

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

GERALD ULIBARRI,  
on behalf of himself and a class  
of similiarly situated persons

Plaintiff

v.

No.

ENERGEN RESOURCES CORPORATION

Defendant

**CLASS ACTION COMPLAINT**

Plaintiff Gerald Ulibarri (“Plaintiff”), for his class action complaint against Defendant Energen Resources Corporation (“Energen”), alleges:

**CLASS DEFINITION**

1. Plaintiff brings this action individually and on behalf of a proposed Class of similarly situated persons, consisting of:

All persons and entities to whom Energen paid royalties on natural gas produced by Energen from wells located in the state of New Mexico between September 1, 2007 and May 31, 2015, pursuant to leases or overriding royalty agreements (collectively, “Royalty Agreements”) which contain a royalty provision which obligated Energen to pay royalties based on a specified percentage of “the proceeds of the gas, as such, for gas from wells where gas only is found,” (“proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a specified percentage “of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found” (“gross proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a specified percentage “of the gross proceeds at the prevailing market rate” (“gross proceeds at the prevailing market rate royalty provision”). Examples of leases containing a proceeds royalty provision, a gross proceeds royalty provision, or a prevailing market rate royalty provision are attached hereto as Exhibits 1, 2, 3, and 4. The defined Class excludes: (a) the United States; (b) any person or entity whose only Royalty Agreement[s] with Energen contains a royalty provision[s] stating that the royalty on natural gas production is to be paid based upon the “market value

at the well”, or the “prevailing field market price”, or any other “at the well” language; (c) any person or entity who has been a working interest owner in a well located in New Mexico on whose behalf Energen paid royalties on natural gas produced by Energen in New Mexico after September 1, 2007; and (d) Energen and its affiliates, and their respective employees, officers and directors.

**PARTIES, JURISDICTION, AND VENUE**

2. Plaintiff Gerald Ulibarri is a resident and citizen of New Mexico, and has been paid royalties by Energen.

3. Defendant Energen is a corporation incorporated under the laws of the State of Alabama, which has its principal place of business at 605 Richard Arrington Jr. Boulevard, Birmingham, Alabama 35203.

4. This Court has subject matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d), because: (a) Plaintiff has brought this case as a class action; (b) the proposed Class of plaintiffs exceeds 100 members; (c) the proposed Class contains at least one Class member who is a citizen of a state different from the State of Alabama, where Energen is a citizen; and (d) the amount in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs.

5. This Court has personal jurisdiction over Energen because Energen has conducted substantial business activities in the State of New Mexico, and because the acts and conduct of Energen giving rise to the claims asserted in this class action complaint occurred in the State of New Mexico.

6. Pursuant to 28 U.S.C. § 1391, venue is proper in this Court.

**FACTUAL ALLEGATIONS**

7. Between September 1, 2007 and March 31, 2015, Energen produced natural gas from gas only wells in New Mexico (“Energen Wells”) pursuant to more than 100 Royalty Agreements which contain a proceeds royalty provision, a gross proceeds royalty provision, or a

prevailing market rate royalty provision, and paid royalties to members of the defined Class under such Royalty Agreements. Pursuant to Energen's royalty accounting methodology, EnCana paid royalties to Plaintiff and the members of the defined Class approximately two months after Energen had produced the natural gas from the Energen Wells. The last month which Energen paid royalties to Plaintiff and the members of the defined Class pursuant to the Royalty Agreements was May 2015.

8. On March 23, 1953, Ramon Ulibarri, Elias Ulibarri, Cедelia Ulibarri, Atancio Ulibarri, and Tena Cook Ulibarri, as Lessors, entered into two oil and gas leases with Stanolind Oil and Gas Company, as Lessee ("the Ulibarri Leases"). A copy of the two Ulibarri Leases are attached hereto as Exhibits 1 and 2.

9. Prior to September 1, 2007, the Lessee's interests under the Ulibarri Leases were assigned to Energen. Energen held the Lessee's interests under the Ulibarri Leases between September 1, 2007 and March 31, 2015, at which time Energen assigned its Lessee's interests under the two Ulibarri Leases to Southland Royalty Company, LLC ("Southland"). Since September 1, 2007, Plaintiff has held the Lessors' interests under the two Ulibarri Leases. Energen paid royalties to Plaintiff under the two Ulibarri Leases at various times between September 1, 2007 and May 31, 2015.

10. Both Ulibarri Leases (Exs. 1 and 2) have identical proceeds royalty provisions, which state, in pertinent part:

4. The lessee shall pay lessor, as royalty, one-eighth of the proceeds from the sale of the gas, as such, for gas from wells where gas only is found...

11. Both Ulibarri Leases (Exs. 1 and 2) contain the following provision, which is commonly referred to as a "Free Fuel Use" provision:

9. The lessee shall have the right to use, free of cost, gas, oil and water found on said land for its operations thereon, except water from the wells of the lessor.

The Free Fuel Use provision allowed Energen to use gas as fuel for certain natural gas operations. There are no other provisions in the two Ulibarri Leases which allow the lessee to make any other deductions from the proceeds received on the sale of the natural gas produced from the gas wells subject to the two Ulibarri Leases.

12. In addition to the Plaintiff, numerous other members of the Class have Royalty Agreements that contain a proceeds royalty provision.

13. Numerous members of the Class have Royalty Agreements which obligated Energen to pay royalties pursuant to the following gross proceeds royalty provision (*See, e.g.*, Ex. 3):

To pay Lessor one-eighth (1/8) of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found, while the same is being used off the premises, and if used in the manufacture of gasoline a royalty of one-eighth (1/8), payable monthly at the prevailing market rate for gas.

14. Numerous members of the Class have Royalty Agreements that obligated Energen to pay Royalties pursuant to the following gross proceeds at the prevailing market price royalty provision (*See, e.g.*, Ex. 4):

Second. To pay lessor for gas from each well where gas only is found, the equal one-eighth (1/8) of the gross proceeds at the prevailing market rate, for all gas used off the premises, said payments to be made quarterly...

15. The Royalty Agreements that contain the gross proceeds royalty provision and the prevailing market rate royalty provision also have Free Fuel Use provisions. (*See, e.g.*, Exs. 3-4).

16. Under the proceeds royalty provision, the gross proceeds royalty provision, and the prevailing market rate royalty provision, Energen was obligated to pay royalties based on the

proceeds received on the sale of gas, including residue gas, natural gas liquid products, and condensate, which Energen produced from Plaintiff's and the Class members' Energen Wells. The only allowable deduction which Energen was authorized to take in the calculation and payment of the Class members' royalties was for the use of fuel in connection with certain natural gas operations, as permitted under the Free Fuel Use provisions set forth in the Class members' Royalty Agreements.

17. Energen continuously produced gas from Plaintiff's and the Class members' Energen Wells pursuant to their Royalty Agreements between September 1, 2007 and March 31, 2015, at which time Energen assigned all of its interests in the Class members' Royalty Agreements to Southland.

18. On information and belief, between September 1, 2007 and March 31, 2015, all of the gas which Energen produced from the wells subject to the Class members' Royalty Agreements were produced from wells where gas only is found.

19. During the time period Energen produced gas from the Class members' Energen Wells, Energen had contracts with various third party companies that own gathering systems and processing plants, in which the third parties gathered, compressed, and processed the raw gas which Energen produced from Plaintiff's and the Class members' Energen Wells.

20. Under the above-referenced gathering and processing agreements, the third party gathering and processing companies charged Energen for their gathering, compressing, and processing services. These companies also charged Energen fees for its share of the New Mexico Natural Gas Processors Tax ("NGPT"), for transporting the natural gas liquids to fractionation facilities, and for fractionating the extracted natural gas liquids into individual natural gas liquid

products (ethane, propane, butane, iso-butane, and pentanes), which were thereafter sold to third party purchasers.

21. The above-referenced gathering and processing agreements permitted the gathering and processing companies to obtain and sell drip condensate produced from Plaintiff's and the Class members' Energen Wells, and to retain, as a percentage of proceeds, certain volumes of natural gas liquids (in kind) as part of their processing charges to Energen.

22. After treatment and processing, the gas which came from the Class members' wells was converted into residue gas, natural gas liquids and condensate, are then sold to third party purchasers.

23. Energen did not pay royalties to Plaintiff or the Class on the sale proceeds received on the sale of gas and/or the prevailing market prices, including proceeds received on the sale of residue gas, natural gas liquids, and condensate, to third party purchasers.

24. The proceeds received on the sale of gas, natural gas liquids and condensate which came from Plaintiff's and the Class members' wells are essentially equivalent to the prevailing market price for such natural gas products.

25. Under the proceeds royalty provision, the gross proceeds royalty provision, and the gross proceeds at the prevailing market rate royalty provision, Energen was contractually obligated to pay royalties based upon a specified percentage of the sales proceeds received on the sale of the gas, including residue gas, individual natural gas liquid products, and condensate, which Energen produced from Plaintiff's and the Class members' Energen Wells.

26. Energen breached the applicable Royalty Agreements by engaging in a common method of royalty accounting which: (1) calculated a value for the royalties which were paid to Plaintiff and the Class members that was substantially less than the sale proceeds received on the

sale of gas, including residue gas, natural gas liquid products, and condensate, which came from Plaintiff's and the Class members' Energen Wells; and (2) improperly deducted costs for gathering, compression, processing, NGPT, natural gas liquids transportation and fractionation, and other costs and expenses.

27. As a direct result of Energen's breaches of the Class members' Royalty Agreements, the royalties owed to Plaintiff and the members of the Class were consistently and substantially underpaid.

28. Plaintiff and the members of the Class defined in Paragraph 1 of this class action complaint were members of the putative class in an earlier class action case filed against Energen, which was captioned *Anderson Living Trust, et al. v. Energen Resources Corporation*, Case No. 1:13-cv-00909-WJ-CG, United States District Court for the District of New Mexico ("the *Anderson Trust* class action"). For purposes of the six year statute of limitations which applies to the breach of contract claims asserted in this class action complaint, that limitations period was tolled, for Plaintiff and the members of the defined Class in this case, from the date the *Anderson Trust* class action was filed on September 20, 2013 until the Tenth Circuit rendered its March 2, 2018 decision in the *Anderson Living Trust v. Energen Resources Corporation* appeal, No. 13-909-WJ/CJ, Tenth Cir. App. No. 16-2124.

### **CLASS ACTION ALLEGATIONS**

29. The proposed Class is so numerous that joinder of all Class members is impractical.

30. There are questions of law or fact common to the Class, including: (1) whether Energen was contractually obligated to pay royalties to the Class members based upon the proceeds received on the sale of residue gas, natural gas liquids, and condensate which came from the gas wells which were subject to the Class members' Royalty Agreements; and (2) whether

Energen breached the Class members' Royalty Agreements by consistently failing to pay the Class members royalties based on the proceeds received on the sale of gas, natural gas liquids and condensate which came from the gas wells subject to the Class members' Royalty Agreements.

31. The claims of the Plaintiff against Energen are typical of the claims of the members of the Class against Energen.

32. The Plaintiff will fairly and adequately protect the interests of the Class.

33. The questions of law or fact common to the members of the Class predominate over any questions affecting only individual members of the Class.

34. A class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

**FIRST CLAIM FOR RELIEF**  
**(Breach of Contract)**

35. The allegations contained in Paragraphs 1 through 34, inclusive, are restated and incorporated by reference herein.

36. Energen breached its obligations to Plaintiff and the Class under the Royalty Agreements at issue by failing to pay royalties based upon the proceeds received on the sale of residue gas, natural gas liquids and condensate which came from the gas wells subject to Plaintiff's and the Class members' Royalty Agreements.

37. As a direct result of Energen's failure to pay royalties on the proceeds received on the sale of residue gas, natural gas liquids, and condensate which came from wells subject to the Royalty Agreements at issue, Energen substantially underpaid the royalties owed to Plaintiff and the Class.



**SECOND CLAIM FOR RELIEF**  
**(Violation of the New Mexico Oil and Gas Proceeds Payment Act)**

38. The allegations contained in Paragraphs 1 through 37, inclusive, are restated and incorporated by reference herein.

39. Pursuant to the New Mexico Oil and Gas Proceeds Payments Act, N.M.S.A. 1978 §§ 70-10-1, *et. seq.*, Energen was required to pay Plaintiff and the proposed Class their proportionate share of the proceeds received on the sale of residue gas, natural gas liquids and condensate which came from the wells subject to the Royalty Agreements at issue, and to make such payments either by the date specified in the Royalty Agreements, or by a date which was no later than forty-five days after the end of the calendar month in which the sale proceeds were received.

40. Between September 1, 2007 and May 31, 2015, Energen failed to pay the amount of royalties owed to Plaintiff and the Class on the sales proceeds received on the sale of gas, including residue gas, condensate and individual natural gas liquid products, attributed to Plaintiff's and the Class members' ownership interests in the Energen Wells, by the date designated in the Royalty Agreement, or within forty-five days after the end of the month in which the sale proceeds on the sale of such gas to third party purchasers were received.

41. Pursuant to N.M.S.A. 1978 § 70-10-5, Plaintiff and the Class members should be awarded all of the underpaid royalty amounts, together with prejudgment interest at the rate of eighteen percent per year, from the date of each royalty underpayment through the date of final judgment.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief:

A. An Order that the claims asserted herein by Plaintiff against Energen, on behalf of the defined Class, be certified as a class action pursuant to Fed. R. Civ. P. 23(b)(3), that Plaintiff Gerald Ulibarri be appointed as the Class Representative, and that attorneys George Barton and Rob Harken be appointed as Class Counsel;

B. A judgment in favor of Plaintiff and the Class members on their claim for Energen's breach of the Royalty Agreements at issue, in an amount which equals the full amount of Energen's royalty underpayments through May 31, 2015, plus applicable prejudgment interest through the date of final judgment;

C. A judgment in favor of Plaintiff and the Class on their claim that Energen has violated N.M.S.A. § 70-10-5 of the New Mexico Oil and Gas Proceeds Payment Act, and an award of prejudgment interest to Plaintiff and the Class on all of Energen's royalty underpayments at the rate of eighteen percent per annum, from the effective date of each royalty underpayment through the date of judgment;

D. An award of attorney's fees to Plaintiff and the Class, pursuant to N.M.S.A. § 70-10-6 of the New Mexico Oil and Gas Proceeds Payment Act; and

E. An award of court costs.

LAW OFFICES OF GEORGE A. BARTON, P.C.

By: /s/ George A. Barton  
George A. Barton Mo. Bar No. 26249  
Robert G. Harken Mo. Bar No. 52975  
7227 Metcalf Avenue, Suite 301  
Overland Park, KS 66204  
(913) 563-6250  
[gab@georgebartonlaw.com](mailto:gab@georgebartonlaw.com)  
[rob@georgebartonlaw.com](mailto:rob@georgebartonlaw.com)

and

NEWBOLD CHAPMAN & GEYER PC

By: /s/ Michael Chapman

Michael Chapman

150 East Ninth Street, Suite 400

Durango, CO 81302

(970) 247-3091

[mchapman@ncg-law.com](mailto:mchapman@ncg-law.com)

**ATTORNEYS FOR PLAINTIFF AND  
THE PROPOSED CLASS**

EXHIBIT 1

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Mid-Continent #1 Revised Unit. (400)  
(New Mexico) 11-45

Oil, Gas and Mineral Lease

THIS AGREEMENT Entered into this the 23rd day of March 19 53  
between Ramon Ulibarri a single man, whose marital status has not changed since acquiring this  
property; Elias Ulibarri and wife, Cedula Ulibarri; Atanacio Ulibarri and wife, Teha Cook  
Ulibarri, all of Blanco, New Mexico. Staholind Oil and Gas Company hereinafter called lessor,  
and hereinafter called lessee; does witness:

1. That lessor, for and in consideration of the sum of Ten and No/100 Dollars (\$ 10.00)  
in hand paid, and of the covenants and agreements hereinafter contained to be performed by the lessee, has this day granted and leased and hereby  
grants, leases and lets unto the lessee for the purpose of mining and operating for and producing oil and gas, casinghead gas, casinghead gasoline,  
and all other mineral, laying pipe lines, building roads, tanks, storing oil, building power stations, telephone lines and other structures thereon to  
produce, save, take care of and manufacture all of such substances, and for housing and boarding employees, the following described tract of land  
in San Juan County, New Mexico, to-wit:

South one-half of the Southeast Quarter of the Southwest Quarter

in Section 35, Township 30 North, Range 9 West, and containing 20 Acres, more or less  
2. This lease shall remain in force for a term of Five (5) years and as long thereafter as oil, gas, casinghead gas, casinghead gasoline or any  
mineral or any of them is or can be produced. from April 30, 1953

3. The lessee shall deliver to the credit of the lessor as royalty, free of cost, in the pipe line to which lessee may connect its wells the equal one-  
eighth part of all oil produced and saved from the leased premises, or at lessee's option, may pay to the lessor for such one-eighth royalty the market  
price for oil of like grade and gravity prevailing on the day such oil is run into the pipe line, or into storage tanks.

4. The lessee shall pay lessor, as royalty, one-eighth of the proceeds from the sale of the gas, as such, for gas from wells where gas only is found,  
and where gas from a well or wells capable of producing gas only is not sold or used, Lessee may pay annually as royalty an amount equal to the  
delay rental as provided in Section 5 hereof, which payment shall not be less than the amount of the delay rental. If such payment is made it will be  
considered that gas is being produced from the above described land under all of the terms and provisions hereof; The lessor to have gas free of  
charge from any gas well on the leased premises for stoves and inside lights in the principal dwelling house on said land by making his own connec-  
tions with the well, the use of said gas to be at the lessor's sole risk and expense. The lessee shall pay to the lessor for gas produced from any oil well  
and used by the lessee for the manufacture of gasoline, or any other product, as royalty, one-eighth of the market value of such gas. If said gas  
is sold by the lessee, then as royalty one-eighth of the proceeds of the sale thereof; and on all other mineral mined and marketed, one-tenth either  
in kind or value at the well or mine, at Lessee's election, except that on sulphur the royalty shall be fifty-cents (50c) per long ton.

5. If operations for the drilling of a well for oil or gas are not commenced on said land or on acreage pooled therewith on or before one year from  
the date of this lease shall terminate as to both parties, unless the lessee shall, on or before one year from the date of this lease, tender to the lessor or for  
the lessor's credit in the Citizens Bank at Blanco, New Mexico  
successors, which bank and its successors are the lessor's agent and shall continue as the depository of any and all sums payable under this lease,

regardless of changes of ownership in said land or in the oil and gas, or in the rentals to accrue thereunder, the sum of Twenty and No/100 dollars (\$ 20.00) which shall  
operate as rental and cover the privilege of deferring the commencement of drilling operations for a period of one year. In like manner and upon like  
payments or tenders, the commencement of drilling operations may be further deferred for like periods successively. All payments or tenders may be  
made by check or draft of lessee or any assignee thereof, mailed or delivered on or before the rental paying date. Notwithstanding the death of the  
lessor, or his successor in interest, the payment or tender of royalty in the manner provided above shall be binding on the heirs, devisees, executors  
and administrators of such person.

6. Should any well drilled on the above described land or on acreage pooled therewith during the primary term before production is obtained be  
a dry hole, or should production on said land or on acreage pooled therewith be obtained during the primary term and thereafter cease, then and  
in either event, if operations for drilling an additional well are not commenced or operations for reworking an old well are not pursued on said  
land or on acreage pooled therewith on or before the first rental paying date next succeeding the completion of a dry hole or the cessation of produc-  
tion or drilling or reworking operations on said well or wells, then this lease shall terminate unless Lessee, on or before said date, shall resume the  
payment of rentals. Upon resumption of the payment of rentals, Section 5 covering the payment of royalty, shall continue in force just as though  
there had been no interruption in the rental payments. If during the last year of the primary term and prior to the discovery of oil or gas on said  
land or on acreage pooled therewith, Lessee should drill a dry hole thereon, or if after discovery of oil or gas on said land or on acreage pooled  
therewith, the production should cease during the last year of said primary term from any cause, no rental payment or operations are necessary in  
order to keep the lease in force during the remainder of the primary term.

7. Lessee, at its option, is hereby given the right and power to pool or combine the land covered by this lease, or any portion thereof, as to oil and  
gas, or either of them, with any other land, lease or leases when in Lessee's judgment it is necessary or advisable to do so in order to properly  
develop and operate said premises, such pooling to be into a well unit or units not exceeding forty (40) acres, plus an acreage tolerance of ten per  
cent (10%) of such acreage for oil, and not exceeding six hundred and forty (640) acres, plus an acreage tolerance of ten per cent (10%) of  
six hundred and forty (640) acres, for gas, except that larger units may be created to conform to any spacing or well unit pattern that may be  
prescribed by governmental authorities having jurisdiction. Lessee may pool or combine acreage covered by this lease, or any portion thereof, as  
above provided, as to oil or gas in any one or more strata, and units so formed need not conform in size or area with the unit or units into which the  
lease is pooled or combined as to any other stratum or strata, and oil units need not conform as to area with gas units. The pooling in one or more  
instances shall not exhaust the rights of the Lessee hereunder to pool this lease or portions thereof into other units. Lessee shall execute in writing  
and place of record an instrument or instruments identifying and describing the pooled acreage. The entire acreage so pooled into a unit shall be  
treated for all purposes, except the payment of royalties, as if it were included in this lease, and drilling or reworking operations thereon or produc-  
tion of oil or gas therefrom, or the completion of a well as a shut-in gas well, shall be considered for all purposes, except the payment  
of royalties, as if such operations were on or such production were from or such completion were on the land covered by this lease, whether or not  
the well or wells be located on the premises covered by this lease. In lieu of the royalties elsewhere herein specified, lessor shall receive from a unit  
so formed, only such portion of the royalty stipulated herein as the amount of his acreage placed in the unit or his royalty interest therein bears  
to the total acreage so pooled in the particular unit involved. Should any unit as originally created hereunder contain less than the maximum  
number of acres hereinabove specified, then Lessee may at any time thereafter, whether before or after production is obtained on the unit, enhance  
such unit by adding additional acreage thereto, but the entire unit shall in no event exceed the acreage contained hereinabove specified. In the  
event an existing unit is so enhanced, Lessee shall execute and place of record a supplemental declaration of unitization identifying and describing  
the land added to the existing unit; provided, that if such supplemental declaration of unitization is not filed until after production is obtained on  
the unit as originally created, then and in such event the supplemental declaration of unitization shall not become effective until the first day of  
the calendar month next following the filing thereof. In the absence of production Lessee may terminate any unitized area by filing of record notice  
of termination.

8. In case said lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties  
and rentals herein provided for shall be paid to the said lessor only in the proportion which his interest bears to the whole undivided fee.

9. The lessee shall have the right to use, free of cost, gas, oil and water found on said land for its operations thereon, except water from the  
wells of the lessor. When required by lessor, the lessee shall bury pipe lines below plow depth and shall pay for damage caused by its operation to  
growing crops on said land. No well shall be drilled nearer than 200 feet to the house or barn now on said premises without written consent of the  
lessor. Lessee shall have the right at any time during or after the expiration of this lease to remove all machinery, fixtures, houses, buildings and  
other structures placed on said premises, including the right to draw and remove all casing.

10. If the estate of either party hereto is assigned (and the privilege of assigning in whole or in part is expressly allowed), the covenants hereof  
shall extend to the heirs, executors, administrators, successors and assigns, by change of ownership in the land or in the rentals or royalties shall  
be binding on the lessee until after notice in the lease and it has been furnished with the written transfer or assignment or certified copy thereof.  
In case lessee assigns this lease, in whole or in part, lessee shall be relieved of all obligations with respect to the assigned portion or portions arising  
subsequent to the date of assignment.

11. If the leased premises are now or if same shall hereafter be owned in severally or in separate tracts, the premises, nevertheless, shall be  
developed and operated as one lease and all royalties accruing hereunder shall be treated as an entirety and shall be divided among and paid to such  
separate owners in the proportions that the acreage owned by each such separate owner bears to the entire leased acreage. There shall be no obliga-  
tion on the part of the lessee to offset wells on separate tracts into which the land covered by this lease may be hereafter divided by sale, devise, or  
otherwise, or to furnish separate measuring or receiving tanks. It is hereby agreed that, in the event this lease shall be assigned as to a part or as to  
parts of the above described lands, and the holder or owner of any such part or parts shall fail or make default in the payment of the propor-  
tionate part of the rent due from him or them, such default shall not operate to default or affect this lease in so far as it covers a part or parts of  
said land upon which said lease or any assignee hereof shall make due payment of said rental. If at any time there be as many as four parties en-  
titled to rentals or royalties, lessee may withhold payments hereof unless and until all parties designate, in writing, in a recordable instrument to be  
filed with the lease, a common agent to receive all payments due hereunder, and to execute division and transfer orders on behalf of said parties,  
and their respective successors in title.

12. Lessor hereby warrants and agrees to defend the title to the land herein described and agrees that the lessee, at its option, may pay and  
discharge any taxes, mortgages, or other liens existing, levied, or assessed on or against the above described lands and, in event it exercises such  
option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such  
mortgage, tax or other lien, any royalty or rentals accruing hereunder.

13. Notwithstanding anything in this lease contained to the contrary, it is expressly agreed that if lessee shall commence drilling operations at  
any time while this lease is in force, this lease shall remain in force and its terms shall continue so long as such operations are prosecuted and, if  
production results therefrom, then as long as production continues.

14. If, at the expiration of the primary term, Lessee is conducting operations for drilling a new well on said land or on acreage pooled therewith or  
reworking an old well thereon, or, if, after the expiration of the primary term, production on this lease or on acreage pooled therewith shall cease, this  
lease nevertheless shall continue as long as said operations continue or additional operations are had on this lease or on acreage pooled therewith,  
which additional operations shall be deemed to be had where not more than sixty (60) days elapse between abandonment of operations on one well  
and commencement of operations on another well, and if production is discovered, this lease shall continue as long thereafter as oil, gas or other  
mineral is produced on said land or on acreage pooled therewith, and as long as additional operations are had thereon.

15. Lessee may at any time surrender this lease, in whole or in part, by delivering or mailing a release or releases thereof to the lessor or by  
placing a release or releases thereof of record in the proper county.

16. It is agreed that this lease shall never be forfeited or cancelled for failure to perform in whole or in part any of its implied covenants, con-  
ditions, or stipulations until it shall have first been finally judicially determined that such failure exists, and after such final determination, lessee  
is given a reasonable time therefrom to comply with any such covenants, conditions or stipulations.

17. All express or implied covenants of this lease shall be subject to all Federal and State Laws, Executive Orders, Rules or Regulations, and  
this lease shall not be terminated, in whole or in part, nor lessee held liable in damages, for failure to comply therewith, if compliance is prevented by, or  
if such failure is the result of, any such Law, Order, Rule or Regulation, or if prevented by an act of God, of the public enemy, labor disputes,  
inability to obtain material, failure of transportation, or other cause beyond the control of Lessee.

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UML-1154 nnp

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This lease and all its terms, conditions, and stipulations shall extend to and be binding on all successors of said lessor or lessee.

IN WITNESS WHEREOF, we sign the day and year first above written.

WITNESSES:

Ramon Ulibarri  
Ramon Ulibarri

E. U. Elias Ulibarri  
C. U. Cidelia Ulibarri  
A. U. Atencio Ulibarri  
T. C. U. Tena Cook Ulibarri

ACKNOWLEDGMENT OF NATURAL PERSON

STATE OF NEW MEXICO

COUNTY OF San Juan

On this 23rd day of March, 1953, before me

personally appeared Elias Ulibarri and wife, Cadelia Ulibarri

to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my notarial seal the day and year first above written.

My Commission expires: Jan. 11-1956

Notary Public

ACKNOWLEDGMENT OF NATURAL PERSON ACTING AS ATTORNEY

NOTARY ACKNOWLEDGMENT--Individual

STATE OF NEW MEXICO,

County of San Juan

On this 23rd day of March, 1953, before me personally

appeared Ramon Ulibarri, a single man

to me personally known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission expires: Jan. 11-1956

Notary Public

FROM \_\_\_\_\_ TO \_\_\_\_\_

and Mineral Lease

Filed for Record on the \_\_\_\_\_ of \_\_\_\_\_, 1953

Book \_\_\_\_\_ Page \_\_\_\_\_ of the \_\_\_\_\_ office.

Notary Public

County Clerk

Notary Public Seal

NOTARY ACKNOWLEDGMENT--Individual

STATE OF NEW MEXICO,

County of San Juan

On this 23rd day of March, 1953, before me personally

appeared Atanacio Ulibarri and wife, Tena Cook Ulibarri

to me personally known to be the person described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission expires: Jan. 11-1956

Notary Public

EXHIBIT 2

128

Mid-Continent 22 Revised Vol. (48)  
(New Mexico) 11-14

### Oil, Gas and Mineral Lease

THIS AGREEMENT Entered into this the 25th day of March 1953

between Ramon Wilbarri a single man, whose marital status has not changed since acquiring this property, Eilaa Wilbarri and wife, Cecelia Wilbarri, Adalberto Wilbarri and wife, Lena Ochoa Wilbarri; all of Blanco, New Mexico, Standard Oil and Gas Company hereinafter called lessor, does witness:

1. That lessor, for and in consideration of the sum of Ten and No/100 Dollars (\$ 10.00) in hand paid, and of the covenants and agreements hereinafter contained to be performed by the lessee, has this day granted and leased and hereby grants, leases and lets unto the lessee for the purpose of mining and operating for and producing oil and gas, casinghead gas, casinghead gasoline, and all other minerals, having pipe lines, buildings, roads, tanks, storage oil buildings, power stations, telephone lines and other structures thereon to produce, save, take care of and manufacture all of such substances, and for housing and boarding employees, the following described tract of land in San Juan County, New Mexico, to-wit:  
Northeast Quarter of the Northwest Quarter

in Section 2 Township 29 North Range 9 West and containing 10 acres, more or less.  
This lease shall remain in force for a term of Five (5) years from and as long thereafter as oil, gas, casinghead gas, casinghead gasoline or other mineral or any of them is or can be produced.  
Five (5) from April 30, 1953

2. The lessee shall deliver to the credit of the lessor as royalty, free of cost, in this lease line to which lessee may connect its wells (the usual eighth part of all production) and save from the lessor's portion of the royalty, one-eighth of the proceeds for each one-eighth royalty this market price for oil of like grade and gravity prevailing on the day when oil is run into the pipe line, or into storage tanks.

3. The lessee shall pay lessor, as royalty, one-eighth of the proceeds from the sale of the gas, as such, for gas from wells where gas only is found, and where gas from a well or wells capable of producing gas only is not sold or used. Lessee may pay annually as royalty an amount equal to the daily rental as provided in Section 4 hereof, which payment shall not be less than \$100.00 per well per year, and if such payment is made it will be considered that gas has been produced from the above described land under the terms and provisions hereof. The lessee to have gas free of charge from any gas well on the leased premises for storage and inside lights in the principal dwelling house on said land by making his own connection with the well, the use of said gas to be at the lessor's sole risk and expense. The lessee shall pay to the lessor for gas produced from any oil well and used by the lessor, for the maintenance of a residence, an office, or other building, as royalty, one-eighth of the market value of such gas. If said gas is sold by the lessee, then as royalty one-eighth of the proceeds of the sale thereof; and on all other mineral mined and marketed, one-tenth either in kind or value at the well or mine, at Lessee's election, except that an sulphur the royalty shall be fifty-cents (50c) per long ton.

4. If operations for the drilling of a well for oil or gas are not commenced on said land or on acreage pooled therewith on or before one year from April 30, 1953, this lease shall terminate, unless the lessee shall, on or before one year from April 30, 1953, file with the lessor's credit in the Citizens Bank at Blanco, New Mexico or its successors, which bank and its successors are the lessor's agent and shall continue as the depository of any and all sums payable under this lease, regardless of changes of ownership in said land or in the oil and gas, or in the rentals to accrue thereunder, the sum of Forty and No/100 Dollars (\$ 40.00) which shall operate as rental and cover the privilege of deferring the commencement of drilling operations for a period of one year. In like manner and upon like payments or tenders, the commencement of drilling operations may be further deferred for like periods successively. All payments or tenders may be made by check or draft or money order, or delivered either by registered mail or by express, and the receipt of the lessor, or his successor, in respect, the payment or tender of rentals in the manner provided above shall be binding on the heirs, devisees, executors and administrators of such person.

5. Should any well drilled on the above described land or on acreage pooled therewith during the primary term before production is obtained be a dry hole, or should production on said land or on acreage pooled therewith be observed during the primary term and thereafter cease, then and in either event, if operations for drilling an additional well are not commenced or operations for reworking an old well are not begun within the term of said land or on acreage pooled therewith on or before the first rental payment date next succeeding the completion of a dry hole or the cessation of production or drilling or reworking operations on said well or wells, then this lease shall terminate unless Lessee, on or before said date, shall resume the payment of rentals. Upon resumption of the payment of rentals, Section 5 covering the payment of rentals, shall continue in force, and should there had been no interruption in the rental payments. If during the last year of the primary term or prior to the discovery of oil or gas on said land or on acreage pooled therewith, Lessee should drill a dry hole thereon, or if after discovery of oil or gas on said land or on acreage pooled therewith, the production should cease during the last year of said primary term from any cause, no rental payment or operations are necessary in order to keep the lease in force during the remainder of the primary term.

6. Lessee, at its option, is hereby given the right and power to pool or combine the land covered by this lease, or any portion thereof, as to all and gas, or either of them, with any other land, lease or leases when in Lessee's judgment it is necessary or advisable to do so in order to properly develop and operate such wells, to be into a well unit or units, not exceeding forty (40) acres, plus an acreage tolerance of ten per cent (10%) of forty (40) acres, for oil, and not exceeding six hundred and forty (640) acres, plus an acreage tolerance of ten per cent (10%) of six hundred and forty (640) acres, for gas, except that larger units may be created by conform to any law, or well unit or units that may be prescribed by governmental authorities, whether such pool or combine acreage created by this lease, or any portion thereof, as above provided, as to oil or gas in any one or more strata, and units so formed need not conform in size or area with the unit or units into which the land is pooled or combined in any other stratum or strata, and units so formed need not conform in size or area with the unit or units into which the leasehold shall not exhaust the rights of the Lessee hereunder to pool this lease or portions thereof into other units. Lessee shall execute in writing and place of record an instrument or instruments identifying and describing the pooled acreage. The entire acreage so pooled into a unit shall be treated for all purposes, except the payment of royalties, as if it were included in this lease, and drilling or reworking operations thereon or production of oil or gas therefrom, or the completion thereof of a well as a unit in gas well, shall be considered for all purposes, except the payment of royalties, as if such operations were on or such production were from or such completion were on the land covered by this lease, whether or not the well or wells be located on the acreage covered by this lease. In event of the termination of this lease, the acreage pooled therefrom, as so formed, may share in the royalty stipulated herein as the amount of his acreage placed in the unit or his royalty interest therein bears to the total acreage so pooled in the particular unit involved. Should any unit as originally created hereunder contain less than the maximum number of acres hereinafter specified, there may at any time thereafter, whether before or after production has been obtained on the unit, be such unit by adding additional acreage thereon, but the enlarged unit shall in no event exceed the acreage content hereinafter specified. In the event an existing unit is so enlarged, Lessee shall execute and place of record a supplemental declaration of unitization in writing, identifying and describing the land added to the existing unit, and that if such supplemental declaration or unitization is not filed until after production has obtained on the unit as originally created, then and in such event the supplemental declaration of unitization shall not become effective until the first day of the following month next following the filing thereof. In the absence of production Lessee may terminate any unitized area by filing of record notice of termination.

7. In any well bore casing a least interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided for shall be paid to the said lesser only in the proportion which his interest bears to the whole undivided fee.

8. The lessee shall have the right to use, free of cost, gas, oil and water found on said land for its operations thereon, except water from the wells of the lessor. When required by lessor, the lessee shall bury pipe lines below plow depth and shall pay for damage caused by its operations to growing crops on said land. No well shall be drilled nearer than 200 feet to the house or barn now on said premises without written consent of the lessor. Lessee shall have the right at any time during or after the expiration of this lease to remove all machinery, fixtures, houses, buildings and other structures placed on said premises, including the right to draw and remove all casing.

9. If the estate of either party herein is assigned (and the privilege of assigning in whole or in part is expressly allowed), the covenants hereof shall extend to the heirs, executors, administrators, successors and assigns, but no change of ownership in the land or in the rentals or royalties shall be binding on the lessee until after notice to the lessor and it has been furnished with the written transfer or assignment or a certified copy thereof. In case Lessee assigns this lease, in whole or in part, Lessee shall be relieved of all obligations with respect to the assigned portion or portions arising subsequent to the date of assignment.

10. If the leased premises are now or if same shall hereafter be owned in severally or in separate trusts, the premises, nevertheless, shall be developed and operated as one lease and all royalties accruing hereunder shall be treated as an entirety and shall be divided among and paid to such separate owners in the proportions that the acreage owned by each such separate owner bears to the entire leased acreage. There shall be no distinction on the part of the lessee to offset wells on separate tracts into which the land covered by this lease may be hereafter divided by sale, devise, or otherwise, or to furnish separate metering or receiving tanks. It is hereby agreed that in the event this lease shall be assigned as to a part or as to parts of the above described land, and the holder or buyer of any such part or parts shall fail or make default in the payment of the proportionate part of the rent due from him or them, such default shall not operate to defeat or affect this lease in so far as it covers a part or parts of said land upon which said lease or any assignee hereof shall make due payment of said rental. If at any time there be no royalty as to any part or parts of the land or acreage covered by this lease, the lessee shall have the right to execute and place of record a recordable instrument, to be filed with the lessor, a common agent to receive all payments due hereunder, and to execute division and transfer orders on behalf of said parties, and their respective successors in title.

11. Lessor hereby warrants and agrees to defend the title to the land herein described and agrees that the lessee, at its option, may pay and discharge any taxes, mortgages, or other liens existing, levied, or assessed on or against the above described land, and, in case it exercises such option, it shall be subordinated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax or other lien, any royalty or rentals accruing hereunder.

12. Notwithstanding anything in this lease contained to the contrary, it is expressly agreed that if Lessee shall commence drilling operations at any time while this lease is in force, this lease shall remain in force and its terms shall continue so long as such operations are prosecuted and, if production results therefrom, then as long as production continues.

13. If, at the expiration of the primary term, Lessee is conducting operations for drilling a new well on said land or on acreage pooled therewith at working an old well thereon, or, if, after the expiration of the primary term, production on this lease or on acreage pooled therewith shall cease, this lease, nevertheless, shall continue as long as said operations continue or additional operations are had on this lease or on acreage pooled therewith, which additional operations shall be deemed to be had thereon so long as there are no operations on this lease or on acreage pooled therewith, and commencement of operations on another well, and if production is discovered, this lease shall continue as long thereafter as oil, gas or other mineral is produced on said land or on acreage pooled therewith, and as long as additional operations are had thereon.

14. Lessee may at any time surrender this lease, in whole or in part, by delivering or mailing a release or releases thereof to the lessor or by placing a release or releases thereof of record in the proper county.

15. It is agreed that this lease shall never be forfeited or cancelled for failure to perform in whole or in part any of its implied covenants, and, dilatory, or stipulations, and it shall have first been finally judicially determined that there exists, and after such final determination, Lessee is given a reasonable time therefrom to comply with any such covenants, conditions or stipulations.

16. All express or implied covenants of this lease shall be subject to all Federal and State Laws, Executive Orders, Rules or Regulations, and this lease shall not be terminated, in whole or in part, nor Lessee held liable in damages, for failure to comply therewith, if compliance is prevented by, or if such failure is the result of, any such Law, Order, Rule or Regulation, or if prevented by an act of God, of the public enemy, labor dispute, inability to obtain material, failure of transportation, or other causes beyond the control of Lessee.

108,957

NM60119-00P  
SRC00061



128A

IN WITNESS WHEREOF, we sign the day and year first above written.

Witnesses:  
 E. U. Elisa Ulibarri  
 G. U. Cedelia Ulibarri  
 A. U. Antonio Ulibarri  
 T. C. U. Tona Cook Ulibarri

Ramon Ulibarri  
Ramon Ulibarri

ACKNOWLEDGMENT OF NATURAL PERSON

STATE OF NEW MEXICO } ss.  
 COUNTY OF San Juan }  
 On this 20th day of March, 1953, before me personally appeared Ramon Ulibarri and wife, Cedelia Ulibarri to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my notarial seal the day and year first above written.

My Commission expires: Jan. 11-1956 J. P. [Signature] Notary Public.

NOTARY ACKNOWLEDGMENT--Individual

STATE OF NEW MEXICO, } ss.  
 County of San Juan }  
 On this 20th day of March, 1953, before me personally appeared Ramon Ulibarri and wife Tona Cook Ulibarri to me personally known to be the person described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission expires: Jan. 11-1956 J. P. [Signature] Notary Public.

as the free act and deed of said

to set my official signature and affixed my notarial seal the day and year

Notary Public.

STATE OF NEW MEXICO } ss.  
 County of San Juan }  
 On this 20th day of March, 1953, before me personally appeared Ramon Ulibarri a single man to me personally known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission expires: Jan. 11-1956 J. P. [Signature] Notary Public.

DOCUMENTARY RECORDS

Oil, Gas and Mineral Lease

FROM TO

No. \_\_\_\_\_

DATE \_\_\_\_\_

Section \_\_\_\_\_

County \_\_\_\_\_

STATE OF NEW MEXICO } ss.  
 County of San Juan }  
 This instrument was filed for record on the 21 day of March, 1953 at 4:05 o'clock P. M., and duly recorded in Book 205 Page 128 of the record of this office.

When Recorded  
 Ramon Ulibarri  
 ASST. CLERK

EXHIBIT 3

PRODUCERS 88-PAID UP  
Reg. 9-60, No. 2

OIL AND GAS LEASE

AGREEMENT, Made and entered into the 15th day of June, 19 88, by and between

SP. → Miguel F. Quintana, a married man dealing in his sole and separate property,  
and as heir to the Estate of Jose V. Quintana and Julianita Quintana  
whose address is 1516 Martin Ave., Aztec, NM 87410, hereinafter called Lessor (whether one or more) and  
T.H. McElvain Jr. whose post office address is 2148 Santa Fe, NM 87504, hereinafter called Lessee:

WITNESSETH, That the Lessor, for and in consideration of Ten & More DOLLARS cash in hand paid, the receipt of which is hereby acknowledged, and the covenants and agreements hereinafter contained, has granted, demised, leased and let, and by these presents does grant, demise, lease and let exclusively unto the said Lessee, the land hereinafter described, with the exclusive right for the purpose of mining, exploring by geophysical and other methods, and operating for and producing therefrom oil and all gas of whatsoever nature or kind, with rights of way and easements for laying pipe lines, and erection of structures thereon to produce, save and take care of said products, all that certain tract of land situated in the County of Rio Arriba State of New Mexico described as follows, to-wit:

See Exhibit A attached hereto and made a part hereof

and containing 132.10 acres, more or less.

Five

- It is agreed that this lease shall remain in force for a term of Five years from this date and as long thereafter as oil or gas of whatsoever nature or kind is produced from said leased premises or on acreage pooled therewith, or drilling operations are continued as hereinafter provided. If, at the expiration of the primary term of this lease, oil or gas is not being produced on the leased premises or on acreage pooled therewith but Lessee is then engaged in drilling or re-working operations thereon, then this lease shall continue in force so long as operations are being continuously prosecuted on the leased premises or on acreage pooled therewith; and operations shall be considered to be continuously prosecuted if not more than ninety (90) days shall elapse between the completion or abandonment of one well and the beginning of operations for the drilling of a subsequent well. If after discovery of oil or gas on said land or on acreage pooled therewith, the production thereof should cease from any cause after the primary term, this lease shall not terminate if Lessee commences additional drilling or re-working operations within ninety (90) days from date of cessation of production or from date of completion of dry hole. If oil or gas shall be discovered and produced as a result of such operations at or after the expiration of the primary term of this lease, this lease shall continue in force so long as oil or gas is produced from the leased premises or on acreage pooled therewith.
- This is a PAID-UP LEASE. In consideration of the down cash payment, Lessor agrees that Lessee shall not be obligated, except as otherwise provided herein, to commence or continue any operations during the primary term. Lessee may at any time or times during or after the primary term surrender this lease as to all or any portion of said land and as to any strata or stratum by delivering to Lessor or by filing for record a release or release, and be relieved of all obligation thereafter accruing as to the acreage surrendered.
- In consideration of the premises the said Lessee covenants and agrees:
  - To deliver to the credit of Lessor, free of cost, in the pipe line to which Lessee may connect wells on said land, the equal one-eighth (1/8) part of all oil produced and saved from the leased premises.
  - To pay Lessor one-eighth (1/8) of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found, while the same is being used off the premises, and if used in the manufacture of gasoline a royalty of one-eighth (1/8), payable monthly at the prevailing market rate for gas.
  - To pay Lessor for gas produced from any oil well and used off the premises or in the manufacture of gasoline or any other product a royalty of one-eighth (1/8) of the proceeds, at the mouth of the well, payable monthly at the prevailing market rate.
  - Where gas from a well capable of producing gas is not sold or used, Lessee may pay or tender as royalty to the royalty owners One Dollar per year per net royalty acre retained hereunder, such payment or tender to be made on or before the anniversary date of this lease next ensuing after the expiration of 90 days from the date such well is shut in and thereafter on or before the anniversary date of this lease during the period such well is shut in. If such payment or tender is made, it will be considered that gas is being produced within the meaning of this lease.
  - If said Lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties (including any shut-in gas royalty) herein provided for shall be paid the Lessor only in the proportion which Lessor's interest bears to the whole and undivided fee.
  - Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for Lessee's operation thereon, except water from the wells of Lessor.
  - When requested by Lessor, Lessee shall bury Lessee's pipe line below plow depth.
  - No well shall be drilled nearer than 200 feet to the house or barn now on said premises without written consent of Lessor.
  - Lessee shall pay for damages caused by Lessee's operations to growing crops on said land.
  - Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.
- The rights of Lessor and Lessee hereunder may be assigned in whole or part. No change in ownership of Lessor's interest (by assignment or otherwise) shall be binding on Lessee until Lessee has been furnished with notice, consisting of certified copies of all recorded instruments or documents and other information necessary to establish a complete chain of record title from Lessor, and then only with respect to payments thereafter made. No other kind of notice, whether actual or constructive, shall be binding on Lessee. No present or future division of Lessor's ownership as to different portions or parcels of said land shall operate to enlarge the obligations or diminish the rights of Lessee, and all Lessee's operations may be conducted without regard to any such division. If all or any part of this lease is assigned, no leasehold owner shall be liable for any act or omission of any other leasehold owner.
- Lessee, at its option, is hereby given the right and power at any time and from time to time as a recurring right, either before or after production, as to all or any part of the land described herein and as to any one or more of the formations hereunder, to pool or unitize the leasehold estate and the mineral estate covered by this lease with other land, lease or leases in the immediate vicinity for the production of oil and gas, or separately for the production of either, when in Lessee's judgment it is necessary or advisable to do so, and irrespective of whether authority similar to this exists with respect to such other land, lease or leases. Likewise, units previously formed to include formations not producing oil or gas, may be reformed to include such non-producing formations. The forming or reforming of any unit shall be accomplished by Lessee executing and filing of record a declaration of such unitization or reformation, which declaration shall describe the unit. Any unit may include land upon which a well has theretofore been completed or upon which operations for drilling have theretofore been commenced. Production, drilling or re-working operations or a well shut in for want of a market anywhere on a unit which includes all or a part of this lease shall be treated as if it were production, drilling or reworking operations or a well shut in for want of a market under this lease. In lieu of the royalties elsewhere herein specified, including shut-in gas royalties, Lessor shall receive on production from the unit so pooled royalties only on the portion of such production allocated to this lease; such allocation shall be that proportion of the unit production that the total number of surface acres covered by this lease and included in the unit bears to the total number of surface acres in such unit. In addition to the foregoing, Lessee shall have the right to unitize, pool, or combine all or any part of the above described lands as to one or more of the formations thereunder with other lands in the same general area by entering into a cooperative or unit plan of development or operation approved by any governmental authority and, from time to time, with like approval, to modify, change or terminate any such plan or agreement and, in such event, the terms, conditions and provisions of this lease shall be deemed modified to conform to the terms, conditions, and provisions of such approved cooperative or unit plan of development or operation and, particularly, all drilling and development requirements of this lease, express or implied, shall be satisfied by compliance with the drilling and development requirements of such plan or agreement, and this lease shall not terminate or expire during the life of such plan or agreement. In the event that said above described lands or any part thereof, shall hereafter be operated under any such cooperative or unit plan of development or operation whereby the production therefrom is allocated to different portions of the land covered by said plan, then the production allocated to any particular tract of land shall, for the purpose of computing the royalties to be paid hereunder to Lessor, be regarded as having been produced from the particular tract of land to which it is allocated and not to any other tract of land; and the royalty payments to be made hereunder to Lessor shall be based upon production only as so allocated. Lessor shall formally express Lessor's consent to any cooperative or unit plan of development or operation adopted by Lessee and approved by any governmental agency by executing the same upon request of Lessee.
- All express or implied covenants of this lease shall be subject to all Federal and State Laws, Executive Orders, Rules or Regulations, and this lease shall not be terminated, in whole or in part, nor Lessee held liable in damages, for failure to comply therewith, if compliance is prevented by, or if such failure is the result of, any such Law, Order, Rule or Regulation.
- Lessor hereby warrants and agrees to defend the title to the lands herein described, and agrees that the Lessee shall have the right at any time to redeem for Lessor, by payment, any mortgages, taxes or other liens on the above described lands, in the event of default of payment by Lessor and be subrogated to the rights of the holder thereof, and the undersigned Lessors, for themselves and their heirs, successors and assigns, hereby surrender and release all right of dower and homestead in the premises described herein, insofar as said right of dower and homestead may in any way affect the purposes for which this lease is made, as recited herein.
- Should any one or more of the parties hereinabove named as Lessor fail to execute this lease, it shall nevertheless be binding upon all such parties who do execute it as Lessor. The word "Lessor," as used in this lease, shall mean any one or more or all of the parties who execute this lease as Lessor. All the provisions of this lease shall be binding on the heirs, successors and assigns of Lessor and Lessee.

IN WITNESS WHEREOF, this instrument is executed as of the date first above written.

X Miguel F. Quintana  
Miguel F. Quintana

ACT

Printed by P&M Printing (303) 423-4691

STATE OF New Mexico  
COUNTY OF San Juan } ss.

Oklahoma, Kansas, New Mexico, Wyoming, Montana, Colorado, Utah,  
Nebraska, North Dakota, South Dakota  
ACKNOWLEDGMENT-INDIVIDUAL

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, on this 27th  
day of June, 19 88, personally appeared Miguel F. Quintana

and \_\_\_\_\_, to me known to be the identical person \_\_\_\_\_, described in and who executed  
the within and foregoing instrument of writing and acknowledged to me that he duly executed the same as his free  
and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.  
My Commission Expires 6-1-90

[Signature]  
Notary Public.  
Address: 118 E. Chaco Centro NM 87410

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ } ss.

Oklahoma, Kansas, New Mexico, Wyoming, Montana, Colorado, Utah,  
Nebraska, North Dakota, South Dakota  
ACKNOWLEDGMENT-INDIVIDUAL

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, on this \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_, personally appeared \_\_\_\_\_

and \_\_\_\_\_, to me known to be the identical person \_\_\_\_\_, described in and who executed  
the within and foregoing instrument of writing and acknowledged to me that \_\_\_\_\_ duly executed the same as \_\_\_\_\_ free  
and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.  
My Commission Expires \_\_\_\_\_

Notary Public.  
Address: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ } ss.

ACKNOWLEDGMENT (For use by Corporation)

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_, before me personally  
appeared \_\_\_\_\_, to me personally known, who, being by  
me duly sworn, did say that he is the \_\_\_\_\_ of \_\_\_\_\_  
and that the seal affixed to said instrument is the corporate seal of  
said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said  
\_\_\_\_\_ acknowledged said instrument to be free act and deed of said corporation.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_

Notary Public.  
Address: \_\_\_\_\_

(SEAL)  
My Commission expires \_\_\_\_\_

FROM TO  
No. \_\_\_\_\_  
Dated \_\_\_\_\_, 19 \_\_\_\_\_  
No. Acres \_\_\_\_\_  
Term \_\_\_\_\_ County \_\_\_\_\_  
This instrument was filed for record on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., and duly recorded in Volume \_\_\_\_\_ Page \_\_\_\_\_ of the records of this office.  
By \_\_\_\_\_ County Clerk.  
Deputy.  
When recorded return to \_\_\_\_\_

952

Printed by P&M Printing (303) 423-4691

STATE OF New Mexico  
COUNTY OF San Juan } ss.

Oklahoma, Kansas, New Mexico, Wyoming, Montana, Colorado, Utah,  
Nebraska, North Dakota, South Dakota  
ACKNOWLEDGMENT—INDIVIDUAL

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, on this 27th  
day of June, 19 88, personally appeared Miguel F. Quintana

and \_\_\_\_\_, to me known to be the identical person \_\_\_\_\_, described in and who executed  
the within and foregoing instrument of writing and acknowledged to me that he duly executed the same as his free  
and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires 6-1-90

[Signature]  
Notary Public.  
Address: 118 E. Chaco Pkwy. N.M. 87410

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ } ss.

Oklahoma, Kansas, New Mexico, Wyoming, Montana, Colorado, Utah,  
Nebraska, North Dakota, South Dakota  
ACKNOWLEDGMENT—INDIVIDUAL

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, on this \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_, personally appeared \_\_\_\_\_

and \_\_\_\_\_, to me known to be the identical person \_\_\_\_\_, described in and who executed  
the within and foregoing instrument of writing and acknowledged to me that \_\_\_\_\_ duly executed the same as \_\_\_\_\_ free  
and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public.  
Address: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ } ss.

ACKNOWLEDGMENT (For use by Corporation)

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_, before me personally  
appeared \_\_\_\_\_, to me personally known, who, being by  
me duly sworn, did say that he is the \_\_\_\_\_ of \_\_\_\_\_

and that the seal affixed to said instrument is the corporate seal of  
said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said  
\_\_\_\_\_ acknowledged said instrument to be free act and deed of said corporation.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_.

(SEAL)  
My Commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public.  
Address: \_\_\_\_\_

No. _____
FROM _____
TO _____
Dated _____, 19 _____
No. Acres _____
Term _____
County _____
This instrument was filed for record on the _____
day of _____, 19 _____, at _____
o'clock _____ M., and duly recorded in
Volume _____ Page _____
_____ of the records of this office.
County Clerk _____
Deputy _____
When recorded return to _____

958

8013A

Exhibit A

Attached to and made a part of that certain Oil and Gas Lease dated June 15, 1988 by and between Miguel F. Quintana, a married man dealing in his sole and separate property, and as heir to the Estate of Jose V. Quintana and Julianita Quintana, as Lessor, and T.H. McElvain Jr., as Lessee.

Township 32 North, Range 6 West

100%  
50%  
60%

Section 11: The South Half of the South Half of the Southeast Quarter (S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ ) and Northeast Quarter of the Southeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section 11, said tract being identified as Parcel 79 in that certain instrument entitled "Order Confirming Title" dated November 24, 1961, and recorded in Book 69, Page 101-102, in the Office of the County Clerk and Recorder, Rio Arriba County, New Mexico.

Section 12: That tract of land located in the Southwest corner of the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$ ) of Section 12; said tract being bounded on the North and East sides by a large arroyo, said tract being identified as Parcel 79A in that certain instrument entitled "Order Confirming Title" dated November 24, 1961, and recorded in Book 69, Page 101-102, in the Office of the County Clerk and Recorder, Rio Arriba County, New Mexico.

Section 12: The Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ ) of Section 12, EXCEPT a tract of land more particularly described as follows:

1/4  
1/4

Beginning at a point on the South line of said Section 12, Thirteen Hundred Twenty (1320) feet East of the Southwest corner of said Section 12; thence North Four Hundred (400) feet; thence East Two Hundred Eighty (280) feet; thence Southwesterly Four Hundred (400) feet, more or less, to a point on the South line of said Section 12; thence Westerly along said South line One Hundred Seventy-five (175) feet to the point of beginning, containing 1.61 acres, more or less; also,

Section 13: The Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$ ) of Section 13, EXCEPT a tract of land more particularly described as follows:

1/4  
1/4

Beginning at a point on the North line of said Section 13, Thirteen Hundred Twenty (1320) feet East of the Northwest corner of Said Section 13; thence East along said line Five Hundred (500) feet; thence South Two Hundred (200) feet; thence West Five Hundred (500) feet; thence North Two Hundred (200) feet to the point of beginning, containing 2.29 acres, more or less, said tract being identified as Parcel 81 in that certain instrument entitled "Order Confirming Title" dated November 24, 1961, and recorded in Book 69, Page 101-102, in the Office of the County Clerk and Recorder, Rio Arriba County, New Mexico.

Miguel F. Quintana  
Miguel F. Quintana

FILED IN THE COUNTY CLERK'S OFFICE AT 11:35 O'CLOCK A.M. Book 123 Page 957-959

62880



JUL 13 1988

JOSE E. ATENCIO  
County Clerk Rio Arriba County  
New Mexico  
By Jose E. Atencio Deputy

EXHIBIT 4

159

OIL AND GAS LEASE

AGREEMENT Made and entered into this Twenty-third day of September, 1952

by and between Leo R. Manning and Mabel H. Manning, his wife  
2321 Candelaria Road, Albuquerque, New Mexico

Party of the first part, hereinafter called lessor (whether one or more) and  
L. G. Oldham, Jr., 1453 Esperson Bldg., Houston, Texas Party of the second part, hereinafter called lessee.

WITNESSETH That the said lessor, for and in consideration of Ten and No/100 ----- DOLLARS  
cash in hand paid, receipt of which is hereby acknowledged and of the covenants and agreements hereinafter contained on the part of lessee to be paid, kept  
and performed, as granted, demised, leased, and let and by these presents does grant, demise, lease and let unto the said lessee, for the sole and only purpose  
of mining and operating for oil and gas, and laying pipe lines, and building tanks, pumps, stations and structures thereon to produce, save and take care of said  
products, all that certain tract of land abate in the County of San Juan State of New Mexico, described as follows, to-wit:

North One hundred (100) yards of the South East Quarter (SE/4) South West Quarter  
(SW/4); and North Two hundred (200) yards of the South Half (S/2) South East  
Quarter (SE/4);

The lessor herein retains 5% Overriding Royalty on the 45 acres set out  
and described above.

of Section 17 Township 30 N Range 8 N and containing 45 ----- acres, more or less.

It is agreed that this lease shall remain in force for a term of two years from date, and as long thereafter as oil or gas, or either of them, is produced  
from said land by the lessee.

In consideration of the premises the said lessee covenants and agrees:

First- To deliver to the credit of lessor, free of cost, in the pipe line to which he may connect his wells, the equal one-eighth (1/8) part of all oil  
produced and saved from the leased premises.

Second- To pay lessor for gas from each well where gas only is found, the equal one-eighth (1/8) of the gross proceeds at the prevailing market rate  
for all gas used off the premises, said payments to be made quarterly and lessor to have gas free of cost from any such well for all stoves and all inside lights  
in the principal dwelling house on said land during the same time by making his own connections with the well at his own risk and expense.

Third- To pay lessor for gas produced from any oil well and used off the premises, or for the manufacture of casing-head gasoline or dry commercial  
gas one-eighth (1/8) of the gross proceeds at the prevailing market rate for the gas during which time such gas shall be used, said payments to be made quarterly.

If no well be commenced on said land on or before the 23rd day of September, 1952  
this lease shall terminate as to both parties, unless the lessee on or before that date shall pay or tender to the lessor or to the lessor's credit  
in the North 4th Street Branch, First National Bank at Albuquerque, New Mexico

or his successor or successors, or any bank with which it may be merged, or consolidated, or which succeeds to its business or assets, or any part thereof,  
by purchase or otherwise, which shall continue as the depository regardless of changes in the ownership of the said land, the sum of  
One and No/100 ----- DOLLARS

which shall operate as a rental and cover the privilege of deferring the commencement of a well for twelve months from said date. In like manner and  
upon like payments or tenders the commencement of a well may be further deferred for like periods of the same number of months successively. And it is  
understood and agreed that the consideration first recited herein, the down payment, covers not only the privileges granted to the date when said first rental  
is payable as aforesaid, but also the lessee's option of extending that period as aforesaid, and any and all other rights conferred.

Should the first well drilled on the above described land be a dry hole or cease to produce thereon and in that event if a second well is not commenced  
on said land within twelve months from the expiration of the last rental period which rental has been paid, this lease shall terminate as to both parties, unless  
the lessee on or before the expiration of said twelve months shall resume the payment of rentals in the same amount and in the same manner as hereinbefore  
provided. And it is agreed that upon the resumption of the payment of rentals, as before provided, that the last preceding paragraph hereof governing  
the payment of rentals and the effect thereof, shall continue in force as though there had been no interruption in the rental payments.

If said lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rentals  
herein provided shall be paid the lessor only in proportion which his interest bears to the whole and undivided fee.

Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for its operation thereon, except water from wells of lessor  
When requested by the lessor, lessee shall bury his pipe lines below plow depth.

No well shall be drilled nearer than 200 feet to the house or barn now on said premises, without the written consent of the lessor.

Lessee shall pay for damages caused by its operations to growing crops on said lands.

Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

If the lessee shall commence to drill a well within the term of this lease or any extension thereof, the lessee shall have the right to drill such well  
to completion with reasonable diligence and dispatch, and if oil or gas, or either of them, be found in paying quantities, this lease shall continue and be in  
force with like effect as if such well had been completed within the term of years herein first mentioned.

If the estate of either party hereto is assigned, and the privilege of assigning in whole or in part is expressly allowed, the covenants hereof shall  
extend to their heirs, executors, administrators, successors or assigns, but no change in the ownership of the land or assignment of rentals or royalties shall be  
binding on the lessee until after the lessee has been furnished with a written transfer or assignment or a certified copy thereof. In the event of the death of  
lessor or his successor in title, any rental payment which may be made hereunder shall be deposited in the depository bank to the credit of the estate of such  
deceased lessor or his successor in title until lessee shall have been furnished with certified copies of all instruments of title terminating title from such deceased  
lessor or successor in title to the person succeeding to such interest. And it is hereby agreed in the event this lease shall be assigned as to a part or parts of  
the above described lands and the assignee or assignees of such part or parts shall fail or make default in the payment of the proportionate part of the rents  
due from him or them, such default shall not operate to defeat or affect this lease in so far as it covers a part or parts of said lands which the said lessee or  
any assignee thereof shall make due payment of said rentals. An assignment of this lease, in whole or in part, shall as to the extent of such assignment relieve  
and discharge the lessee of all obligation hereunder.

Compliance with any now or hereafter existing act, bill or statute purporting to be enacted by any Federal or State legislative authority, or with orders,  
judgments, decrees, rules, regulations made or promulgated by State or Federal courts, State or Federal officers, boards, commissions or committees purporting  
to be made under authority of any such act, bill or statute, shall not constitute a violation of any of the terms of this lease or be considered a breach of any  
clause, obligation, covenant, undertaking, condition or stipulation contained herein, nor shall it be or constitute a cause for the termination, forfeiture, revision  
or revesting of any estate or interest herein and hereby created and set out, nor shall any such compliance confer any right of entry or become the basis of any  
action for damages or suit for the forfeiture or cancellation hereof, and while any such purport to be in force and effect they shall, when complied with by  
lessor or assigns, to the extent of such compliance operate as modifications of the terms and conditions of this lease where inconsistent therewith.

Lessee may at any time surrender this lease, in whole or in part, by delivering or mailing a release to the lessor, or by placing a release of record in  
the proper county.

Lessor hereby warrants and agrees to defend the title to the lands herein described, and agrees that the lessor shall have the right at any time to redeem  
for lessor, by payment any mortgage, taxes or other liens on the above described lands in the event of default of payment by lessor, and be subrogated to the  
rights of the holder thereof.

In TESTIMONY WHEREOF, we sign the day and year first above written.

(SEAL) \_\_\_\_\_ (SEAL) Leo R. Manning (SEAL)  
(SEAL) \_\_\_\_\_ (SEAL) Mabel H. Manning (SEAL)  
(SEAL) \_\_\_\_\_ (SEAL) \_\_\_\_\_ (SEAL)  
(SEAL) \_\_\_\_\_ (SEAL) \_\_\_\_\_ (SEAL)



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Gerald Ulbarri
(b) County of Residence of First Listed Plaintiff San Juan, NM
(c) Attorneys (Firm Name, Address, and Telephone Number) Law Offices of George A. Barton, P.C., 7227 Metcalf Avenue, Suite 301, Overland Park, KS 66204 (913) 563-6250 and Newbold, Chapman, & Geyer, P.C., 150 E. 9th Street, Durango, CO 81302 (970) 247-3091

DEFENDANTS Energen Resources Corporation
County of Residence of First Listed Defendant Jefferson, Alabama
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
REAL PROPERTY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C 1332(d)
Brief description of cause:
Breach of contract for failure to pay full amount of royalties pursuant to royalty agreements

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ 5,000,000.00
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE
DOCKET NUMBER

DATE 03/29/2018
SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Mexico



Gerald Ulibarri, on behalf of himself and a class of similiarly situated persons

Plaintiff(s)

v.

Energen Resources Corporation

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Energen Resources Corporation Registered Agent: Gary Don Reagan 1819 N. Turner, Ste G Hobbs, New Mexico 88240

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael Chapman Newbold, Chapman, & Geyer, P.C. 150 East Ninth Street, Suite 400 Durango, CO 81302

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 03/29/2018

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Energen Resources Corp. Accused of Underpaying Gas Royalties to NM Well Owners](#)

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