

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

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

CASE NO. 15072

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REPLY IN SUPPORT OF MOTION TO VACATE OR STAY
PORTIONS OF ORDER NO. R-10154-A

As explained in Energen Resources Corporation's ("Energen") Motion to Vacate or Stay Portions of Order No. R-10154-A ("Motion"), Order No. R-10154-A (July 28, 2016) ("Order") is in pertinent part directly contrary to the rulings of the court in *King v. Gilbreath*, No. 1:13-CV-00862-JCH-LAM (D.N.M). The Kings' response in opposition to the Motion, filed Aug. 15, 2016, ("Response") is without merit for several reasons.

First, the Kings' reliance on Section 70-2-18 is without support because it is directly contrary to the Court's rulings. *See, e.g.*, Response at 4. The Court ruled that Section 70-2-18 cannot provide relief for the Kings, because it "is entirely barred" by the statute of limitations. Doc. 315 at 18, 32. The Court concluded that the Kings' claims under Section 70-2-18 "accrued in 1994, and Plaintiffs had inquiry notice in 2001 and certainly by May of 2009." *Id.* at 32; *see id.* at 27.

The facts recited by the Court in each of its memorandum opinions and orders ("MOOs") are undisputed. *See, e.g.*, Doc. 315 at 4, 6-9. Based on the undisputed facts, the Court concluded that Mr. King was alerted "to possible operations involving his mineral interests" by letter in 2001. *Id.* at 24. Thus, Mr. King sat on his hands for more than three years prior to the time that Energen began operations of the Flora Vista wells. In 2005 and in 2007, Energen communicated

with the Kings. *Id.* at 8, 26; *see id.* at 29 (stating that the Kings “could have inquired further of Energen, with whom they had a number of communications in 2005 and 2007”). In 2007, Energen sent them proposed division orders, one of which was signed and returned. *Id.* at 26. In January 2007, Plaintiffs accepted royalty payments from Energen for production in 2007. *Id.* at 9. In March 2009, the Kings claimed monies from the Texas Comptroller that had been paid to the State of Texas as unclaimed property by Energen’s predecessor, SG Interests I, Ltd., for production revenues from the Flora Vista Well No. 2. *Id.* Yet the Kings made no effort to inform Energen or its predecessor that their mineral interests were unleased. Instead, more than twelve years after having notice that their minerals may be unleased but under production, the Kings *chose* to bring their claims in federal court, where those claims are still pending. Under these circumstances, requiring Energen to pay the Kings for all production attributable to the Kings’ unleased interests would be neither just nor reasonable. This is particularly true because the Gilbreaths, the purported lessee of the Kings’ mineral interests, received the gas and proceeds to which the Kings assert they are entitled. *See* Motion at 2 (citing the Kings’ complaint).

Moreover, the Division does not protect correlative rights by requiring Energen to pay the Kings when the Gilbreaths are the liable party. Rather, the Division creates further inequities among the correlative rights within the spacing unit by requiring Energen to make payments attributable to the Kings’ gas when such payments have already been made or such gas taken in kind by the owner of another correlative right, the Gilbreaths. By requiring Energen to pay the Kings, the Division does not protect correlative rights, but rather creates further disparity among the correlative rights. As further explained in the Motion, such a requirement is also inconsistent with the Court’s rulings to date.

The Kings assert that the Division is not collaterally estopped by the Court's rulings on the statute of limitations. Response at 1. The Kings' misapprehend the argument. The *Kings* are collaterally estopped from asserting that the statute of limitations does not apply. Motion at 6. As stated, the Kings sought relief in the federal court and litigated the issue regarding the statute of limitations. *See generally* Doc. 315. The Court concluded that in light of the undisputed facts, the Kings are not entitled to relief against Energen for any claims prior to September 2009. *See* Motion at 6-7. Thus, contrary to the Kings' assertion, the issue as to the relief to which Plaintiffs are entitled from Energen has been litigated and decided. *See* Response at 11. Plaintiffs are not entitled to relief from Energen for claims prior to September 2009. It would not be just or reasonable for the Division to allow the Kings to circumvent the ruling of the Court chosen by the Kings to determine the relief to which they are entitled.

Under the circumstances, the Division will protect correlative rights by allowing the parties to resolve the issues in the pending litigation. Energen believes relief for the Kings is best achieved by bringing the Kings in balance through an assignment of additional gas from the Gilbreaths' interests going into the future. As explained in the Motion, the parties are attending a settlement conference in an effort to resolve the Kings' claims under their correlative right, as well as various cross-claims applicable to the correlative rights of all the parties with working interests in the Flora Vista wells. Motion at 9. Energen is prepared to show the magistrate judge at the settlement conference that there are sufficient reserves to recover the Kings' gas, which remains in the ground, and bring their account into a balanced position.

Finally, contrary to the Kings' assertions, Energen does not have data in addition to that which Plaintiffs' accounting expert had available. *See* Response at 8, ¶ 14. Energen has provided all data in its possession that relate to the Kings' interests through the date of their

expert's report. It serves no purpose whatsoever to require another independent accounting when Plaintiffs' expert report has been adopted by Energen.

For all of the reasons stated herein and in the Motion, the Division should exercise repose by vacating or alternatively staying Order No. R-10154-A, Order ¶¶ 7 – 11 and all related findings until after completion of the court-supervised settlement conference or other resolution of the judicial proceeding, or until the Division has had the opportunity to amend the Order so that it is consistent with the Court's rulings in *King v. Gilbreath*.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following counsel of record by electronic mail on August 17, 2016:

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