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April 8, 2014

Via Facsimile to (505) 476-3462 and U.S. Mail
Richard Ezeanyim, Hearing Examiner
New Mexico Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

Re: *In the Matter of the Application of Energen Resources Corporation to Amend Compulsory Pooling Order No. R-10154, San Juan County, New Mexico;*
NMOCD Case No. 15072

Dear Mr. Ezeanyim:

Applicant Energen Resources Corporation provided additional authority to the Hearing Examiner and the Legal Examiner at the April 3, 2014 hearing which was not previously presented in Applicant's filings. Applicant has also corresponded with the Hearing Examiner since the hearing regarding the substance of its Application. Accordingly, on behalf of Frank A. King and Paula S. Elmore f/k/a Paula S. King, the mineral interest owners who oppose Energen's Application, we provide the following additional authorities in support of the Kings' position.

Attached is a copy of OCD Order No. R-13165, which clarifies the necessary prerequisites to a party bringing a compulsory pooling case before the OCD. As set forth therein, at least 30 days prior to filing a compulsory pooling application, an applicant must send to locatable parties a well proposal and proposed authorization for expenditure, as well as a proposed joint operating agreement where requested. As disclosed by Energen's testimony at the hearing, Energen did not send a proposal to the Kings to allow them to participate in the Flora Vista #19-2 or #19-3 Wells drilled under the authority of Order No. R-10154 back to first production as unleased mineral interest owners. Instead, only a contingent offer to lease was made with an indefinite effective date, which is therefore an illusory proposal. As Energen did not comply with this necessary prerequisite of giving the Kings the opportunity to participate as unleased mineral interest owners, its Application to Amend Order No. R-10154 retroactive to 1994 should be denied.

Accordingly, the Kings' Motion to Dismiss should be granted, or in the event the Hearing Examiner decides Energen's Application substantively, said Application should be denied for

failure of necessary conditions precedent, or alternatively, said Application should be abated indefinitely pending determination by the court of the lease status of the Kings' minerals.

Thank you for your consideration in this matter.

Sincerely,

CAVIN & INGRAM, P.A.

By: _____
Stephen D. Ingram

SDI:tg
Enclosure

cc w/enc: Gabriel Wade, Esq.
J. Scott Hall and Sharon T. Shaheen

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:

ORDER NO. R-13165

APPLICATION OF CIMAREX ENERGY CO. FOR A NON-STANDARD SPACING UNIT AND COMPULSORY POOLING, CHAVES COUNTY, NEW MEXICO.

CASE NO. 14368

APPLICATION OF CIMAREX ENERGY CO. FOR A NON-STANDARD SPACING UNIT AND COMPULSORY POOLING, CHAVES COUNTY, NEW MEXICO.

CASE NO. 14369

APPLICATION OF CIMAREX ENERGY CO. FOR A NON-STANDARD SPACING UNIT AND COMPULSORY POOLING, CHAVES COUNTY, NEW MEXICO.

CASE NO. 14370

APPLICATION OF CIMAREX ENERGY CO. FOR A NON-STANDARD SPACING UNIT AND COMPULSORY POOLING, CHAVES COUNTY, NEW MEXICO.

CASE NO. 14372

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing on various parties' Motions to Dismiss at 8:15 a.m. on September 3, 2009, at Santa Fe, New Mexico, before Examiner Terry Warnell.

NOW, on this 15th day of September, 2009, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due notice has been given, and the Division has jurisdiction of the subject matter of these cases.

(2) Because all of the Motions to Dismiss present the same issue, a consolidated hearing was held on these motions, and one order is being issued ruling on the motions in all of the cases. However, the cases remain separate and will be heard separately unless the Division subsequently determines otherwise.

(3) Fuel Products, Inc., Pear Resources and Hyde Oil and Gas Corporation, respondents in Cases 14368, 14369 and 14370, and MeTex Supply Company, a respondent in Case No. 14372, (herein collectively called Movants) filed motions to dismiss the application in these cases. Movants contend that no valid well proposals have been submitted for their consideration because: (a) the well proposals do not contain specific footage locations; (b) the applicant did not furnish a proposed form of joint operating agreement with its well proposal; and (c) the proposals in the separate cases, collectively, constitute a multi-well drilling program, and applicant's correspondence indicates uncertainty as to whether it will actually drill all of the proposed wells.

(4) With respect to the omission of a proposed form of joint operating agreement, Movants cite Division Order No. R-13155 in which the Division dismissed a compulsory pooling application and ordered that a well proposal including a proposed form of joint operating agreement be furnished prior to re-filing.

(5) Because past Division practice has not been entirely consistent, and because some language in Order No. R-13155 was not intended to apply to all cases, the Division takes this opportunity to clarify the requirements that it will ordinarily apply in compulsory pooling cases as follows:

> (a) At least thirty days prior to filing a compulsory pooling application, in the absence of extenuating circumstances, an applicant should send to locatable parties it intends to ask the Division to pool a well proposal identifying the proposed depth and location and target formation, together with a proposed Authorization for Expenditures (AFE) for the well. The proposal should specify the footages from section lines of the intended location, and, in the case of a directional well, of the intended point of penetration and bottomhole location. The Division understands these requirements to be comparable to the proposal requirements included in forms operating agreements generally used in the industry.
>
> (b) Although exact footage locations for the proposed well should be specified in the well proposal, the exact footage locations need not necessarily be

specified in the application filed with the Division or in formal notices of hearing. These documents (the application and formal hearing notices) establish the Division's jurisdiction, and, if an exact location for the well is specified in such documents, any modification may require new notices and a further hearing. There may be perfectly legitimate reasons for varying the well location at the hearing, such as federal or private surface owner requirements. If a more generalized location is specified in the application and legal notices, and it becomes necessary to change the location prior to the hearing, reasons for such variation can be explained at the hearing and approved by the Division in its order, without the necessity of further proceedings.

(c) A proposed form of joint operating agreement should not be required in every case but should be furnished with reasonable promptness if requested.

(d) The issue of compliance with the more subjective requirement the Division has customarily recognized for good faith negotiation is better examined in these cases, and in most cases, at the compulsory pooling hearing, based upon a full evidentiary record, rather than upon a preliminary motion to dismiss.

(6) In these cases, unlike Cases 14365 and 14366, which were the subject of Order No. R-13155, Movants have received well proposals and AFEs though these proposals were deficient in not identifying the footage locations of the wells. These cases have been re-set for hearing on a date more than thirty days from the date of this Order to allow applicant to furnish Movants with a more specific proposal and with other documents Movants have requested and to afford the parties time for further negotiations. Accordingly the Division concludes that it is not necessary to dismiss these cases and require that they be re-filed in order for the applicant to proceed. If additional time proves necessary for good faith negotiations, Movants may request a further continuance.

IT IS THEREFORE ORDERED THAT:

(1) Movants Motions to Dismiss are hereby overruled. As announced at the motion hearing, these cases are continued until October 15, 2009.

(2) Applicant will furnish Movants with documents complying with Finding Paragraphs 5(b) and (c) at least 30 days prior to the hearings.

(3) The issue of whether or not adequate good faith negotiation has occurred may be further considered at the hearings.

(4) Jurisdiction of these cases is retained for the entry of such further orders as the Division may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

MARK E. FESMIRE, P.E.
Director

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