

OIL CONSERVATION DIV.
OCT 30 PM 4:31

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

**APPLICATION OF XERIC OIL & GAS
CORPORATION FOR COMPULSORY
POOLING, LEA COUNTY, NEW MEXICO**

CASE NO. 12074

PRE-HEARING STATEMENT AND MOTION TO DISMISS

This Pre-Hearing Statement and Motion to Dismiss is submitted in behalf of The Coates Energy Trust and Coates Energy Interests, Ltd. in opposition to this Application which is set for hearing the Examiner Docket of November 5, 1998.

APPEARANCES OF PARTIES

Applicant

Xeric Oil & Gas Corporation

Attorney

W. Thomas Kellahin
Post Office Box 2265
Santa Fe, NM 87504

Opposing Party

The Coates Energy Trust
Coates Energy Interest Ltd.

J.E. Gallegos
Gallegos Law Firm, P.C.
460 St. Michael's Drive, Bldg. 300
Santa Fe, NM 87505

MOTION TO DISMISS

Compulsory pooling is unavailable to the applicant for the interests in the subject proration unit owned by The Coates Energy Trust and Coates Energy Interests Ltd. ("Coates"). In July 1998 the applicant and Coates came to agreement for a lease of

Coates' minerals in the S/2 of subject Section 14; the principle terms of the lease were agreed upon: the primary term, the royalty, the bonus and the subsurface depth.

Coates has a fiduciary responsibility in the management of the various oil and gas properties under its control to require specific lease conditions which appropriately protect the mineral owners and provide for payment of royalties in a manner truly reflective of the value of the severed hydrocarbons. It has developed an oil and gas lease that accomplishes this and sought its execution by the applicant. Applicant has rejected the lease form sought by Coates and instead has sought to impose a printed form Producer's 88 lease which is outmoded and, among other inadequacies, fails to address the correct manner of royalty calculation and payment, an issue which is currently the source of numerous disputes and lawsuits due to the ambiguity and unfairness of lease forms used in decades past.

Compulsory pooling is unavailable to applicant for the acreage in question because contrary to established Division practice and to the requirements of Section 70-2-17C. NMSA 1978 Xeric Oil & Gas has instituted this proceeding without first undertaking a good faith and reasonable effort to reach voluntary agreement with Coates for the development of the subject tract. When an owner such as Coates is willing to lease its mineral interest for the drilling of a well and seeks to do so on basic terms that are reasonable and customary in the industry (and in fact acceptable to the party seeking to develop) it is not within the authority of the Division to impose a specific lease form and language upon the lessor at the insistence of the lessee.

STATEMENT OF THE CASE

Xeric oil & gas Corporation has filed an application seeking to force pool the mineral interests of Coates in a 40-acre proration unit to be dedicated to its Cain Well No. 1 to test the Abo formation. The applicant and Coates exchanged correspondence beginning in early July 1998 and by the end of that month had agreed to the basic terms for a lease by Coates to the applicant of Coates' mineral interest. When Coates presented its written form of lease to the applicant, however, it was rejected. Coates is not unwilling to lease its interest. A lessor of a mineral interest is entitled to a lease with provisions and conditions that are mutually fair and reasonable and which address current issues and conditions in the industry. The operator is attempting to use the police powers of the state as delegated to the Division to cram down a lease unfavorable to the lessor and which is in applicable to today's industry environment. Coates will present the documentation concerning the negotiations and lease forms.

WITNESS

Sherrie Green
Land Manager

ESTIMATED TIME

30 minutes

EXHIBITS

Ten

PROCEDURAL MATTERS

Motion to Dismiss

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By



J.E. GALLEGOS
MICHAEL J. CONDON

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CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing to be faxed and mailed on this 30th day of October, 1998 to the following:

W. Thomas Kellahin
Post Office Box 2265
Santa Fe, NM 87504



J. E. Gallegos