

3 IN THE MATTER OF THE HEARING CALLED
4 BY THE OIL CONSERVATION DIVISION FOR
5 THE PURPOSE OF CONSIDERING:

6 APPLICATION OF ENERGEN RESOURCES
7 CORPORATION TO AMEND COMPULSORY
8 POOLING ORDER NUMBER R-10154,
9 SAN JUAN COUNTY, NEW MEXICO.

CASE NO. 15072

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

April 3, 2014

Santa Fe, New Mexico

14 BEFORE: RICHARD EZEANYIM, CHIEF EXAMINER
15 GABRIEL WADE, LEGAL EXAMINER

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17 This matter came on for hearing before the
18 New Mexico Oil Conservation Division, Richard Ezeanyim,
19 Chief Examiner, and Gabriel Wade, Legal Examiner, on
20 Thursday, April 3, 2014, at the New Mexico Energy,
21 Minerals and Natural Resources Department, 1220 South
22 St. Francis Drive, Porter Hall, Room 102, Santa Fe,
23 New Mexico.

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1 (8:20 a.m.)

2 EXAMINER EZEANYIM: This is what we're
3 going to do. We scheduled these cases today. The other
4 hearing today will be, number one, 15072. This is the
5 case that we continued today to hear first thing in the
6 morning. We are going to, first of all, hear the
7 argument for a motion to dismiss or not dismiss, and
8 after that, we are going to complete hearing the case.
9 And we are going to write one order. If we dismiss the
10 case, then we don't have any case. If we deny the
11 motion to dismiss, we don't have any case; then the case
12 is dismissed. But if we -- I mean, if we grant a motion
13 to not dismiss -- or how do you put it -- then we are
14 going to write an order, both of them, whether we
15 dismiss the case pending on that motion or not.

16 And after that, there are two cases, Case
17 Number 15098 and Case Number 15082. Those cases have
18 been heard previously. And I'm going to have to call
19 the case to meet requirements, so we will take time.
20 And then the other cases will be in the format we have
21 on the docket. I hope this does not present any problem
22 to anybody.

23 With that being said, the first case I will
24 call is the last case on the docket, as I told you, and
25 that's Case 15072. This case has been continued to

1 today from previous hearings, and this is application of
2 Energen Resources Corporation to amend compulsory
3 pooling Order Number R-10154, San Juan County, New
4 Mexico.

5 What I'm calling right now is calling for
6 the parties to present their arguments and the motion to
7 dismiss or not dismiss. After that argument is taken,
8 we're also going to call the case for purposes of
9 hearing today. And then we make examination in one
10 order.

11 Is that okay to everybody? Is that going
12 to be a problem to anybody?

13 I'm not calling for appearances yet. I'm
14 trying to see if the format I'm presenting is okay with
15 everybody. We will hear the motion to dismiss or not
16 dismiss, and then we hear the case, also, today, so we
17 can get everything in one package and make a
18 determination.

19 MR. HALL: That's fine, Mr. Examiner. We
20 will proceed as you wish. I would offer, if there are
21 one or two cases that just involve notice that are very
22 short, we wouldn't mind if they proceeded.

23 EXAMINER EZEANYIM: That's okay. We can
24 get to them, because we gave you the chance to do it
25 first thing in the morning. We are going to be done

1 with this case today.

2 MR. HALL: Just making the offer.

3 EXAMINER EZEANYIM: Very good. Thank you
4 for that offer.

5 Okay. At this point, I call for
6 appearances on Case 15072. Call for appearances.

7 MR. HALL: Mr. Examiner, my name is Scott
8 Hall with the Montgomery & Andrews Law Firm here in
9 Santa Fe appearing on behalf of Energen Resources
10 Corporation. Appearing with me also is Sharon Shaheen
11 from our office.

12 And I will have one witness this morning.

13 MR. INGRAM: Mr. Examiner, Steve Ingram
14 from Cavin & Ingram. We represent the mineral owner,
15 Frank King, opposing the pooling application of Energen.

16 And with me is Mr. King. And I may have
17 one witness, depending on whether we believe it's
18 necessary or not.

19 EXAMINER EZEANYIM: Okay. Very good. I
20 just got your amended PR statement yesterday, which is
21 good.

22 Any other appearances?

23 We are going to start with motions. I
24 think what we are going to do is start with the motion
25 to dismiss and then counter with the motion not to

1 dismiss, so that's the order we're going to follow.

2 Who filed the motion to dismiss?

3 MR. INGRAM: I filed the motion to dismiss.

4 EXAMINER EZEANYIM: Okay. Then you are
5 going to go first.

6 MR. INGRAM: You want me to be over here
7 (indicating)?

8 EXAMINER EZEANYIM: Yeah, anywhere.

9 You may proceed, Mr. Ingram. What we're
10 going to hear at this time, at this point, is to see why
11 you want the case dismissed. Don't forget the
12 obligations of the OCD. Bear that in mind, and also I
13 want you to bear in mind that OCD has nothing to do with
14 the district court. So we have two different very
15 dichotomous duties. Whatever the district court has, I
16 have no business with the district court, and I don't
17 think the district court would listen to these
18 administrative proceedings.

19 But we are working for the State of New
20 Mexico under the Oil and Gas Act, and we have our
21 obligations to implement the Oil and Gas Act through
22 compulsory pooling, through everything. So bear that in
23 mind. Go ahead and let us know why you want the case
24 dismissed.

25 MR. INGRAM: Thank you, Mr. Examiner.

1 On behalf of Frank King and Paula Elmore,
2 formally known as Paula King, who are the mineral owners
3 at issue here, we're asking the OCD to dismiss the
4 application of Energen to amend R-10154, which is a
5 20-year old pooling order, on the basis that it would
6 not be in the proper exercise of the OCD's jurisdiction
7 to hear this application at this time and under these
8 circumstances.

9 As the Hearing Examiner has already pointed
10 out, the OCD wants nothing to do with the pending
11 lawsuit brought by the Kings against Energen and the
12 other parties regarding this matter, and I would echo
13 that. And we believe that that underscores why the OCD
14 should not exercise its jurisdiction and rule on
15 Energen's application to amend the pooling order at this
16 time.

17 The Kings have filed suit to have the Court
18 declare the lease of their minerals expired for
19 nonproduction, to obtain relief for the violation of
20 New Mexico's pooling statute and to recover damages for
21 revenues unpaid to them from the wells to which their
22 minerals have been contributed. Those are all matters
23 that have been given to the federal court's
24 jurisdiction, and the federal court will hear those
25 matters and determine them.

1 Thus, there is pending -- was pending prior
2 to the time that Energen brought the present
3 application, contested litigation that involves
4 contractual disputes, title disputes and issues
5 regarding damage recovery, all of which are undisputedly
6 outside the OCD's jurisdiction.

7 Because of the passage of time, 20 years,
8 and the changed circumstances, for the OCD to now hear
9 Energen's application to retroactively pool the Kings'
10 minerals 20 years after the fact would not be in the
11 proper exercise of the OCD's jurisdiction and in pursuit
12 of its authority to prevent waste and protect
13 correlative rights. Absent that authority, the OCD
14 shouldn't proceed on this. We're not asking and are not
15 submitting to the OCD's jurisdiction to resolve this
16 dispute regarding the lease rights and those contract
17 issues. Those are an exclusive province of the courts.

18 We also don't believe the Doctrine of
19 Primary Jurisdiction applies here because there isn't
20 concurrent jurisdiction over the issues. As we've just
21 said, the OCD doesn't have jurisdiction over the
22 contract and title issues and the damage issues that
23 have been brought in federal court.

24 I would cite the Examiner to the Eldridge
25 case cited in our motion to dismiss. In that case, a

1 workers' comp judge was instructed to defer further
2 activity in the administrative proceeding until the
3 Court heard an underlying tort suit that involved the
4 issues underlying the administrative proceeding.

5 The retroactive relief sought by Energen is
6 extraordinary and improper in this case. Mr. Hall may
7 have something otherwise, but I haven't found precedent
8 for the OCD to make pooling retroactive to 20 years
9 back, under these circumstances, where the wells have
10 already paid out and litigation was by then pending
11 regarding the underlying issues. The Godfrey case, I
12 cite in our motion, indicates that it would be improper
13 for the administrative agency to, quote, unquote,
14 "change history" by making a retroactive pooling order
15 depending on the circumstances.

16 We also believe that for the OCD to rule on
17 this matter would be to defeat the purpose of 7218B of
18 the Oil and Gas Act, which places the burden on the
19 operator to ensure that all interests are properly
20 pooled and would defeat the purpose of -- or frustrate
21 the opinion given in the Utton case by the New Mexico
22 Supreme Court, which emphasizes the due process
23 protections to be afforded mineral interests and the
24 fact that meaningful notice must be given to mineral
25 interest owners. For an operator to not properly pool a

1 given mineral owner's interest and then to be able to go
2 back 20 years later and obtain a retroactive pooling
3 order would be to frustrate the purpose of the pooling
4 statute.

5 From an alternative standpoint, we also
6 believe that it would be premature to the OCD to hear
7 Energen's application at this time. On its face, it's
8 conditional as to the determination of the status of the
9 Kings' lease of their minerals. That determination is
10 to be made by the Court. On that basis, we don't
11 believe there is really any effective relief that can be
12 granted by the OCD here when it hasn't been determined
13 whether or not there are, in fact, unleased mineral
14 interests to be pooled.

15 We also don't believe that the OCD should
16 weigh in on this matter at this time because of the
17 changed circumstances. There is no practical relief
18 that can be afforded, and the OCD should decline to
19 exercise its jurisdiction on that basis.

20 The two wells that were drilled, the Flora
21 Vista 19 #2 and 19 #3 wells that were drilled on the
22 basis of the 1994 pooling order have long paid out. The
23 Kings were not given an opportunity to participate in
24 that well as required, and there is no effective way, we
25 believe, to do that now. And we don't see how, for

1 example, a nonconsent penalty could be assessed when no
2 opportunity to participate was given to the Kings to
3 begin with.

4 Paragraph eight of the pooling order at
5 issue states that its purpose is to afford the owner of
6 each interest in the unit the opportunity to recover
7 without unnecessary expense his fair share of gas in the
8 pool. We don't believe that that purpose is being
9 served by retroactively pooling the Kings' minerals now,
10 and we don't believe that it would serve the purpose of
11 protecting correlative rights and preventing waste.

12 Rather, we believe that OCD to accept
13 Energen's invitation to retroactively pool 20 years
14 after the fact, when there is litigation pending on
15 these very issues and concerning, among other things,
16 the failure to follow the pooling statute, would be to
17 interfere with the federal court's jurisdiction and
18 would unduly involve the OCD in a matter that's already
19 been conferred to the jurisdiction of the courts.

20 For that reason, we'd ask that the Hearing
21 Examiner grant our motion to dismiss Energen's
22 application.

23 EXAMINER EZEANYIM: Thank you, Mr. Ingram.

24 As you know, I'm not an attorney. I'm
25 going to have to defer to Mr. Wade to see if he wants to

1 ask questions, because this is outside my realm. I'm
2 not an attorney. That's why he's here.

3 Do you want to ask him questions now as an
4 attorney, or do you want opposing party to state his
5 position before?

6 MR. WADE: Let's let Mr. Hall speak first.

7 EXAMINER EZEANYIM: Go ahead.

8 MR. HALL: Mr. Examiner, what we're
9 presenting you today is what we think you should treat
10 as a very simple ordinary compulsory pooling case. It
11 involves, really, no exotic issues that we need to worry
12 about. In fact, it is simpler than most compulsory
13 pooling cases.

14 We seek the consolidation of a formerly
15 joined interest that is apparently -- apparently fallen
16 out of lease and, therefore, is not consolidated in the
17 well, and we're asking that be done retroactively as the
18 statute directs you to do. We're not here to discuss
19 well costs. We're not here to discuss the nonconsent
20 penalty, the risk penalty.

21 We're simply here to do two things: One,
22 consolidate the interest in accordance with the statute
23 and provide for the reimbursement of lease operating
24 expenses going forward, very simple thing to do. And it
25 is something that is within the exclusive jurisdiction

1 of the Division to do. No court can do these things.
2 Only the OCD can do these things by statute. You should
3 not be deterred by the fact that there is litigation
4 pending over a title-failure issue. That has no bearing
5 on what you do here today.

6 And I think, as Mr. Ingram has described,
7 the context of the lawsuit pending in front of the
8 federal district court, he has described it as involving
9 contractual rights, title disputes and damage recovery.
10 None of those issues are involved within the scope of
11 the application we've brought before you today. It's
12 simply to consolidate an unjoined interest.

13 Why do we do that? Because we have a duty
14 as the operator under the statute, 70-2-17 and 70-2-18,
15 to do that. Technically, if you do not do that, the
16 well is not entitled to receive an allowable. I'll just
17 point that out. And I would refer you to Rule
18 19-15-16-20, and I think you may be familiar with that
19 rule. I don't think anyone here is asking for the
20 cancellation of the allowable.

21 EXAMINER EZEANYIM: 19-15 --

22 MR. HALL: 19-15-16-20A3.

23 And so we recognize that we have an
24 obligation to consolidate all interests in a well.

25 Recently, the Division, in the Reliant

1 Exploration case explained to us that not only does the
2 operator have a duty to consolidate the interest --

3 Did you have a question?

4 EXAMINER EZEANYIM: No.

5 MR. HALL: Okay. Not only does the
6 operator have a duty to consolidate the interest, but
7 the Division, if it is presented with the basics of a
8 compulsory pooling situation, an operator coming in
9 demonstrating the right to drill through ownership or
10 control of lease interests and having made an offer to a
11 nonparticipating party to participate in the well by
12 lease, farm-out, what have you, if all of those showings
13 are made to the Division, then it is the Division that
14 has the duty to consolidate the interest. That is all
15 we are asking you to do.

16 And, again, do not be confused by the
17 pendency of the litigation. We have cited to you
18 several cases that the Division has dealt with where
19 there was actually quite heated litigation. It involved
20 the Timber-Sharp-Arrington [phonetic] cases. The
21 Chesapeake-Sanchez [phonetic] cases were two cases that
22 I was involved in.

23 In fact, in the Timber-Sharp case, Director
24 Rotenberry encouraged the parties to proceed with their
25 litigation over an underlying title failure. She found

1 in that case that resolution of that separate legal
2 issue helped facilitate the Division's function in the
3 consolidation of the interest and getting a well
4 drilled.

5 So that's all we're asking you to do today,
6 Mr. Examiner, is fulfill your statutory obligation as a
7 Hearing Examiner and, through the Division director, to
8 consolidate an unjoined interest. It is as simple as
9 that.

10 EXAMINER EZEANYIM: Okay. Thank you very
11 much.

12 I pass it over to Mr. Wade.

13 MR. WADE: Mr. Ingram, if the Kings are
14 successful in their claim in federal court, what do you
15 think the effect would be on the OCD order if it were to
16 forcibly pool retroactively?

17 MR. INGRAM: If we're successful, then one
18 of the pieces of relief that we will obtain is a
19 declaration that the lease had expired by its terms for
20 nonproduction prior to the '94 pooling proceeding, and
21 on that basis, the pooling proceeding that occurred in
22 '94 was deficient and the actions of the operator were
23 in violation of 70-2-18B of the Oil and Gas Act.

24 MR. WADE: What would you then do with that
25 claim? In other words, if another action was brought to

1 forcibly pool the Kings 20 years later, how would you
2 defend that?

3 MR. INGRAM: Well, if we were dealing with
4 a new proceeding today --

5 MR. WADE: Correct.

6 MR. INGRAM: -- and the '94 proceeding
7 hadn't happened or --

8 MR. WADE: Assuming it did happen.

9 MR. INGRAM: Okay. And they're just now
10 seeking to pool? Well, it would depend on whether the
11 Kings had been approached and given the opportunity, as
12 required, to participate in the well, which they had
13 not -- has not occurred, whether that had been done or
14 not. And, again, our reason for being here is that the
15 Kings were not given the opportunity to participate in
16 these wells. They were not notified of the pooling
17 proceedings, and they're a lessee who, we contend, did
18 not hold any leasehold rights at the time; instead,
19 contributed to their minerals and never accounted to
20 them for the revenues generated.

21 MR. WADE: Maybe I'm not asking it
22 correctly. What relief would you ask for from the OCD
23 at that point? Would you ask that they not be pooled at
24 all?

25 MR. INGRAM: Well, I mean, again, if they

1 were given the opportunity, depending on the
2 circumstances, you know, maybe they would have leased,
3 or, you know, maybe they would have participated as a
4 working interest owner.

5 MR. WADE: 20 years ago?

6 MR. INGRAM: Yes.

7 MR. WADE: Do you see an issue in the
8 district court case that would estop any of the issues
9 that will be brought up here today in the forced
10 pooling?

11 MR. INGRAM: Well, yes. We have an issue
12 because we do have -- one of the claims that is pending
13 is the violation by -- of the duty by the operator and
14 all persons who occupy that status and are liable under
15 the pooling statute for having to -- failed to have
16 properly pooled.

17 The present application is, in part, an
18 attempt to undercut that claim that's pending in court,
19 by going back and retroactively pooling and saying, Oh,
20 well, it's no harm, no foul; we've gone back and
21 retroactively pooled now.

22 MR. WADE: Mr. Hall, would you like to
23 respond to either of those questions I've asked?

24 MR. HALL: I don't quite understand that
25 last point. The interests are consolidated or they're

1 not. What's pending before the federal district court
2 is ultimately a quiet title. A judge will make a legal
3 determination whether or not the underlying oil and gas
4 lease has terminated. If it has, then it is an unjoined
5 interest, and the statute requires us to join somehow.

6 If the judge determines that the lease
7 remains in good standing, then this interest has been
8 pooled all along. And I think what we would do at that
9 point is come back to the Division and ask that this
10 most recent order be vacated and allow the original
11 order to proceed in effect.

12 MR. WADE: With that in mind, do you feel
13 it is premature to bring this forced pooling case?

14 MR. HALL: I do not. It's alleged by the
15 Kings. The interest is no longer under lease, and it is
16 unconsolidated. Right now the operator is prevented
17 from being reimbursed for lease operating expenses going
18 forward and apparently within a single spacing unit,
19 because there is an apparent unleased interest. There
20 is another entity out there that could claim the rights
21 to drill. That's primarily why we consolidate interests
22 within the spacing units. We can't have that.

23 EXAMINER EZEANYIM: I think whether you
24 have a quiet title or a noisy [sic] title, the OCD has
25 no jurisdiction over a noisy title or a quiet title. I

1 don't know what that means.

2 This is the point of the OCD. The OCD has
3 nothing to do with the district court. The lease
4 obligation -- I just want you to correct me if I'm
5 wrong, because I'm not an attorney. We don't have
6 anything to do with court. Whatever they decide is what
7 they decide.

8 And what the OCD does is based on the Oil
9 and Gas Act --

10 MR. HALL: That's right.

11 EXAMINER EZEANYIM: -- and we have the
12 obligation to share [sic] that duty, and that's why we
13 are here.

14 Now, this question I'm going to ask would
15 be for both of you, because I don't understand the legal
16 here. He (indicating) has done a good job asking you
17 what we need to do to make an determination on that
18 motion.

19 But my point is: Let's say this hearing is
20 not going on now, and we go to district court. At this
21 time, you are probably the plaintiff; either wins or
22 loses. How does it affect the proceeding here today?
23 Let's say that happened.

24 Let's say, for example, you win in the
25 district court. Even if you win, we still have to

1 determine if this is under the Compulsory Pooling Act,
2 because that is what the New Mexico Legislature uses to
3 make sure we protect the minerals. Let's say you win.
4 Okay. Are you saying we are not going to do compulsory
5 pooling here? And if you lose -- I'm not saying you're
6 going to lose, but just using an example, how does that
7 affect you? That is really the point. So I want to
8 explain myself on the district court. I don't pretend
9 to be a lawyer, and I don't want to meddle. I don't
10 want to deal with quiet or noisy titles. And I want to
11 deal with the compulsory pooling orders. So there are
12 those two. I want you to tell me what would happen if
13 either lose or win or whatever. I don't know. How is
14 it going to affect our obligation to carry out our
15 duties as the OCD?

16 MR. HALL: I think your sense on the issue
17 is correct. There is no jurisdictional overlap between
18 the Division and the court. They are separate remedies,
19 separate claims.

20 If we are in court, I cannot go before the
21 judge and ask the district court judge to force pool
22 interests. She does not have that authority. It's
23 purely a statutory proceeding under the Oil and Gas Act,
24 and that is not before the district court judge. So
25 what you do does not affect the district court

1 proceeding, and the district court proceeding does not
2 affect what you do.

3 Where there may be a common question is
4 whether or not this interest is under lease. If it is
5 under lease, then there will no need to force pool the
6 interest. That remains an outstanding question right
7 now. That's a question, however, that the OCD cannot
8 determine. That is for the district court. That will
9 be determined later.

10 In the meantime, we have an apparent
11 unjoined interest, so that's why we're before the
12 Division.

13 EXAMINER EZEANYIM: I want Mr. Ingram to
14 make comments on my questions, because I really directed
15 that question to you. Can you make comments? And I
16 want you to repeat that question because it's very
17 important.

18 First of all, before we started this
19 hearing, I said I don't have anything to do -- the OCD
20 has nothing to do with the district court. In fact,
21 anything we do here, you can take it to district court
22 and my hands are out, and I'm not going to be called as
23 a witness. I'm just discharging my duties under the Oil
24 and Gas Act.

25 So my question, knowing that I don't have

1 anything -- I can even read some paragraphs you wrote
2 here, which you are perfectly right. I have no
3 authority to do anything that the district court does.

4 So my question is: The fact that some case
5 is in district court, whether it's this case or any
6 other case, what are you going to do with our
7 proceedings here at OCD? You-all know the Oil and Gas
8 Act more than I do. I just know enough to be able to
9 implement it, but you know more than I do. So what does
10 that have to do with compulsory pooling, because we have
11 to be able to consider to dismiss the case or not. So I
12 want to know whether to dismiss or not to dismiss it.

13 So what has the district court case have to
14 do with OCD? That's really the question, the crux of
15 the matter.

16 MR. INGRAM: Here's what the district court
17 case has to do with the OCD proceedings, Mr. Examiner.
18 The district court is going to determine the status of
19 this lease and whether this is an unleased mineral
20 interest that's subject to Energen's application to pool
21 or not. And we have asked the district court to hear
22 our claims regarding the violation of the pooling
23 statute, again another issue that's devoted to the
24 court's jurisdiction.

25 So what we're asking is that the OCD,

1 because of that, dismiss this proceeding. Let the
2 district court proceeding proceed, and, you know, we
3 should have a determination at the end of this year or
4 early next year as to the status of the Kings' minerals
5 as leased or unleased. And at that time, we'll then
6 know whether or not there are further proceedings that
7 need to be brought before the OCD.

8 At this time, we don't know that, and for
9 the OCD to weigh in on this at this time, during the
10 pendency of that lawsuit, because of the issues
11 presented, would involve the OCD in that federal court
12 proceeding, which is something that no one wants to
13 occur. So that's why we believe that they are -- that
14 they would impact each other, and it would be improper
15 for the OCD to go forward with this at this time because
16 of that district court proceeding.

17 EXAMINER EZEANYIM: Mr. Wade?

18 MR. WADE: I think you answered my
19 follow-up question that I have.

20 I was going to ask you (indicating) what is
21 the harm of compulsory pooling for the Kings, at this
22 point, going to be? I think you've explained and
23 answered previously, but I'd like you to reiterate.
24 What is the harm of not force pooling the Kings at this
25 point.

1 MR. HALL: Well, we have a violation of the
2 consolation statutes, both of them, because there is an
3 unjoined interest. And in addition to that, there is a
4 practical consideration. The operator is prevented from
5 recovering its proportionate share of monthly lease
6 operating expenses and overhead attributable to this
7 interest.

8 EXAMINER EZEANYIM: Anybody have anything
9 else to say?

10 MR. HALL: No, sir.

11 EXAMINER EZEANYIM: Do you have anything
12 else to say?

13 MR. INGRAM: No.

14 EXAMINER EZEANYIM: We can't make a
15 determination here today. We are going to go ahead and
16 hear the case. That doesn't mean we are not going to
17 dismiss or oppose the motion, but it depends because we
18 haven't made a decision. So I don't want you to
19 think -- because somebody called me, Mr. Ingram, from
20 your office: Can we hear this? Even if your motion is
21 upheld, we are still going to hear the case, so we don't
22 have to come back. If it's the other way, we are going
23 to hear -- we will deal with this case, get it out of
24 the way. I don't want it to be overwhelmed with the
25 docket, so we need to get it out.

1 So at this point, I'm going to have the
2 witnesses -- do you want to take a break?

3 MR. HALL: Yes, a couple of minutes to
4 distribute the exhibits.

5 EXAMINER EZEANYIM: Okay. Let's take about
6 a five-minute break, and then we are going to swear in
7 the witnesses.

8 (Break taken, 8:52 a.m. to 9:00 a.m.)

9 EXAMINER EZEANYIM: At this point, I call
10 Case Number 15072, application of Energen Resources
11 Corporation to amend compulsory pooling Order Number
12 R-10154, San Juan County, New Mexico.

13 Call for appearances.

14 MR. HALL: Mr. Examiner, Scott Hall and
15 Sharon Shaheen of Montgomery & Andrews here in Santa Fe
16 appearing on behalf of Energen Resources Corporation.

17 EXAMINER EZEANYIM: Any other appearances?

18 MR. INGRAM: Your Honor, Steve Ingram, of
19 Cavin & Ingram, Albuquerque, New Mexico, for Frank King
20 and Paula King.

21 EXAMINER EZEANYIM: Any other appearances?

22 Anybody who is going to testify in this
23 case stand up and be sworn. Please state your name and
24 then be sworn, please.

25 MR. LEWIS: Bryan Lewis.

1 MR. KING: Frank King.

2 (Mr. Lewis and Mr. King sworn.)

3 MR. HALL: And I would ask Mr. Lewis to
4 take the stand as our first witness.

5 EXAMINER EZEANYIM: You may proceed.

6 BRYAN LEWIS,

7 after having been first duly sworn under oath, was
8 questioned and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. HALL:

11 Q. For the record, state your name, please, sir.

12 A. Bryan Lewis.

13 Q. Mr. Lewis, where do you live and by whom are
14 you employed?

15 A. I live in Farmington, New Mexico, and I'm
16 employed by Energen Resources.

17 Q. And what is your job there?

18 A. I'm a district landman.

19 Q. For the San Juan Basin?

20 A. For the San Juan Basin.

21 Q. Have you previously testified before the
22 Division and had your credentials as an expert petroleum
23 landman accepted and made a matter of record?

24 A. I have.

25 MR. HALL: At this time, Mr. Examiner, we

1 re-tender Mr. Lewis as a qualified petroleum landman.

2 EXAMINER EZEANYIM: So qualified.

3 Q. (BY MR. HALL) Mr. Lewis, would you please
4 explain to the Hearing Examiner what Energen is seeking
5 by its application today?

6 A. We are seeking to force pool a potentially
7 unleased mineral interest according to the statute and
8 to have the ability to recover lease operating and
9 administrative overhead.

10 Q. Are we asking for an amendment to an existing
11 compulsory pooling order?

12 A. Yes.

13 Q. And is that Order Number R-10154?

14 A. It is.

15 Q. Would you describe for the Hearing Examiner the
16 spacing unit in the two wells that are the subject of
17 this proceeding?

18 A. The spacing unit is the south half of Section
19 19, Township 30 North, Range 11 West for the Fruitland
20 Coal. It is the Flora Vista 19 #2 and the Flora Vista
21 19 #3 wells.

22 Q. Are these wells producing from the Fruitland
23 Coal Formation?

24 A. They are.

25 Q. Is Energen currently the operator of those

1 wells?

2 A. We are.

3 Q. Mr. Lewis, I'll refer you to Exhibit Number 1.
4 Could you identify that, and is this a way for the
5 Hearing Examiner to gain some background information on
6 the history of these two wells?

7 A. Yes. It's a chronology of the relevant,
8 important dates and what happened and would be a review
9 outline for them to go by.

10 Q. Would you briefly run through that and give the
11 Hearing Examiner some background?

12 A. Okay. On June 23rd, 1994, the OCD heard the
13 case initially in Case Number 11007 for the two wells in
14 the south half of Section 19.

15 On July 19th of 1994, the OCD issued Order
16 Number R-10154, and that order identifies the interest
17 pool, which included 48.6 percent owned by Norman and
18 Loretta Gilbreath.

19 On August 18th of 1994, the Flora Vista
20 Well #2 was spud by Maralex Resources, a contract
21 operated by our predecessors, SG Interests.

22 October 11th, 1994 was the date that the
23 Flora Vista Well #2 was completed.

24 August 1st, 2004, Energen became the -- or
25 we acquired the interest of SG Interests.

1 Also, on August 1st, we have an effective
2 date for a Joint Operating Agreement for the Flora Vista
3 Well #2, which was signed by Norman and Loretta
4 Gilbreath.

5 August 3rd, the OCD approved the change of
6 operator of the Flora Vista Well #2 from SD Interests to
7 Energen.

8 On November 21st, we spud Flora Vista Well
9 #3. Also on November 21st, we have an effective date
10 for a Joint Operating Agreement covering the Flora Vista
11 Well #3.

12 EXAMINER EZEANYIM: Counsel, please, I need
13 to understand this chronology because it's very
14 important.

15 First of all, Mr. Lewis, do you want to
16 amend Order Number R-10154?

17 THE WITNESS: We do.

18 EXAMINER EZEANYIM: It took you a minute to
19 answer that, so I wanted to make sure.

20 THE WITNESS: We do. We do.

21 EXAMINER EZEANYIM: Because this is on the
22 order. Because if you don't want to amend it, then
23 we're done.

24 THE WITNESS: Right. Yeah (laughter).

25 EXAMINER EZEANYIM: I want to ask you

1 questions on this before I forget them, because this is
2 important, what we're going to do.

3 If you look at July 19, 1994 -- I was
4 looking at these motions, and as you all know, I don't
5 understand the legal implications. But I wanted to ask
6 you about this ownership. Whatever they may be, 48.6,
7 is that what is at stake today? Is it owned by this
8 guy -- who is this guy -- Norman and Loretta Gilbreath,
9 and then it was referred to the Kings? Is that what
10 happened here, because I don't understand it.

11 MR. HALL: Mr. Examiner, we can establish
12 that through some follow-up questions with this
13 witness --

14 EXAMINER EZEANYIM: Okay.

15 MR. HALL: -- or I can explain it to you.

16 EXAMINER EZEANYIM: No, no. I can
17 understand it, because I really need to know what
18 happened 20 years ago. It will help with the decision
19 we make. I want to know who owned what, from what to
20 what, you know. We're going through the motions now.
21 We haven't made a decision, but we're going through the
22 real hearing to determine what's going to happen.

23 MR. HALL: Right. And we will get there
24 through the testimony. We'll establish that for you.

25 EXAMINER EZEANYIM: Excellent. Go ahead.

1 Q. (BY MR. HALL) Why don't we turn to Exhibit
2 Number 2, Mr. Lewis? Is Exhibit Number 2 a copy of
3 Order Number R-10154 that was entered in 1994 pursuant
4 to the application of Maralex Resources?

5 A. It is.

6 Q. And it affected the lands that are the subject
7 of this application today?

8 A. It does.

9 Q. And this is the order that you're seeking to
10 amend to bring in unjoined interests; is that right?

11 A. That is correct.

12 Q. If we look at Exhibit A to that order, does
13 Exhibit A explain to the Hearing Examiner the interests
14 that were committed to the well participating in the
15 well and then the nonparticipating interests that were
16 force pooled?

17 A. It does.

18 Q. And was the force-pooled interest comprised of
19 approximately 48.6 percent leasehold interest owned by
20 Norman and Loretta Gilbreath?

21 A. It does [sic].

22 Q. Now, of the interests that were owned or
23 controlled by Norman and Loretta Gilbreath, did they
24 include the Kings' oil and gas interest?

25 A. They did.

1 Q. Let's look at Exhibit 3, if you could explain
2 that to the Hearing Examiner.

3 A. Exhibit 3 is a plat of Section 19, Township 30
4 North, Range 11 West and specifically the south half of
5 the section, which is our Fruitland Coal spacing unit.
6 And the different -- the different colors represent
7 different leases.

8 The King lease is shown as the west half of
9 the northwest quarter of the southeast quarter, 18.37
10 acres of that. Down below in the tabulation, it shows
11 which tracts are Gilbreath tracts and which are not
12 Gilbreath tracts. And the very bottom summary
13 summarizes what Gilbreaths brought to the spacing unit,
14 which was 48.6 percent. And if you look up, you can see
15 that the King interest contributed 5.63 percent of that
16 48.6 percent that the Gilbreaths brought to the spacing
17 unit.

18 Q. So on the tabulation of the ownership
19 percentages, the 5.63 percent represents the Kings'
20 ownership interest leased or unleased; is that correct?

21 A. Yes, that's correct.

22 Q. It constitutes approximately 5.6 percent of the
23 well unit?

24 A. Yes.

25 Q. Now, let's look at Exhibit Number 4. Identify

1 that.

2 A. This is the 1972 oil and gas lease that Frank
3 and Paula King signed in favor of Rodney Calvin, and it
4 legally describes their 18.37 acres in the west half of
5 the northwest of the southeast quarter of Section 19.

6 Q. And if you look at the bottom of the lease at
7 paragraph 21, is there a depth limitation?

8 A. There is. The lease covers only from the
9 surface of the earth to the base of the Pictured Cliffs
10 Formation.

11 Q. And is this the lease that the Kings claim may
12 have terminated?

13 A. It is.

14 Q. And have the Kings commenced a lawsuit in court
15 seeking a quiet title to their mineral interests?

16 A. They have.

17 Q. And are they asking for a judicial
18 determination that the oil and gas lease has terminated?

19 A. They have.

20 Q. Have they obtained that determination as of
21 this date?

22 A. No, they have not.

23 Q. In 2004, did the Gilbreaths contribute their
24 lease interest to the Flora Vista Well under two Joint
25 Operating Agreements?

1 A. They did.

2 Q. And if we look at Exhibits 5 and 6, are those
3 excerpted copies of those two JOAs?

4 A. They are.

5 Q. What are the effective dates of those JOAs?

6 A. There is one Joint Operating Agreement dated
7 August 1st, 2004 that covers the #2 well, and we have
8 another JOA dated November 21st, 2004 covering the #3
9 well.

10 Q. And were both operating agreements -- again,
11 what is the quantum of working interest that the
12 Gilbreaths contributed to the wells?

13 A. 48 percent -- 48.6 percent.

14 Q. And that was supposedly inclusive of the Kings'
15 oil and gas lease interest; is that correct?

16 A. That's correct.

17 Q. Now, after you were advised that the Kings'
18 lease may have terminated, did you -- did Energen
19 attempt to obtain a lease covering their unleased
20 mineral interests?

21 A. We did.

22 Q. Look at Exhibit Number 7. Is that a copy of
23 your lease offer made to the Kings?

24 A. It is.

25 Q. And does the letter recite bonus consideration

1 for the lease?

2 A. It does.

3 Q. And did it attach an oil and gas lease form?

4 A. It does -- it did.

5 Q. Was this lease offer ever accepted by the
6 Kings?

7 A. No.

8 Q. Did you get any response at all from the Kings
9 to this lease offer?

10 A. No.

11 Q. In your opinion, Mr. Lewis, has Energen made a
12 reasonable and good-faith offer to obtain a lease
13 covering the Kings' interest?

14 A. We have.

15 Q. Now, in terms of relief that Energen does or
16 does not seek from the Division here today, does Energen
17 seek to recover drilling costs at this point?

18 A. We don't.

19 EXAMINER EZEANYIM: What was the answer?

20 THE WITNESS: No, we don't.

21 EXAMINER EZEANYIM: Why is that?

22 Q. (BY MR. HALL) Have drilling costs already been
23 reimbursed for these two wells?

24 EXAMINER EZEANYIM: Okay.

25 A. They have.

1 Q. (BY MR. HALL) And similarly, Mr. Lewis, is
2 there any need to recover the risk penalty?

3 A. There is not.

4 Q. So any order that the Division enters in this
5 case need not deal -- need not provide for recovery of
6 costs or risk penalties at all?

7 A. No.

8 Q. Does Energen seek authorization to recover
9 producing overhead and operating expenses attributable
10 to the unleased mineral interests?

11 A. Yes.

12 Q. And what producing well overhead rates does
13 Energen seek to charge for the two wells?

14 A. For the #2 well, we seek to charge, for
15 administrative overhead, \$716.93.

16 EXAMINER EZEANYIM: How much?

17 THE WITNESS: \$716.93 for administrative
18 overhead for the #2 well.

19 EXAMINER EZEANYIM: Okay.

20 Q. (BY MR. HALL) That's a producing overhead rate?

21 A. Producing overhead rate, yes.

22 And for the #3 well, \$940.46.

23 EXAMINER EZEANYIM: 900 what?

24 THE WITNESS: \$940.46.

25 EXAMINER EZEANYIM: #3?

1 THE WITNESS: For the #3, yes, sir.

2 Q. (BY MR. HALL) Is that number \$940.96?

3 EXAMINER EZEANYIM: .96?

4 Q. (BY MR. HALL) Just so we're clear on that
5 number.

6 A. 46.

7 Q. How are these rates established?

8 A. For the #2 well, in the 1994 hearing, producing
9 monthly overhead rate was established at \$350 a month.
10 The figure of \$716.93 has been escalated annually by the
11 COPAS annual adjustment factor to arrive at the \$716.93.
12 So it has its roots in the 1994 compulsory pooling.

13 For the #3 administrative overhead, the
14 Joint Operating Agreement that the Gilbreaths signed
15 allowed for a \$609-a-month producing well rate,
16 administrative overhead. That also has since been
17 escalated by the COPAS annual adjustment factor, and
18 that works out to \$940.46.

19 Q. Now, are the overhead rates for these two wells
20 in line with what Energen is charging for other similar
21 Fruitland Coal wells in the area?

22 A. They are.

23 Q. And are you asking, going forward, that the
24 order the Division enters in this case provide for a
25 periodic adjustment of the overhead rates consistent

1 with the COPAS procedures?

2 A. We are.

3 Q. In your opinion, are the monthly lease
4 operating expenses and overhead rates charged by Energen
5 reasonable?

6 A. They are reasonable.

7 Q. Look back at the exhibits, Mr. Lewis. Let me
8 ask you: Was Exhibit 1 and then Exhibits 3 through 8
9 prepared by you or compiled by you from records of
10 Energen Resources Corporation?

11 A. I'm sorry. The numbers again, the exhibit
12 numbers?

13 Q. I'll give you those again: Exhibit 1 -- and
14 then you skipped Exhibit Number 2; that is the OCD
15 order -- and then Exhibits 3 through 7. I misspoke. 3
16 through 7.

17 A. Yes. 1 and 3 through 7 were, yes, sir.

18 MR. HALL: Mr. Examiner, we would at this
19 time move the admission of 3 through 7 and ask you to
20 take administrative notice of Exhibit Number 2, which is
21 the order.

22 EXAMINER EZEANYIM: Any objection?

23 MR. HALL: I have one more exhibit to move.

24 EXAMINER EZEANYIM: Okay.

25 MR. HALL: Exhibit Number 8 is our notice

1 affidavit in this case.

2 EXAMINER EZEANYIM: Any objection?

3 MR. INGRAM: No objection, Mr. Examiner.

4 EXAMINER EZEANYIM: At this time, Exhibit
5 Numbers 1 and 3 through 8 will be admitted, and the
6 Division will also take administrative notice of Exhibit
7 Number 2.

8 (Energen Resources Corporation Exhibit
9 Numbers 1 and 3 through 8 were offered and
10 admitted into evidence, and administrative
11 notice to be taken of Exhibit Number 2.)

12 MR. HALL: And that concludes our direct
13 examination of this witness.

14 EXAMINER EZEANYIM: Mr. Ingram?

15 MR. INGRAM: Thank you.

16 CROSS-EXAMINATION

17 BY MR. INGRAM:

18 Q. Morning, Mr. Lewis.

19 A. (Indicating.)

20 Q. I have a few questions for you. Does Energen
21 seek the benefit of the prior pooling order that was
22 obtained by Maralex in seeking now to amend that order?

23 A. I'm sorry. Could you say that one more time?

24 Q. Certainly.

25 Mr. Lewis, are you seeking the benefit of

1 the prior pooling order obtained by Maralex in 1994 and
2 asking the Hearing Examiner here today to amend it?

3 A. Yes.

4 Q. Are you -- when I say you, is Energen adopting
5 what was done by Maralex in the 1994 pooling proceeding?

6 A. Yes.

7 Q. Are you familiar with the record in Case Number
8 11007, which was the proceeding concerning the pooling
9 of interests in connection with the Flora Vista 19 #2
10 well?

11 A. By the record -- what do you mean by the
12 record?

13 Q. Are you familiar with the transcript of the
14 testimony that was given in that proceeding or the
15 exhibits that were introduced in that proceeding?

16 A. I'm not familiar with the record, as you state
17 that.

18 Q. Okay. Do you know when the 19-2 well paid out?

19 A. Not off the top of my head.

20 Q. And I should say the Flora Vista 19 #2 well.

21 Do you know when the Flora Vista 19 #3 well
22 paid out?

23 A. Again, not off the top of my head.

24 Q. Has it been some time?

25 A. It didn't pay out last week or last year. It's

1 hard to quantify "some time."

2 Q. The 19-2 was drilled in late '94 or early '95,
3 and then the 19-3 was drilled in 2004 or 2005. Does
4 that comport with your recollection?

5 A. Right.

6 Q. And would it stand to reason that the payout
7 would have occurred within a few years after those
8 respective spudding dates?

9 A. It would stand to reason.

10 Q. So your application to amend the pooling order
11 that was filed in this case, Mr. Lewis, states that it
12 does seek a 200 percent risk factor, but, in fact, you
13 say here today there is no risk penalty that's sought by
14 Energen?

15 A. That's correct. We're not seeking a risk
16 penalty.

17 Q. And, in fact, the 200 percent risk factor that
18 was mentioned in your application, that's the risk
19 factor applicable today. Are you familiar with the fact
20 that in the '94 proceeding, it was, I believe, 156
21 percent risk factor that was applied?

22 A. Right.

23 Q. To your knowledge, were Frank and Paula King
24 given the opportunity to consent to the 19 #2 well back
25 in 1994 before these original pooling proceedings were

1 brought?

2 A. I don't -- I don't know the answer to that
3 question.

4 Q. The Energen Exhibit 2 you referred to -- let me
5 back up.

6 Your Energen Exhibit Number 1, under July
7 19th, '94, you said that the order identifies the
8 interest pooled as, quote, "'whatever they may be' as
9 48.6 percent owned by Norman and Loretta E. Gilbreath."
10 And I'm sorry, I wasn't able to find in your Exhibit 2
11 order where it says "whatever they may be." Can you
12 point that out to me?

13 A. Page 3 of the order under "It Is Therefore
14 Ordered That," paragraph number one, "All mineral
15 interests, whatever they may be, in the Basin-Fruitland
16 Coal Gas Pool...."

17 Q. Thank you, Mr. Lewis.

18 So that 48.6 percent owned by Norman and
19 Loretta Gilbreath as concerns that 48.6 percent, a
20 portion of that is comprised of the Kings' minerals,
21 correct?

22 A. That's correct.

23 Q. And this was pooled on the basis of the
24 Gilbreaths owning leasehold interest concerning the
25 Kings' minerals, correct?

1 A. That's correct.

2 Q. And you're aware, are you not, that there is
3 presently a court action pending to determine whether or
4 not the Gilbreaths, in fact, held a leasehold interest
5 concerning the Kings' minerals?

6 A. I'm aware of that.

7 Q. But at least in '94, Maralex was proceeding
8 under the assumption that the Gilbreaths held the Kings'
9 minerals through the lease that they had taken or their
10 predecessor had taken from the Kings; is that correct?

11 A. It would appear so.

12 Q. Now, do you know whether Maralex made a
13 determination of whether or not the King lease, in '94,
14 was held by production or otherwise held by shut-in
15 royalty or by some other mechanism?

16 A. I don't know what Maralex did, no.

17 Q. Did Maralex make any kind of determination when
18 it took over operations in 2004?

19 A. I don't know. Again, I was not on board with
20 Energen at the time.

21 Q. Do you know whether Maralex checked the
22 production records on file with the OCD regarding the
23 Wright #1 well, which was supposedly holding this lease
24 as of '94?

25 A. I can't answer for Maralex's actions.

1 Q. Would you be able to answer for Energen at the
2 time it took over operations?

3 A. Again, I was not on board at the time, and I
4 did not find where they objected.

5 Q. Are you now aware that the Wright #1 well,
6 which supposedly held the lease of the Kings' minerals,
7 had no production reported to the OCD from May of '90
8 through February of '91 and from April of '91 through
9 February of '96?

10 A. I'm aware that there are some gaps of
11 production from the Wright #1 well. I don't recall the
12 exact months.

13 Q. Now, you've offered into evidence Energen
14 Exhibit Number 4, which is a copy of the Kings' lease.
15 Have you reviewed this lease to determine whether it has
16 a shut-in royalty clause, for example?

17 A. I have.

18 Q. And does it?

19 A. It does.

20 Q. Where is that?

21 A. Paragraph number four.

22 Q. There is a delay rental clause in paragraph
23 four?

24 A. Sorry. It's been a while since I looked at it
25 (reading).

1 Q. Mr. Lewis, maybe we can short-circuit this.

2 I'll tell you that in my review of the lease, I don't
3 see a shut-in royalty clause. Are you aware of one?

4 A. (Reading.)

5 I guess it doesn't.

6 Q. As we sit here today, does Energen believe that
7 the King lease expired by its terms for nonproduction?

8 A. Well, that's a matter of judicial
9 determination.

10 Q. Does Energen take any position on that for the
11 purpose of this proceeding?

12 MR. HALL: Mr. Examiner, let me interpose a
13 very brief objection to that point. It's really beyond
14 the scope of his direct testimony.

15 We acknowledge there is an issue about the
16 pendency of the lease. That is what is pending before
17 the district court, a quiet title action only, and we
18 stated a position in our court pleading.

19 MR. WADE: Grant the objection.

20 EXAMINER EZEANYIM: Okay. Objection
21 sustained.

22 Q. (BY MR. INGRAM) Mr. Lewis, your Energen Exhibit
23 Number 7, this is a copy of your letter to me, as
24 counsel for the Kings, offering to lease their minerals;
25 is that right?

1 A. That's correct.

2 Q. Now, on page 2, you state that your lease offer
3 is contingent upon the lease being terminated no longer
4 in effect; is that correct?

5 A. That's correct.

6 Q. So your lease offer is, in effect, conditional
7 offer conditioned on a determination as to whether or
8 not the lease is in effect; is that right?

9 A. That's correct.

10 Q. And that's a determination that's going to be
11 made by the court, as you said?

12 A. Correct.

13 Q. And that hasn't been performed yet, right?

14 A. Correct.

15 Q. So I guess I'm a little bit confused with how
16 this would be an effective lease offer if it's
17 conditional on some other event happening. In other
18 words, when would this lease become effective if the
19 Kings accepted your lease proposal?

20 A. I guess when it was determined that there the
21 underlying lease was no longer in force.

22 Q. So it wouldn't be a presently effective lease
23 if the Kings had accepted it?

24 A. I guess not. My answer stands, though, you
25 know, not until the underlying lease is deemed

1 terminated.

2 Q. Now, in addition to this lease offer, did you
3 also offer to the Kings an opportunity to participate in
4 the well as a working interest owner --

5 A. No.

6 Q. -- and you're not aware of the Kings being
7 offered the opportunity to participate in the wells
8 prior to this time, right?

9 A. I'm not aware of it.

10 Q. And by this pooling -- this amended order --
11 this amended pooling order you seek, the Kings would be
12 paid on the basis of a one-eighth royalty; is that
13 correct?

14 A. Well, I think that the statute says that they
15 have to be paid on the basis of a one-eighth royalty.

16 Q. However, if they had been offered and had taken
17 the opportunity to participate earlier, they would have
18 been able to participate as an unleased mineral interest
19 and not on a royalty basis, correct?

20 MR. HALL: I'm going to object. It calls
21 for speculation on the part of the witness in what the
22 Kings would have proposed.

23 MR. WADE: When would the proposal have
24 taken place? I'm not clear on that.

25 MR. INGRAM: Well, there is no -- prior to

1 this present pooling application of Energen, our point
2 is that there was no offer to participate, there was an
3 offer to lease only and that they were not previously
4 offered the opportunity to participate. The point being
5 that it is unfair now being subjected to pooling when
6 they never were given the option of determining whether
7 they wished to participate, rather than being, you know,
8 force pooled.

9 EXAMINER EZEANYIM: Objection sustained,
10 whatever that means. Go ahead.

11 (Laughter.)

12 MR. INGRAM: No further questions.

13 EXAMINER EZEANYIM: Thank you.

14 Any redirect?

15 MR. HALL: No, sir.

16 EXAMINER EZEANYIM: Do you have anything?

17 MR. WADE: No.

18 CROSS-EXAMINATION

19 BY EXAMINER EZEANYIM:

20 Q. Mr. Lewis, go to Exhibit Number 3. I want you
21 to explain to me what is happening with Exhibit
22 Number 3. I don't know -- the Kings, in 1990, do they
23 own an interest or acquire an interest after 1990? I
24 don't understand your land description here. I want you
25 to explain to me what's happening with this land

1 description in Exhibit Number 3.

2 A. . Okay.

3 Q. When did the Kings acquire the interest? Did
4 they have an interest from the time the first well was
5 drilled?

6 A. I can't tell you --

7 Q. Well, because I know it was drilled by Maralex,
8 but you acquired Maralex. I wanted to know if you know
9 whether the Kings had an interest in the -- I don't know
10 when they acquired that interest. Can you tell me when
11 they had an interest in this?

12 A. I can't tell you exactly when the Kings
13 acquired their mineral interest, but it was prior to
14 1994 when they acquired their mineral interests.

15 Q. Oh, they still had interest when the initial
16 order was issued? It was issued in 1994.

17 A. They owned the mineral interest then.

18 Q. Did Maralex, who obtained that compulsory
19 pooling order, send a notice of that compulsory pooling
20 at that time?

21 A. I can't find where they sent them a notice, but
22 I understand that Maralex would have thought that the
23 King interest was covered by Gilbreath, and Gilbreath
24 would have been noticed. They would have been given the
25 notice because the Gilbreaths owned the Kings' leasehold

1 interest.

2 Q. Oh, okay. But the Gilbreaths got notice?

3 A. The Gilbreaths did, yes, sir.

4 Q. Okay. Go to Exhibit Number 3 and let's look at
5 what the Kings have. Where in that map do they have
6 that interest that they acquired from the Gilbreaths, on
7 Exhibit Number 3? Can you give me the color?

8 A. It's this yellow right here (indicating).

9 Q. The yellow? Okay. That's the Kings'?

10 A. Yes, sir.

11 Q. And that amounted to 18.37 acres?

12 A. 18.37 acres, yes, sir.

13 Q. And this was part of the Gilbreaths' in 1994
14 when Maralex got this compulsory pooling order, right?

15 A. Correct.

16 Q. If you go to Exhibit Number 4, what is that
17 telling us? Is this an agreement between who and who?

18 A. This is a lease agreement between Frank and
19 Paula King, as lessor, and Rodney P. Calvin, as lessee,
20 covering their 18.37 acres in Section 19.

21 Q. And then the Kings signed this agreement,
22 right?

23 A. The Kings signed it, yes, sir.

24 Q. I don't have time to read it. Does it expire?

25 And when did it expire? That lease, has it expired? Is

1 it indefinite, or does it expire? Can you tell me that?

2 A. The lease is dated in 1972, and it had a
3 primary term of three years.

4 Q. Three years?

5 A. Three years.

6 Q. So after that three years, it expired?

7 A. No. It would go, after that, for long as
8 production continues. Okay?

9 Q. Okay.

10 A. That's how an oil and gas lease works.

11 Q. Okay. Why the three years?

12 A. That's just a term that they negotiated when
13 the lease was taken.

14 Q. So let's say it's three years, and I haven't
15 drilled the well. Is that when I lose the lease? If I
16 haven't drilled the well after three years, I lose the
17 lease, right?

18 A. Right.

19 Q. If I drill the well, the three years, back
20 then, was continued to be in effect after that three
21 years because the well is producing?

22 A. Correct.

23 Q. See, I'm asking stupid questions --

24 A. No, sir.

25 Q. -- because I don't understand this.

1 A. They're questions I can answer easily.

2 Q. They're very important for my determination.

3 Okay. Go to Exhibit Number 7. And I think
4 in July of last year, you made offer to the Kings,
5 right?

6 A. Sorry. Let me get my exhibit here.

7 Q. Yeah. Exhibit Number 7.

8 A. They've gotten out of order.

9 Okay. Here we go.

10 Q. So it was made in 2000- -- why was the offer
11 made?

12 A. I beg your pardon?

13 Q. Why was that offer made to lease in 2013?

14 A. Well, to bring the King interest into --
15 properly into the unit and case.

16 Q. Go ahead. So if they had accepted this offer,
17 you wouldn't be here today?

18 A. That's correct.

19 Q. You see where I'm going?

20 A. Right.

21 Q. I just want to understand.

22 Now, on the application it talks about a
23 200 percent risk penalty, but the docket didn't mention
24 it. From your testimony, you're not asking for that 200
25 percent?

1 A. No, sir.

2 Q. In 1994, it was 156, until the rule was
3 changed. Of course, you're not asking for any risk
4 penalties after the fact, right?

5 A. No.

6 Q. All you are asking is the overhead rates, not
7 even including the -- you are asking for the producing
8 rate?

9 A. The producing overhead -- the administrative
10 overhead rate and to be able to recover lease operating
11 expenses.

12 Q. Yeah. Sometimes I try to pride myself as a
13 mathematician. Can you tell me how you calculated from
14 450 to well #2; you got 716.93?

15 A. Yes.

16 Q. And on #3, you got 940. I know you are using
17 COPAS. How do you come up with those numbers?

18 A. Well, I have a collection of all of the COPAS
19 annual administrative -- or adjustment factors. I put
20 them in a spreadsheet and I just do the calculation, and
21 it calculates it forwards and backwards to what it
22 should be each year. And for the #2 well, it calculated
23 out to \$716.93 from the \$350. The same on the #3 well.
24 It went from the \$609 to \$940.46. It's just the
25 culmination of all the COPAS adjustment factors for all

1 of those years.

2 Q. So there is a spreadsheet for doing that?

3 A. I have a spreadsheet for that. A person could
4 easily find those COPAS adjustment factors by going to
5 COPAS' Website or possibly Ernst & Young's Website.

6 Q. Okay. Now, what are the input parameters on
7 those spreadsheets? What do you do? Do you get the
8 COPAS -- what do you put in there to get this number,
9 from 350 to whatever you got? What is the input that
10 you put in there?

11 A. In my spreadsheet, I put in \$350 and then the
12 year of 1994, and it automatically calculates the
13 current administrative overhead. My spreadsheet will
14 also calculate backwards and forwards for all the years.

15 Q. Yeah. But you don't know how this spreadsheet
16 comes out with this number? Do you know what it takes
17 into account when you put in 350 and 1994, put in the
18 year? What else does it take into consideration to
19 calculate that number?

20 A. It takes into account all of the COPAS annual
21 adjustment factors for all the years in the interim, the
22 intervening years.

23 Q. So you are seeking to be paid this -- what do
24 you call it -- producing overhead rates --

25 A. Right. Yes, sir.

1 Q. -- if the application is approved?

2 Are you going to make it retroactive to
3 1994? Are you going make them retroactive to 1994 when
4 the first order was issued? I wanted to know --

5 A. Are we -- is your question are we going to try
6 to collect?

7 Q. Yeah.

8 MR. WADE: Retroactively.

9 A. It's from a going-forward basis.

10 Q. (BY EXAMINER EZEANYIM) What?

11 A. It's on a going-forward basis.

12 Q. And what does that mean?

13 A. From this point forward.

14 Q. Oh, from this point forward. So you are going
15 to negate everything that happened before this?

16 A. We're going to negate it?

17 Q. I mean, you know, forgive the -- for well #2,
18 you say -- you are asking for 716.93. And that's per
19 month?

20 A. Right.

21 Q. Okay. The other one is 940.46 per month. And
22 you want to go from now, the date -- the effective date
23 of this amendment? I want to make sure that's what
24 you're asking.

25 A. Right. Right.

1 Q. Okay. From the effective date of this
2 amendment, the overhead rate would be, for the other
3 two -- #2 well, 716.93, and 940, right?

4 A. Yes, sir.

5 Q. You can see why I'm asking these question.

6 MR. HALL: Let me make clear what we're
7 asking in the application, Mr. Examiner.

8 EXAMINER EZEANYIM: Okay.

9 MR. HALL: This is -- since the statute
10 directs -- start over.

11 The historic overhead charges have been
12 reimbursed to the operators already.

13 EXAMINER EZEANYIM: (Indicating.)

14 MR. HALL: They have been reimbursed.
15 We're not seeking to recover them again. Just bear in
16 mind that the statute directs that the pooling order be
17 effective back to date of first production, so we
18 eliminate any question about the operator's ability to
19 recover overhead charges at any time. But all Energen
20 is seeking in terms of reimbursement of overhead charges
21 is prospective.

22 EXAMINER EZEANYIM: Oh, prospective. Not
23 retroactive?

24 MR. HALL: Yes.

25 EXAMINER EZEANYIM: Starting from the

1 effective date of the amendment?

2 MR. HALL: We are not trying to recover the
3 same costs twice.

4 EXAMINER EZEANYIM: Yeah. Okay. That's
5 what I'm saying. Now, these numbers, you told me, have
6 to be effective from the effective date of the amendment
7 if there is one, right?

8 MR. HALL: Yes, a consolidation and the
9 authorization to obtain the reimbursement. Yes, that's
10 correct, would be reimbursement. In fact, we're not
11 seeking to recover those costs twice. They have already
12 been reimbursed. Going forward.

13 EXAMINER EZEANYIM: Going forward. Okay.

14 MR. HALL: Yes, sir.

15 EXAMINER EZEANYIM: I'm glad I asked you
16 that question because I don't want to --

17 MR. HALL: In sync with the drilling costs,
18 the well costs.

19 EXAMINER EZEANYIM: You are not asking for
20 any drilling costs?

21 MR. HALL: That's right. They've been
22 paid.

23 EXAMINER EZEANYIM: It's already paid.
24 It's only because of these overhead and producing rates,
25 you know.

1 Q. (BY EXAMINER EZEANYIM) By the way, what are
2 those wells -- the 2 and 3, are they doing okay?

3 A. They're doing okay, yes.

4 Q. Because I like very good wells, you know. I
5 don't want them to be -- you know, if they are not doing
6 well, I don't know why I should be wasting my time
7 talking about them. They are doing well?

8 A. Correct. We wouldn't be wasting anybody's time
9 if they weren't worth it.

10 Q. That's what I said.

11 You may step down.

12 A. Thank you.

13 EXAMINER EZEANYIM: Any more witnesses?

14 MR. HALL: No, sir.

15 EXAMINER EZEANYIM: Mr. Ingram, you can
16 call your witness.

17 MR. INGRAM: Mr. Examiner, may I just take
18 a five-minute break so I can confer with my client as to
19 whether or not we're going to call a witness or not?

20 EXAMINER EZEANYIM: Okay. Let's take five
21 minutes, and I'm going to stay here and wait. Okay.
22 Five minutes.

23 (Break taken, 9:47 a.m. to 9:55 a.m.)

24 EXAMINER EZEANYIM: Let's go back on the
25 record.

1 Mr. Ingram, any witnesses?

2 MR. INGRAM: Mr. Hearing Examiner, we do
3 not have a witness. I, instead, would only refer the
4 Hearing Examiner and ask the Hearing Examiner to take
5 administrative notice of the record in Case Number 11007
6 on file with the OCD. I have a copy I can provide to
7 you if it's helpful. I basically just downloaded it
8 from the OCD with regard to Case Number 11007. And we
9 would ask that you take administrative notice of that.

10 It provides and it confirms that notice in
11 that proceeding was only given to the Gilbreaths and not
12 to the Kings, and it further contains some discussion,
13 in the transcript of the hearing -- of the original
14 pooling hearing, of the fact that there were other prior
15 leases taken by the Gilbreaths, where there was some
16 discussion as to whether or not they had expired and as
17 to action taken by Maralex, the operator then, to secure
18 a lease at that time from the mineral interest owners
19 where it wasn't clear whether or not their lease had
20 expired or not.

21 And then if we have the opportunity for
22 Mr. Hall and myself to make some final comments on this,
23 I'd ask for that. Otherwise, we have no further
24 evidence.

25 EXAMINER EZEANYIM: Mr. Ingram, thank you

1 very much.

2 As you know, most of what you said is
3 recorded and what anybody said is recorded. If you want
4 to give us -- I don't have to go and search for a well
5 to get the information. If there is anything you want
6 to give to us, give it to us and we will put it into the
7 record and use it for consideration in this case. So if
8 you don't mind, you can make copies for us, instead of
9 me trying to find it. And in that case, Mr. Hall
10 doesn't know what I did. So in that case, we need to
11 put it in the record, and especially if he agrees to be
12 part of the evidence.

13 MR. INGRAM: If that's acceptable, what I
14 have, then, I would just offer as Exhibit A on behalf of
15 the Kings, and it's just a copy of the record from Case
16 Number 11007.

17 I will point out that it is incomplete in
18 some respects in that Exhibit 3 -- or all of Exhibit 3
19 that was introduced into evidence in the underlying
20 proceeding does not seem to be copied and on the OCD's
21 Website and not available under this case record, but I
22 represent that I copied everything that was in the
23 record on Case Number 11007.

24 (King Exhibit Letter A marked.)

25 EXAMINER EZEANYIM: What exhibit number are

1 you --

2 MR. INGRAM: Exhibit A.

3 EXAMINER EZEANYIM: Exhibit A. Okay.

4 Do you have any objection to that?

5 MR. HALL: Mr. Examiner, I don't know if I
6 do or not at this time. I'm not sure why it's being
7 offered. And if it's the entire case record, I'd like
8 the opportunity to look at that again. I probably do
9 not have an objection, but I'd like to reserve the right
10 to object. I'll let you know.

11 EXAMINER EZEANYIM: Mr. Hall, you say you
12 are not sure. So this is what I think I might do in
13 this case. Do you want to get with everybody and say
14 what you want to do? Meanwhile, we can take
15 administrative notice of that exhibit by the Kings, and
16 then pending your determination, whether or not you want
17 to make a comment --

18 MR. HALL: Here's how I can help. Perhaps
19 Mr. Ingram can tell us what portions of the record he
20 wishes to direct your attention to.

21 EXAMINER EZEANYIM: Okay. Very good.

22 MR. WADE: Maybe there are two questions.
23 What part of the record is relevant -- do you find
24 relevant to this proceeding? And are you saying --
25 you're representing that what you have as Exhibit A is

1 what we have on OCD online under the case file?

2 MR. INGRAM: Correct.

3 MR. WADE: So is there a specific part you
4 see as relevant to this proceeding?

5 MR. INGRAM: Certainly, Mr. Wade. What I
6 have is -- what we believe is relevant is the notice
7 letter -- the June 2, 1994 notice letter to all working
8 interest owners, unleased mineral owners, which it shows
9 the notice was only given to the Gilbreaths and not to
10 the Kings, and also to the discussion on pages 7 and 20
11 of the transcript of the 1994 hearing where there was
12 discussion of the status of another lease taken by the
13 Gilbreaths in which there was a question of whether the
14 Gilbreaths were the proper parties to be pooled or, in
15 fact, the mineral owners on the basis that that lease
16 had expired.

17 MR. WADE: It seems to me that the easiest
18 way to deal with this is to -- rather than take
19 administrative notice of the actual exhibits, since
20 Mr. Hall has not had the opportunity to go through that
21 exhibit, I don't see that there is a problem with the
22 OCD taking administrative notice of what is actually on
23 the OCD online file.

24 EXAMINER EZEANYIM: Okay.

25 MR. HALL: I agree.

1 Let me be clear on one point. There is no
2 dispute about notice in this case, I don't believe.

3 Is that correct, for today's case?

4 MR. INGRAM: If you're stipulating that no
5 notice was given to the Kings in the original
6 proceeding, then no.

7 MR. HALL: No, no. The question is for
8 this application here today.

9 MR. INGRAM: There is no issue as to notice
10 for this present application.

11 EXAMINER EZEANYIM: I want to examine
12 something there, because you have just opened up
13 something. Okay. Now, based on what you said, I'm
14 going to take administrative notice of Exhibit A, and I
15 will put it in the record. And that doesn't mean we
16 can't revisit it. We can revisit it, as long as
17 everybody agrees to that. Can we have a copy of that so
18 we have it --

19 MR. INGRAM: Certainly.

20 EXAMINER EZEANYIM: I have a question for
21 you, Mr. Ingram.

22 MR. INGRAM: Yes, sir.

23 EXAMINER EZEANYIM: Not just for you. Both
24 of you.

25 Why you give us this exhibit is that you

1 contend that during the time this application was made
2 initially, in 1994, the Kings didn't get notice. Was
3 that by omission? Not on you; both of you. Was that by
4 omission, or why wasn't notice given in 1994 to the
5 Kings?

6 MR. INGRAM: Maralex apparently believed,
7 in 1994, that the Gilbreaths held a lease that was still
8 in existence on the Kings' minerals.

9 EXAMINER EZEANYIM: Oh, okay.

10 MR. INGRAM: Therefore, they only needed to
11 give notice to the Gilbreaths as the leasehold interest
12 owners.

13 EXAMINER EZEANYIM: Okay. Now, after you
14 are going through it, now I understand. Okay. Thank
15 you very much.

16 Anybody have any anything else to say on
17 this case?

18 Okay. Now, I'll give you the opportunity
19 to make one final comment. I think you are entertaining
20 to do that. Anybody can go first.

21 MR. INGRAM: Go ahead, Scott.

22 CLOSING STATEMENT

23 MR. HALL: If I may approach? I wanted to
24 provide you with copies of the precedent orders that
25 I've referenced in our response to Mr. Ingram's motion

1 to dismiss.

2 EXAMINER EZEANYIM: Are you going to make
3 it part of the exhibits?

4 MR. HALL: No. They're just courtesy
5 copies.

6 EXAMINER EZEANYIM: Do you have any
7 objection to him giving me these copies?

8 MR. INGRAM: I don't.

9 MR. HALL: One order I missed, and I'm
10 sorry I don't have a copy of that for you. But I did
11 want to direct your attention to the order that was
12 issued in Case Number 10888. It's the Merrion case, and
13 I think it may provide the template for you to issue an
14 order in this case because it involved a title failure.

15 EXAMINER EZEANYIM: 10888?

16 MR. HALL: Yes.

17 MR. WADE: Is that the order number, or is
18 that the case number?

19 EXAMINER EZEANYIM: Case number.

20 MR. HALL: The case number, right?

21 EXAMINER EZEANYIM: And in that case
22 number, what was it doing? What are you telling me?

23 MR. HALL: It's a similar situation, where,
24 after a well was drilled, the unit formed, some
25 overriding royalty interest in the unit converted to

1 working interest. I'm speculating because of the well
2 payout or something like that. Apparently a carried
3 interest. Those interests converted to a working
4 interests, so they were unjoined at the time. The
5 Division came and pooled those retroactively, so there
6 was a consolidation. Very simple. I think it's the
7 template for you.

8 EXAMINER EZEANYIM: Was that your closing
9 statement?

10 MR. HALL: I would also add for the
11 Examiner's reference that the requisite components of a
12 compulsory pooling order already exist in Order Number
13 R-10154, which is the 1994 order we're seeking an
14 amendment. And if you look at paragraph eight, in
15 particular, that establishes that the application was
16 supported on a finding that pooling was necessary to
17 avoid the drilling of unnecessary wells, to protect
18 correlative rights and to prevent waste.

19 And then, Mr. Examiner, if you refer to
20 decretal paragraph nine, that's where you find the
21 Division's approval of the overhead rates, and that's
22 where we have provided testimony to you today how the
23 current rate was established based on that preapproved
24 rate. And that's all I wanted to call your attention
25 to, Mr. Examiner.

1 EXAMINER EZEANYIM: Thank you.

2 Mr. Ingram?

3 CLOSING STATEMENT

4 MR. INGRAM: Thank you, Mr. Examiner.

5 We believe that the evidence has
6 demonstrated that this amendment of the pooling order
7 ought to be denied on its substance. Mr. Lewis admitted
8 that their present lease offer, made as a necessary
9 precondition to their present application, was merely
10 contingent. He didn't know when it would become
11 effective, and it's really irrelevant at this stage,
12 made 20 years later after the original pooling
13 proceeding they seek to make us retroactive to.

14 And I also wanted to underscore what we
15 believe is the fundamental unfairness to these mineral
16 owners in this situation of being subjected to the
17 possibility of the retroactive pooling, again, going
18 back 20 years, and thus limiting them to a one-eighth
19 royalty interest when they were never given the
20 opportunity to participate on the basis of their 100
21 percent interest 20 years ago, nor have they been given
22 the opportunity to do so today.

23 So we believe that the amendment of the
24 pooling order on its substance, and in the event that
25 the OCD chooses to exercise jurisdiction over the

1 present application, is unfair, is inappropriate and
2 that all prerequisites have been met and that it should
3 be denied.

4 EXAMINER EZEANYIM: Thank you very much.
5 Anything further?

6 MR. HALL: No, sir.

7 MR. INGRAM: Nothing further.

8 EXAMINER EZEANYIM: Okay. At this point,
9 Case Number 15072 will be taken under advisement.

10 Thank you, Counsel.

11 (Case Number 15072 concludes, 10:08 a.m.)

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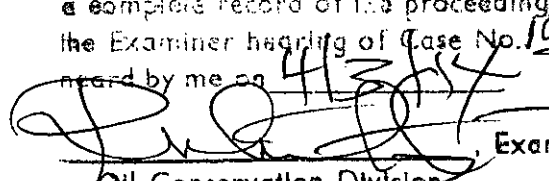
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I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 15072
heard by me on 4/3/87.


Examiner
Oil Conservation Division

1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, New Mexico Certified
6 Court Reporter No. 20, and Registered Professional
7 Reporter, do hereby certify that I reported the
8 foregoing proceedings in stenographic shorthand and that
9 the foregoing pages are a true and correct transcript of
10 those proceedings that were reduced to printed form by
11 me to the best of my ability.

12 I FURTHER CERTIFY that the Reporter's
13 Record of the proceedings truly and accurately reflects
14 the exhibits, if any, offered by the respective parties.

15 I FURTHER CERTIFY that I am neither
16 employed by nor related to any of the parties or
17 attorneys in this case and that I have no interest in
18 the final disposition of this case.

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Mary C. Hankins

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