee to perform any of its obligations hereunder, or to comply with any requirements hereof, shall not automatically terminate the leases effectuated by this order, it being agreed that such leases shall never be terminated, forfeited or canceled for any failure of performance on the part of Kerr-McGee unless and until it shall have first been finally determined by a court of record of competent jurisdiction that Kerr-

McGee is in default hereunder, and it shall have failed to commence action within sixty days after the said judicial determination thereof to cure such default and thereafter to prosecute such action to completion. Provided, that nothing herein shall ever serve to create any commitment or obligation on the part of Kerr-McGee, express or implied, to explore, develop, mine or conduct any other operations on Section 19.

(13) Kerr-McGee shall not be liable or deemed in default for failure to perform any of its obligations during periods in which performance is prevented by any cause reasonably beyond Kerr-McGee's control (any such cause being for purposes hereof "force majeure").

(14) While the leases effectuated by this order remain in force, Kerr-McGee will pay the property taxes on any improvements placed on Section 19 by it, but otherwise each tract owner shall pay all property taxes on their separate tracts, except as provided in paragraph 9.4.9 [now paragraph (9) of subsection D of 19.7.3.9 NMAC] of this order.

(15) The provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, personal representative and heirs of the various tract owners and of Kerr-McGee.

E. Entered at Santa Fe, New Mexico, this 15th day of April, 1968.
[04-15-68, 10-31-96; Recompiled 12/31/01]

HISTORY OF 19.7.3 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center and Archives under:

GB 67-1, Order Adopting Rules and Regulations for Administration of Chapter 33, New Mexico Laws of 1967 Concerning Consolidation of Mining Properties, 7/7/67.

GB 68-1, Order of Consolidation, Application of Kerr-McGee Corp., 4/23/68.

History of Repealed Material: [RESERVED]