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April 15, 2004

HAND DELIVERED

Carol Leach, Esq.
Oil Conservation Commission
1220 South St. Francis Drive
Santa Fe New Mexico 87505

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APR 15 2004

Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

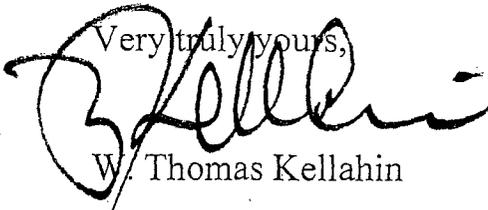
Re: NMOCD Case 12085
Application of EGL Resources, Inc. for pool expansion
or in the alternative pool creation, Lea County, New Mexico

Re: NMOCC Cases 13048 and 13049 (de novo)
Order R-11962

- (1) Case 13048: Application of Devon Energy Production Company,
L.P. for compulsory pooling, Lea County, New Mexico
- (2) Case 1304: Application of EGL Resources, Inc.
for compulsory pooling, Lea County, New Mexico

Dear Ms. Leach:

In accordance with your letter dated April 7, 2004, please find enclosed Devon Energy Production Company's response to the EGL-Landreth motion to dismiss Devon's de novo application.

Very truly yours,

W. Thomas Kellahin

cc: J. Scott Hall, Esq.
Attorney for EGL-Landreth
James Bruce, Esq.
Attorney for Southwestern Energy
Devon Energy Production Company, L.P.
Attn: Richard Winchester

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

APPLICATION OF DEVON ENERGY PRODUCTION
COMPANY, L.P. FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO

CASE NO. 13048
De Novo
ORDER R-11962

APPLICATION OF EGL RESOURCES, INC.
FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO

CASE NO. 13049
De Novo
ORDER R-11962

APPLICATION OF EGL RESOURCES, INC.
AND ROBERT LANDRETH FOR POOL
EXTENSION FOR THE NORTH BELL LAKE
DEVONIAN GAS POOL, OR ALTERNATIVELY,
FOR POOL CREATION AND SPECIAL POOL
RULES, AND EXPANSION OF A GAS SPACING
AND PRORATION UNIT,
LEA COUNTY, NEW MEXICO.

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Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

CASE NO. 13085
De Novo
ORDER R-12106

**DEVON ENERGY PRODUCTION COMPANY, L.P.'s
RESPONSE TO
EGL-LANDRETH MOTION TO DISMISS**

Devon Energy Production Company, L.P. ("Devon") submits this response in opposition to EGL-Landreth's motion to dismiss Devon's de novo application in Case 13048:

On April 2, 2004, EGL-Landreth unilaterally withdrew their de novo applications to Cases 13049 and 13085. Their withdrawal was not conditioned upon Devon dismissal of its de novo application to Case 13048.

Significant compulsory pooling issues remain despite EGL-Landreth withdrawal of their denovo applications disputing 320-acre spacing for the Rio Blanco 4-1 Well, including:

- (1) Should the Commission establish the precedent for a compulsory pooling case that allows the operator to be the party who sought to pool a different sized spacing unit?
- (2) Should the Commission reverse Examiner Brooks' decision that authorized EGL to be the operator based upon its majority control when there were compelling geologic factors in dispute and in doing so, did he incorrectly apply Finding Paragraph (24) of Order R-10731-B, entered in Case 11677, that:

“In the absence of compelling factors such as geologic and prospect differences, ability to operate prudently, or any reason why one operator would economically recover more oil or gas by virtue of being award operations than the other would, working interest control...should be the controlling factor in awarding operations.”

- (3) Should the Commission remove EGL as the Division's designated operator for withholding payment of proceeds to all owners within the Division approval 320-acre spacing unit?
- (4) Can EGL, as the operator, engage in subsequent operations without inclusion of such provisions in the compulsory pooling order?
- (5) Should the Commission modify the compulsory pooling order to include provisions for subsequent operations, including prior notice and elections?
- (6) Should the Commission modify the compulsory pooling order to include “gas balancing” provisions?

SUMMARY OF PROCEEDINGS AND ARGUMENTS

Prior to EGL-Landreth withdrawing its de novo applications, the central focus of these proceedings¹ pending before the Commission was whether the Commission should continue to dedicate the Rio Blanco 4-1 well to a standard 320-acre spacing unit consisting of the N/2 of Section 4 T23S, R34E, Lea County, New Mexico. Having lost this issue twice before the Division, EGL/Landreth sought to have the Commission reverse the Division's decisions and grant an exemption to Division Rule 104 and now require that a 640-acre spacing unit be dedicated to this well consisting of all of Section 4. On April 2, 2004, EGL-Landreth abandoned their contentions by withdrawing their de novo applications leaving Division Order R-12106 as the law of the case.

On April 10, 2003, the Division heard Cases 13048 and 13049, competing compulsory pooling cases, in which Devon sought and the Division approved by Order R-11962 the dedication of the Rio Blanco 4-1 well to a standard 320-acre gas spacing unit consisting of the N/2 of Section 4. In companion Case 13049, EGL/Landreth sought to dedicate a 640-acre spacing unit to this same well, arguing that Section 4 is subject to 640-acre spacing because it is subject to special rules for the North Bell Lake Devonian Gas Pool. EGL/Landreth also argued before Examiner Brooks that a Devonian gas well in Section 4 should drain 640-acres despite the fact that Landreth presented the Examiner with only a single calculation for

¹ Cases 13048, 13049, 134085

a well in Section 6.² They further argued that Section 4 is geologically connected to Section 6. EGL/Landreth ignored the undisputed fact that the North Bell Lake-Devonian Gas Pool was never expanded to include Section 4 and Section 5.³

The Division Examiner, David K. Brooks, rejected the EGL-Landreth claim and declared that, in accordance with Rule 104, Section 4 is subject to 320-acre spacing, but then oddly authorized EGL to operate the well despite the fact that EGL/Landreth opposed the 320-acre dedication and despite a substantial dispute over reservoir geology and petroleum engineering.⁴ The Examiner allowed EGL to be the operator of a well dedicated to a 320-acre spacing unit despite the fact that EGL had never proposed a 320-acre spacing unit and continues to dispute it.⁵ Both Devon and EGL/Landreth sought and obtained a De Novo hearing before the Commission which has been vacated until the Division enters an order in Case 13085. The critical flaw with Examiner Brook's order is that he incorrectly applied Finding (24) of Order R-10731-B and awarded operations to EGL as the majority owner based upon the erroneous assumption that there was an absence of substantial geologic dispute. The Commission need not hearing further technical geological evidence to answer (1) and (2) above, but can rely upon the Examiner Catanach's order and the evidence to Case 13085 to find that Examiner Brooks misapplied Order R-10731-B and should have award operations to Devon.

² Devon's calculation showed that this same well has drained less than 330 acres. See Devon's Exhibit 15, Case 13085

³ See Transcript in Cases 6962 and 10267

⁴ The Examiner failed to recognize that he must decide the geologic dispute within the context of the compulsory pooling cases and over Devon's objection declared both Devon's and Landreth's technical evidence irrelevant but then heard more than 4 hours of technical testimony.

In motions filed in Case 13085, EGL/Landreth sought to stop Devon from drilling Devonian wells in Section 33 on the grounds that Devon's wells must be stayed so that EGL/Landreth can pursue their objectives even though Devon's wells are in full compliance with Division Rule 104 and are not subject to any special pool rules. On August 22, 2003, Examiner Catanach issued an order denying EGL-Landreth's motion.

Without waiting for the Commission DeNovo hearing, EGL commenced operations of the re-entry of the Rio Blanco 4-1 despite the fact that the Division had authorized that re-entry for a 320-acre spacing unit that EGL/Landreth continued to dispute.⁶ Consequently, Devon and Southwestern elected to participate pursuant to the compulsory pooling order and pre-paid their proportionate share of the risk costs based upon ownership in a 320-acre spacing unit.

Case 13085, filed on May 23, 2003, EGL-Landreth requested that the Division expand the eastern boundary of the North Bell Lake Devonian Gas Pool,⁷ so that this pool would include both Section 5 and Section 4. On June 25, 2003, EGL/Landreth filed an amended application to include an additional request to grant a special exception to Division Rule 104 thereby creating a new Devonian gas pool spaced on 640 acres to include the dedication of all of Section 4 to the Rio Blanco 4-1 well.

At the hearing of Case 13085, EGL/Landreth further sought, within the context of this case, to have Devon's Rio Blanco "33" Federal Well No. 1 (Unit N of Section 33) made subject to a penalized allowable for being

⁵ See Devon Exhibit A, Case 13048

⁶ On July 9, 2003, EGL commenced deepening the Rio Blanco 4-1 well to the Devonian formation, and by September 9, 2003, had drilled the well into the top 92 feet of the Devonian.

⁷ A pool that last produced gas in March 2003, and that included Section 6 (PI/Dwight's).

located at a standard location that would become unorthodox if the Division had granted Landreth's application for 640-acre spacing for Section 4.

On February 20, 2004, the Division entered Order R-12106 in which Examiner David R. Catanach dealt with the technical geologic and petroleum engineering issues that Examiner Brooks had declined to address. Examiner Catanach denied all of EGL/Landreth arguments and adopted 320-acre gas spacing units pursuant to Rule 104 for a new Devonian gas pool called the Northeast Bell Lake-Devonian Gas Pool and requiring that the Rio Blanco 4-1 well be dedicated to the N/2 of Section 4.

EGL-Landreth, after having already lost this issue twice, now abandoned it by withdrawing its de novo application, has moved to dismiss Devon's de novo application based upon the absurd notion that there is nothing left for the Commission to decide. EGL-Landreth now defend its motion to dismiss by a preposterous claim that it is beyond the scope of the Commission's jurisdiction to dealing with the remaining compulsory pooling issues that were left unanswered by Examiner Brook's order; an argument that is unfiltered by either logic or reasoning.

To the contrary, not only are these issues within the scope of the Commission's compulsory pooling jurisdiction but also they are essential parts of its statutory obligation to provide that "All order effecting pooling shall.....and shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas or both." **See Oil & Gas Act, Section 70-2-17.C** EGL's operations of the Rio Blanco "4" Well No.1 is being conducted only because of this compulsory pooling order. It cannot be just

and reasonable for EGL, as the operator, to (a) refuse to pay Devon its fair share of the gas produced, (b) to engage to subsequent operator that may jeopardize the well that has cum'd more that 670,000MFC of gas and is currently making 6.6 Million a day, and (c) to take Devon's share of the produces gas without any provisions for balancing those takes or accounting for it. Perhaps counsel for EGL-Landreth has forgotten that these issues are caused by an order that fails to contain provisions necessary and, if fact, are essential to the operation of this well.

In the absence of a voluntary agreement, both Devon and EGL-Landreth are limited by and confined to the terms and conditions of the Division's compulsory pooling order (R-11962). Unlike a Joint Operating Agreement ("JOA"), the Division's compulsory pooling order, among other things, fails to contain the following essential provisions:

- (a) gas balancing agreement
- (b) subsequent operations
- (c) accounting
- (d) distribution of proceeds

Unless the Commission modifies this pooling order, the Division will be faced with an unending series of hearings between these parties to resolve current disputes and future disputes about the order. For example, the problems with this compulsory pooling order cut both ways: (a) for Devon, it must now file a Division case to remove EGL as the operator in order to compel EGL as operator to pay Devon on the basis of a 320-acre spacing unit, (b) for EGL, should to desire to deepen this well, it must file a Division case to obtain approval for such subsequent operations.

CONCLUSION

The Division granted Devon's compulsory pooling case (Case 13048, Order R-11962) including its request to dedicate the well to a standard 320-acre gas spacing unit, but then oddly authorized EGL to operate the well despite the fact that EGL and Landreth have both opposed the 320-acre dedication, and despite a substantial dispute over reservoir geology and petroleum engineering.⁸ With regards to all of the potential issues involved with these two compulsory pooling cases, Devon contends that the Commission should amend Order R-11962:

- (a) substituting Devon for EGL as the operator. By doing so, the Commission will avoid establishing a precedent that would allow an applicant to be operator of a spacing unit that it had opposed being formed;
- (b) remove EGL as the Division's designated operator for withholding payment of proceeds to all owners within the Division approval 320-acre spacing unit and designate Devon as the operator;
- (c) modify the compulsory pooling order to include provisions for subsequent operations, including prior notice and elections;
- (d) modify the compulsory pooling order to include "gas balancing" provisions.

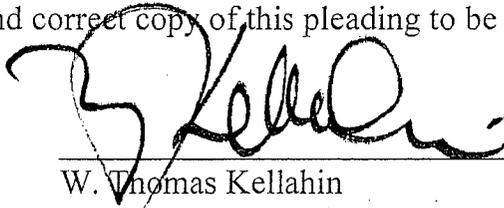
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CERTIFICATE OF SERVICE

I, W. Thomas Kellahin, hereby certify that on this 15th day of April 2004, I caused a true and correct copy of this pleading to be delivered to all counsel of record.



W. Thomas Kellahin