

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

IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION COMMISSION FOR  
THE PURPOSE OF CONSIDERING:

**ORIGINAL**

REOPENED APPLICATION OF THE NEW  
MEXICO OIL CONSERVATION DIVISION, THROUGH  
ITS ENVIRONMENTAL BUREAU CHIEF, FOR ADOPTION  
OF AN AMENDMENT TO 19.15.39 NMAC ADDING NEW SECTIONS  
TO BE CODIFIED AT 19.15.39.9 AND 19.15.39.10 NMAC  
ADDRESSING SPECIAL PROVISIONS FOR SANTA FE COUNTY  
AND THE GALISTEO BASIN, SANTA FE, SANDOVAL AND  
SAN MIGUEL COUNTIES, NEW MEXICO

Case No. 14255

DE NCVO 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. 13957

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
COMMISSIONER HEARING

BEFORE: MARK E. FESMIRE, Chairman  
JAMI BAILEY, Commissioner  
WILLIAM C. OLSON, Commissioner

RECEIVED OGD  
2009 JUN 10 P 3:13

May 27, 2009

Santa Fe, New Mexico

This matter came on for hearing before the New  
Mexico Oil Conservation Commission, MARK E. FESMIRE,  
Chairman, on Wednesday, May 27, 2009, at the New Mexico  
Energy, Minerals and Natural Resources Department, 1220  
South Saint 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  
Albuquerque, NM 87103 505-843-9241

## 1 A P P E A R A N C E S

2 FOR THE OIL CONSERVATION DIVISION:

3 Gail MacQuesten, Esq.  
 Deputy General Counsel  
 4 1220 S. St. Francis Drive  
 Santa Fe, New Mexico 87505

5  
 6 FOR ENERGEN RESOURCES CORPORATION:

7 J. Scott Hall, Esq.  
 Montgomery & Andrews  
 325 Paseo de Peralta  
 8 Santa Fe, New Mexico 87501

9 FOR THE ESTATE OF JOSEPH A. SOMMER, JOSEPH A. SOMMER  
 10 REVOCABLE TRUST AND JAS OIL AND GAS CO., LLC:

11 James Bruce, Esq.  
 Candice Lee, Esq.  
 P.O. Box 1056  
 12 Santa Fe, New Mexico 87504

13 FOR THE OIL CONSERVATION COMMISSION:

14 Mark A. Smith  
 Assistant General Counsel  
 15 1220 S. St. Francis Drive  
 Santa Fe, New Mexico 87504

16  
 17 ALSO PRESENT:

18 Florene Davidson

19 INDEX PAGE

20 WITNESS: DANIEL SANCHEZ

21 Direct Examination by Ms. MacQuesten 8

22 WITNESS: PAUL ROTE

23 Direct Examination by Mr. Hall 18  
 Cross-Examination by Mr. Bruce 56  
 Examination by Commissioner Bailey 71  
 24 Examination by Chairman Fesmire 77  
 Redirect Examination by Mr. Hall 90  
 25 Recross-Examination by Mr. Bruce 94  
 Further Redirect Examination by Mr. Hall 130

1	INDEX (Continued)	
2	WITNESS: KURT A. SOMMER	PAGE
3	Direct Examination by Mr. Bruce	97
4	Cross-Examination by Mr. Hall	112
5	Examination by Commissioner Bailey	118
6	Examination by Chairman Fesmire	121
7	EXHIBITS (Case No. 14255)	PAGE
8	OCD EXHIBIT 48 WAS ADMITTED	6
9	OCD EXHIBITS 45, 46 AND 47 WERE ADMITTED	11
10	EXHIBITS (Case No. 13957)	PAGE
11	ENERGEN EXHIBITS 1, 3 THROUGH 24, 26, 27 AND 28 WERE ADMITTED	55
12	(Administrative notice taken on Energen Exhibits 2 and 25.)	
13	SOMMER EXHIBITS 1 THROUGH 13 WERE ADMITTED	112
14	(Sommer Exhibit 14 was stricken.)	
15	ENERGEN EXHIBIT 29 WAS ADMITTED	133
16		
17	REPORTER'S CERTIFICATE	149
18		
19		
20		
21		
22		
23		
24		
25		

1 CHAIRMAN FESMIRE: At this point we will  
2 call the Wednesday, May 27th regularly-scheduled meeting  
3 of the New Mexico Oil Conservation Commission to order.  
4 The record should reflect that Commissioners Bailey,  
5 Olson and Fesmire are all present. We, therefore, have a  
6 quorum. The first order of business before the  
7 Commission this morning is the adoption of the minutes of  
8 the April 15th, 2009, special Commission meeting. Have  
9 the Commissioners had a chance to review those minutes?

10 COMMISSIONER BAILEY: Yes, I have, and I  
11 move that we adopt them.

12 COMMISSIONER OLSON: Second.

13 CHAIRMAN FESMIRE: All those in favor  
14 signify by saying aye.

15 Let the record reflect that the minutes of the  
16 April 15th meeting were unanimously adopted by the  
17 Commission, signed by the Chairman and conveyed to the  
18 secretary.

19 At this point we probably need to talk about  
20 scheduling. The next item on the agenda is Case Number  
21 14255, the Galisteo Basin matter. The Commission has  
22 decided, in order to facilitate scheduling this morning,  
23 that we will address the Galisteo Basin first, then we  
24 will address the Energen case, and then we'll go into  
25 deliberations on the "Pit Rule". So if you are brave

1 enough to want to venture how long it will take to  
2 address those three issues, you can plan your day  
3 accordingly.

4                   The first item before the Commission this  
5 morning is Case Number 14255, the reopened Application of  
6 the New Mexico Oil Conservation Division, through its  
7 Environmental Bureau Chief, for adoption of an amendment  
8 to 19.15.39 NMAC adding new sections to be codified at  
9 19.15.39.9 and 19.15.39.10 NMAC addressing special  
10 provisions for Santa Fe County and the Galisteo Basin,  
11 Santa Fe, Sandoval and San Miguel Counties. May we have  
12 the entry of appearance for the attorneys in that case,  
13 please?

14                   MS. MACQUESTEN: Mr. Commissioner, my name  
15 is Gail MacQuesten. I'm here representing the Oil  
16 Conservation Division.

17                   CHAIRMAN FESMIRE: Ms. MacQuesten, are you  
18 the only attorney in this case?

19                   MS. MACQUESTEN: Now I am.

20                   CHAIRMAN FESMIRE: Are you prepared to  
21 begin?

22                   MS. MACQUESTEN: Yes, I am. Mr.  
23 Commissioner, I have two witnesses, Theresa Duran-Saenz  
24 and Daniel Sanchez. Ms. Duran-Saenz is here to provide  
25 information on notice. You should have in front of you

1 Exhibit 48, which is our Affidavit of Notice. It was not  
2 provided with the prehearing statement but it was  
3 provided this morning. I would move for admission of the  
4 affidavit. However, if you have questions about notice,  
5 Ms. Duran-Saenz is here to testify to answer your  
6 questions.

7 CHAIRMAN FESMIRE: Have the Commissioners  
8 had a chance to review the --

9 COMMISSIONER BAILEY: Yes, I have, and I  
10 have no questions.

11 COMMISSIONER OLSON: I have no questions.

12 CHAIRMAN FESMIRE: Neither do I. We will  
13 go ahead and admit OCD Exhibit 48 in Case Number 14255.

14 (Exhibit 48 was admitted.)

15 MS. MACQUESTEN: In that case, I would  
16 call Daniel Sanchez.

17 CHAIRMAN FESMIRE: Mr. Sanchez, would you  
18 proceed to the stand, please? Would you raise your right  
19 hand?

20 (The witness was sworn.)

21 CHAIRMAN FESMIRE: Ms. MacQuesten before  
22 we start, can you bring the Commission up to speed of  
23 where we are and why we're doing this in this case?

24 MS. MACQUESTEN: Certainly. The Division  
25 had proposed special rules for the Galisteo Basin and the

1 remainder of Santa Fe County. After the case was  
2 concluded and the Commission entered into its  
3 deliberations, it made the determination that the rules  
4 should apply only to the Galisteo Basin and not the  
5 remainder of Santa Fe County.

6 At that time the Commission asked the OCD to  
7 provide a legal description of the Galisteo Basin so that  
8 the rule could be limited to just that area. The OCD  
9 provided a legal description and also copies of the maps  
10 that we used to create that legal description. The  
11 information was put out for comment. We did not receive  
12 any comments or proposed modifications for the legal  
13 description. However, the Commission order indicated  
14 that the Commission would like to have this brought to a  
15 hearing so that testimony could be taken on the legal  
16 description and any comments or questions could be raised  
17 at that time.

18 CHAIRMAN FESMIRE: At this point -- and  
19 we're not scheduling right now -- is there anyone here  
20 who has any comments on the proposed legal description?  
21 Ms. MacQuesten, why don't you proceed?

22 DANIEL SANCHEZ

23 Having been first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25

1 BY MS. MACQUESTEN:

2 Q. Would you please state your name for the  
3 record?

4 A. Daniel Sanchez.

5 Q. And what is your title?

6 A. I am the Compliance and Enforcement Manager  
7 for the OCD.

8 Q. Are you here to introduce and explain the  
9 exhibits pertaining to the legal description for the  
10 Galisteo Basin?

11 A. Yes, I am.

12 Q. Could you turn to what's been marked as  
13 Exhibit 45?

14 A. Okay.

15 Q. What is this exhibit?

16 A. This is an exhibit of the Galisteo Basin and  
17 watershed as defined by the State Engineer's office.

18 Q. Where did you obtain this map?

19 A. From the State Engineer's office. Darrio  
20 Rodriguez, who is now retired from the State Engineer's  
21 office, put together the database that came up with these  
22 coordinates, and Manuel Pasquel from the State Engineer's  
23 office put together the maps and provided those maps to  
24 us.

25 Q. Is this map pulled from the database of the



1 State Engineer's office?

2 A. Yes, it is.

3 Q. The map has a dotted line boundary. What does  
4 that indicate?

5 A. That is the boundary of the Galisteo Basin  
6 watershed.

7 Q. Is the State Engineer the entity that defines  
8 the Galisteo Basin watershed?

9 A. Yes, they are.

10 Q. What are the small squares on the map?

11 A. Those are the sections within that area.

12 Q. And what are the numbers within each section?

13 A. They indicate the range within each section.

14 Q. What are the blank areas that are marked,  
15 "MS"?

16 A. Those are areas that have not been surveyed  
17 and in this case, they're land grants.

18 Q. Could you turn to what's been marked as  
19 Exhibit 46, please?

20 A. Okay.

21 Q. What is this exhibit?

22 A. This, as well, is a blown-up version of that  
23 map, and this shows the sections. The sections are  
24 penciled in for the entire area.

25 Q. Could you turn to what's been marked as

1 Exhibit 47, please?

2 A. Okay. Exhibit 47 is the legal description of  
3 the entire basin, both sides.

4 Q. And this is by section, township and range?

5 A. Yes, it is.

6 Q. How were the unsurveyed areas described?

7 A. They were described by the surveyed sections  
8 around those areas that were not surveyed.

9 Q. Why not just name the land grants involved?

10 A. Some of the land grants were only partly  
11 within the Galisteo Basin.

12 Q. Now, in paragraph A(1) and A(2), some of the  
13 section numbers are highlighted. Why is that?

14 A. Those highlighted numbers are additional areas  
15 or descriptions of additional areas within Sandoval and  
16 San Miguel Counties that we originally didn't see in our  
17 version of the original map. When the State Engineer  
18 gave us the coordinates for the new map, those little  
19 sections, those areas, actually came out, so we decided  
20 to put those in, every single piece that we could, within  
21 that map -- within the boundaries of the watershed.

22 Q. To be clear, those highlighted sections were  
23 not included in the original description that was  
24 provided with the application?

25 A. No, they were not.

1 Q. Did the OCD receive any comments on the  
2 proposed legal description?

3 A. No, we did not.

4 Q. Did the OCD receive any proposed  
5 modifications?

6 A. No.

7 MS. MACQUESTEN: I would move for  
8 admission of Exhibits 45 through 47.

9 CHAIRMAN FESMIRE: Is there any objection  
10 to the admission of Exhibits 45 through 47? They'll be  
11 so admitted.

12 (Exhibits 45 through 47 were admitted.)

13 MS. MACQUESTEN: That concludes the OCD's  
14 presentation.

15 CHAIRMAN FESMIRE: Thank you. Do you have  
16 anything to add?

17 MS. MACQUESTEN: Just that the reason we  
18 provided this level of detail on the map for you and in  
19 the legal description was so that we could give you the  
20 raw data to fashion the legal description however you see  
21 fit to fashion it.

22 And, also, I wanted to point out that you can  
23 put the legal description of the Galisteo Basin in  
24 several different locations within the proposed rule.  
25 Again, we're leaving it to the Commission to decide how

1 to do it. But the NMAC structure would allow you to take  
2 this description and put it in subsection 7, which is the  
3 area of Part 39 that's reserved for definitions, because  
4 it is a very lengthy legal description. So it would be  
5 possible that you can either build it into the rule or  
6 you could put it in the definition section of that part.

7 CHAIRMAN FESMIRE: Ms. MacQuesten, thank  
8 you very much. At this time the Commission will take  
9 Case Number 14255 under consideration with the intention  
10 of deliberating at the end of the -- towards the end of  
11 the meeting today. Is that acceptable? Thank you very  
12 much. Thank you, Mr. Sanchez.

13 The next case before the Commission is Case  
14 Number 13957, the amended application of Energen  
15 Resources Corporation to amend the cost recovery  
16 provision of Compulsory Pooling Order No. R-1960, to  
17 determine reasonable costs, and for the authorization to  
18 recover costs from production of pooled mineral interests  
19 in Rio Arriba County, New Mexico. Are the attorneys  
20 present for that case?

21 MR. HALL: Yes, sir.

22 MR. BRUCE: Yes, sir.

23 CHAIRMAN FESMIRE: May we have an entry of  
24 appearance?

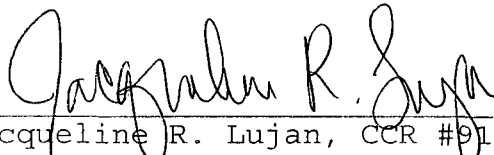
25 MR. HALL: Mr. Chairman, Commissioners,

## REPORTER'S CERTIFICATE

I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO  
HEREBY CERTIFY that on May 27, 2009, 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 9th day of June, 2009.

  
Jacqueline R. Lujan, CCR #91  
Expires: 12/31/2009