

**STATE OF NEW MEXICO
ENERGY MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:**

**CASE NO. 15072
ORDER NO. R-10154-B**

**APPLICATION OF ENERGEN RESOURCES
CORPORATION TO AMEND COMPULSORY
POOLING ORDER NO. R-10154, SAN JUAN
COUNTY, NEW MEXICO**

ORDER OF THE DIVISION

This case came on for consideration of Applicant's Motion to Vacate or Stay Portions of Order No. R-10154-A ("the Motion"), filed on August 10, 2016, and Respondents' Opposition to Motion to Vacate or Stay Portions of Order No. R-10154-A ("the Response"), filed on August 16, 2016.

NOW, on this 22nd day of August, 2016, the Division Director, having considered the record and the recommendations of the Examiner,

FINDS THAT:

[1] Due notice has been given and the Division has jurisdiction of this case and the subject matter.

[2] The Division issued Order No. R-10154-A ("the Order") in this case on July 28, 2016.

[3] The Motion challenges the correctness of provisions of the Order and seeks a new order vacating or staying certain portions of the Order.

[4] A motion to vacate or stay an order is addressed to the discretion of the Division. Thus, notwithstanding the fact that Applicant's motion addresses only certain provisions of the Order, the Division has authority to consider whether the Order should be vacated or stayed as to particular provisions only, in its entirety, or not at all.

[5] The Order modified an earlier compulsory pooling order, Order No. R-10154, issued in Case No. 11007 on July 19, 1994, to pool the unleased mineral interest of

Frank A. King and Paula S. Elmore f/k/a Paula S. King ("Respondents") in the spacing unit therein described ("the Unit"), which unleased interest was not referred to in Case No. 11007 or in original Order No. R-10154, presumably because it was then assumed that Respondents' interest was subject to a valid and subsisting lease.

[6] Among other provisions, the Order is made effective from date of first production from the Unit and requires Applicant, as the operator of the Unit, to account and pay to Respondents the share of proceeds of production to which Respondents would have been entitled based on their ownership of an unleased mineral interest, from the date when Applicant became operator of the Unit. It is this latter provision that Applicant now asks the Division to vacate or stay.

[7] As indicated in Finding Paragraph (6) of the Order, there exists a pending lawsuit in the United States District Court for the District of New Mexico ("the Federal Court"), Cause No. 1:13-cv-00862, in which Respondents are plaintiffs and Applicant and others are defendants. That lawsuit involves the same controversy as this compulsory pooling application, and the Federal Court has made numerous rulings therein.

[8] As noted in Finding Paragraph (11) of the Order, the Federal Court ruled that the lease covering Respondents' mineral interest expired before issuance of the original pooling order, contrary to assumptions previously made by Applicant and by the Division. The Federal Court's ruling on this issue was called to the attention of the Division prior to its issuance of the Order and had clear legal implications for this compulsory pooling case which are reflected in the Order.

[9] However, the Federal Court also issued other rulings that potentially impact the present case which were not previously brought to the Division's attention. Most significantly, the Federal Court ruled that Respondents' claim asserting the statutory liability of Applicant as operator pursuant to NMSA 1978 Section 70-2-18.B is barred by the applicable statute of limitations, not only as to production more than four years prior to the filing of Respondents' suit, but as to *all* prior production.

[10] Section 70-2-18.B provides that an operator who fails to obtain an agreement of all parties, or to apply for a compulsory pooling order, pooling all interests in a spacing unit "which order shall be effective from the first production,"¹ is liable to any owner whose interest is not so pooled [as applicable to this case] for the amount to which the owner would have been entitled if pooled. Prior to the Federal Court's decision, there existed no published court decision known to the Division that settled the applicability of the statutes of limitations to claims under Section 70-2-18.B, or when such a claim was deemed to accrue.

[11] Applicant argues that the Federal Court's determination of the limitations issue bars issuance of a compulsory order in this case which would require the operator to

¹ This language appears in Section 70-2-18.A. However, Section 70-2-18.B imposes liability on an operator who fails to apply for an order "as required by this section," thus presumably importing the requirements concerning the order to be obtained into Section 70-2-18.B.