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Joseph A. Sommer
(1922-2006)

January 7, 2007

Via Hand Delivery

New Mexico Energy, Minerals
and Natural Resources Department
Oil Conservation Division

David K. Brooks, Jr.
Hearing Officer
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: Case No. 12,957/Amended Application of Energen Resources Corporation to Amend the Cost Recovery Provisions of 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

Dear Mr. Brooks:

In connection with the hearing that was held in the above-referenced case on November 29, 2007, please find enclosed an original and a copy of the Post-Hearing Brief submitted on behalf of the Estate of Joseph A. Sommer, the Joseph A. Sommer Revocable Trust, and JAS Oil & Gas Company, LLC, including exhibits.

Please return a file-stamped copy of the Post-Hearing Brief to my attention at the address above.

Thank you.

Sincerely,

Candice Lee

cc: Kurt A. Sommer
James Bruce

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

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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

POST-HEARING BRIEF OF JAS OIL AND GAS, LLC, *ET AL.*

This post-hearing brief is submitted by the Estate of Joseph A. Sommer, Joseph A. Sommer Revocable Trust, and JAS Oil and Gas Co., LLC (collectively, "Sommer").

I. FACTS.

The basic facts of this case are as follows:

A. The well involved in this case is the Pictured Cliffs formation underlying the SW/4 of Section 2, Township 25 North, Range 3 West, NMPM (the "well unit").

B. Sommer owns an unleased mineral interest in the well unit.

C. Commission Order No. R-1960 (the "order" or "pooling order") force pooled Sommer (and others) into the well unit, and contained the following provisions:

> PROVIDED HOWEVER, That the proportionate share of the costs of development and operation of the pooled unit shall be borne by each consenting working interest owner in the same proportion to the total costs that his acreage bears to the total acreage in the pooled unit.
>
> PROVIDED FURTHER, That the proportionate share of the costs of development of the pooled unit, including a reasonable charge for supervision, shall be paid out of production by each nonconsenting working interest owner and shall be 110 per cent of the same proportion to the total costs of drilling and completing the well that his acreage bears to the total acreage in the pooled unit. (Emphasis added.)
>
> PROVIDED FURTHER, That the share of the costs for development of

the pooled unit, as determined above, which is to be paid by the mineral interest owners shall be withheld only from the working interests' share (7/8) of the revenues derived from the sale of the hydrocarbons produced from the well on the pooled unit. Royalty payments are not to be affected by the Withholding of any funds for the purpose of paying out a proportionate share of the costs of development and operation of the pooled unit.

D. The supervision charges which are allowed to be charged are to be for the development of the well, and those charges are not specified. In addition, the order does not provide for supervision charges for the operation of the well after development. Sommer is not party to a joint operating agreement governing production and costs from the well unit.

E. The subject well (the Martinez Well No. 1) was drilled and completed as a producer. The costs of drilling and completing the well (plus risk charge) have paid out, and there is no issue as to those costs.

F. For decades, the operator of the well unit sold all gas produced from the well, and accounted to and paid all interest owners for their respective shares of production. Thus, after payout of well costs, Sommer received (i) the 1/8 "royalty" interest, and (ii) the 7/8 working interest, less operating costs.

G. Energen Resources Corporation ("Energen") is now operator of the well unit. Although Energen has sold 100% of the gas produced from the well unit, Energen is paying Sommer only the 1/8 royalty interest from the net proceeds therefrom. Energen is not paying Sommer its working interest share of production, though has retained the benefit of the proceeds therefrom. In addition, Energen is not using Sommer's share of working interest proceeds to pay ongoing operating costs. Instead, Energen is charging Sommer for unauthorized joint interest billings for monthly well operating costs and overhead management fees.

H. Energen has filed this application, seeking (i) to establish reasonable supervision charges, and escalate those charges under the COPAS accounting procedure, (ii) impose a gas balancing agreement upon Sommer, and (iii) make these provisions of a pooling order retroactive to the time Energen assumed operations.

II. GOVERNING STATUTE.

The statute governing this case is NMSA 1978 §70-2-17.C, which provides in pertinent part:

All orders effecting such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas, or both. Each order shall describe the lands included in the unit designated thereby, identify the pool or pools to

which it applies and designate an operator for the unit. All operations for the pooled oil or gas, or both, which are conducted on any portion of the unit shall be deemed for all purposes to have been conducted upon each tract within the unit by the owner or owners of such tract. For the purpose of determining the portions of production owned by the persons owning interests in the pooled oil or gas, or both, such production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit. The portion of the production allocated to the owner or owners of each tract or interest included in a well spacing or proration unit formed by a pooling order shall, when produced, be considered as if produced from the separately owned tract or interest by a well drilled thereon. Such pooling order of the division shall make definite provision as to any owner, or owners, who elects not to pay his proportionate share in advance for the prorata reimbursement **solely out of production** to the parties advancing the costs of the development and operation, which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, but **which shall include a reasonable charge for supervision** and may include a charge for the risk involved in the drilling of such well, which charge for risk shall not exceed two hundred percent of the nonconsenting working interest owner's or owners' prorata share of the cost of drilling and completing the well.

In the event of any dispute relative to such costs, the division shall determine the proper costs after due notice to interested parties and a hearing thereon. The division is specifically authorized to provide that the owner or owners drilling, or paying for the drilling, or for the operation of a well for the benefit of all shall be entitled to all production from such well which would be received by the owner, or owners, for whose benefit the well was drilled or operated, after payment of royalty as provided in the lease, if any, applicable to each tract or interest, and obligations payable out of production, until the owner or owners drilling or operating the well or both have been paid the amount due under the terms of the pooling order or order settling such dispute. No part of the production or proceeds accruing to any owner or owners of a separate interest in such unit shall be applied toward the payment of any cost properly chargeable to any other interest in said unit.

If the interest of any owner or owners of any unleased mineral interest is pooled by virtue of this act, seven-eighths of such interest shall be considered as a working interest and one-eighth shall be considered a royalty interest, and he shall in all events be paid one-eighth of all production from the unit and creditable to his interest.

(Emphasis added.)

III. STATEMENT OF POSITION.

Sommer does not dispute that the Division has limited jurisdiction to determine reasonable supervision charges prospectively, and further, the operator of the well unit is entitled

to reasonable and necessary supervision charges. However, Sommer thinks that: (a) the pooling statute and pooling order require Energen, if it sells all gas produced from the well unit, to account for, and pay to Sommer, its pro rata share of production for the entire time Energen has operated the unit on a continuous basis, if and until the order is amended without charge for any costs until such costs are fixed by the Division or a court; (b) Energen has failed to establish it is entitled to any charges for operation of the well unit, or in the alternative, that its charges for operation of the well unit have been reasonable during the entire period of time that it has operated the well unit; (c) Energen's proposed supervision charges for the year 2007 are unreasonable; (d) retroactive relief going back over a decade is improper and is beyond the scope of the Division's jurisdiction (Energen could have filed its request for clarification of the order once it acquired operation of the well unit); (e) the imposition of Energen's joing operating agreement terms over Sommer would be unfair and tantamount to a contract of adhesion; and (f) the Division does not have the authority to impose a gas balancing agreement on Sommer.

IV. ARGUMENT.

A. Energen Must Account for and Pay for Gas Produced: NMSA 1978 §70-2-17.C , cited above, makes clear that Energen must pay a pooled working interest owner for all of his share of production proceeds on an ongoing basis. The statute (and order) provide that Energen must sell gas and pay Sommer its royalty share of all income. Despite Energen's assertion to the contrary, if Energen sells the gas, it must also sell Sommer's share of gas to cover reasonable ongoing operating costs and pay to Sommer its share of the income. Thus, sending JIB's to Sommer is improper if Energen elects to produce the well. Instead, Energen's operating costs should be recovered from production.

Likewise, Energen must account to, and pay Sommer for, its working interest share. This is evident from the following: (a) the statute and the order require the well operator to sell the non-consenting interest owner's share of production to pay drilling costs, operating costs, and the risk charge (110% in this case); and (b) prior operators of the well unit sold 100% of gas produced and paid Sommer his working interest share, deducting costs from production. Why must working interest gas be sold before payout, but not after payout? Under Energen's theory, Sommer's working interest share of gas would never be sold and payout would never be reached because the parties have not entered into a joint operating agreement, and thus Sommer would never be entitled to any proceeds for its working interest share.

Sommer's position is confirmed by the provisions of current pooling orders. Attached as **Exhibit A** is a recent pooling order (No. R-12854) entered in Case No. 13975. This order states that, if all proceeds from production of a well are not disbursed for any reason, such proceeds shall be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership. (See, Paragraph 14 of Order No. R-12854). In this case, Sommer's ownership is not at issue and Sommer should have been paid all along for all gas sales as they occurred. To do otherwise is illogical, and contrary to statute and the 1960 pooling order.

Moreover, if the royalty share of Sommer's production must be sold, and an additional share of production must be sold to cover supervision charges, what is the alleged difficulty in selling Sommer's remaining share of production to pay the working interest share? Energen's position is simply without merit.

B. The Proposed Supervision Charges are not Reasonable: Under current New Mexico law, Energen and Sommer, as working interest owner's without an operating agreement governing their relationship, may also be considered "cotenants". In Bellet,

Levanthal and Merves v. Grynberg, 114 N.M. 690 (S. Ct. 1992), the New Mexico Supreme Court affirmed the trial court's addressing of the working interest owners' relationship based upon their status as cotenants. The Court stated that in the absence of an operating agreement, an operating cotenant has the right to be reimbursed for reasonable and necessary expenses. However, an operating cotenant may only recover out of the share of actual production, and it may not recover for any money spent speculatively. Id. at 694. Energen has failed to show how the joint interest billings and monthly management fees are "reasonable" and "necessary" to the operation of the well unit. On the contrary, Energen is charging Sommer for company labor, field office charges, vehicle charges, R & M surface charges, lease operating expenses and company supervision. Except for the company supervision charge, none of these charges are authorized by the order, or have been demonstrated by Energen to be "reasonable" and "necessary".

The evidence produced by Energen at the hearing showed that it is charging in excess of $500.00 per month over other pictured cliff operators. Energen presented testimony that overhead rates of $748 were reasonable, based on a 1983 operating agreement (with an escalation provision) which Sommer never executed. Such an agreement does not prove reasonableness. Energen did not produce an accountant who could testify as the reasonableness or necessity of these charges. The comparable rates submitted by Energen (Energen's Exhibit 22) show that the rates for Pictured Cliffs wells seem to be closer to $400-$500 than the rates proposed by Energen, and Energen's witness admitted that the well produced gas only and was inexpensive to operate.[1]

As a corollary, Energen produced no evidence as to what rates were reasonable in 1997 and ensuing years, when it operated the well, and has offered no basis in fact or in law for

[1] Energen did not even present data from the Ernst & Young annual survey.

mandatory escalation. Hence, the Division should not attempt to retrospectively establish the reasonableness of the rates for this well unit.

Most importantly, the order provides only that reasonable supervision charges shall be charged out of production from the well unit for the well unit's development only. The order does not address operation costs for the well once the development costs have been recovered. Alternatively, Energen failed to demonstrate "reasonableness" of the rates noted above, and Energen is not entitled to invoice Sommer for these charges. Any reasonable supervision charges must come out of Sommer's share of production. Thus, Energen's charges are nothing more than speculative, and therefore, under Grynberg, only the reasonable and necessary charges for operation of the well unit can be taken out of Sommer's share of production.

C. Retroactive Relief Is Improper: Energen has requested that the pooling order be amended retroactively. Retroactive relief is improper under these circumstances. Although pooling a party's interest retroactively back to the date of first production is proper under NMSA 1978 §70-2-18.B, ensures that an interest owner receives a proportionate share of all production from a well, where there is an existing pooling order, there is no statutory authority allowing the Division to grant retroactive relief going back nearly 11 years to recover operating costs at rates not allowed by the original order.

D. A Gas Balancing Agreement Cannot be Imposed: Without a written agreement between the parties, Energen has been imposing its form of gas balancing agreement upon Sommer by selling Sommer's share of the gas production and "crediting" Sommer in gas units. This is illegal, improper and actively conflicts with Order No. R-8361 which rejected mandatory gas balancing. (*See*, **Exhibit B**, attached). Gas balancing agreements are negotiated among interest owners in a well, and the Division does not have the authority to unilaterally impose

such an agreement on Sommer, or any other interest owner similarly situated. The original pooling order, as supplemented by the statute, is the only operative document between Sommer and Energen. The order requires Energen to sell 100% of the production from the well and to and account to, and pay Sommer, its royalty and working interest share of production from the net proceeds thereof. Energen may not sidestep the provisions of the statute by allegedly seeking to "amend" the pooling order.

> E. Relief Under Rule 414 is Improper: Any relief sought by Energen under Rule 414 is inapposite here. Rule 414 provides: 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.

In fact, Energen sells all of the production from the well unit, and retains Sommer's share of the net proceeds therefrom for its own use and benefit, therefore Rule 414 does not apply. Further, Sommer does not argue that its correlative rights are being violated in such a way that intervention by the Division and an amendment of the order is appropriate. Sommer's position is that its rights, and the responsibilities of Energen, are clearly set forth in the order, and Energen has been violating those rights and responsibilities by selling 100% of the gas production of the well unit and refusing to pay Sommer its working interest share from the proceeds thereof, and charging Sommer for unauthorized costs.

V. CONCLUSION.

Under these facts, the only relief which may be awarded by the Division is determination of reasonable supervision charges prospectively. The Division may not impose gas balancing on Sommer. Since Energen has not proven the reasonableness of its proposed charges, its application must be denied.

Respectfully submitted,

SOMMER, UDALL, HARDWICK, AHERN & HYATT, LLP

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Attorneys for the Estate of Joseph A. Sommer, Joseph A. Sommer Revocable Trust, and JAS Oil and Gas Co., LLC

CERTIFICATE OF SERVICE

The foregoing pleading was served upon the following counsel of record this 7th of January, 2008 via facsimile transmission and U.S. Mail:

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

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:

CASE NO. 13975
ORDER NO. R-12854

APPLICATION OF DEVON ENERGY PRODUCTION COMPANY, L.P. FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This case came for hearing at 8:15 a.m. at Santa Fe, New Mexico on September 20, 2007 before Examiners David K. Brooks and William V. Jones.

NOW, on this 20th day of December, 2007, the Division Director, having considered the testimony, the record and the recommendations of the Examiners,

FINDS THAT:

(1) Due public notice has been given, and the Oil Conservation Division has jurisdiction of this case and of the subject matter.

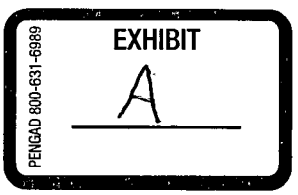
(2) The applicant, Devon Energy Production Company, L.P. ("applicant" or "Devon"), seeks an order pooling all uncommitted interests from the surface to the base of the Barnet Shale underlying the E/2 of Section 22, Township 19 South, Range 31 East, NMPM, Eddy County, New Mexico, in the following manner:

the E/2 to form a standard 320-acre gas spacing unit for all formations or pools spaced on 320 acres within this vertical extent, which presently includes, but is not limited to, the Undesignated West Lusk-Morrow Gas Pool (80840);

the SE/4 to form a standard 160-acre spacing unit for all formations or pools spaced on 160 acres within this vertical extent, which presently includes, but is not limited to, the Lusk-Strawn Pool (41589); and

the NE/4 SE/4 (Unit I) to form a standard 40-acre oil spacing and proration unit for all formations or pools spaced on 40 acres within this vertical extent, which presently includes, but is not limited to, the Undesignated West Lusk-Yates Pool (42180), the Undesignated Hackberry-Delaware Pool (29348), and the Undesignated East Hackberry-Bone Spring Pool (96746).

(3) The above-described units ("the Units") are to be dedicated to the applicant's Arenoso "22" Federal Well No. 2 (API No. 30-015-35631), to be drilled directionally from a surface location 1980 feet from the South line and 990 feet from the East line (Unit I) of Section



22 to a standard bottomhole location 1980 feet from the South line and 1650 feet from the East line (Unit J) of Section 22 and drilled to an approximate vertical depth of 12,800 feet in order to test the Morrow formation for production potential.

(4) Shackleford Oil Company, as the only party being pooled in this case, submitted a letter stating it would appear at the hearing, but Shackleford did not appear either by corporate representative or legal counsel. No other parties entered an appearance in this case or otherwise opposed the application.

(5) Applicant is an owner of an oil and gas working interest within the Units. Applicant has the right to drill and proposes to drill its Arenoso "22" Federal Well No. 2 (API No. 30-015-35631) to a common source of supply within the E/2 of Section 22.

(6) Two or more separately owned tracts are embraced within the Units, and/or there are royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the Units that are separately owned.

(7) There are interest owner(s) in these Units that were not locatable or have not yet agreed to pool their interest(s).

(8) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Units the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, this application should be approved by pooling all uncommitted interests, whatever they may be, in the oil and gas within the Units.

(9) Applicant should be designated the operator of the proposed well and of the Units.

(10) Any pooled working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 200% thereof as a reasonable charge for the risk involved in drilling the well.

(11) Reasonable charges for supervision (combined fixed rates) should be fixed at $6,000 per month while drilling and $600 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations.*"

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of Devon Energy Production Company, L.P. ("applicant"), all uncommitted interests, whatever they may be, in the oil and gas from the surface to the base of the Barnett Shale underlying the E/2 of Section 22, Township 19 South, Range 31 East, NMPM, Eddy County, New Mexico, are hereby pooled, as follows:

the E/2 to form a standard 320-acre gas spacing unit for all formations or pools spaced on 320 acres within this vertical extent, which presently includes, but is not limited to, the Undesignated West Lusk-Morrow Gas Pool (80840);

the SE/4 to form a standard 160-acre spacing unit for all formations or pools spaced on 160 acres within this vertical extent, which presently includes, but is not limited to, the Lusk-Strawn Pool (41589); and

the NE/4 SE/4 (Unit I) to form a standard 40-acre oil spacing and proration unit for all formations or pools spaced on 40 acres within this vertical extent, which presently includes, but is not limited to, the Undesignated West Lusk-Yates Pool (42180), the Undesignated Hackberry-Delaware Pool (29348), and the Undesignated East Hackberry-Bone Spring Pool (96746).

The above-described units ("the Units") shall be dedicated to the applicant's Arenoso "22" Federal Well No. 2 (API No. 30-015-35631), to be drilled directionally from a surface location within Unit I of Section 22 to a standard bottomhole location 1980 feet from the South line and 1650 feet from the East line (Unit J) of Section 22.

(2) The operator of the Unit shall commence drilling the proposed well on or before March 31, 2008 and shall thereafter continue drilling the well with due diligence to test the Morrow formation at an approximate total depth of 12,800 feet.

(3) In the event the operator does not commence drilling the proposed well on or before March 31, 2008, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause.

(4) Should the proposed well not be drilled and completed within 120 days after commencement thereof, Ordering Paragraph (1) shall be of no further effect, and the unit created by this Order shall terminate unless the operator appears before the Division Director and obtains an extension of time to complete the well for good cause demonstrated by satisfactory evidence.

(5) Upon final plugging and abandonment of the Arenoso "22" Federal Well No. 2 (API No. 30-015-35631) and any other well drilled on the Units pursuant to Division Rule 36, the pooled units created by this Order shall terminate, unless this order has been amended to authorize further operations.

(6) Devon Energy Production Company, L.P. (OGRD 6137) is hereby designated the operator of the proposed well and of the Units.

(7) After pooling, uncommitted working interest owners are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Units, including unleased mineral interests, who are not parties to an operating agreement governing the Units.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Units an itemized schedule of estimated costs of drilling, completing and equipping the proposed well ("well costs").

(8) Within 30 days from the date the schedule of estimated well costs is furnished, any pooled working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges. Pooled working interest owners who elect not to pay their share of estimated well costs as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."

(9) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs within 90 days following completion of the proposed well. If no objection to the actual well costs is received by the Division, and the Division has not objected within 45 days following receipt of the schedule, the actual well costs shall be deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(10) Within 60 days following determination of reasonable well costs, any pooled working interest owner who has paid its share of estimated costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator the amount, if any, that the estimated well costs it has paid exceed its share of reasonable well costs.

(11) The operator is hereby authorized to withhold the following costs and charges from production:

(a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner; and

(b) as a charge for the risk involved in drilling the well, 200% of the above costs.

(12) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs.

(13) Reasonable charges for supervision (combined fixed rates) are hereby fixed at $6,000 per month while drilling and $600 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations.*" The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to pooled working interest owners.

(14) Except as provided above in Ordering paragraphs (11) and (13), all proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

(15) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(16) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(17) The operator of the well and Units shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(18) Jurisdiction of this case 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

SEAL

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:

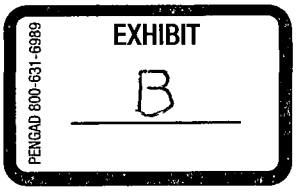
(1) Due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(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.



(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

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.

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

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