MILLER STRATVERT P.A.
LAW OFFICES

RANNE B. MILLER
ALICE T. LORENZ
GREGORY W. CHASE
STEPHEN M. WILLIAMS
STEPHAN M. VIDMAR
SETH V. BINGHAM
TIMOTHY R. BRIGGS
RUDOLPH LUCERO
DEBORAH A. SOLOVE
GARY L. GORDON
LAWRENCE R. WHITE
SHARON P. GROSS
VIRGINIA ANDERMAN
MARTE D. LIGHTSTONE
J. SCOTT HALL
THOMAS R. MACK

THOMAS M. DOMME
RUTH O. PREGENZER
JEFFREY E. JONES
ROSS B. PERKAL
JAMES J. WIDLAND
BRADLEY D. TEPPER
ROBIN A. GOBLE
JAMES R. WOOD
DANA M. KYLE
KIRK R. ALLEN
RUTH FUESS
H. BROOK LASKEY
KATHERINE W. HALL
PAULA G. MAYNES
MICHAEL C. ROSS
CARLA PRANDO

JENNIFER L. STONE
GARY RISLEY
M. DYLAN O'REILLY
JENNIFER D. HALL
JENNIFER L. OLSON
TODD A. SCHWARZ
NELL GRAHAM SALE
SCOTT P. HATCHER
LEONARD D. SANCHEZ
MICHELLE K. OSTRYE
KELSEY D. GREEN
MARCY BAYSINGER
DAVID J. MARTIN
CAROLINE BLANKENSHIP
MATTHEW S. RAPPAPORT

COUNSEL

WILLIAM K. STRATVERT
JAMES B. COLLINS

ALBUQUERQUE, NM
500 MARQUETTE NW, SUITE 1100
P.O. BOX 25687 (87125-0687)
ALBUQUERQUE, NM 87102
TELEPHONE: (505) 842-1950
(800) 424-7585
FACSIMILE: (505) 243-4408

SANTA FE, NM
150 WASHINGTON AVE., SUITE 300
P.O. BOX 1986 (87504-1986)
SANTA FE, NM 87501
TELEPHONE: (505) 989-9614
FACSIMILE: (505) 989-9857

FARMINGTON, NM
300 WEST ARRINGTON, SUITE 300
P.O. BOX 869 (87499-0869)
FARMINGTON, NM 87401
TELEPHONE: (505) 326-4521
FACSIMILE: (505) 325-5474

LAS CRUCES, NM
1125 SOUTH MAIN ST., SUITE B
P.O. BOX 1209 (88004-1209)
LAS CRUCES, NM 88005
TELEPHONE: (505) 523-2481
FACSIMILE: (505) 526-2215

PLEASE REPLY TO SANTA FE

* NEW MEXICO BOARD OF SPECIALIZATION RECOGNIZED SPECIALIST IN NATURAL RESOURCES - OIL & GAS LAW
** NEW MEXICO BOARD OF SPECIALIZATION RECOGNIZED SPECIALIST IN REAL ESTATE LAW

May 29, 2003

RECEIVED
MAY 29 2003
Oil Conservation Division

VIA FACSIMILE & HAND-DELIVERY
Lori Wrotenbery, Director
New Mexico Oil Conservation Director
1220 South St. Francis
Santa Fe, New Mexico 87505

Re: NMOCD Case Nos. 13048 and 13049

Dear Ms. Wrotenbery:

Attached is the Response of E.G.L. Resources, Inc. and Robert Landreth to the Devon Energy Production Company, L. P. Motion for Stay of Order No. R-11962 and Devon's subsequently filed request for an emergency order.

Should additional information be required, please do not hesitate to contact me.

Very truly yours,

MILLER STRATVERT P.A.

J. Scott Hall

JSH/glb
Enclosure
cc: Carol Leach, Esq. (Via facsimile 476-3220)
Tom Kellahin, Esq. (Via facsimile 982-2047)

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

IN THE MATTER OF THE APPLICATION OF
EGL RESOURCES, INC.
FOR COMPULOSRY POOLING
LEA COUNTY, NEW MEXICO

CASE NO. 13049

IN THE MATTER OF THE APPLICATION OF
DEVON ENERGY PRODUCTION COMPANY, L.P.
FOR COMPULOSRY POOLING
LEA COUNTY, NEW MEXICO

CASE NO. 13048

RESPONSE OF
E.G.L. RESOURCES, INC. AND ROBERT LANDRETH
TO DEVON'S MOTION FOR STAY

E.G.L. Resources, Inc., ("EGL"), and Robert Landreth, ("Landreth"), for their response to Devon Energy Production Company's Motion For Stay, state:

In a motion filed by it on May 27, 2003,[1] Devon applied for a stay of a Division compulsory pooling order. Subsequent to filing its motion, on May 28th, counsel for the Energy, Minerals and Natural Resources Department called to advise that Devon had also filed a Request for an Emergency Order. A copy of the Request for Emergency Order was received by fax at 4:14 p.m. on May 28th and that filing was found to have no substantive difference from Devon's first motion. Accordingly, this Response addresses both filings.

SUMMARY

Devon has not satisfied the established regulatory criteria for the issuance of a stay order and therefore its motion must be denied. With Devon's express encouragement, EGL moved a rig onto location on May 28, 2003 and has begun

[1] Devon's motion was not served on counsel until May 28th.

operations. Consequently, EGL and Landreth will incur "gross negative consequences", including significant economic damages, if Devon's request for a stay order is issued.

BACKGROUND FACTS

Both EGL and Devon had the right to drill on the subject lands and both sought to operate the Rio Blanco "4" Federal Well No. 1 for purposes of conducting relatively identical reentry and sidetracking operations to the Devonian formation. The only significant difference between the EGL and Devon proposals was that EGL contended that 640 acre spacing applied while Devon asserted that 320 acre "wildcat" well spacing was applicable. Accordingly, Devon's Application in Case No. 13048 sought the creation of a 320-acre unit. EGL's Application in Case No. 13049 sought the creation of a 640-acre unit. The Division consolidated the two applications for hearing on April 10, 2003 and subsequently issued Order No. R-11962 on May 13, 2002.

Devon was previously the operator of the Rio Blanco well pursuant to an Operating Agreement and a Communitization Agreement limited to rights from surface to the base of the Morrow formation. The Rio Blanco well last produced Morrow formation gas in March of 2000. A subsequent effort to recomplete the well in the Atoka formation in June 2000 was unsuccessful. As a consequence of the production cessation in 2000, the Communitization Agreement and Operating Agreement expired by their own terms. EGL consequently has the right to utilize the well bore for the Rio Blanco "4" Federal Well No. 1 as a tenant in common, a matter that is undisputed by Devon.

At the Division hearing on the pooling applications, operator experience, geology, well costs, risk penalties and the fact that pre-application negotiations occurred were not at issue. The Division also found: "*There is no evidence that either applicant is not a prudent operator, or that either applicant would economically recover more oil or gas*

than would the other by virtue of being awarded operations hereunder." (Order No. R-11962, at finding 23.)

In Order No. R-11962, the Division interpreted its well spacing and acreage dedication requirements under Rule 104 and determined that 320-acre spacing applied. Accordingly, the Order pooled the Devonian formation mineral interests underlying the N/2 of Section 4 to form a 320-acre spacing unit. Citing to the precedent established under Order No. R-10731-B, the Division noted in Order No. R-11962 that EGL and Landreth controlled 75% of the working interest in the 320 acre unit while Devon owned only a 12.5% interest. Correspondingly, EGL was designated operator of the well under the Order.

Under the Order, the Division also invited EGL and Landreth to file a subsequent application to expand the 320-acre unit in the context of an application to extend the limits of the North Bell Lake Devonian Gas Pool, the pool rules for which provide for 640-acre spacing units. (Order No. R-11962, finding 17). EGL and Landreth filed such an application with the Division on May 23, 2003.

On May 15, 2003, following the issuance of Order No. R-11962, EGL and Landreth filed an Application for Hearing De Novo in order to have the Commission further consider the Division's interpretation of its acreage dedication rules consistent with established precedent.[2] Devon filed its own Application for Hearing De Novo on May 27th.

On May 21, 2003 EGL sent its AFE reflecting the estimated well costs under Order No. R-11962 to Devon's landman.

[2] In Order No. R-9493, the Division pooled the Devonian formation underlying these very same lands and formed a 640-acre spacing and proration unit.

On or about May 21, 2003, EGL's president had a conversation with Devon's landman advising him that EGL was proceeding with the re-entry and drilling operation on the Rio Blanco well. In that conversation, Devon's landman "***encouraged [EGL] to proceed as soon as possible***." (See correspondence from Wes Perry dated May 26, 2003, Exhibit 1, attached.)

On the morning of May 28, 2003, EGL moved a workover rig onto the location and proceeded with operations. EGL and Landreth have also contracted for a large drilling rig, a consultant, workover crews, other personnel and equipment at significant expense. (*Id.*)

CRITERIA FOR STAY ORDERS

Devon seeks the extraordinary relief of a stay of a Division compulsory pooling order (Order No. R-11962) for only one reason: the order is the subject of a de novo appeal to the OCC and therefore the status quo should be maintained. Otherwise, Devon offers no grounds for the issuance of a stay.

Rule 1220(B) of the Rules and Regulations of the Oil Conservation Division, 19 NMAC 15.N.1220(B), permit the Director to enter a stay of a Division order "*...if a stay is necessary to prevent waste, protect correlative rights, protect public health and the environment or prevent gross negative consequences to any affected party...*".

POINTS AND AUTHORITIES

Devon fails to establish that (1) waste is threatened, (2) correlative rights are in jeopardy, (3) public health or the environment are at risk, or (4) that "*gross negative consequences*" will accrue to any party from the Division's order.

At no time has Devon asserted that EGL could not properly operate the Rio Blanco well. Devon's only argument is that drilling should wait until the Commission can

decide the "operatorship issue". Such "generalized concerns" are insufficient grounds for the issuance of a stay order. (Order No. R-11663; *Application of McElvain Oil and Gas Properties, Inc. for Compulsory Pooling, Rio Arriba County, New Mexico*; Case No. 12705.) Devon does not assert that it will suffer harm if the order is not granted. It does not have a lease expiration situation and it is threatened with no other loss.

EGL and Landreth on the other hand, with their operations in-progress, will incur significant harm, including monetary damages, if Devon succeeds in interrupting drilling operations.

As established in the attached correspondence from EGL's president (Exhibit 1):

1. A rig is on location and workover operations are already under way.
2. EGL and Landreth have already contracted with Patterson Drilling Company for a deep drilling rig that is scheduled to move on location soon.
3. If operations are interrupted, the Patterson rig deal may be lost and the rig may become unavailable for some time.
4. Rig availability has become "tight" and drilling costs are increasing. It is not likely that EGL could obtain another drilling rig at a rate as low as the current rate under its contract with Patterson.
5. Production revenues will become delayed.
6. In connection with operations, EGL and Landreth have already contracted with consultants, crews, other personnel and equipment at significant costs that cannot be recouped but will instead be recurrent costs if operations are disrupted and subsequently re-started.

EGL and Landreth bear 75% of these costs. Unquestionably, the losses that will

accrue to them if operations are disrupted would constitute the "gross negative consequences" that Rule 1220(B) is intended to avert.

Finally, it should also be borne in mind that as operator and owner of an interest in the lands, under established agency precedent, EGL is fully authorized to enter onto the lands and commence operations, regardless of the pendency of the agency's disposition of a compulsory pooling order. In Order No. R-11700-B, also in the context of a similar request for stay, the Commission has said:

> *"34. It has long been the practice in New Mexico that the operator is free to choose whether to drill first, whether to pool first, or whether to pursue both contemporaneously. The Oil and Gas Act explicitly permits an operator to apply for compulsory pooling after the well is already drilled. See NMSA 1978, § 70-2-17(C) (the compulsory pooling powers of the Division may be invoked by an owner or owners ". . . who has the right to drill has drilled or proposed to drill a well [sic] . . . ")."*

(Case Nos. 12731/12744; *Application Of TMBR/Sharp Drilling, Inc. For An Order Staying David H. Arrington Oil & Gas, Inc. From Commencing Operations, Lea County, New Mexico.*)

CONCLUSION

Devon is improperly using the Division's extraordinary relief processes as a tool for challenging operatorship of a well. However, Devon has failed to satisfy even a single one of the requirements under Rule 1220(B) for the issuance of a stay of the Division's compulsory pooling order. Regardless, even without the issuance of a stay, Devon remains free to challenge the operatorship of the well pursuant to its De Novo appeal, should it choose to do so. EGL and Landreth, on the other hand, will suffer significant harm should Devon's request for extraordinary relief be granted. Correspondingly, Devon's motion should be denied.

MILLER STRATVERT P.A.

By: _____

J. Scott Hall
Attorneys for EGL Resources, Inc. and
Robert Landreth
Post Office Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 29th day of May 2003, as follows:

Thomas Kellahin, Esq.
Post Office Box 2265
Santa Fe, New Mexico 87504
Attorney for Devon Energy Production Company, LP

Carol Leach, Esq.
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 98504

_____

J. Scott Hall

E. G. L. Resources, Inc. 508 West Wall Street, Suite 1250 P.O. Box 10886 Midland, Texas 79702 915.687.6560 telephone 915.682.5852 facsimile

5/28/2003

Scott Hall
Miller Stratvert PA
150 Washington Ave., Suite 300
P.O. Box 1986
Santa Fe, NM 87504-1986

Via Fax #: 505-989-9857

RE: **Rio Blanco Federal 4-1**
T23N, R34E, NMPM
Section 4
Lea County, New Mexico

Dear Scott:

Today EGL Resources, Inc. moved in a workover rig on the captioned well. Our procedure includes pulling tubing, setting a bridge plug over the Atoka zone and a second bridge plug for the whipstock.

The reasons why it is important for EGL continue are:

1. A Patterson Rig has been contracted and will be moving to this location soon. This workover operation readies the well prior the Patterson Rig move in.

2. If the well is not ready, EGL may lose the Patterson Rig and it may not become available again for some time. EGL will be unable to obtain a Patterson Rig at a rate as low as the current contracted rate. This incurs significant economic damage for reasons that rig prices are escalating and other rigs may not be available at all. By not taking advantage of the current high gas prices, further delays create significant loss of revenue for the working and royalty interest owners.

3. EGL has contracted with a consultant, workover crews, other personnel and equipment and will incur wasted expenses if we terminate operations today.

4. Significantly, on or about May 21, 2003, Richard Winchester with Devon indicated Devon was interested in moving forward and encouraged us to proceed as soon as possible.

If you have any questions, please call 915.686.4360. I am,

Very truly yours,

W. Wesley Perry
President

EXHIBIT NO. 1