

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE APPLICATION OF WILLARD AND BETTY SEIBEL, TRUSTEES, FOR AN ACCOUNTING UNDER THE PROVISIONS OF §34-60-118.5 OF THE CONSERVATION ACT AND FOR AN ORDER OF THE COMMISSION DECLARING THAT WILLARD AND BETTY SEIBEL SHOULD HAVE BEEN GIVEN THE OPPORTUNITY TO PARTICIPATE IN THE DRILLING OF THE SWANEMYR 32-6-2 AND 32-6-3 WELLS LOCATED IN THE S/2 OF SECTION 1, TOWNSHIP 32 NORTH, RANGE 6 WEST, NMPM, ARCHULETA COUNTY, COLORADO AND TO ALL OTHER ADDITIONAL FRUITLAND COAL WELLS DRILLED UPON SUCH LANDS; OR ALTERNATIVELY TO REVISE ORDER 112-162 AS NECESSARY TO PROVIDE THAT WILLARD AND BETTY SEIBEL, TRUSTEES, SHALL NOT BE SUBJECT TO THE PENALTY PROVISIONS OF §34-60-116(7)(b)(II) OF THE CONSERVATION ACT AS IT APPLIES TO THEIR INTEREST IN THE SWANEMYR 32-6-2 AND 32-6-3 WELLS AND ALL OTHER ADDITIONAL FRUITLAND COALS WELLS DRILLED UPON THE SUBJECT LANDS

CAUSE NO: 112

ORDER NO:

DOCKET NO:

VERIFIED APPLICATION

COMES NOW Willard Seibel, trustee of the Willard H. Seibel Revocable Trust, dated May 24, 1991, and Betty Seibel, trustee of the Betty Seibel Revocable Trust, dated May 24, 1991, (collectively referred to herein as "Applicant"), by and through their undersigned counsel, and make application to the Oil and Gas Conservation Commission of the State of Colorado ("COGCC") for an order:

(a). Declaring and clarifying that Order 112-162 by its terms force pooled the Seibel Trust in only the Swanemyr # 32-6-1 Well.

(b). Alternatively, declaring and acknowledging that the Commission lacked the authority to force pool the Seibel Trust for more than one well at a time absent compliance by the force pooling applicant with all conditions precedent to force pooling pursuant to C.R.S. Section 34-60-116 and COGCC Rule 530.

(c). In either event, declaring that the Seibel Trust must be offered the opportunity to bear its proportionate share of the costs and risks of drilling and operating the Swanemyr # 32-6-2 and/or # 32-6-3 Wells if either or both wells have not yet paid out, free and clear of the statutory penalties imposed upon mineral owners who have been forced pooled; and/or, to the extent either

well has paid out, that the Seibel's revenue interest in the production be calculated free and clear of those same statutory penalties.

(d). Alternatively, should the Commission determine that the forced pooling order does apply to the second, third and/or fourth wells drilled and produced on the Subject Lands, it should nonetheless find that the penalty provisions of Section 34-60-116 (7)(b)(II) do not apply to the recovery of costs attributable to the drilling and producing of these wells. To allow the penalty to apply would be unjust enrichment of Energen (and any other consenting parties), especially under circumstances where the Seibel Trust had offered, and continues to offer, to pay its fair share of costs attributable to the drilling and operation of these wells. The original involuntary pooling order certainly could not be said to be fair and reasonable if it allowed the penalty provisions to apply to wells that had not been authorized to be drilled when the involuntary pooling order was rendered.

(e). Granting an accounting under the provisions of Section 34-60-118.5 of the Conservation Act, all as further set forth in Part I of this Verified Application.

GENERAL BACKGROUND

1. Applicant is the owner of an unleased mineral interest comprising approximately 37.5% of the 320 acre drilling and spacing unit comprising the Subject Lands. Applicant does not own the surface of the Subject Lands.

2. Pursuant to the Commission's Order No. 112-60, dated June 17, 1988, effective June 15, 1988, the S/2 of Section 1, Township 32 North, Range 6 West, NMPM, Archuleta County, Colorado (hereinafter " Subject Lands") was established as a 320 acre drilling and spacing unit for the production of gas and associated hydrocarbons from the Fruitland Coal Formation.

3. Pursuant to the Commission's Order No. 112-157, dated April 25, 2000, effective April 24, 2000, a second well was authorized to be drilled upon the Subject Lands for the production of gas and associated hydrocarbons from the Fruitland Coal seams.

4. Pursuant to the Commission's Order No. 112-162, dated December 17, 2001, effective February 25, 2002 (the "Forced Pooling Order"), all interests in such drilling unit were pooled for the development and operation of the Fruitland Coal seams. Order 112-162 recounts that the Seibel Trusts were afforded the opportunity to participate in the drilling of one well, the Swanemyr 32-6-1 well, (hereinafter "First Well"). The Seibel Trust was also was offered the opportunity to lease its mineral interest in the Subject Lands but declined to do so. The order also provided that Applicant be treated as the owner of the landowner's royalty to the extent of 12.5% of his/her interest until such time as the consenting owners to the well recover out of the Applicant's proportionate 87.5% share of production, the costs specified in §34-60-116(7)(b), C.R.S., as amended and that, after recovery of such costs, the Applicant shall then own his/her proportionate share of the well, surface facilities and production, and then shall be liable for his/her proportionate share of further costs incurred in connection with the well as if he/she had originally agreed to the drilling. The order also provided that Applicant is "hereby deemed to have elected not to participate and shall therefore be deemed to be non consenting as to the well(s) and be subject to the penalties as provided for by § 34-60-116 (7)." The order further provided that the operator shall furnish all non consenting owners (which would include Applicant) with a monthly statement

of all costs incurred, together with the quantity of oil and gas produced, and the amount of proceeds realized from the sale of production during the preceding month.

5. Exok, Inc.'s Application in Cause No. 112-162 stated only that it proposed "to drill one well" (Application, Cause No. 112-162, at ¶ 4 (emphasis added)). Neither the Application, the Notice of Hearing, the Report of the Hearing Officer, nor any other document in the hearing file, suggests otherwise.

6. On January 22, 2003, Exok, Inc.'s application to drill the Swanemyr # 32-6-1 was approved.

7. The Swanemyr #32-6-1 well was spud on or about January 7, 2004.

8. The Swanemyr # 32-6-1 well was completed on or about February 3, 2004.

9. First production from the Swanemyr # 32-6-1 well occurred on or about February, 2005.

10. The operator at the time the Swanemyr # 32-6-1 well was drilled and completed was Exok, Inc. The current operator of the well, and the subsequent wells, is Energen Resources Corporation ("Energen").

11. On May 11, 2005, Energen's application to drill the Swanemyr # 32-6-2 well was approved.

12. The Swanemyr #32-6-2 well was spud on or about May 27, 2005.

13. The Swanemyr # 32-6-2 well was completed on or about June 14, 2005.

14. First production from the Swanemyr #32-6-2 well occurred on or about June 24, 2005.

15. Energen did not offer the Seibel Trust the opportunity to bear its proportionate share of the costs and risks of drilling and operating the Swanemyr # 32-6-2 well.

16. Pursuant to the Commission's Order No. 112-204, dated August 22, 2007, effective July 23, 2007, two additional Fruitland Coal seam wells were authorized to be optionally drilled on the Subject Lands. Nothing on file in Cause No. 112-204 references the Forced Pooling Order.

17. On November 30, 2007, Energen's application to drill the Swanemyr # 32-6-3 well was approved.

18. The Swanemyr #32-6-3 well was spud on or about January 4, 2008.

19. The Swanemyr # 32-6-3 well was completed on or about January 28, 2008.

20. First production from the Swanemyr #32-6-3 well occurred on or about May, 2008.

21. Energen did not offer the Seibel Trust the opportunity to bear its proportionate share of the costs and risks of drilling and operating the Swanemyr # 32-6-3 well.

FORCED POOLING ISSUES

22. The Seibel Trust contends that the provisions of § 34-60-116(7) of the statute do not apply to subsequent wells drilled within a given drilling and spacing unit but only apply to the well which was proposed for drilling (in this case the first well). In other words, Applicant contends that its interest should not have been involuntarily pooled in the second or third well without first giving Applicant the opportunity to lease at competitive terms or to participate in drilling as a working interest owner. A legal brief in support of this position will be filed with the Commission as a separate instrument.

23. The Seibel Trust further contends, that at worst, when the operator, per the Commission's Order No. 112-204 effective July 23, 2007, was granted the right to drill third and fourth wells on the Subject Lands, there created changed circumstances in that the involuntary pooling order, while it may have contemplated two wells potentially being drilled on the Subject Lands, did not contemplate the drilling and producing of three or four Fruitland Coal Seam wells on the Subject Lands. In fact, the order granting third and fourth wells was granted after the effective date of the involuntary pooling order for the first well. In these circumstances, Applicant should have the right and opportunity to participate in the drilling of those wells if and when proposed by the Operator and should have the right to be offered a competitive lease of its unleased mineral interest as to the drilling of these wells.

24. In either event, the Seibel Trust should be offered the opportunity to bear its proportionate share of the costs and risks of drilling and operating the Swanemyr # 32-6-2 and/or # 32-6-3 Wells if either or both wells have not yet paid out, free and clear of the statutory penalties imposed upon mineral owners who have been forced pooled; and/or, to the extent either well has paid out, the Seibel's revenue interest in the production should be calculated and paid free and clear of those same statutory penalties.

25. Alternatively, should the Commission determine that the forced pooling order does apply to the second, third and/or fourth wells drilled and produced on the Subject Lands, it should nonetheless find that the penalty provisions of Section 34-60-116 (7)(b)(II) do not apply to the recovery of costs attributable to the drilling and producing of these wells. To allow the penalty to apply would be unjust enrichment of Energen (and any other consenting parties), especially under circumstances where the Seibel Trust had offered, and continues to offer, to pay its fair share of costs attributable to the drilling and operation of these wells. The original involuntary pooling order certainly could not be said to be fair and reasonable if it allowed the penalty provisions to apply to wells that had not been authorized to be drilled when the involuntary pooling order was rendered.

ACCOUNTING ISSUES

26. The Seibel Trust has been provided with payout statements which disclose in its opinion that the 200% statutory penalty had been applied to the Seibel Trust's proportionate share of all costs of drilling and completing the well when, per the terms of the statute, it should not have been applied to the Applicant's proportionate share of costs of surface equipment beyond the

wellhead and operating costs. The costs of drilling the Swanemyr # 32-6-1 well also greatly exceeded the estimated costs of the well which had been furnished to the Seibel Trust prior to drilling of the well. The Seibel Trust believes that the statutory penalty should not apply to any actual costs in excess of the originally estimated costs. Energen has attempted to correct this error, but it is unclear to the Seibel Trust whether this error has in fact been corrected.

27. The Seibel Trust further contends that Energen, has incorrectly recovered the costs of one of more wells from the production of one or more of the other wells. There is nothing in the provisions of §34-60-116 allowing the operator to offset proceeds due an unleased mineral owner attributable to production from one well against proceeds to that same unleased mineral owner attributable to its share of production proceeds from another well.

28. There may be other accounting issues as well. The Seibel Trust acknowledges, however, that Energen is willing to permit the Seibel Trust the opportunity to audit the subject accounts, subject to a confidentiality agreement which has been finalized and submitted to Energen for execution. The Seibel Trust nonetheless has asserted its claim for an accounting herein as a precautionary measure.

WHEREFORE, Applicant respectfully requests that this matter be set for hearing in March, 2010, that notice be given as required by law, and that upon such hearing this Commission enter its order consistent with Applicant's proposals as set forth above.

DATED: _____.

By: _____
Scott M. Campbell
POULSON, ODELL & PETERSON, LLC
1775 Sherman Street, Suite 1400
Denver, Colorado 80203
Telephone No.: (303) 861-4400
Facsimile No.: (303) 861-1225

VERIFICATION

STATE OF COLORADO

)

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SS.

COUNTY OF ARCHULETA

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Willard H. Seibel, trustee of the Willard H. Seibel Revocable Trust, dated May 24, 1991, of lawful age, being first duly sworn upon oath, deposes and says that he has read the foregoing Application and that the matters therein contained are true to the best of his knowledge, information and belief.

By: _____

Subscribed and sworn to before me this _____ day of _____, 2010.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Exhibit A

Willard H. Seibel Revocable Trust
673 CR 982
Ignacio, CO 81137

BP America Productions
380 Airport Drive
Durango, CO 81303

Energen Resources Corporation
605 Richard Arrington Blvd.
Birmingham, AL 35203-2707

Betty Seibel Revocable Trust
673 CR 982
Ignacio, CO 81137

Energen Resources Corporation
2198 Bloomfield Hwy.
Farmington, NM 87401

Scott M. Campbell
Poulson, Odell & Peterson LLC
1775 Sherman, Suite 1400
Denver, CO 80203

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE APPLICATION OF
WILLARD AND BETTY SEIBEL, TRUSTEES,
FOR AN ACCOUNTING UNDER THE
PROVISIONS OF §34-60-118.5 OF THE
CONSERVATION ACT AND FOR AN ORDER
OF THE COMMISSION DECLARING THAT
WILLARD AND BETTY SEIBEL SHOULD HAVE
BEEN GIVEN THE OPPORTUNITY TO
PARTICIPATE IN THE DRILLING OF THE
SWANEMYR 32-6-2 and 32-6-3 WELLS
LOCATED IN THE S/2 OF SECTION 1,
TOWNSHIP 32 NORTH, RANGE 6 WEST,
NMPM, ARCHULETA COUNTY, COLORADO
AND TO ALL OTHER ADDITIONAL FRUITLAND
COAL WELLS DRILLED UPON SUCH LANDS;
OR ALTERNATIVELY TO REVISE ORDER 112-
162 AS NECESSARY TO PROVIDE THAT
WILLARD AND BETTY SEIBEL, TRUSTEES,
SHALL NOT BE SUBJECT TO THE PENALTY
PROVISIONS OF §34-60-116(7)(b)(II) OF THE
CONSERVATION ACT AS IT APPLIES TO
THEIR INTEREST IN THE SWANEMYR 32-6-2
AND 32-6-3 WELLS AND ALL OTHER
ADDITIONAL FRUITLAND COALS WELLS
DRILLED UPON THE SUBJECT LANDS

CAUSE NO: 112

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AFFIDAVIT OF MAIL

STATE OF Colorado)
) ss.
CITY & COUNTY OF Denver)

Kathryn L. Irons, of lawful age, being first duly sworn upon oath, states and declares:

That on the 3rd day of February, 2010, she caused a copy of the attached Application and Affidavit of Mail to be deposited in the United States Mail, postage prepaid, addressed to each of the parties listed on Exhibit "A" to the Application.

By: _____

Subscribed and sworn to before me this 3rd day of February, 2010.

Witness my hand and official seal.

My commission expires: _____

Notary Public