

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:

ORIGINAL

APPLICATION OF ENERGEN RESOURCES
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX SURFACE LOCATION,
RIO ARriba COUNTY, NEW MEXICO

Case No. 14653

TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: TERRY WARNELL, Presiding Examiner
DAVID K. BROOKS, Legal Examiner

May 26, 2011

Santa Fe, New Mexico

This matter came on for hearing before the
New Mexico Oil Conservation Division, TERRY WARNELL,
Presiding Examiner, and DAVID K. BROOKS, Legal Examiner,
on Thursday, May 26, 2011, at the New Mexico Energy,
Minerals and Natural Resources Department, 1220 South St.
Francis Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: Jacqueline R. Lujan, CCR #91
Paul Baca Professional Court Reporters
500 Fourth Street, N.W., Suite 105

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE APPLICANT:

MONTGOMERY & ANDREWS, P.A.
J. SCOTT HALL, ESQ.
325 Paseo de Peralta
Santa Fe, New Mexico 87501
(505) 982-3873

ALSO PRESENT:

Chris and Stephanie Ribera, Adobe
Investments, LLC

WITNESSES:

PAGE

David Poage:

Direct examination by Mr. Hall	4
Examination by Examiner Brooks	14
Further direct examination by Mr. Hall	33

INDEX

PAGE

EXHIBITS 1 THROUGH 6 ADMITTED	13
-------------------------------	----

REPORTER'S CERTIFICATE	35
------------------------	----

1 EXAMINER WARNELL: Let's go back on the
2 record with Docket 13-11. We will now call -- jumping
3 out of sequence, showing our flexibility, we'll call Case
4 14653, application of Energen Resources Corporation for
5 compulsory pooling and an unorthodox surface location,
6 Rio Arriba County, New Mexico. Call for appearances.

7 MR. HALL: Mr. Examiner, Scott Hall, with
8 the Montgomery & Andrews law firm of Santa Fe, appearing
9 on behalf of Energen Resources Corporation. We have one
10 witness this morning.

11 EXAMINER WARNELL: All right. Any other
12 appearances?

13 MR. RIBERA: I'd like to -- my name is
14 Chris Ribera, with Adobe Investments, LLC. May we
15 approach up here? I don't know the procedures.

16 EXAMINER WARNELL: Please.

17 MR. RIBERA: This is my wife, Stephanie.

18 EXAMINER WARNELL: Would you state your
19 name and be sworn, please?

20 MR. POAGE: My name is David Poage,
21 district landman with Energen Resources.

22 EXAMINER BROOKS: Do you intend to
23 testify?

24 MR. RIBERA: I intend to read my letter of
25 protest.

1 EXAMINER BROOKS: Okay. We'll make a
2 decision on whether you need to be sworn at a later time.

3
4 (One witness was sworn.)

5 DAVID POAGE

6 Having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. HALL:

9 Q. For the record, please state your name.

10 A. David Poage.

11 Q. Mr. Poage, where do you live, and by whom are
12 you employed?

13 A. Farmington, New Mexico. I'm employed by
14 Energen Resources Corporation.

15 Q. In what capacity?

16 A. I'm a district landman.

17 Q. You've previously testified before the
18 Division a number of times and had your credentials as an
19 expert petroleum landman accepted as a matter of record,
20 have you not?

21 A. Yes.

22 Q. You're familiar with the application and the
23 lands that are the subject of the application?

24 A. Yes.

25 MR. HALL: At this point, we offer

1 Mr. Poage as a qualified expert petroleum landman.

2 EXAMINER WARNELL: So recognized.

3 Q. (By Mr. Hall) Mr. Poage, if you would, please
4 explain to the Hearing Examiner what Energen seeks by its
5 application today.

6 A. We seek in this force pooling order to get a
7 pool interest at 14.05 acres pool into our spacing unit
8 in Section 8. It's a nonstandard spacing unit, and it's
9 on the borderline of the Colorado/New Mexico border.

10 Section 8 does contain enough acreage to fit
11 the profile for acreage required to drill Fruitland Coal.

12 Q. If we look at Exhibit 1, would you identify
13 that?

14 A. This is the C-102 for this well. It shows the
15 surface location as well as the entry point for a
16 directional well and the bottomhole location.

17 Q. And attached to the C-102 is a drilling
18 profile?

19 A. Yes. This is the drilling profile for this
20 well, Caracas 8B 16H.

21 Q. This is an irregular section on the border
22 with the State of Colorado?

23 A. Correct.

24 Q. What is the size of the unit you're proposing?

25 A. 274.08 acres.

1 Q. Is that within the tolerance permitted by the
2 rules of the Division for standard units --

3 A. Yes.

4 Q. -- in the Fruitland Coal formation?

5 A. Yes.

6 Q. If you look at your Exhibit 1, could you
7 identify the surface location? What is the footage for
8 that?

9 A. The surface location is shown on the eastern
10 side. The surface location is actually located in
11 Section 9 on an existing location that's already there.
12 And then we propose to drill in a westerly direction
13 across Section 8.

14 Q. Look again on Exhibit 1, the face page of the
15 C-102. There's a reference to EP. What is that?

16 A. The entry point, the point at which we will
17 enter the Fruitland Coal.

18 Q. And that entry point is 400 feet from the side
19 of the subdivision boundary; is that correct?

20 A. That's correct.

21 Q. Can you explain to the Hearing Examiner how
22 Energen is able to drill from a surface location and
23 intercept the coal at this particular location in this
24 area?

25 A. The entry point is 400 feet from the eastern

1 boundary of the section line. This section has been
2 included in a hearing that -- in an order that was issued
3 allowing that it was within the Caracas setback area to
4 have 10 setbacks for inner boundaries.

5 In this case, the setback rules that would
6 apply would be 660 feet from the state line, which would
7 be on the north boundary. And then 10-foot setbacks
8 would be in place for the east and western boundaries.
9 And we're well within that on both our entry point as
10 well as our bottomhole location.

11 MR. HALL: If I may approach?

12 I have a copy of Order Number R-13119, which
13 was entered by the Division in this case you heard on
14 March 19th, 2009, approving the Caracas Canyon production
15 area and special rules for that area.

16 Q. In addition to your application for compulsory
17 pooling, you're also seeking approval of the nonstandard
18 surface location; is that right?

19 A. That's correct.

20 Q. But the bottomhole location and the entry
21 point location are all currently permitted under existing
22 rules?

23 A. Yes.

24 Q. Do terrain considerations restrict where you
25 might place --

1 A. Yes. On the north boundary, the San Juan
2 River. And on the -- south of the location, the terrain
3 goes up to 300 feet, so it's a pretty steep hill. So the
4 spot where we have this located is one of the few level
5 spots allowed in that area.

6 Q. Will utilizing the existing surface location
7 enable Energen to avoid additional surface disturbance?

8 A. That's correct.

9 Q. Let's look at Exhibit 2. Would you identify
10 that and explain what that shows to the Examiner?

11 A. This shows that -- this was taken from a title
12 opinion we had done. It shows the different tracts
13 involved. It's 274.08 acres.

14 It also shows that two of those tracts are
15 federal and gas leases that are owned 100 percent by
16 Energen Resources. 14.305 acres in the west half of Lot
17 5 are minerals that are owned by Energen Resources, and
18 the Adobe Investment interest of 14.305 acres in the east
19 half of Lot 5.

20 Q. Is it the 14.305 acres that you seek to pool
21 today?

22 A. Yes.

23 Q. What percentage of the unit does that
24 represent?

25 A. It's a little over 5 percent.

1 Q. The owner of record for that particular
2 interest is whom?

3 A. Adobe Investments.

4 Q. Is that a firm -- an entity with which Mr.
5 Chris Ribera is affiliated?

6 A. Yes.

7 Q. Would you tell us about your efforts to obtain
8 the voluntary participation for the Adobe interest?

9 A. We first attempted to lease this property back
10 in 2009. That was unsuccessful. And the well had not
11 been scheduled at that point in time, so I waited until
12 we got the well on the drilling schedule.

13 And then we re-approached Adobe in March of
14 this year, the early part of March, and offered an oil
15 and gas lease and furnished them with a copy of the oil
16 and gas lease we proposed to use and explained to them
17 the difference in the acreage, as it exists, and the
18 title opinion and that the government's MT plat shows
19 that lot to be 28.61 acres, which they own the east half
20 of, so they have 14.305 acres.

21 Whereas if you look at -- there's a
22 discrepancy with what Rio Arriba County Assessor's Office
23 is using. They're using numbers from an old survey that
24 shows this piece of property to be 25 acres, instead of
25 the 14.

1 Q. So you're referring to Energen Exhibit 3?

2 A. Yes.

3 Q. And that's your letter dated March 2, 2011, to
4 Adobe?

5 A. Yes.

6 Q. And if the Hearing Examiner reviews that, he
7 can see your explanation about why there's a discrepancy
8 on the acreage?

9 A. That's correct.

10 Q. Did you have a title opinion rendered for this
11 drilling unit?

12 A. Yes, I did.

13 Q. And was a portion of that attached to Exhibit
14 Number 3?

15 A. Yes. The part that affected this acreage
16 ownership was attached.

17 Q. It was excerpted and attached to your letter
18 to Adobe?

19 A. Yes.

20 Q. Are you satisfied, based on your investigation
21 of title and review of the master township plat and other
22 survey information, that in fact the Adobe Investment
23 interest is 14.035 acres?

24 A. Yes.

25 Q. Tell us about any other efforts you made to

1 obtain Adobe's participation.

2 A. Mr. Ribera and I have talked on a couple of
3 occasions. We've emailed back and forth. We actually
4 had lunch in Durango one day and went over all the
5 paperwork for all of this.

6 I had changed my initial offer to them, in
7 that I was willing to go ahead and make the bonus payment
8 based on the 25 acres that the assessor's office shows.
9 However, until that's been resolved in court as to
10 whether it's 14 or 25, we will have to stay with what the
11 title opinion shows for this and the for royalty payments
12 once the well is producing.

13 Q. So your revenue decs will show approximately 5
14 percent attributable to that --

15 A. Yes.

16 Q. Let's look at Exhibit Number 4. Would you
17 identify that?

18 A. This is another letter I wrote to Adobe, dated
19 April 20th, 2011. Basically what I was trying to do is
20 outline whatever the options that I saw that Adobe
21 Investment had. Our offer to lease is still available,
22 including paying the bonus on the larger amount of
23 acreage. We offered them a five-year term and a 20
24 percent royalty.

25 I also include for them an AFE showing the

1 total cost of the well, as well as advising them that if
2 they were to join and pay their proportionate share, we
3 would propose an operating agreement under the 1982 model
4 form with fixed overhead rates of 6,500 per month
5 drilling and 650 per month producing.

6 Q. If we look at the top page of Exhibit 4, the
7 fourth paragraph there, can we ascertain the working
8 interest attributable to the unleased mineral interest?

9 A. Pursuant to our title opinion, their mineral
10 interests would provide them with a 5.219279 percent
11 working interest in this.

12 Q. In your opinion, has Energen made a good-faith
13 effort to obtain voluntary participation with Adobe
14 Investment?

15 A. Yes, I think I have.

16 Q. Let's talk about Exhibit 5. Identify that,
17 please, sir.

18 A. This is the Authority for Expenditure and the
19 AFE for the drilling and completion of this well. It
20 shows a dry hole cost of 1,245,000, completion costing an
21 additional 372,000, with a total cost completed,
22 \$1,602,830.

23 Q. Are you satisfied that those dry hole
24 completion costs are in line with what other operators in
25 the area are charging?

1 A. Yes.

2 Q. What overhead rates are you seeking?

3 A. 6,500 drilling, 650 overhead producing.

4 Q. Are those rates in line with --

5 A. Yes. That's in line with what we're seeing
6 from other operators to drill similar wells.

7 Q. Is Energen asking that the order issued by the
8 Division provide for those overhead rates --

9 A. Yes.

10 Q. -- in the recovery of these well costs?

11 A. Yes.

12 Q. Does Energen also ask the Division to enter an
13 order providing for the adjustment of the administrative
14 rates in accordance with the current COPAS Bulletin?

15 A. Right.

16 MR. HALL: That concludes our direct of
17 Mr. Poage. We move the admission of Exhibits 1 through
18 5. Exhibit 6 is our notice affidavit indicating notice
19 to Adobe Investment company, and I've provided the court
20 reporter with the originals.

21 EXAMINER WARNELL: So we're going to admit
22 Exhibits 1 through 5?

23 MR. HALL: And 6.

24 EXAMINER WARNELL: Exhibits 1 through 6
25 are admitted.

1 (Exhibits 1 through 6 admitted.)

2 MR. HALL: At this point I would note that
3 the Division did receive a letter from Mr. Ribera,
4 expressing a statement about his position. We were not
5 aware that he was going to appear today. We received no
6 pre-hearing statement. I don't believe that Mr. Ribera
7 would be entitled to provide testimony or evidence. We
8 wouldn't object to him making a statement here today,
9 though.

10 EXAMINER WARNELL: Because it is a
11 hearing, I think we need to let Mr. Ribera say --

12 EXAMINER BROOKS: Is this your only
13 witness?

14 MR. HALL: Yes, sir. That concludes our
15 case in chief.

16 EXAMINER WARNELL: Questions, Mr. Brooks?

17 EXAMINER BROOKS: Well, this is a
18 horizontal well. You're not -- because it's only a
19 270-acre unit, you're not requesting -- because it's
20 within tolerance, you're not requesting a nonstandard
21 unit?

22 MR. HALL: That's correct.

23 EXAMINATION

24 BY EXAMINER BROOKS:

25 Q. I don't know that I have any questions at this

1 point. This is just a Fruitland Coal well; correct?

2 It's not any other formation?

3 A. Just a Fruitland Coal.

4 Q. So you're asking for pooling within the
5 Fruitland Coal?

6 A. That's correct.

7 Q. And Ribera or Adobe is the only party being
8 pooled?

9 A. Yes.

10 EXAMINER BROOKS: I have no further
11 questions.

12 EXAMINER WARNELL: I have no questions.

13 Now, Adobe Investments --

14 EXAMINER BROOKS: Okay. We'll allow you
15 to read your statement, Mr. Ribera.

16 MR. RIBERA: My wife will read that to us.
17 And I'd like to speak on our behalf and give you some
18 background into it as to what has resulted in this whole
19 process.

20 MRS. RIBERA: A letter was written and
21 sent out on May 16th. We've had a very short period of
22 time to deal with all of this, so I'll just read the
23 letter. I believe you may have received one.

24 It says, "Dear Sir: We are submitting this
25 letter as a notice of our concern, and request to have

1 our issues addressed in regards to the drilling of the
2 proposed Caracas 8B Well No. 16-H by Energy Resources
3 Corporation in the hearing of NMOCD Case Number 14653.

4 "Our major concern is that the amount of land
5 claimed by Energen to be in our ownership and to be
6 included in the drilling pool is different than what we
7 own. We (my wife, Stephanie" -- that's me -- "and I)
8 purchased 25.84 acres of land in 2007, have a recorded
9 title and warranty deed and have paid taxes on this
10 amount of acreage for all these years. Energen has
11 submitted a title opinion referencing our property as
12 containing only 14.305 acres. Also submitted was a plat
13 that was indecipherable that Energen states contains
14 these acres which is contrary to records contained in the
15 Rio Arriba County Assessor's Office. When we were
16 contacted by Mr. David Poage, district landman for
17 Energen, we stated our concern and stated we needed a
18 second opinion. Our inability to afford a professional
19 attorney, landman, surveyor, Realtor to research this in
20 a timely manner coinciding with Energen's planned
21 drilling timelines was the impetus of this compulsory
22 hearing. When Energen was approached during our
23 conversations about assistance with professional fees to
24 obtain a second opinion, assistance was denied.
25 Therefore, we feel that our warranty deed and taxed

1 acreage are a basis that requires prudent review and due
2 process in resolving these differing opinions. We ask
3 that accommodations be made for this resolution during
4 the hearing process.

5 "Our second concern with this application to
6 permit drilling is that we do not have the financial
7 capability to afford a New Mexico licensed (non-industry)
8 oil and gas attorney to review lease agreements for our
9 fair compensation and just arrangements. When Energen
10 was approached for financial assistance with this matter
11 this was rebuked, contrary to an earlier promise made by
12 Mr. Poage that conditions held in related lease would be
13 in the current arrangements, that included paid attorney
14 fees.

15 "Our third concern with this application is
16 that Energen wants to access their mineral interests
17 through our property while crossing it subsurface at a
18 horizontal direction. As an adjacent landowner, we
19 requested access to our property across their land in
20 case of an exigent circumstance and access was somewhat
21 afforded with conditions. Our parcel of land is
22 currently only accessible via our family ranch and by
23 fording the river. Our request for this intermittent
24 and/or urgent access via a newly constructed bridge and
25 road was misinterpreted yet Energen wants to access their

1 minerals through our property with formalities of this
2 hearing. The inability to reciprocate and negotiate in
3 good faith is very apparent here. Please provide a
4 condition for this arrangement in your consideration of
5 this permit.

6 "Our fourth concern is that Energen's risk
7 recovery rate they are requesting, coupled with the
8 rejection of some financial assistance in dealing with
9 issues mandated by their pursuit, and the diminished land
10 ownership, further erodes our financial status. We
11 believe that a business should be able to make a profit,
12 but such a high return of capital investment is in excess
13 especially when it is partially borne by an entity that
14 is confined to their development process with little say.
15 In this case, us. Please consider our request for a rate
16 that is just and justifiable.

17 "In order to mitigate the above cited impacts
18 and conditions, we request that this hearing place
19 conditions on this pooling with respect to our mineral
20 rights.

21 "1. Energen provide financial assistance with
22 already incurred professional fees and future fees
23 associated with research, examination and reporting of
24 fair compensation with our share of mineral rights.

25 "2. Energen provide financial assistance with

1 current and future expenses associated with the
2 establishment of accurate legal description and status of
3 our property parameters.

4 "3. Assignment of a lower risk factor with a not
5 exceed amount in this development to help offset the
6 associated impacts borne by us.

7 "4. Because the land and environment surrounding
8 the proposed oil and gas extraction area is of a pristine
9 and delicate nature, we ask that we be held harmless of
10 any responsibility in the drilling, extraction,
11 production and transportation impacts to the surrounding
12 sustained plant and animal life, including endangered
13 species, impacts to old growth forest, impacts to water
14 sources, impacts to historical and archeological entities
15 and impacts to visual, noise and air quality. The
16 indemnification shall be recognized by Energen and/or its
17 assignees in any legal process, mandates, regulations,
18 and spiritual appeals associated with the production of
19 oil and gas on this location.

20 "5. We ask that NMOCD afford us the method to
21 ensure that financial information associated with this
22 development is readily available to us.

23 "Other important information.

24 "1. In a previous contact by a previous landman
25 hired by Energen, dated March 25, 2009, they cited our

1 acreage as 25.84 acres. We did not hear from them until
2 late February 2011. The title opinion cites an abstract
3 of title dated for the affected property as November 19,
4 2008, yet we were not made aware of this situation until
5 two years later. Why?

6 "2. The Rio Arriba County is unaware of this
7 discrepancy in land ownership in this local associated
8 with drilled wells and is unaware of this title opinion.

9 "3. During our verbal contact with Mr. Poage, we
10 were not advised of opportunities to voluntarily
11 participate as a partner in this endeavor. The first
12 time we knew of this option was from reading the letter
13 dated April 20th, 2011, which was quickly absolved when
14 we received notice that an application for pooling
15 stamped April 21, 2011, had been submitted to the NMOCD.

16 "We appreciate you taking the time to consider
17 our concerns and hope you understand how overwhelming
18 this process has been on our lifestyle, while still
19 trying to conduct daily activities of ranch work, our
20 regular employment responsibilities, my voluntary school
21 board and BOCES commitments and while raising and caring
22 for four teenage children. We ask that your
23 consideration of our matters be viewed as those impacting
24 a couple who have worked hard for our life and children
25 and provide us with a just application of admissible

1 guidelines in our manner. Please feel free to call me at
2 (970)749-9501 if you have any questions or require
3 additional information."

4 MR. RIBERA: Now, if I can point out --

5 MR. HALL: Excuse me for just one minute.

6 EXAMINER BROOKS: Go ahead.

7 MR. HALL: If I might make a statement.

8 We don't object to Mr. Ribera making a statement before
9 the Examiner, provided that the statement is a statement
10 only. It does not constitute evidence upon which the
11 Division may rely for purposes of entry of an order in
12 this case.

13 EXAMINER BROOKS: We'll note your
14 observation, Mr. Hall, and let Mr. Ribera go ahead and
15 make his statement.

16 You may proceed.

17 MR. RIBERA: Thank you, sir. As you can
18 see by the letter, we've been overwhelmed with this
19 development that has impacted our lives financially and
20 emotionally for the last two months. We're trying to
21 deal with this while keeping our lifestyle afloat.

22 I think the major issue we have is that back
23 in 2007, we did purchase 25.84 acres, and we do have a
24 warranty deed for that. When they approved us, they said
25 that we only owned 14.8 acres. We told Mr. Poage that we

1 needed additional time to take a look at this. And he
2 was under the pressure of getting a May 1st drilling
3 window started.

4 He met with us. He talked to us about what
5 our lease options were and what our force pooling
6 ramifications would be. He never did offer an operating
7 type of agreement. We never heard "partnership." We
8 never heard anything that you can buy in. None of these
9 words were made available to us, other than the letter we
10 received on April the 20th -- dated April 20th. But that
11 we received later on, because it was certified mail and
12 it had to travel in the mail. And then we received the
13 letter that they had already filed the petition for force
14 pooling us.

15 I have no objections to them drilling, other
16 than I don't think we've been fairly dealt with.
17 We've -- they have taken -- in New Mexico they have
18 purchased the land adjacent to both sides of us. And
19 adjacent to them is federal lands, so they have those
20 leases. Their option has been to buy the individuals out
21 so that they can drill.

22 We purchased that land so that we could haul
23 material down to the river to riprap it and to access the
24 natural forest. We told them we didn't want to sell.
25 And so when they hit us with that we only owned half the

1 land that we had -- we made an investment for the 25
2 acres. We bought it for 40,000. Now we only owe 20,000.
3 They offered us \$10,000, so that -- as a sign-up
4 agreement.

5 We said, "This is not going to work out for
6 us." If we have to hire a surveyor, a Realtor, a title
7 lawyer and a mineral rights individual, our \$10,000 is
8 going to be gone, adjacent to the land we already lost,
9 adjacent to the investment we made a long time ago and
10 the taxes we've been paying. This was really not the way
11 we wanted to go. We would rather have figured out some
12 other way for negotiating this type of arrangement.

13 I know that's a proven field out there. In
14 their letter, they state that they want a 300 percent
15 risk factor, which I find to be -- I can see somebody
16 doing a markup on a capital investment, but at 300
17 percent, I don't think that's fair. From what I
18 understand, it's only 200 percent.

19 But when it's subject to us, who have already
20 lost so much, and from 10 percent we're down to 5
21 percent, I think that's a real tax on us, especially when
22 we're being -- we have no say in it.

23 We ask your hearing to accommodate us with
24 some way of understanding this whole ramification or --
25 and I don't know what it's going to take. I couldn't

1 afford a lawyer to come represent us today because of the
2 cost. It's \$250 an hour. It's going to take more than
3 40 hours to resolve all this. There goes our bonus.

4 In addition, we're losing that 80 percent of
5 our -- what I think our interest is. I just think
6 there's a lot that can be done here to assure us that we
7 get what we deserve. It kind of makes me sad that I went
8 to Desert Storm, fought for our country, and now I have
9 to come and fight for what I own in a court of law. It
10 just doesn't make sense that I went out there and I did
11 my time and I thought it was over, and I'm getting force
12 pooled into doing something that I don't think is fairly
13 compensated or negotiated in good faith to the fullest
14 extent.

15 EXAMINER BROOKS: Do you wish to question
16 Mr. Ribera, Mr. Hall?

17 MR. HALL: No, sir.

18 EXAMINER BROOKS: Okay. To my
19 understanding, the principal concern you have here is
20 that they credit you with a much smaller amount of acres
21 than you believe you own?

22 MR. RIBERA: Yes, sir.

23 EXAMINER BROOKS: The difference between
24 25 something and 14 something?

25 MR. RIBERA: Yes.

1 EXAMINER BROOKS: The issue of land
2 ownership is not something that the Oil Conservation
3 Division has the authority to determine. That would have
4 to be determine by the District Court of Rio Arriba
5 County, New Mexico.

6 If we enter an order, it will give you two
7 options. One will be to participate in the drilling of
8 this well, which will mean you will have to advance an
9 amount of money equal to -- they're saying 5 percent,
10 that they credit you with 5 percent. You'd have to come
11 up with 5 percent of the cost of the well, which would
12 be --

13 MR. RIBERA: Around \$80,000.

14 EXAMINER BROOKS: Around \$80,000? I
15 hadn't computed it. But yeah, you would have to come up
16 with that amount of money.

17 And if you did so, then of course you would
18 share -- you would get your 5 percent of any proceeds
19 that came from this well. You would, in addition, get
20 one-eighth of 5 percent of all proceeds from this well as
21 a royalty under the terms of the Division order.

22 The 200 percent risk penalty is provided by
23 the Oil Conservation Division rules. And it's standard
24 in the sense that it is provided for all cases, unless
25 particular facts provide for some other penalty in a

1 particular case.

2 The reason that the Oil Conservation Division
3 adopted the 200 percent risk penalty is because it is
4 somewhat in accordance with industry standards. Not that
5 the industry negotiates the same deal in every case, but
6 you will often find -- it's a figure that's not unusual
7 in deals made between people who are active exploration
8 companies in the business where one elects to
9 participate -- one elects not to participate in a well
10 that is drilled on jointly owned land.

11 So I think that's basically all -- I think the
12 only thing we can do for you is we can try to -- we can
13 put some language in our order -- consider putting some
14 language in our order to provide that if you do establish
15 that you own a larger interest, that that will be
16 recognized in the context of whatever options you're
17 given in this order.

18 But it will still be necessary for you to
19 establish that, and that would have to be
20 through the courts. So I think that's all I can say on
21 the subject.

22 MR. RIBERA: I understand your position on
23 that. We were not aware of this discrepancy until
24 Energen brought it up. The time length that they gave us
25 to resolve it was not viable for us to resolve it.

1 So I know at this point it's going to have to
2 be resolved. I don't know if a title opinion has been
3 filed with the courthouse so that they know. I don't
4 know if they entered into Rio Arriba. They didn't have
5 any knowledge of this title opinion.

6 So there's a lot of ambiguity out there
7 concerning the whole 10-mile section of New Mexico of
8 which there's drilling going on. So I'm not the only one
9 affected by this. I think there's some taxation, some
10 other issues that are going to be affected. And we need
11 to figure this out, what's going on out there. I would
12 like more time.

13 EXAMINER BROOKS: What are the constraints
14 as far as your drilling schedule is concerned? I can
15 imagine what they probably are because I know you have a
16 winter shutdown.

17 MR. HALL: Mr. Poage might be able to
18 address that.

19 MR. POAGE: This well is right now
20 scheduled to be commenced somewhere around the 1st of
21 July. So we've got another month. basically. We could
22 delay that, if that's what the OCD requires.

23 EXAMINER BROOKS: A delay of a month or
24 even a few months is not going to enable Mr. Ribera to
25 get his title issues straightened out, since he's

1 indicated that he may not have the funds to pursue
2 judicial remedies. I'm not sure the time is necessarily
3 going to do that.

4 The only thing would be to get the parties to
5 negotiate, and that would be the only consideration
6 affected there. So I do know that you have to pursue
7 your drilling schedule during the summer because -- when
8 do you get shut down by BLM?

9 MR. POAGE: November 1st.

10 EXAMINER BROOKS: So you have to be
11 through and out by November 1st?

12 MR. POAGE: Yes.

13 EXAMINER BROOKS: Let's take a five-minute
14 recess and we can confer.

15 EXAMINER WARNELL: Okay.

16 (A recess was taken.)

17 EXAMINER BROOKS: Okay. The determination
18 that we have made, the Oil Conservation Division has
19 limited discretion in compulsory pooling cases because of
20 the statutory statement that we shall pool the acreage if
21 the appropriate showing is made.

22 There is no requirement in Section 70-2-17 or
23 18 about negotiation, as there is in Texas' compulsory
24 pooling statute. However, the Commission has over the
25 years recognized that good faith negotiation of a

1 voluntary pooling is a prerequisite to pooling.

2 And without making any judgments about whether
3 good faith has been exercised or not, the Examiners have
4 concluded that we would use our discretion to continue
5 this case for four weeks, to the June 23rd docket, to
6 encourage the parties to see if a voluntary resolution
7 can be reached, specifically with the possibility of
8 seeing how various alternatives that might exist to
9 making a deal can be adjusted in the context of the
10 uncertainty of the amount of acreage involved, so that
11 Mr. Ribera could be made whole if in fact he does at some
12 point establish that he owns a larger interest.

13 Because any order that we enter would just pool his
14 interest, whatever it was. The Oil Conservation Division
15 would not have the jurisdiction or ability to make a
16 judgment as to what the interest was, and then we still
17 have to deal with it.

18 Perhaps at the hearing, when you come back,
19 you would have some suggestions as to how we can deal
20 with that uncertainty in terms of what we provide in our
21 orders.

22 We don't ever set out the interests in our
23 orders, but we normally assume that everything is going
24 to flow right along as the interests are shown in the
25 testimony. And in this case, we have kind of a problem

1 making some kind of provision as to what happens if it
2 subsequently shows that the interest is different from
3 what the evidence at hearing indicated it was.

4 Any questions?

5 MR. HALL: I want to understand what the
6 expectations are of us for June 23rd. I don't want
7 Mr. Poage to make an unnecessary trip down here. But do
8 you wish us to adduce additional evidence of post
9 application filing negotiations to establish additional
10 good faith?

11 EXAMINER BROOKS: I think that would be
12 advisable if you do not reach a conclusion. Obviously,
13 Mr. Ribera has the feeling that the negotiations have
14 been inadequate. As I said, we are making no judgment on
15 that at this point.

16 But the reason for the continuance is to allow
17 an opportunity for more negotiations. If those
18 negotiations are unsuccessful, then we need some evidence
19 as to what negotiations have occurred so we can make a
20 judgment about that at that time.

21 MR. HALL: I would note that negotiations
22 can continue even after the well is drilled. We all may
23 want to --

24 EXAMINER BROOKS: Absolutely. We always
25 encourage people, when compulsory pooling orders have

1 been entered, to continue to try to negotiate a voluntary
2 agreement with the pooled parties.

3 MR. HALL: We may request that the
4 Division acknowledge that Energen may start the well in
5 the interim to meet the limited schedule.

6 EXAMINER BROOKS: You have that right
7 under the statute. The way it's drafted, it's very clear
8 that -- the legislature has been very clear that
9 compulsory pooling can be done even after the well is
10 drilled.

11 MR. HALL: Okay.

12 EXAMINER BROOKS: Any questions?

13 MR. RIBERA: Yes, sir. If it does go into
14 compulsory pooling, what type of reassurance do we have
15 from the New Mexico Oil Conservation Division that the
16 well is done accordingly and that we receive our
17 interest? Is there inspectors on board that would
18 provide us with logs or with the layout of the well, with
19 daily productions, calibrations, any of that information
20 that we request, since we will be --

21 EXAMINER BROOKS: I would assume, if you
22 elect to participate in the well -- if you put up your
23 money and elect to participate in the well, I would
24 assume that Energen will provide you with all that
25 information.

1 Is that a correct assumption?

2 MR. POAGE: Yes, it is.

3 EXAMINER BROOKS: It's routine in the
4 industry that anybody that is a participant in a well
5 gets all information that's available to the operator.

6 We just had a case this morning, which you may
7 have heard, about what information is filed with us. Of
8 course, what's filed with us is available to the general
9 public.

10 Other than what is required to be filed with
11 us, which is available on our website once it's filed,
12 the law does not require that someone who is pooled into
13 a well but does not elect to participate is entitled to
14 additional information. That information is not, by
15 statute or rule, considered to be public.

16 If you elect not to participate, you would
17 only be entitled to such information as we require them
18 to file with us.

19 MR. RIBERA: Yes, sir. Of course.

20 EXAMINER BROOKS: I understand your
21 concerns about potential liability under federal law or
22 to third parties, but those are not matters over which
23 the Oil Conservation Division has jurisdiction.

24 MRS. RIBERA: I appreciate you giving us a
25 little more time to negotiate this. I think that is the

1 way we would choose to go. And also to investigate and
2 learn a little more about the partner option, which we
3 had like a 24-hour notice to look at, and then it was
4 kind of taken from us.

5 So I'm hoping the way this goes forward is a
6 good negotiation. And we won't have to come back on June
7 23rd, if we do so; correct?

8 EXAMINER BROOKS: That will be up to you.
9 If you get an agreement, there won't be any hearing.
10 They'll dismiss the case. If you don't get an agreement,
11 then it's entirely up to you whether you come back on
12 June 23rd or not.

13 MR. HALL: In the interest of completeness
14 of the record, would you allow me to ask Mr. Poage two
15 more questions?

16 EXAMINER WARNELL: I would allow you to
17 ask two more questions.

18 FURTHER DIRECT EXAMINATION

19 BY MR. HALL:

20 Q. Mr. Poage, does Energen seek to be the
21 designated operator of the well?

22 A. Yes.

23 Q. Does Energen seek recovery of reasonable well
24 costs and risk penalties associated with drilling the
25 well?

1 A. Yes.

2 EXAMINER BROOKS: Did you get the overhead
3 charges?

4 EXAMINER WARNELL: We got the overhead
5 charges.

6 EXAMINER BROOKS: We missed that one on
7 the last --

8 EXAMINER WARNELL: We never did get a very
9 good explanation.

10 Okay. With that, Case Number 14653 will be
11 continued to June 23rd.

12

13

* * *

14

15

16

17

18

I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. _____
heard by me on _____

19

20

21

_____, Examiner
Oil Conservation Division

22

23

24

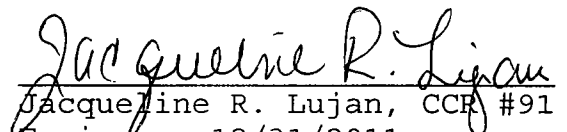
25

REPORTER'S CERTIFICATE

I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on May 26, 2011, proceedings in the
above captioned case were taken before me and that I did
report in stenographic shorthand the proceedings set
forth herein, and the foregoing pages are a true and
correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with any of the parties or
attorneys in this case and that I have no interest
whatsoever in the final disposition of this case in any
court.

WITNESS MY HAND this 8th day of June, 2011.


Jacqueline R. Lujan, CCR #91
Expires: 12/31/2011