

STATE OF NEW MEXICO
COUNTY OF RIO ARRIBA
FIRST JUDICIAL DISTRICT

THE ESTATE OF JOSEPH A. SOMMER,
Deceased, THE JOSEPH A. SOMMER
REVOCABLE TRUST, and JAS OIL &
GAS CO., LLC a New Mexico limited
liability company,

Plaintiffs,

v.

ENERGEN RESOURCES CORPORATION,
an Alabama corporation,

Defendant.

RECEIVED

AUG 20 2007

MILLER STRATVERT, P.A.

ENDORSED
First Judicial District Court

AUG 17 2007

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

Case No. D-117-CV-2007-00128

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SUPPLEMENT TO PLAINTIFF'S MEMORANDUM IN SUPPORT OF PLAINTIFF'S REPLY
TO DEFENDANT'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, TO STAY THESE
PROCEEDINGS DUE TO THE PRIMARY JURISDICTION OF AN ADMINISTRATIVE
AGENCY

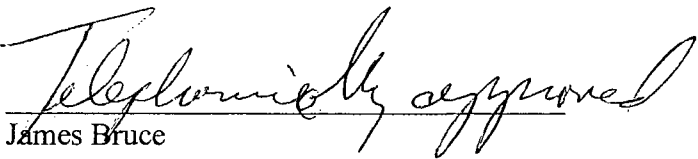
Plaintiffs, the Estate of Joseph A. Sommer, deceased, the Joseph A. Sommer Revocable Trust, and JAS Oil and Gas Co., LLC ("Plaintiffs"), hereby supplement their Memorandum in Support of Plaintiff's Reply to Defendant's Motion to Dismiss, or in the Alternative, to Stay These Proceedings Due to the Primary Jurisdiction of an Administrative Agency ("Reply") as follows:

1. Plaintiffs attach as an Exhibit to the Reply, the "Amended Pre-Hearing Statement", also attached herewith, submitted to the State of New Mexico Energy, Minerals and Natural Resources Department Oil Conservation Division on August 13, 2007, by Plaintiffs' counsel, James Bruce, Esq.
2. The "Amended Pre-Hearing Statement" requests the Division refrain from taking action on Defendant's Application to Amend Order No. R-1960, pending the outcome of this litigation.

Respectfully submitted,

SOMMER, UDALL, HARDWICK, AHERN &
HYATT, LLP



Kurt A. Sommer
Candice Lee
P.O. Box 1984
Santa Fe, New Mexico 87504
505-982-4676

James Bruce
Attorney at Law
P.O. Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Certificate of Service

I certify that a copy of the foregoing was sent via first class mail to J. Scott Hall, Esq., at Miller Stravert, P.A., P.O. Box 1986, Santa Fe, New Mexico 87504-1986, attorneys for Defendant, on this 17th day of August, 2007.



Candice Lee


**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:**

**APPLICATION OF ENERGEN RESOURCES
CORPORATION TO AMEND THE COST RECOVERY
PROVISIONS OF COMPULSORY POOLING ORDER
NO. R-1960, TO DETERMINE REASONABLE COSTS,
AND FOR AUTHORIZATION TO RECOVER COSTS
FROM PRODUCTION OF POOLED MINERAL
INTERESTS, RIO ARRIBA COUNTY, NEW MEXICO.**

Case No. 13,957

AMENDED PRE-HEARING STATEMENT

This pre-hearing statement is submitted by opponent as required by the Oil Conservation Division.

APPEARANCES

APPLICANT

Energen Resources Corporation

APPLICANT'S ATTORNEY

J. Scott Hall

OPPONENT

Estate of Joseph A. Sommer
Joseph A. Sommer Revocable Trust
JAS Oil and Gas Co., LLC
P.O. Box 1984
Santa Fe, New Mexico 87504

OPPONENT'S ATTORNEY

James Bruce
P.O. Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attention: Kurt A. Sommer
(505) 982-4676

STATEMENT OF THE CASE

APPLICANT

The SW/4 of Section 2, Township 25 North, Range 3 West, NMPM is subject to Commission Order No. R-1960. Applicant allegedly seeks and order "clarifying" or "amending" certain provisions of the order.

OPPONENT

Opponents are in litigation with applicant concerning the subject lands and the provisions of Order No. R-1960. The case is being litigated in the following First Judicial District Court case:

**THE ESTATE OF JOSEPH A. SOMMER,
deceased, THE JOSEPH A. SOMMER
REVOCABLE TRUST, and JAS OIL &
GAS CO., LLC, a New Mexico limited
liability company,**

Plaintiffs,

v.

Case No. D-117-CV-2007-00128

**ENERGEN RESOURCES CORPORATION,
an Alabama corporation,**

Defendant.

The thrust of the complaint is that applicant has (i) failed to comply with the terms of Order No. R-1960, (ii) engaged in unfair trade practices, (iii) converted property, and (iv) violated the Oil and Gas Act and the Proceeds Payment Act.

Opponents are unclear of applicant's position in this case. However, it is opponents' position that the terms of Order No. R-1960 are clear and unambiguous, and that applicant has violated same on an ongoing basis. Because the matter is in litigation, and because any relief which could possibly be afforded by the Division would be prospective in nature, no action should be taken by the Division which interferes with matters now in litigation.

PROPOSED EVIDENCE

APPLICANT

WITNESSES

EST. TIME

EXHIBITS

OPPONENT

WITNESSES

EST. TIME

EXHIBITS

Kurt A. Sommer
(possible witness)

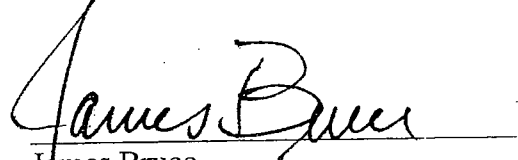
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Approx. 2

PROCEDURAL MATTERS

The Division has continued this matter indefinitely. Applicant has requested a pre-hearing conference. However, counsel for applicant has been on vacation for over two weeks, and the conference has not been scheduled.

Respectfully submitted,



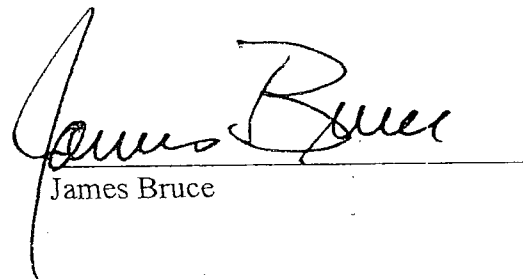
James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for Opponents

CERTIFICATE OF SERVICE

The foregoing pleading was served upon the following counsel of record this 13th of August, 2007 by U.S. Mail:

J. Scott Hall
Suite 300
150 Washington Avenue
Santa Fe, New Mexico 87501
(505) 989-9857



James Bruce

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION COMMISSION

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

CASE NO. 9016
Order No. R-8361

APPLICATION OF THE OIL CONSERVATION DIVISION ON ITS OWN MOTION
FOR THE ADOPTION OF A NEW RULE 414 TO REGULATE SALES OF GAS BY
SEPARATE OWNERS IN A WELL.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 o'clock a.m. on
October 23 and November 20, 1986, at Santa Fe, New Mexico,
before the Oil Conservation Commission of New Mexico,
hereinafter referred to as the "Commission."

NOW, on this 18th day of December, 1986, the
Commission, a quorum being present, having considered the
testimony presented and the exhibits received at said hearing,
and being fully advised in the premises,

FINDS THAT:

- (1) Due public notice having been given as required by
law, the Commission has jurisdiction of this cause and the
subject matter thereof.
- (2) The Oil Conservation Division (Division) seeks the
adoption of a new Rule 414 to regulate the sales of gas from
wells by owners of less than 100 percent of the working owners.
- (3) An industry committee had recommended that the
Division examine such sales to determine if rules therefor were
necessary to protect the correlative rights of the owners in
such a well.
- (4) When such sales occur, it may be possible for an
owner to sell more than his share of the gas from a well,
thereby violating the correlative rights of the other owners in
the well.
- (5) When such sales occur, a small percentage interest
owner may overproduce a well causing it to be shut in under the
gas proration rules and at a time when the other owners in the
well might otherwise be able to sell their share.

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Case No. 9016
Order No. R-8361

(6) A special study committee appointed by the Division Director considered four proposed rules as follows:

RULE 414. PROPOSAL NO. 1.

Where there are separate owners in a well, no gas sales may commence or be made from such well until all owners have agreed to a single well operator with authority to commit 100 percent of the gas therefrom.

The well operator must provide the Division with a statement attesting to such agreement before any allowable will be assigned or before any authorization to produce will be made.

RULE 414. PROPOSAL NO. 2.

Where there are separate owners in a well, no gas sales may commence or be made from such well unless such owners have entered into a gas balancing agreement. Such balancing agreement must provide for each owner to receive his just and equitable share of the gas from the well(s) covered thereunder.

The well operator must provide the Division with a statement attesting to such agreement before any allowable will be assigned or before any authorization to produce will be made.

RULE 414. PROPOSAL NO. 3.

Where there are separate owners in a well and where there is no gas balancing agreement providing for each such owner to receive his just and equitable share of the gas therefrom, no individual owner may sell a volume of gas in any month greater than his percentage interest in the well's current allowable or purchasers per well allocation.

In pools with assigned allowables, the volume to be sold may be determined by multiplying the appropriate percentage interest times the allowable. In pools without assigned allowables, the volume to be sold will be that volume which is produced in that period of time found by multiplying the number of days in the month by the appropriate percentage interest.

RULE 414. PROPOSAL NO. 4

When there are separate owners in a well and where any such owner's gas is not being sold with current production from such well, such owner may, if necessary to protect his

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Order No. R-8361

correlative rights, petition the Division for a hearing seeking appropriate relief.

(7) The special study committee could not agree on or recommend proposals No. 1, 2, or 3.

(8) The committee did recommend proposal No. 4 in that it would advise owners how they could seek relief from the Division if less than one hundred percent of the owners of the production from a well authorized the sale of gas from a well and such sale threatened the correlative rights of an unconsenting interest owner.

(9) Such a hearing process would permit owners in wells where such a sale occurs the opportunity to seek protection of their correlative rights and permit the Division, through the adversarial process, to gain the problem-specific knowledge to better deal with problems relating to sales by less than one hundred percent of the owners of a well.

(10) Committee proposal No. 4 should be adopted effective January 1, 1987.

IT IS THEREFORE ORDERED THAT:

(1) Effective January 1, 1987, a new Rule 414 is hereby adopted to read in its entirety as follows:

"RULE 414 GAS SALES BY LESS THAN ONE HUNDRED PERCENT OF THE OWNERS IN A WELL

When there are separate owners in a well and where any such owner's gas is not being sold with current production from such well, such owner may, if necessary to protect his correlative rights, petition the Division for a hearing seeking appropriate relief."

(2) Jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

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Case No. 9016
Order No. R-8361

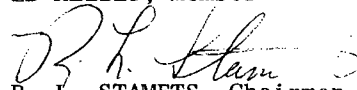
DONE at Santa Fe, New Mexico, on the day and year
hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

JIM BACA, Member



ED KELLEY, Member



R. L. STAMETS, Chairman and
Secretary

S E A L

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