

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:)

AMENDED 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

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: WILLIAM V. JONES, Jr., Hearing Examiner

July 26th, 2007

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, WILLIAM V. JONES, Jr., Hearing Examiner, on Thursday, July 26th, 2007, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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STEVEN T. BRENNER, CCR
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I N D E X

July 26th, 2007
Examiner Hearing
CASE NO. 13,957

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A P P E A R A N C E S

FOR THE DIVISION:

MICHAEL THOMAS
Assistant General Counsel
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

FOR THE APPLICANT:

MILLER STRATVERT, P.A.
150 Washington
Suite 300
Santa Fe, New Mexico 87501
By: J. SCOTT HALL

FOR THE ESTATE OF JOSEPH A. SOMMER and JAS OIL AND GAS:

JAMES G. BRUCE
Attorney at Law
P.O. Box 1056
Santa Fe, New Mexico 87504

* * *

1 WHEREUPON, the following proceedings were had at
2 10:12 a.m.:

3 EXAMINER JONES: Okay, at this time let's call
4 Case Number 13,957, which is the amended Application of
5 Energen Resources Corporation to amend the cost recovery
6 provisions of compulsory pooling Order No. R-1960, to
7 determine reasonable costs, and for authorization to
8 recover costs from production of pooled mineral interests,
9 Rio Arriba County, New Mexico.

10 I'm going to call for appearances, and then I'm
11 going to turn this over to Mike here.

12 So call for appearances.

13 MR. HALL: Mr. Examiner, Scott Hall, Miller
14 Stratvert, PA, Santa Fe, appearing on behalf of the
15 Applicant, Energen Resources Corporation.

16 EXAMINER JONES: You've got one witness?

17 MR. HALL: Yes, I do.

18 EXAMINER JONES: Okay, other appearances?

19 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,
20 representing the estate of Joseph A. Sommer and JAS Oil and
21 Gas.

22 EXAMINER JONES: Any witnesses?

23 MR. BRUCE: No, sir.

24 EXAMINER JONES: Any other appearances?

25 Okay, Mike.

1 MR. THOMAS: I think what we've decided to do is
2 to let your witness testify, and you can argue the
3 jurisdiction issues that you've raised in the motion, but
4 we're going to just reserve ruling on the jurisdiction
5 issue and let your witness testify, and then they'll make a
6 ruling, of course, in the next coming days, you know, as
7 they try to get a decision out to you guys, as to both the
8 jurisdiction issue and -- possibly if they reach it, but,
9 you know, any merits.

10 MR. HALL: We received word yesterday morning
11 that there would be no testimony taken in the case.

12 MR. BRUCE: It was my understanding that the case
13 would be called and continued, and as a result I didn't
14 bring my witness nor my file, so...

15 EXAMINER JONES: We did -- I have to confess that
16 we did spread the word on that.

17 MR. BRUCE: I mean, I don't -- if Energen wants
18 their witness to testify, that's -- I have no big objection
19 to that, but I would retain the right to call a witness,
20 because I was going to put something on, but it was my
21 understanding the case was going to be continued.

22 (Off the record)

23 EXAMINER JONES: Okay, as far as the
24 jurisdictional issues, if -- you guys prepared to make some
25 little arguments about that today, and then we will take

1 that part under advisement.

2 And then as far as the other part of the case, we
3 can continue that to another docket, unless your -- if your
4 witness is here, and Mr. Bruce does not object to him
5 testifying today, and then we continue the technical part
6 of the case some other time, we could do that.

7 MR. HALL: Let me suggest this. When I received
8 word yesterday that we wouldn't be going forward today I
9 stopped preparing for the case, as you can imagine.

10 MR. BRUCE: So did I, and I didn't bring my file.

11 EXAMINER JONES: Okay.

12 MR. HALL: But let me suggest that we proceed
13 this way. It was never made clear to me the reasons we
14 were continuing the case, and so I'm at somewhat of a
15 disadvantage. I'm not prepared to respond to the reasons
16 for the continuance, and I'd like to do so if an order is
17 going to be issued that addresses a continuance and the
18 apparent jurisdictional arguments. What I would suggest we
19 do is convene a case-status conference or hearing sometime
20 before hearing on the merits, and we can flesh that out,
21 get some direction from you, counsel or the Director, how
22 he'd like us to handle that.

23 There is some Division precedent on this very
24 issue, I think. As I understand, what's troubling the
25 Division is that we have a concurrent lawsuit pending in

1 District Court. You didn't know as of yesterday that I had
2 filed a motion to dismiss that lawsuit because of primary
3 jurisdiction.

4 MR. THOMAS: Yes, we got a copy of it.

5 MR. HALL: Yes, I believe jurisdiction rests with
6 the agency in this case, and there's a prior Division
7 precedent that supports that. So it may be that you would
8 like us to address that in further depth for you before we
9 proceed.

10 MR. BRUCE: And I would concur, and perhaps maybe
11 if Mr. Hall could just revise his brief in the district
12 court to submit to the Division, or -- either that or have
13 me respond to that. I would like a chance to respond to
14 the Division, and then maybe like Scott says call a status
15 conference.

16 MR. HALL: I think it would be helpful to both
17 Mr. Bruce and I if we got clear direction from the agency
18 just what the issue is.

19 EXAMINER JONES: Okay, in a separate conference.

20 MR. BRUCE: Yeah, just an informal conference, I
21 think, would do.

22 MR. HALL: I think that's fine.

23 MR. BRUCE: In the next couple of weeks.

24 EXAMINER JONES: We can do that. And meanwhile
25 we can continue this case --

1 MR. BRUCE: Continue this --

2 EXAMINER JONES: -- for about a month or so.

3 MR. BRUCE: Continue it for a month so that we
4 can take care of this argument.

5 EXAMINER JONES: Okay. Is that okay?

6 (Off the record)

7 EXAMINER JONES: Okay, we will -- if that's okay
8 with both of you we'll do that, we will -- I've lost it
9 here. What case number is this?

10 MR. BRUCE: Page 2.

11 MR. HALL: 13,957.

12 EXAMINER JONES: Okay, Case 13,957, we'll
13 continue it to August the 23rd, and we'll get with you two
14 about coming in --

15 MR. BRUCE: Okay.

16 EXAMINER JONES: -- for a conference.

17 (Thereupon, these proceedings were concluded at
18 10:18 a.m.)

19 * * *

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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 _____.

_____, Examiner
Oil Conservation Division

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
 COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL July 29th, 2007.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 16th, 2010