

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

|  |                      |
|--|----------------------|
| IN THE MATTER OF ALLEGED VIOLATIONS OF THE ) | CAUSE NO. 1V         |
| RULES AND REGULATIONS OF THE COLORADO OIL )  |                      |
| AND GAS CONSERVATION COMMISSION BY )         | DOCKET NO. 170600310 |
| ENERGY SEARCH CO., ADBA ENERGY SEARCH CO. )  |                      |
| INC., ADAMS AND WASHINGTON COUNTIES, )       | TYPE: ENFORCEMENT    |
| COLORADO                                     |                      |
|  | ORDER NO. 1V-636     |

**ORDER FINDING VIOLATION**

The Colorado Oil and Gas Conservation Commission ("Commission"), having reviewed the administrative record and being fully advised on the premises, enters this Order Finding Violation ("OFV") against Energy Search Co., ADBA Energy Search Co. Inc., ("Energy Search") (Operator No. 27635) pursuant to the Rules and Regulations of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1 ("Rule" or "Rules"), and finds and states as follows:

**LEGAL AND FACTUAL FINDINGS**

**A. Adams County Wells - Mechanical Integrity Testing**

Energy Search is the operator of record of the Sauvage 3 (API # 05-001-08803); Green 2 (API # 05-001-08804); Green 3 (API # 05-001-08805); Kortum 7 (API # 05-001-06190); Kortum 3 (API #05-001-07085); Tsuzuki 2 (API #05-001-06851); Tsuzuki 4 (API #05-001-06870); Tsuzuki 3 (API #05-001-06852); North Colorado Boulevard 4 (API #05-001-07405); and the North Colorado Blvd 1 (API # 05-001-07005) well in Adams County, Colorado (the "Adams County Wells"). (Exhibit 1 – Well Records).

Rule 326.b.(1) states that "A mechanical integrity test shall be performed on each shut-in well within two years of the initial shut-in date."

A review of COGCC records reveal that the Adams County Wells are past-due for MITs. MITs came due at these wells on the dates indicated: Sauvage 3 (1/1/2016), Green 2 (11/1/2015), Green 3 (8/1/2016), Kortum 7 (1/30/2015 – per Order No. 1V-490), Kortum 3 (1/30/2015 – per Order No. 1V-490), Tsuzuki 2 (3/1/2015), Tsuzuki 3 (3/1/2015), Tsuzuki 4 (2/1/2017), N. Colo. Blvd 4 (12/1/2016), and N. Colo. Blvd 1 (11/1/2015). (Id.).

Based on the foregoing, the Commission finds that Energy Search has violated Rule 326.b.(1).

**B. Washington County Wells - Mechanical Integrity Testing**

Energy Search is the operator of record of the Resler 22-27 (API # 05-121-10345); Resler 12-27 (API # 05-121-10323); Fassler 42-28 (API # 05-121-10338); and the Criswell 1 (API # 05-121-09558) well in Washington County, Colorado (the "Washington County

Wells"). (Id.).

Rule 326.b.(1) states that "A mechanical integrity test shall be performed on each shut-in well within two years of the initial shut-in date."

A review of COGCC records reveal that the Washington County Wells are past-due for MITs. MITs came due at these wells on the dates indicated: Resler 22-27 (2/1/2017), Resler 12-27 (3/1/2015), Fassler 42-28 (1/1/2017), and Criswell 1 (9/1/2016). (Id.).

Based on the foregoing, the Commission finds that Energy Search has violated Rule 326.b.(1).

**C. Order No. 1V-490**

On December 15, 2014, the Commission entered enforcement Order No. 1V-490 against Energy Search for violations of Rules 326, 605, 906 and 907. (Exhibit 2 - Order No. 1V-490). The Order required Energy Search to pay \$27,000, by January 26, 2015, and perform MITs or plug and abandon both the Kortum #3 and the Kortum #7 wells by January 30, 2015. (Id.).

Rule 522.f states that "An operator's failure to diligently implement corrective action pursuant to an AOC, OFV, or other Commission order constitutes an independent violation which may subject the operator to additional penalties or corrective action requirements."

As of May 22, 2017, Energy Search has failed to pay any of the assessed penalty. (Exhibit 3 – Affidavit of Eric Nickell).

Based on the foregoing, the Commission finds that Energy Search has violated Rule 522.f.

**D. Order No. 1V-547**

On October 26, 2015, the Commission entered enforcement Order No. 1V-547 against Energy Search for violations of Rule 707. (Exhibit 4 - Order No. 1V-547). The Order required Energy Search to pay a penalty of \$63,090 and post \$160,000 in additional financial assurance by December 10, 2015. (Id.).

Rule 522.f states that "An operator's failure to diligently implement corrective action pursuant to an AOC, OFV, or other Commission order constitutes an independent violation which may subject the operator to additional penalties or corrective action requirements."

As of May 22, 2017, Energy Search has failed to pay any of the assessed penalty. (Exhibit 3 – Affidavit of Eric Nickell).

Based on the foregoing, the Commission finds that Energy Search has violated Rule 522.f.

#### **D. Enforcement Proceedings**

On March 24, 2017, COGCC Staff issued NOAV No. 401225877 to Energy Search for violations of Rule 522.f (Failure to Comply with a Commission Order). (Exhibit 5 - NOAVs).

Also on March 24, 2017, COGCC Staff issued NOAV Nos. 401225943, 401226120, 401226125, 401226187, 401226197, 401226217, 401226230, 401226257, 401226261, 401226266, 401226274, 401226283, 401226297, and 401226306 to Energy Search for violations of Rule 326.b (Mechanical Integrity Testing – Shut-in Wells). (Id.).

The NOAVs were properly served upon Energy Search via certified mail at its address on file with the COGCC pursuant to Rule 302. (Id.).

The NOAVs were also emailed to Energy Search at an email address known to be monitored by Energy Search's Principal Agent. (Exhibit 6 – NOAV Service Emails).

To date, Energy Search has taken no action to comply with the corrective actions listed in NOAVs. (Exhibit 1; Exhibit 3).

This matter was noticed for hearing on April 19, 2017. (Exhibit 7 – Notice of Hearing). Energy Search and RLI Insurance Company (who holds Energy Search's financial assurance) were properly served with the Notice of Hearing via certified mail at addresses on file with the COGCC pursuant to Rule 302. (Id.).

COGCC Staff also emailed the Notice of Hearing to all of Energy Search's email addresses on file with the COGCC. (Exhibit 8 –Notice of Hearing Service Emails).

Due notice of the time, place and purpose of the hearing has been given in all respects, as required by law. (Exhibit 9 – Proofs of Publication).

Hearing Officer Rouse held an initial prehearing conference in this matter on May 23, 2017. (Exhibit 10 – Case Management Order). Energy Search was notified of the prehearing conference in advance via email. (Exhibit 11 – Email Notification of Prehearing Conference). Staff appeared at the prehearing conference. Energy Search did not appear at the prehearing conference.

Under the Case Management Order, the parties were ordered to submit prehearing statements and exhibits no later than May 26, 2017. (Exhibit 10). Staff timely submitted its Prehearing Statement and Exhibits. Energy Search did not submit a prehearing statement or exhibits.

Under the Case Management Order, the parties were ordered to submit any objections to prehearing statement, witnesses, or exhibits no later than May 31, 2017. (Exhibit 10). Energy Search did not submit any objections to Staff's Prehearing Statement, witnesses, or exhibits.

Under the Case Management Order, the parties were ordered to submit a proposed order for Commission consideration no later than June 2, 2017. (Exhibit 10). Staff timely submitted a proposed order. Energy Search did not.

No person representing Energy Search appeared at the June 12, 2017, hearing on this matter.

#### **E. Penalty Calculation**

Based on the foregoing, the Commission finds that Energy Search has committed the following violations and calculates the following penalties:

| <b>NOAV No.</b> | <b>Order No./Well Name</b> | <b>Rule</b> | <b>Compliance Date</b> | <b>Class, Impact</b> | <b>Days of Violation</b> | <b>Total Penalty</b> |
|-----------------|----------------------------|-------------|------------------------|----------------------|--------------------------|----------------------|
| 401225877       | 1V-490                     | 522.f       | 1/26/2015              | 3, Min               | 441                      | \$199,080            |
| 401226187       | Kortum 7                   | 326.b       | 1/30/2015              | 2, Min               | 441                      | \$62,270             |
| 401226197       | Kortum 3                   | 326.b       | 1/30/2015              | 2, Min               | 441                      | \$62,270             |
| 401226217       | Tsuzuki 2                  | 326.b       | 3/1/2015               | 2, Min               | 441                      | \$62,270             |
| 401226257       | Tsuzuki 3                  | 326.b       | 3/1/2015               | 2, Min               | 441                      | \$62,270             |
| 401226283       | Resler 12-27               | 326.b       | 3/1/2015               | 2, Min               | 441                      | \$62,270             |
| 401226120       | Green 2                    | 326.b       | 11/1/2015              | 2, Min               | 441                      | \$62,270             |
| 401226266       | N. Colo. Blvd 1            | 326.b       | 11/1/2015              | 2, Min               | 441                      | \$62,270             |
| 401225877       | 1V-547                     | 522.f       | 12/10/2015             | 3, Min               | 441                      | \$199,080            |
| 401225943       | Sauvage 3                  | 326.b       | 1/1/2016               | 2, Min               | 441                      | \$62,270             |
| 401226125       | Green 3                    | 326.b       | 8/1/2016               | 2, Min               | 315                      | \$58,250             |
| 401226306       | Criswell 1                 | 326.b       | 9/1/2016               | 2, Min               | 284                      | \$56,700             |
| 401226261       | N. Colo. Blvd 4            | 326.b       | 12/1/2016              | 2, Min               | 193                      | \$52,150             |
| 401226297       | Fassler 42-28              | 326.b       | 1/1/2017               | 2, Min               | 162                      | \$50,600             |
| 401226230       | Tsuzuki 4                  | 326.b       | 2/1/2017               | 2, Min               | 131                      | \$49,050             |
| 401226274       | Resler 22-27               | 326.b       | 2/1/2017               | 2, Min               | 131                      | \$49,050             |
| <b>TOTAL</b>    |                            |             |                        |                      |                          | <b>\$1,212,120</b>   |

Pursuant to Rule 523 and the Commission's Enforcement and Penalty Policy, the Commission calculates a penalty of \$1,212,120 for these violations. The penalty calculation is based on the following:

1. Order No. 1V-490:
  - a. Energy Search violated Rule 522.f by failing to pay a \$27,000 penalty by January 26, 2015, as required by Order No. 1V-490.
  - b. Staff determined that this violation resulted in a minor impact.
  - c. Violation of a Class 3 Rule, with a minor impact, results in a daily penalty of \$5,000.
  - d. The violation commenced on January 26, 2015, and continued through June 12, 2017, (the hearing date), though for penalty calculation purposes a penalty was imposed only back to March, 28, 2016 (one year prior to the NOAV service date).

- e. Application of the Duration Matrix ("Duration Matrix") from the COGCC Enforcement Guidance and Penalty Policy January 2015 (corrected 4/8/2015).
2. Kortum 7, Kortum 3, Tsuzuki 2, Tsuzuki 3, Resler 12-27, Green 2, N. Colo. Blvd 1, and Sauvage 3:
  - a. Energy Search violated Rule 326.b by failing to perform an MIT at these wells by the dates indicated: Kortum 7 (1/30/2015 – per Order No. 1V-490), Kortum 3 (1/30/2015 – per Order No. 1V-490) Tsuzuki 2 (3/1/2015), Tsuzuki 3 (3/1/2015), Resler 12-27 (3/1/2015), Green 2 (11/1/2015), N. Colo. Blvd 1 (11/1/2015), and Sauvage 3 (1/1/2016).
  - b. Staff determined that these violations resulted in minor impacts.
  - c. Violation of a Class 2 Rule, with a minor impact, results in a daily penalty of \$2,500.
  - d. The violations commenced on the dates indicated above, and continued through June 12, 2017, (the hearing date), though for penalty calculation purposes a penalty was imposed only back to March, 28, 2016 (one year prior to the NOAV service date).
  - e. Application of the Duration Matrix ("Duration Matrix") from the COGCC Enforcement Guidance and Penalty Policy January 2015 (corrected 4/8/2015).
3. Order No. 1V-547:
  - a. Energy Search violated Rule 522.f by failing to pay a penalty of \$63,090 and post \$160,000 in additional financial assurance by December 10, 2015, as required by Order No. 1V-547.
  - b. Staff determined that this violation resulted in a minor impact.
  - c. Violation of a Class 3 Rule, with a minor impact, results in a daily penalty of \$5,000.
  - d. The violation commenced on December 10, 2015, and continued through June 12, 2017, (the hearing date), though for penalty calculation purposes a penalty was imposed only back to March, 28, 2016 (one year prior to NOAV service date).
  - e. Application of the Duration Matrix ("Duration Matrix") from the COGCC Enforcement Guidance and Penalty Policy January 2015 (corrected 4/8/2015).
4. Green 3, Criswell 1, N. Colo. Blvd 4, Fassler 42-28, Tsuzuki 4, and Resler 22-27:
  - a. Energy Search violated Rule 326.b by failing to perform an MIT at these wells by the dates indicated: Green 3 (8/1/2016), Criswell 1 (9/1/2016), N. Colo. Blvd 4 (12/1/2016), Fassler 42-28 (1/1/2017), Tsuzuki 4 (2/1/2017), and Resler 22-27 (2/1/2017).

- b. Staff determined that these violations resulted in minor impacts.
  - c. Violation of a Class 2 Rule, with a minor impact, results in a daily penalty of \$2,500.
  - d. The violations commenced on the dates indicated above, and continued through June 12, 2017, (the hearing date).
  - e. Application of the Duration Matrix ("Duration Matrix") from the COGCC Enforcement Guidance and Penalty Policy January 2015 (corrected 4/8/2015).
5. Aggravating factors. The Commission finds that the following three aggravating factors apply:
- a. The violator was recalcitrant or uncooperative with the Commission or other agencies in correcting or responding to the violation.
  - b. The violator benefited economically from the violation, in which case the amount of such benefit shall be taken into consideration.
  - c. The violator has engaged in a pattern of violations (discussed below).
6. No mitigating factors; and
7. No gross negligence or knowing and willful misconduct.

#### **F. Energy Search's Pattern of Violations**

Pursuant to the Act, if the Commission determines there is "evidence that an operator is responsible for a pattern of violation" of the Act, or Commission rules, orders, or permits, "it may issue an order that prohibits the issuance of any new permits to the operator, suspends any or all of the operator's certificates of clearance, or both." §34-60-121(7), C.R.S.

Pursuant to Rule 523.d.(3), the Commission will "consider an operator's history of violations of the Act, or Commission rules, orders, or permits and any other factors relevant to objectively determining whether an operator has engaged in a pattern of violations."

Taking into account the violations currently at issue, as well as those confirmed in Order Nos. 1V-490 and 1V-547, the Commission finds that Energy Search has engaged in a pattern of violations. The pattern of violation that most prominently marks Energy Search's compliance history is a complete failure to make any effort to comply with COGCC Rules or Commission Orders, particularly with respect to testing the integrity of its inactive wells and paying previously imposed enforcement penalties.

Cumulatively, the Commission finds that this pattern indicates an unwillingness, or inability, to comply with COGCC Rules. Energy Search failed to comply with two enforcement orders. Failing to comply with an enforcement order undermines the entire enforcement program and Staff's efforts to enforce the COGCC Rules statewide.

## ORDER

NOW, THEREFORE, the COMMISSION ORDERS:

1. Energy Search is found in violation of COGCC Rules 326.b and 522.f, as described above.
2. Energy Search is ordered to pay a \$1,212,120 penalty, by certified check, within 35 days after this Order is mailed by the Commission.
3. Energy Search is hereby ordered to return to compliance with the Act and Rules, including, but not limited to:
  - a. Energy Search shall immediately perform a successful MIT at the Sauvage 3 (API # 05-001-08803); Green 2 (API # 05-001-08804); Green 3 (API # 05-001-08805); Kortum 7 (API # 05-001-06190); Kortum 3 (API #05-001-07085); Tsuzuki 2 (API #05-001-06851); Tsuzuki 4 (API #05-001-06870); Tsuzuki 3 (API #05-001-06852); North Colorado Boulevard 4 (API #05-001-07405); and the North Colorado Blvd 1 well (API # 05-001-07005) in Adams County, Colorado.
  - b. Energy Search shall immediately perform a successful MIT at the Resler 22-27 (API # 05-121-10345); Resler 12-27 (API # 05-121-10323); Fassler 42-28 (API # 05-121-10338); and the Criswell 1 (API # 05-121-09558) well in Washington County, Colorado.
  - c. Energy Search shall immediately pay the \$27,000 penalty required by Order No. 1V-490.
  - d. Energy Search shall immediately pay the \$63,090 penalty and post \$160,000 in additional financial assurance required by Order No. 1V-547.
4. Energy Search has engaged in a pattern of violations, pursuant to Section 34-60-121(7), C.R.S. and Rule 523.d.(3), by failing to comply with Order Nos. 1V-490 and 1V-547 and by repeatedly demonstrating an unwillingness or inability to comply with COGCC Rules, including COGCC Rules 326.b.
5. If Energy Search fails to pay the penalty or return to compliance within 35 days of mailing of the approved Order Finding Violation, the Director shall take the following actions:
  - a. Suspend Energy Search's Form 10s, Certificates of Clearance, for Energy Search's wells, and withhold the issuance of any new drilling or oil and gas location permits, until Energy Search demonstrates to the satisfaction of the Director that it has brought all violations cited in the Order into compliance and that any penalty assessed has been paid;
  - b. Terminate Energy Search's Operator Number (Operator No. 27635), rescind Energy Search's Form 1 (Doc. No. 384313), and revoke Energy Search's right to conduct oil and gas operations in Colorado, until Energy Search demonstrates at a Commission hearing that Energy Search has

brought all violations cited in the Order into compliance, any penalty assessed has been paid, and that re-instating Energy Search's Form 1 will not threaten to or actually create significant adverse impacts to public welfare or the environment;

- c. Foreclose Energy Search's existing financial assurance (Surety ID 1994-0056) and claim both the principal and any accrued, but undisbursed, interest that may exist and use those funds to remediate conditions that threaten to cause, or that actually cause, significant environmental impacts at non-federal and non-tribal wells and locations formerly operated by Energy Search. To the extent COGCC Staff has already expended Oil and Gas Conservation and Environmental Response Funds at non-federal and non-tribal wells and locations formerly operated by Energy Search, foreclosed financial assurance can be used to repay those funds;
- d. Require Don Robuck and Brett Robuck to notify the Commission if: (1) either individual or any entity of which either individual is a principal, majority owner, operational or general manager, or otherwise controls applies for a permit or submits a Form 10, Certificate of Clearance, for the Commission's approval; or (2) either individual joins an existing entity and becomes the principal, majority owner, operational or general manager, or otherwise controls the existing entity. If Don Robuck, Brett Robuck or such an entity applies for a permit or submits a Form 10, Certificate of Clearance, the Director may not approve the request. The request must come before the Commission at a hearing, at which it may determine whether to grant the application, require a higher amount of financial assurance before granting the application, or deny the application;
- e. Require Energy Search, and its successors or assigns, to comply with the Order and repay any funds expended by the Commission from the Oil and Gas Conservation and Environmental Response Fund for any work undertaken by COGCC Staff; and/or

6. If Energy Search fails to pay the penalty or return to compliance within 35 days of mailing of the approved Order Finding Violation, the Director is authorized, but not required, to take any or all of the following actions:

- a. Declare Energy Search's wells "Orphaned Wells", as defined in the 100-Series Rules;
- b. Use funds from the Oil and Gas Conservation and Environmental Response Fund to investigate, prevent, monitor, or mitigate conditions that threaten to cause, or that actually cause, significant adverse environmental impacts at non-federal and non-tribal wells and locations formerly operated by Energy Search;
- c. Claim all equipment, saleable product, and appurtenances related to Energy Search's oil and gas operations at its wells as property of the Commission, provided that any proceeds from the disposition of the assets will be credited to the cost of plugging and abandonment of the



Well and/or the Oil and Gas Conservation and Environmental Response Fund.

7. At the Director's request, Energy Search will assign equipment, saleable product, and appurtenances related to Energy Search's oil and gas operations to the Commission or a third party to be determined by the Director.

8. In the event the Director determines, in the Director's discretion and consistent with the Director's independent determination of operational priorities, that there is a need to use the Commission's Emergency Response appropriation (Long Bill), which is funded by the Oil and Gas Conservation and Environmental Response Fund, to remediate conditions that threaten to cause, or that actually cause, significant environmental impacts at wells or locations formerly operated by Energy Search, the Director will confer with the Commission regarding expenditure of Emergency Response appropriation funds at the earliest practical opportunity.

9. The following will not affect Energy Search's obligations under this Order: (1) a change in ownership, corporate status, or partnership status; or (2) a conveyance of title or other interest relating to Energy Search's oil and gas operations. Energy Search will give written notice of this Order to any purchaser, successor, or assignee prior to transferring ownership or title to its oil and gas operations. Energy Search will give written notice to the Director prior to any change in title, ownership, or status. If there are outstanding corrective actions at the time of a change in title or ownership, Energy Search's successors or assigns will be responsible for completing those corrective actions at Energy Search's former oil and gas locations.

10. Upon the Director's notice of a claim pursuant to Paragraph 5.h., Energy Search will not remove, transfer, or dispose of any equipment, saleable product, or appurtenances related to its oil and gas operations, unless permission is granted by the Director.

11. This Order is effective as of the date it is mailed by the Commission. It constitutes final agency action for purposes of judicial review.

12. The Commission expressly reserves its right after notice and hearing, to alter, amend, or repeal any and/or all of the above Order.

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ENTERED this 14<sup>th</sup> day of JUNE, 2017 as of the 12th day of June, 2017.

OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO

By Peter A. Gowen  
Peter Gowen, Acting Secretary

CERTIFICATE OF MAILING

On June 15<sup>th</sup>, 2017, a true and correct copy of the foregoing *Order Finding Violation* was sent by certified mail, return receipt requested, to the following:

Energy Search Co.  
Attn: Brett Robuck  
PO Box 1896  
Edwards, CO 81632

  
Margaret Humecki