

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

December 2, 1997
(Our File No. 97-170.01)

VIA FEDERAL EXPRESS

Gregory T. Ireland, Court Administrator
Eleventh Judicial District Court
103 South Oliver Drive
Aztec, New Mexico 87410

RE: Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D
February 12, 1983; et al. v. Burlington Resources Oil & Gas
Company; Cause No. CV-97-572-3

Dear Mr. Ireland:

Enclosed for filing on behalf of our clients, Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983, et la. is an original and copies of a Title Page and Stipulations to the Complete Record in Oil Conservation Commission Docket No. 11745.

Please endorse the additional copy and return it to our office in the enclosed self-addressed, stamped envelope. Thank you for your assistance in this matter. Should you have any questions, please contact me.

Very truly yours,

GALLEGOS LAW FIRM, P.C.


Sandra Arrison

/sa

Enclosures

cc: Marilyn Hebert
W. Thomas Kellahin

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Telefax No. 505-986-0741

December 2, 1997
(Our File No. 97-170.01)

VIA FEDERAL EXPRESS

Honorable Byron Caton
District Judge, Division III
Eleventh Judicial District Court
103 South Oliver Drive
Aztec, New Mexico 87410

RE: Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust
U/A/D February 12, 1983; et al. v. Burlington Resources Oil &
Gas Company; Cause No. CV-97-572-3

Dear Judge Caton:

Enclosed please find courtesy copies of the following documents:

1. The complete record in Oil Conservation Commission Docket No. 11745.
2. Title Page and Stipulations to the Complete Record.

Please feel free to contact our office if you have any questions.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.


Sandra Arrison

/sa

Enclosures

cc: Marilyn Hebert, Esq.
W. Thomas Kellahin

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

November 25, 1997
(Our File No. 97-170.01)

Gregory T. Ireland, Court Administrator
Eleventh Judicial District Court
103 South Oliver Drive
Aztec, New Mexico 87410

RE: Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D
February 12, 1983; et al. v. Burlington Resources Oil & Gas
Company; Cause No. CV-97-572-3

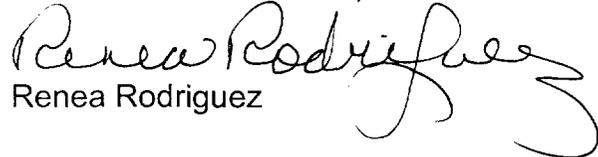
Dear Mr. Ireland:

Enclosed for filing on behalf of our clients, Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983, et la. is an original and copies of Appellants' Request For Entry of Order on Enforcing the Stay and For Final Hearing on the Appeal.

Please endorse the additional copies and return them to our office in the enclosed self-addressed, stamped envelope. Thank you for your assistance in this matter. Should you have any questions, please contact me.

Very truly yours,

GALLEGOS LAW FIRM, P.C.


Renea Rodriguez

/rr

Enclosures

cc: Marilyn Hebert
W. Thomas Kellahin
John Bemis
William F. Carr

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983; et. al.,

Appellants,

vs.

Burlington Resources Oil & Gas Company, a corporation, and The New Mexico Oil Conservation Commission,

Appellees.

Cause No. CV-97-572-3

**APPELLANTS' REQUEST FOR ENTRY OF ORDER ON ENFORCING THE STAY
AND FOR FINAL HEARING OF THE APPEAL**

Appellants, Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983, et al., (hereinafter collectively "Appellants") by and through their undersigned counsel hereby respectfully request that this Court: (1) enter an order on Appellants Motion to Enforce the Stay of NMOCC Order No. R-10815 Pending Appeal, For Sanctions Including Attorney's Fees and for Expedited Hearing, and (2) set oral argument on this appeal. In support of this Request Appellants state:

1. On October 29, 1997, Appellants filed their Motion to Enforce the Stay of Commission Order No. R-10815 Pending Appeal, for Sanctions Including Attorney's Fees and for Expedited Hearing ("Appellants' Motion"). On November 4, 1997, Burlington filed its Response in Opposition to Appellants' Motion. At direction of the Court, on November 8, 1997, Appellants submitted two forms of Order for the Court's consideration. One

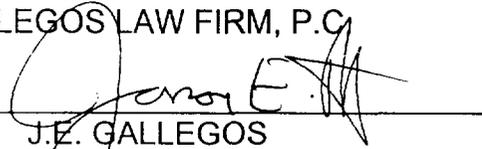
Order grants Appellants' Motion while the other Order sets the matter for hearing on an Order to Show Cause. Appellants request that the Court enter an order enforcing the stay.

2. Appellants advise the Court that this matter is ready for final argument on the merits. All briefing is completed and before the court, as is the complete record proper and the parties supplements to the record proper. Pursuant to the scheduling order filed in this matter, Appellants filed their Appellants' Statement of Appellate Issues on October 3, 1997. Appellees filed their Appellees' Statement of Appellate Issues on October 24, 1997. Appellants filed their Appellants' Trial Brief on October 31, 1997. Appellant New Mexico Oil Conservation Commission ("Commission") filed its Answer Brief to Appellants Trial Brief on November 5, 1997, and Appellant Burlington Resources Oil and Gas Co. ("Burlington") filed its Answer Brief to Appellants Trial Brief on November 7, 1997. Appellants filed their Appellants' Reply Brief In Support of Appellants Trial Brief on November 17, 1997. No further briefing is outstanding. It is estimated that oral argument will require no more than two hours.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By



J.E. GALLEGOS

JASON E. DOUGHTY

460 St. Michael's Drive, Bldg. 300

Santa Fe, New Mexico 87505

(505) 983-6686

Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of Appellants' Request For Entry Of Order On Enforcing The Stay And For Final Hearing Of The Appeal to be mailed on the 25th day of November, 1997 to the following counsel of record:

Marilyn S. Hebert
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504

John Bemis, Esq.
Burlington Resources
P.O. Box 4289
Farmington, New Mexico 87499

William F. Carr
Campbell, Carr, Berge & Sheridan, P.A.
P.O. Box 2208
Santa Fe, New Mexico 87504



J.E. Gallegos

GALLEGOS LAW FIRM

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460 St. Michael's Drive
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Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

November 17, 1997
(Our File No. 97-170.01)

VIA FEDERAL EXPRESS

Gregory T. Ireland, Court Administrator
Eleventh Judicial District Court
103 South Oliver Drive
Aztec, New Mexico 87410

RE: Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D
February 12, 1983; et al. v. Burlington Resources Oil & Gas
Company; Cause No. CV-97-572-3

Dear Mr. Ireland:

Enclosed for filing on behalf of our clients, Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983, et al. is an original and copies of a Reply Brief of Timothy B. Johnson, Trustee for Ralph A. Bard, Jr., Trust U/A/D February 12, 1983, et al.

Please endorse the additional copy and return it to our office in the enclosed self-addressed, stamped envelope. Thank you for your assistance in this matter. Should you have any questions, please contact me.

Very truly yours,

GALLEGOS LAW FIRM, P.C.


Sandra Arrison

/sa

Enclosures

cc: Marilyn Hebert
W. Thomas Kellahin



NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

November 5, 1997

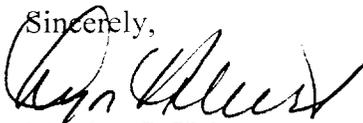
Gregory T. Ireland, Clerk
Eleventh Judicial District
103 South Oliver Drive
Aztec, NM 87410

Re: Johnson et al. v. Burlington Resources Oil & Gas Co. et al.
No. CV 97-572-3

Dear Mr. Ireland:

Enclosed please find the original and a copy of the New Mexico Oil Conservation Commission's Answer Brief to be filed in the above-referenced case. Please file the original and conform and return to me the copy in the enclosed stamped envelope. Thank you for your assistance.

Sincerely,



Marilyn S. Hebert

cc: W. Thomas Kellahin
J.E. Gallegos

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

October 31, 1997
(Our File No. 97-170.01)

HAND-DELIVERED

Marilyn S. Hebert
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

RE: Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D
February 12, 1983; et al. v. Burlington Resources Oil & Gas
Company; Cause No. CV-97-572-3

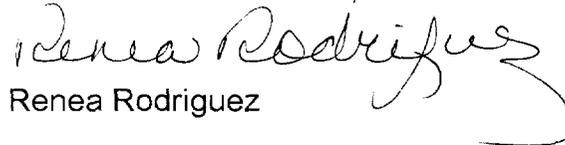
Dear Ms. Hebert:

Enclosed herewith is a copy of our Appellant's Trial Brief.

Thank you for your cooperation.

Very truly yours,

GALLEGOS LAW FIRM, P.C.


Renea Rodriguez

/rr
Enclosure

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
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Telefax No. 505-986-1367
Telefax No. 505-986-0741

October 31, 1997
(Our File No. 97-170.01)

VIA FEDERAL EXPRESS

Gregory T. Ireland, Court Administrator
Eleventh Judicial District Court
103 South Oliver Drive
Aztec, New Mexico 87410

RE: Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D
February 12, 1983; et al. v. Burlington Resources Oil & Gas
Company; Cause No. CV-97-572-3

Dear Mr. Ireland:

Enclosed for filing on behalf of our clients, Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983, et la. is an original and copies of Appellant's Trial Brief.

Please endorse the additional copies and return them to our office in the enclosed self-addressed, stamped envelope. Thank you for your assistance in this matter. Should you have any questions, please contact me.

Very truly yours,

GALLEGOS LAW FIRM, P.C.


Renea Rodriguez

/rr

Enclosures

cc: Marilyn Hebert (via hand-delivery)
W. Thomas Kellahin (via hand-delivery)
John Bemis

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

October 30, 1997
(Our File No. 97-170.1)

JASON E. DOUGHTY*

VIA TELECOPY

W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

VIA TELECOPY

Marilyn S. Hebert
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: **JOHNSON, TRUSTEE FOR BARD et al. v. BURLINGTON
RESOURCES OIL AND NEW MEXICO OIL CONSERVATION
COMMISSION; San Juan County Cause No. CV-97-572-3**

Dear Tom and Lyn:

This shall confirm our agreement reached today that appellants have until tomorrow, October 31, 1997, to file and serve their trial brief in this action. We shall serve our brief to you tomorrow by hand delivery. Thanks for your courtesy.

Sincerely,

GALLEGOS LAW FIRM, P.C.

By



JASON E. DOUGHTY

*Admitted to practice in Colorado,
New Mexico and Texas

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

October 28, 1997
(Our File No. 97-170.01)

VIA FEDERAL EXPRESS

Gregory T. Ireland, Court Administrator
Eleventh Judicial District Court
103 South Oliver Drive
Aztec, New Mexico 87410

RE: Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D
February 12, 1983; et al. v. Burlington Resources Oil & Gas
Company; Cause No. CV-97-572-3

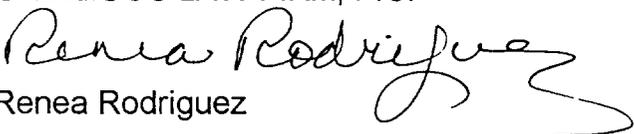
Dear Mr. Ireland:

Enclosed for filing on behalf of our clients, Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983, et al. is an original and copies of a Motion to Enforce the Stay of New Mexico Oil Conservation Commission Order No. R-10815 Pending Appeal, For Sanctions Including Attorney's Fees and For Expedited Hearing.

Please endorse the additional copies and return them to our office in the enclosed self-addressed, stamped envelope. Thank you for your assistance in this matter. Should you have any questions, please contact me.

Very truly yours,

GALLEGOS LAW FIRM, P.C.


Renea Rodriguez

/rr

Enclosures

cc: Marilyn Hebert
W. Thomas Kellahin
John Bemis, Esq.

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. (505) 983-6686
Telefax No. (505) 986-0741 or (505) 986-1387

CLIENT: LaForce
CLIENT NO.: 97-170.01

DATE: October 28, 1997

TO: Marilyn S. Hebert

COMPANY:

TELEFAX NO.: 827-8177

FROM: Jason E. Doughty

MESSAGE:

NUMBER OF PAGES INCLUDING COVER SHEET: 13

IMPORTANT

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS CONFIDENTIAL AND INTENDED SOLELY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, COPYING, OR UNAUTHORIZED USE OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE NOTIFY THE SENDER IMMEDIATELY BY TELEPHONE, AND RETURN THE FACSIMILE TO THE SENDER AT THE ABOVE ADDRESS VIA THE UNITED STATES POSTAL SERVICE. THANK YOU.

STATE OF NEW MEXICO
 COUNTY OF SAN JUAN
 ELEVENTH JUDICIAL DISTRICT

 Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983; et. al.,
 Appellants,
 vs.
 Burlington Resources Oil & Gas Company, a corporation, and The New Mexico Oil Conservation Commission,
 Appellees.

Cause No. CV-97-572-3

**MOTION TO ENFORCE THE STAY OF NEW MEXICO OIL CONSERVATION
 COMMISSION ORDER NO. R-10815 PENDING
 APPEAL, FOR SANCTIONS INCLUDING ATTORNEY'S FEES
 AND FOR EXPEDITED HEARING**

Appellants Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983, et al., (hereinafter collectively "appellants") move this Court to enforce its Order entered October 2, 1997 staying the effect and operation of New Mexico Oil Conservation Commission ("Commission") Order No. R-10815 pending review thereof, and in support of this Motion state:

1. On June 5, 1997 the Commission, upon application by Burlington Resources Oil and Gas Company ("Burlington"), entered Order No. R-10815 which, inter alia, changed the long-standing spacing unit for deep wildcat gas wells in the San Juan Basin from 160 acres to 640 acres (the "Spacing Order").

2. Armed with Order No. R-10815, on June 11, 1997, Burlington immediately filed an application with the New Mexico Oil Conservation Division ("Division") seeking inter alia, an order compulsory pooling the appellants' working interest in the deep Pennsylvanian formation underlying Section 9, T31N-R10W, San Juan County, New Mexico on a 640-acres spacing and proration unit for Burlington's proposed Scott Well No. 24. This case was numbered Case No. 11808.

3. On July 18, 1997, appellants perfected a timely appeal of the Spacing Order, Order No. R-10815, by filing their Verified Petition for Review of Commission Order No. R-10815 with this court and simultaneously filed a Motion to Stay Commission Order No. R-10815 as to appellants pending appeal thereof pursuant to NMSA 1978 § 70-2-25(C).

4. On September 12, 1997, the Division issued its order No. R-10877 granting Burlington's application for compulsory pooling of Section 9, T31N-R10W for Burlington's proposed Scott well on a 640-acre spacing and proration unit. The appellants' operating rights were ostensibly pooled by said Order No. R-10877 (the "Pooling Order").

5. At a hearing on all pending motions held before this Court on September 15, 1997, the Court denied motions to dismiss filed by the Commission and Burlington and a motion to strike filed by Burlington, and granted appellants' Motion to Stay the effect of the Spacing Order as to the appellants pending appeal thereof. On October 2, 1997, this Court entered its written Order to this effect. See Order attached hereto as Exhibit "A".

6. Pursuant to this court's order, Commission Order No. R-10815, the Spacing Order, is stayed as to the appellants pending their judicial appeal. As such, the amended 640-acre spacing rule is of no force and effect as to the appellants. The Division has no authority to compulsory pool the GLA-66 Owners' leasehold operating rights acreage in Section 9-T31N, R10W, San Juan County, New Mexico for Burlington's proposed Scott Well No. 24 on 640-acre spacing.

7. Appellants have filed with the Oil Conservation a de novo appeal of the Pooling Order, which is presently pending.

8. Notwithstanding this court's clear and unambiguous ruling and Order that 640-acre spacing does not apply to the appellants pending appeal, Burlington is proceeding as though there is no stay of the Spacing Order.

10. On October 20, 1997, Burlington sent to all appellants its "Notification of Election" letter for its proposed Scott Well No. 24. An example of this letter is attached hereto as Exhibit "B". Burlington proposes to drill its Scott well on a 640-acre spacing and proration unit in Section 9, T31N, R10W, San Juan County, New Mexico. Burlington's Notification of Election requires that within 30 days from receipt of the letter, the appellants must elect to either pay their share of the estimated \$2,316,973 well costs or, alternatively, do nothing and lose their ownership through the imposition of the statutory risk penalty until 300% of the cost of drilling, completing and operating the Scott Well is recovered from the plaintiffs' share of production therefrom.

11. This Court has unambiguously ruled that Order No. R-10815, which provides for 640-acre spacing and proration units, is stayed as to the appellants

pending this appeal. As such, Burlington has no right nor authority to demand that the appellants either contribute to its proposed Scott well based on the Spacing Order or suffer 300% of the well costs being deducted from their share of production.

12. Burlington's "Notification of Election" letter contemptuously defies this Court's Order, and continues the same course of oppressive practice that has forced appellants to file this appeal in the first place.

13. New Mexico courts have the inherent power to award sanctions, including attorney fees, when a party acts in bad faith, vexatiously, wantonly, or for oppressive reasons. See State ex rel. N.M. State Highway & Transp. Dep't v. Baca, 116 N.M. 751, 754, 867 P.2d 421, 424 (Ct. App. 1993), cert. granted, 116 N.M. 801, 867 P.2d 1183 (1994) ("a New Mexico court may award attorney fees when . . . a party shows bad faith by disrupting litigation or hampering enforcement of court orders, or when it is necessary to vindicate judicial authority and make the prevailing party whole for expenses caused by an opponent's obstinacy under circumstances in which the opponent's behavior is characterized by bad faith or vexatious oppression.") Burlington's oppressive treatment of the appellants and absolute and intentional defiance of this Court's Order warrant that sanctions, to include appellants' attorney's fees and costs incurred in this Motion, be charged against Burlington.

14. Due to the 30-day election period provided for in Burlington's Notice of Election, appellants request that a hearing on this Motion be had on an expedited basis.

15. Concurrence in this Motion was sought from Burlington's counsel, but no response was received. Due to the nature of this Motion, however, Burlington is presumed to oppose same.

WHEREFORE, for the foregoing reasons, Appellants respectfully request that this court enforce its Order entered October 2, 1997 which stayed New Mexico Oil Conservation Commission Order No. R-10815 as to the appellants pending review thereof, by entering a supplemental Order to the effect that:

A. Division Order No. R-10877, which compulsory pooled the appellants' operating rights for Burlington's Scott Well No. 24 on 640-acre spacing, is stayed as to the appellants pending their appeal of the Commission 640-acre spacing order No. R-10815 before this court and any conduct by Burlington to the contrary is contemptuous;

B. Burlington's "Notification of Election" letter of October 20, 1997 is of no force and effect as to the appellants; and

C. Appellants are allowed to recover their fees and costs incurred in this Motion from Burlington, and have such further relief as is proper.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By 

J.E. GALLEGOS
JASON E. DOUGHTY
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

Attorneys for Appellants

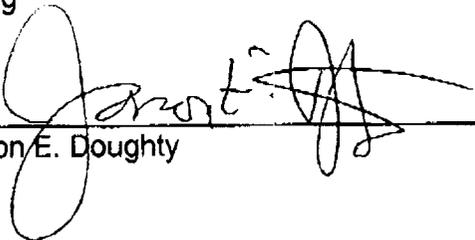
CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of Appellant's Motion to Enforce the Stay of New Mexico Oil Conservation Commission Order No. R-10815 Pending Appeal, for Sanctions Including Attorney's Fees and for Expedited Hearing to be served via facsimile on this 28th day of October, 1997 to the following counsel of record:

Marilyn S. Hebert
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504

John Bernis, Esq.
Burlington Resources
P.O. Box 4289
Farmington, New Mexico 87499



Jason E. Doughty

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

RECEIVED
OCT 2 2 03 PM '97

Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983; et. al.,

Plaintiffs,

vs.

Cause No. CV-97-572-3

Burlington Resources Oil & Gas Company, a corporation, and The New Mexico Oil Conservation Commission,

Defendants.

**ORDER DENYING MOTIONS TO DISMISS AND
TO STRIKE AND STAYING COMMISSION
ORDER 4-10815 AS TO PLAINTIFFS**

THIS MATTER came before the Court on September 15, 1997 for hearing on all pending motions with the plaintiffs appearing by their attorney, J.E. Gallegos, the defendant New Mexico Oil Conservation Commission ("Commission") by its attorney Marilyn S. Hebert and defendant Burlington Resources Oil and Gas Company ("Burlington") appearing by its attorney W. Thomas Kellahin. The Court has considered the pleadings, briefs and legal authorities and received arguments of counsel and is fully advised. The Court concludes as follows and IT IS SO ORDERED.

1. Plaintiffs have correctly followed the provisions of Section 70-7-25B. NMSA 1978 in bringing this case from the executive branch of government to the Courts for judicial review. Once the case is within the jurisdiction of the Court, NMRA 1997 Rule 1-074 provides meritorious procedures for the disposition of the appeal.

Under the circumstances there is little, if any, difference between what the Court has been provided by plaintiffs through its Verified Petition for Review and what would be filed as a Notice of Appeal. Should there be anything further to be provided the Court under the Rule 1-074 procedures, the plaintiffs shall make such filing. Accordingly, the defendants' motions to dismiss and Burlington's motion to strike are denied.

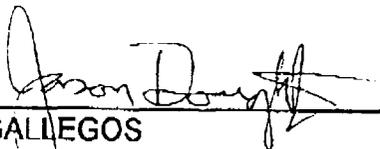
2. The decision in Uhden v. New Mexico Oil Conservation Commission, 112 N.M. 528, 817 P.2d 721 (1991) is controlling regarding plaintiffs' motion to stay Commission Order R-10815 pending appeal. Knowing of its plan to pool the interests of the plaintiffs for a wildcat well on 640-acre spacing and knowing the identities and whereabouts of the plaintiffs, Burlington's failure to provide notice to them of the spacing case proceeding underlying Order R-10815 was a denial of due process under the United States and New Mexico constitution. That spacing change case was not an exercise of general rule making by the Commission but rather resulted from an application by Burlington seeking a particular decision and order of the Commission and Burlington had the burden to notify the plaintiffs of its application as parties whose property could be affected. The plaintiffs' motion to stay is granted.

3. This Order staying Commission Order R-10815 applies only to the plaintiffs in this proceeding and is granted without requirement of bond. The Court expedites hearing of the appeal in this matter setting trial on October 7, 1997. The stay of Commission Order R-10815 shall remain in effect through that date, until further order of the Court.

ORIGINAL SIGNED BY
BYRON CATON

Honorable Byron Caton, District Judge

SUBMITTED:



J.E. GALLEGOS
JASON E DOUGHTY
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

Attorney for Plaintiffs

APPROVED:

Telephonically approved on September 22, 1997

Marilyn Hebert
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Attorney for New Mexico Oil Conservation
Commission

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504

Attorney for Burlington Resources Oil
and Gas Company

COPIES MAILED Gallegos
Hebert
Kellahin
10-2-97

70 886-0741

BURLINGTON RESOURCES

SAN JUAN DIVISION

October 20, 1997

Certified Mail-Return Receipt Requested

ROBERT DOUGLAS STUART, JR.
NORTHERN TRUST BNK/LAKE FOREST
& ROBERT DOUGLAS STUART JR
CO-TRSTE U/A ROBT D STUART
PO BOX 226270
DALLAS, TX 75222

RE: NOTIFICATION OF ELECTION
Compulsory Pooling
Scott Well No. 24
Section 9, T81N, R10W, NMPM
San Juan County, New Mexico
NMOCD Case 10808, Order R-10877

On September 12, 1997, the New Mexico Oil Conservation Division issued Order R-10877 which is a compulsory pooling order which involuntarily committed your interest in a 640-acre spacing unit to be dedicated to the referenced well.

On behalf of Burlington Resources Oil & Gas Company and in accordance with the terms of Order R-10877, copy enclosed, I am providing you with notice of your right to elect to participate in the well to be drilled pursuant to this order.

It is our information that at the time the application in this case was filed on June 12, 1997, you held a 0.774329% working interest ownership in this 640 acre spacing unit for all formations below the base of the Dakota formation to the total depth drilled in this well. Should you desire to participate in this well and avoid the payment of the 200% risk factor out of your share of production, then within thirty days of the date you receive this letter, Burlington must receive a cashier's check for \$17,940.99 being your 0.774329% of the completed well costs and a letter signed by you agreeing to participate in this well pursuant to said order. Enclosed is a copy of the AFE for this well.

If you decide not to participate then you need do nothing further. In that event, you will be a non-consenting party and Burlington will pay your share of the costs of the well and will recover your share out of production plus an additional 200 percent. Thereafter, you will commence to receive your working interest share of production. If you are an unleased mineral owner, then 1/8th of you share is deemed to be a royalty and 7/8ths is deemed to be a working interest.

Order R-10877
October 20, 1997
Page 2.

The executed authority for Expenditure and the prepayment of well costs must be returned to Burlington at the letterhead address within thirty (30) days of your receipt of this letter.

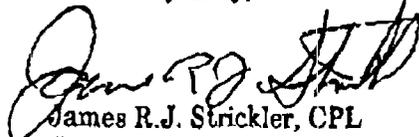
If you do not voluntarily join the well within the thirty (30) day period or if we do not receive your joinder pursuant to the referenced order within the thirty (30) day period, it will be assumed that you have elected not to participate in the well. Burlington under the terms of the order has the right to drill the well and recover your pro-rata share of reasonable well costs from production. Burlington will also be allowed to recover an additional two hundred percent (200%) of reasonable well costs as a charge for bearing risk of drilling the well.

In the event you do not desire to have your interest subject to this pooling order, Burlington desires to offer you the following options:

- (a) farmout under similar terms and conditions as outlined in my June 6, 1997 offer letter, with appropriate date changes.
- (b) sell your interest under similar terms and conditions as outlined in my July 31, 1997 offer letter, with appropriate date changes.

I look forward to hearing from you on this matter. If you have any questions or require further information, please advise.

Yours very truly,


James R.J. Strickler, CPL
Senior Staff Landman
(505) 826-9756

JRS:dg
c:dawn/R10877_1.doc

Enclosures: Order R-10877
AFE for subject well

cc: Director NMOCD-Santa Fe



NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

October 24, 1997

Gregory T. Ireland, Clerk
Eleventh Judicial District
103 South Oliver Drive
Aztec, NM 87410

Re: Johnson et al. v. Burlington Resources Oil & Gas Co. et al.
No. CV 97-572-3

Dear Mr. Ireland:

Enclosed please find the original and a copy of the New Mexico Oil Conservation Commission's Statement of Appellate Issues to be filed in the above-referenced case. Please file the original and conform and return to me the copy in the enclosed stamped envelope. Thank you for your assistance.

Sincerely,



Marilyn S. Hebert

cc: W. Thomas Kellahin
J.E. Gallegos

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE Box 2265

SANTA FE, NEW MEXICO 87504-2265

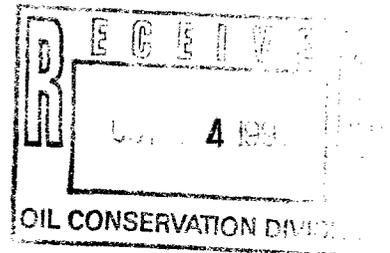
W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

October 24, 1997



FEDERAL EXPRESS

Gregory T. Ireland, Clerk
Eleventh Judicial District
103 South Oliver Drive
Aztec, NM 87410

**Re: Johnson et al. v. Burlington Resources Oil & Gas Co.
No. CV 97-572-3**

Dear Mr. Ireland:

Please find enclosed for filing in the referenced case, Burlington's Appellee Statement of Appellate Issues.

Please conform and return to me the copy of the first page in the enclosed stamped envelope.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Thomas Kellahin".

W. Thomas Kellahin

cc w/ enclosure:

Gene Gallegos, Esq.
Lyn Hebert, Esq.
John Bemis, Esq.

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

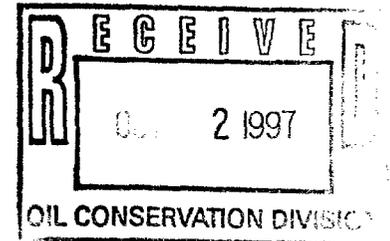
TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

JASON KELLAHIN (RETIRED) (1991)

October 22, 1997

HAND DELIVERED

Lyn Hebert, Esq.
Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87502



*Re: NMOCD Case No. 11745
Application of Burlington Resources Oil & Gas
Company for 640-acre Deep Gas Spacing, San
Juan Basin, New Mexico*

Dear Lyn:

Enclosed is a draft of my appellee statement of issues which I am ready to send to the court on Friday. If you desire, I would be pleased to have you join in this statement. However if you prefer to file your own, you can see how I approached the issues.

Regards,

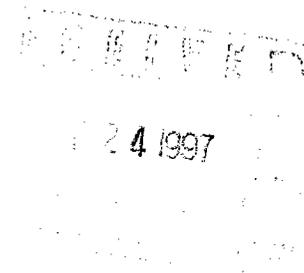
A handwritten signature in black ink, appearing to be "W. Thomas Kellahin".

W. Thomas Kellahin

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741



October 22, 1997
(Our File No. 97-170.1)

VIA TELECOPY

W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

VIA TELECOPY

Marilyn S. Hebert
NM Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: **JOHNSON, TRUSTEE FOR BARD et al. v. BURLINGTON
RESOURCES OIL AND NEW MEXICO OIL CONSERVATION
San Juan County Cause No. CV-97-572-3**

Dear Mr. Kellahin and Ms. Hebert:

Enclosed please find a revised Scheduling Order. We request that you review the Order and call Jason Doughty with your telephonic approval.

Thank you for your cooperation.

Very truly yours,

GALLEGOS LAW FIRM, P.C.

Renea Rodriguez,
Legal Secretary

RR.
Enclosure
ioc: Julie L. Hall

**STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT**

**Timothy B. Johnson, Trustee for Ralph A.
Bard, Jr. Trust U/A/D February 12, 1983; et al.,**

Appellants,

vs.

Cause No. CV 97-572-3

**Burlington Resources Oil & Gas Company, a
corporation, and the New Mexico Oil
Conservation Commission,**

Appellees.

SCHEDULING ORDER

The Court directs that the appeal taken from the New Mexico Oil Conservation Commission Order R-10815 by the plaintiffs shall generally follow the procedure of Rule 1-074 NMRA 1997 on the schedule and terms hereby ordered.

1. Statement of Appellate Issues.

The appellant's Statement of Appellate Issues was served and mailed for filing on October 2, 1997. The appellee's response shall be served on or before October 27, 1997 and sent for filing at that time and may consist of up to fourteen (14) pages of argument.

2. Record on Appeal.

The parties shall jointly compile and agree upon the record and appeal and file it with the Court. All statements, briefs or other filings citing the record shall make appropriate references to the record on appeal.

3. Briefs.

The appellants may serve and send to be filed a brief not exceeding thirty-five (35) pages by October 30, 1997. The appellees may serve and send for filing response briefs not exceeding thirty-five (35) pages by November 7, 1997. The appellants may serve and send for filing a reply brief not exceeding fifteen (15) pages on November 17, 1997. The form of briefs shall generally adhere to the format prescribed by SCRA 1986, Rule 12-213 (1995 Supp.).

4. Oral Argument.

The matter will be heard on oral argument in the San Juan County Courthouse, Aztec, New Mexico at ___ o'clock _____, 1997.

Honorable Byron Caton, District Judge

APPROVED AND AGREED:

J.E. GALLEGOS
JASON E. DOUGHTY
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

Attorney for Plaintiffs

Marilyn Hebert
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Attorney for New Mexico Oil Conservation
Commission

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504

Attorney for Burlington Resources Oil
and Gas Company

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Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

October 15, 1997
(Our File No. 97-170.1)

J.E. GALLEGOS *

VIA TELECOPY

W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

Re: **JOHNSON, TRUSTEE FOR BARD et al. v. BURLINGTON
RESOURCES OIL AND NEW MEXICO OIL CONSERVATION
COMMISSION; San Juan County Cause No. CV-97-572-3**

Dear Tom:

I phoned a couple of times Tuesday hoping to talk with you regarding yours of October 13, 1997 commenting on my proposed Scheduling Order and Stipulation. On Wednesday, I will be in a deposition most of the day and then out-of-town Thursday and Friday, so I send you the attached.

The Scheduling Order has been modified to accommodate all of your requests regarding page lengths, format of briefs and, I believe, the timetable you desire.

As to the stipulation of the record of the Division be advised that we copied exactly what was contained in the agency file. If the Burlington proposed order and the Commission docket and notification are not included, it is because they were not in the file. Should those things be significant in your view then I suggest they be included via the Florene Davidson affidavit.

Lyn Hebert had already phoned to approve the proposed papers I sent on October 9th. Would you please check with her to learn whether the modifications made to accommodate your requests cause any difficulty. We should wind this up and get it to Judge Caton very soon. While I may be unavailable, please feel free to phone Jason Doughty or reply by fax.

Sincerely,

GALLEGOS LAW FIRM, P.C.

By


J.E. GALLEGOS

JEG:sa

fxc: Marilyn Hebert (w/attachments)
ioc: Jason E. Doughty

* New Mexico Board of Legal Specialization
Recognized Specialist in the area of
Natural Resources-Oil and Gas Law

**STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT**

**Timothy B. Johnson, Trustee for Ralph A.
Bard, Jr. Trust U/A/D February 12, 1983; et al.,**

Appellants,

vs.

Cause No. CV 97-572-3

**Burlington Resources Oil & Gas Company, a
corporation, and the New Mexico Oil
Conservation Commission,**

Appellees.

SCHEDULING ORDER

The Court directs that the appeal taken from the New Mexico Oil Conservation Commission Order R-10815 by the plaintiffs shall generally follow the procedure of Rule 1-074 NMRA 1997 on the schedule and terms hereby ordered.

1. **Statement of Appellate Issues.**

The appellant's Statement of Appellate Issues was served and mailed for filing on October 2, 1997. The appellee's response shall be served on or before October 20, 1997 and sent for filing at that time and may consist of up to fourteen (14) pages of argument.

2. Record on Appeal.

The parties shall jointly compile and agree upon the record and appeal and file it with the Court. All statements, briefs or other filings citing the record shall make appropriate references to the record on appeal.

3. Briefs.

The appellants may serve and send to be filed a brief not exceeding thirty-five (35) pages by October 30, 1997. The appellees may serve and send for filing response briefs not exceeding thirty-five (35) pages by November 7, 1997. The appellants may serve and send for filing a reply brief not exceeding fifteen (15) pages on November 17, 1997. The form of briefs shall generally adhere to the format prescribed by SCRA 1986, Rule 12-213 (1995 Supp.).

4. Oral Argument.

The matter will be heard on oral argument in the San Juan County Courthouse, Aztec, New Mexico at ___ o'clock _____, 1997.

Honorable Byron Caton, District Judge

APPROVED AND AGREED:

J.E. GALLEGOS
JASON E. DOUGHTY
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

Attorney for Plaintiffs

Marilyn Hebert
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Attorney for New Mexico Oil Conservation
Commission

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504

Attorney for Burlington Resources Oil
and Gas Company

**STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT**

**Timothy B. Johnson, Trustee for Ralph A.
Bard, Jr. Trust U/A/D February 12, 1983; et al.,**

Appellants,

vs.

Cause No. CV 97-572-3

**Burlington Resources Oil & Gas Company, a
corporation, and the New Mexico Oil
Conservation Commission,**

Appellees.

**TITLE PAGE AND STIPULATIONS TO THE COMPLETE
RECORD IN OIL CONSERVATION COMMISSION DOCKET NO. 11745**

The parties to this proceeding hereby stipulate that the attached documents numbered 001 through 327 constitute the complete record on appeal taken by the New Mexico Oil Conservation Commission in its Docket No. 11745 upon which Order R-10815 was issued. This document also constitutes the title page of the record pursuant to Rule 1-074H. (1) NMRA 1997.

The parties further stipulate that on the issue of lack of notice, the Court may consider the evidence provided in plaintiffs' Affidavit Introducing Supplemental Evidence Concerning Identification of Appellants and Communications to Them From Burlington identified as documents PLF 001 through PLF ____ and Burlington Resources Oil and Gas Company's Supplements to Record Proper identified as documents DEF 001 through DEF ____.

GALLEGOS LAW FIRM, P.C.

J.E. GALLEGOS
JASON E. DOUGHTY
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

Attorneys for Plaintiffs

APPROVED:

Marilyn Hebert
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Attorney for New Mexico Oil Conservation
Commission

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504

Attorney for Burlington Resources Oil
and Gas Company

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

TELEPHONE (505) 982-4285

TELEFAX (505) 982-2047

W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

FACSIMILE COVER SHEET

DATE: October 13, 1997 NUMBER OF PAGE -2-
 TIME: 1:30 PM

TO: Gene Gallegos, Esq.
 OF: Gallegos Law Firm
 FAX NO: (505) 986-1367 or 986-0741

TO: Lyn Hebert, Esq.
 OF: Oil Conservation Commission
 FAX NO: (505) 827-8177

REF: **Johnson et al. v. Burlington and Oil Commission**
San Juan County Cause CV-97-572-3

Dear Gene and Lyn:

I have reviewed Gene's proposed scheduling order and stipulation and having the following for you to consider:

(1) Despite my best efforts, I am unable to reduce the argument portion of Burlington's appellee's statement of issues to less than 14 pages. Accordingly, I am requesting your concurrence in a motion in intend to file asking the Court for permission to file 14 pages of argument.

(2) Subject to an exception to the page limit, I am ready to file Burlington's Appellate Statement prior to October 31st although Rule 1-074 would allow us until October 31st.

(3) I have prepared a draft Burlington's brief. Subject to making additions to items that Gene may include in his brief which I may not have anticipated, I am also prepared to file a brief on "short notice". However, the "briefing" schedule Gene has suggested will require me to file a response brief by November 17th. Unfortunately, I have made prior commitments which will preclude me from working on this appeal from November 10 to December 1st. We will either need to move the schedule up or back or I will have to find substitute counsel.

Gene Gallegos, Esq.
Lyn Hebert, Esq.
October 13, 1997
Page 2.

(4) I would prefer to use the Supreme Court briefing requirements in Appellate Rule 12-313 for the format and length of any brief. Accordingly, I propose we use the 35-page brief limit and other requirements in the Supreme Court Rule rather than an arbitrary 10 page limit.

(5) I am concerned that Gene's proposed stipulate as to the record proper may preclude both of us from using our supplemental affidavits. In addition, the copy of the documents numbers 001-327 which I received from Jason Doughty:

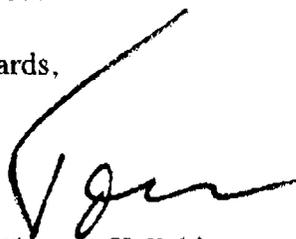
(a) included Amoco's proposed order but excluded Burlington's proposed order;

(b) excluded the Commission's docket of the case and the notifications made by the Division.

I recommend we include these items in the stipulation.

I would appreciate your concurrence to my suggested changes and look forward to hearing from you.

Regards,



W. Thomas Kellahin

cfx: John Bemis, Esq.

This information contained in this Facsimile Message and Transmission is ATTORNEY PRIVILEGED AND CONFIDENTIAL information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this Facsimile in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service.

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

RECEIVED
OCT 10 1997

October 9, 1997
(Our File No. 97-170.1)

J.E. GALLEGOS *

VIA TELECOPY

W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

VIA TELECOPY

Marilyn S. Hebert
NM Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: **JOHNSON, TRUSTEE FOR BARD et al. v. BURLINGTON
RESOURCES OIL AND NEW MEXICO OIL CONSERVATION
San Juan County Cause No. CV-97-572-3**

Dear Tom and Lyn:

To keep the ball rolling per our phone conference with Judge Caton we provided you on October 2, 1997 our Statement of Appellate Issues, an Affidavit of Supplemental Evidence and a copy of the complete record in Docket No. 11745.

I here provide you with a draft Title Page and Stipulation concerning the record on appeal. If you are satisfied that we faithfully assembled the record, this pleading will be executed and sent to the court clerk.

I also provide you with a draft Scheduling Order to consider.

Please call or fax any comments or suggestions as soon as possible. Friday, I will be out-of-town but Jason Doughty will be available. We would like to have both of these items on the way to the Court by early next week.

Sincerely,

GALLEGOS LAW FIRM, P.C.

By


J.E. GALLEGOS

JEG:sa

ioc: Jason E. Doughty
Julie L. Hall

DRAFT

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

Timothy B. Johnson, Trustee for Ralph A.)
Bard, Jr. Trust U/A/D February 12, 1983; et. al.,)

Plaintiffs,)

vs.)

Cause No. CV-97-572-3

Burlington Resources Oil & Gas Company, a)
corporation, and The New Mexico Oil)
Conservation Commission,)

Defendants.)

**TITLE PAGE AND STIPULATION AS TO THE COMPLETE
RECORD IN OIL CONSERVATION COMMISSION DOCKET NO. 11745**

The parties to this proceeding hereby stipulate that the attached documents numbered 001 through 327 constitute the complete record on appeal taken by the New Mexico Oil Conservation Commission in its Docket No. 11745 upon which Order R-10815 was issued. This document also constitutes the title page of the record pursuant to Rule 1-074H.(1) NMRA 1997.

GALLEGOS LAW FIRM, P.C.

J.E. GALLEGOS
JASON E. DOUGHTY
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

Attorneys for Plaintiffs

APPROVED:

Marilyn Hebert
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Attorney for New Mexico Oil Conservation
Commission

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504

Attorney for Burlington Resources Oil
and Gas Company

DRAFT

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

Timothy B. Johnson, Trustee for Ralph A.)
Bard, Jr. Trust U/A/D February 12, 1983; et. al.,)

Plaintiffs,)

vs.)

Burlington Resources Oil & Gas Company, a)
corporation, and The New Mexico Oil)
Conservation Commission,)

Defendants.)

Cause No. CV-97-572-3

SCHEDULING ORDER

The Court directs that the appeal taken from the New Mexico Oil Conservation Commission Order R-10815 by the plaintiffs shall generally follow the procedure of Rule 1-074 NMRA 1997 on the schedule and terms hereby ordered.

1. Statement of Appellate Issues.

The appellant's Statement of Appellate Issues was served and mailed for filing on October 2, 1997. The appellees' response shall be served on or before October 31, 1997 and sent for filing at that time.

2. Record on Appeal.

The parties shall jointly compile and agree upon the record on appeal and file it with the Court. All statements, briefs or other filings citing the record shall make appropriate references to the record on appeal.

3. Brief.

The appellants may serve and send to be filed a brief not exceeding ten (10) pages by November 7, 1997. The appellees may serve and

send for filing response briefs not exceeding ten (10) pages by November 17, 1997. The appellants may serve and send for filing a reply brief not exceeding five (5) pages on November 21, 1997.

4. Oral Argument.

The matter will be heard on oral argument in the San Juan County Courthouse, Aztec, New Mexico at _____ o'clock _____, 1997.

BYRON CATON,
DISTRICT COURT JUDGE

APPROVED AND AGREED:

J.E. Gallegos
Jason E. Doughty
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

Attorney for Plaintiffs

Marilyn Hebert
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Attorney for New Mexico Oil Conservation
Commission

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Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504

Attorney for Burlington Resources Oil
and Gas Company

GALLEGOS LAW FIRM

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Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

October 2, 1997
(Our File No. 97-170.1)

JASON E. DOUGHTY*

VIA HAND DELIVERY

W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

VIA HAND DELIVERY

Marilyn Hebert
NMOCC
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: **JOHNSON, TRUSTEE FOR BARD et al. v. BURLINGTON**
RESOURCES OIL AND NEW MEXICO OIL CONSERVATION
COMMISSION
San Juan County Cause No. CV-97-572-3

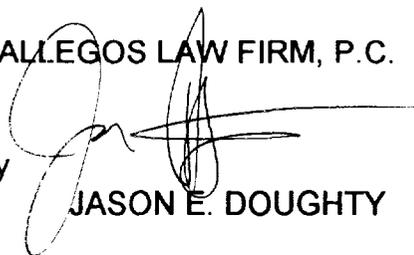
Dear Tom and Lyn:

Enclosed please find our Appellants' Statement of Appellate Issues and Affidavit Introducing Supplemental Evidence. In addition, as we agreed yesterday in our conference with Judge Caton, we also enclose what we believe to be the complete record before the Commission. We have arranged the record in chronological order for ease of the parties and the court. Please give me a call should you have questions or comments concerning the foregoing.

Sincerely,

GALLEGOS LAW FIRM, P.C.

By


JASON E. DOUGHTY

ioc: J.E. Gallegos

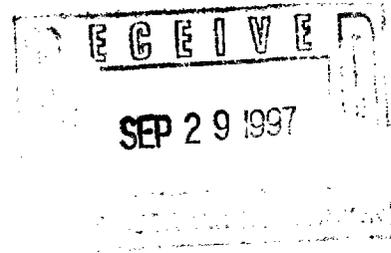
97-170.01/KELLAH3.DOC

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

September 26, 1997
(Our File 97-170.1)



JASON E. DOUGHTY*

VIA FAX 827-8177

Lyn Hebert
Legal Counsel
Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

RE: **Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983, et al., v. Burlington Resources Oil and Gas Co. and the NMOCC, San Juan County District Court, Cause No. 97-572**

Dear Ms. Hebert:

Attached please find a revised version of our "Joint Motion for Scheduling Order" in the referenced case. According to your suggestions, I have made minor revisions to ¶ 2. The filings required by Rule 74, i.e. our Statement of Appellate Issues and the defendants' response, and due dates for same are expressly governed by subsections J through O. Any additional briefs, such as trial briefs etc., are to be filed with leave of the Court pursuant to subsection O. I have attempted to make this distinction.

On another matter, I received your notice indicating that the record in this matter has been filed with the Court. Please let me know if the Commission retained a complete copy of the record. As you know, Rule 74(M) requires that references in the statement of appellate issues be to the pages of the record on appeal. As such, it would be most helpful if we could borrow the Commission's copy for a few hours in order to make our own copy.

Please give me a call should you have questions or comments concerning the foregoing.

Sincerely yours,

GALLEGOS LAW FIRM, P.C.

By:

JASON E. DOUGHTY

A handwritten signature in black ink, appearing to read "Jason E. Doughty", written over the typed name.

ioc: J. E. Gallegos
J. Hall/file

**STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT**

**Timothy B. Johnson, Trustee for Ralph A.
Bard, Jr. Trust U/A/D February 12, 1983; et al.,**

Plaintiffs,

vs.

Cause No. CV 97-572-3

**Burlington Resources Oil & Gas Company, a
corporation, and the New Mexico Oil
Conservation Commission,**

Defendants.

JOINT MOTION FOR SCHEDULING ORDER

At the hearing on September 15, 1997, the Court directed counsel to agree among themselves on Pre-Trial Scheduling. The attorneys for the parties have conferred and report to the Court and move for its direction as follows.

1. Expedited Hearing. Should the case remain on the docket for final hearing on the Merits on October 7, 1997, as announced by the Court, then the parties would propose the following schedule:

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C. Oral arguments to be presented October 7, 1997 with one to two hours allotted, as the Court directs.

2. Rule 1-074 Timing. Counsel for Burlington Resources Oil and Gas Company submits that the matter should proceed by observing the filings and the time frames specified in Rule 1-074 J. through O. In keeping with that procedure, the Court would set due dates for serving and filing additional trial briefs and affidavits to be followed by a date for oral argument.

3. Counsels' Position. The New Mexico Oil Conservation Commission will proceed under either schedule. The plaintiffs will proceed under either schedule, provided that the Court ordered stay of Order R-10815 remains in effect throughout and until further order of the Court. Burlington Resources requests the Rule 1-074 schedule and concurs in the stay of the order remaining in effect.

WHEREFORE, the parties jointly move the Order of the Court as to the schedule and procedure to be followed and advise that they will be available for a Scheduling Conference by telephone on short notice should the court deem that advisable.

SUBMITTED:

J.E. GALLEGOS
JASON E. DOUGHTY
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

Attorney for Plaintiffs

APPROVED:

Marilyn Hebert
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Attorney for New Mexico Oil Conservation
Commission

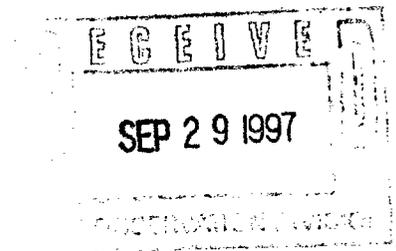
W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504

Attorney for Burlington Resources Oil
and Gas Company

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741



JASON E. DOUGHTY*

September 26, 1997
(Our File No. 97-170.01)

VIA FAX AND EXPRESS MAIL

The Honorable Byron Caton
District Judge, Division III
920 Municipal Dr., Suite 2
Farmington, NM 87401

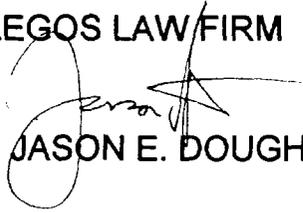
RE: Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D
February 12, 1983; et al. v. Burlington Resources Oil & Gas
Company; Cause No. CV-97-572-3

Dear Judge Caton:

Enclosed please find a copy of our Joint Motion For Scheduling Order in the referenced case. Should you have questions or comments concerning the foregoing, please give me a call.

Very truly yours,

GALLEGOS LAW FIRM

By: 
JASON E. DOUGHTY

Enclosures

cfx: Marilyn S. Hebert, Esq. (w/enclosures)
W. Thomas Kellahin, Esq. (w/enclosures)
John Bemis, Esq. (w/enclosures)

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

Timothy B. Johnson, Trustee for Ralph A.
Bard, Jr. Trust U/A/D February 12, 1983; et al.,

Plaintiffs,

vs.

Cause No. CV 97-572-3

Burlington Resources Oil & Gas Company, a
corporation, and the New Mexico Oil
Conservation Commission,

Defendants.

JOINT MOTION FOR SCHEDULING ORDER

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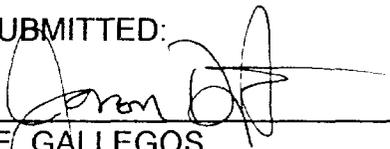
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SUBMITTED:



J.E. GALLEGOS
JASON E. DOUGHTY
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

Attorney for Plaintiffs

APPROVED:

Telephonically Approved 9/26/97

Marilyn Hebert
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Attorney for New Mexico Oil Conservation
Commission

Telephonically Approved 9/25/97

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504

Attorney for Burlington Resources Oil
and Gas Company

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
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Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

September 26, 1997
(Our File No. 97-170.01)

VIA TELECOPY

Gregory T. Ireland, Court Administrator
Eleventh Judicial District Court
103 South Oliver Drive
Aztec, New Mexico 87410

RE: Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust
U/A/D February 12, 1983; et al. v. Burlington Resources Oil &
Gas Company; Cause No. CV-97-572-3

Dear Mr. Ireland:

Enclosed herewith is an original Joint Motion for Scheduling Order to be filed by fax.

Thank you for your cooperation in this matter. If you should have any questions to the above request, please feel free to call me.

Very truly yours,

GALLEGOS LAW FIRM, P.C.


Renea Rodriguez

RR:

Enclosure

cc: Marilyn Hebert, Esq.
W. Thomas Kellahin, Esq.
John Bemis, Esq.

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. (505) 983-6686
Telefax No. (505) 986-0741 or (505) 986-1387

CLIENT: LaForce
CLIENT NO.: 97-170.01

DATE: September 26, 1997

TO: Marilyn S. Hebert

COMPANY:

TELEFAX NO.: 827-8177

FROM: Jason E. Doughty

MESSAGE:

NUMBER OF PAGES INCLUDING COVER SHEET: 5

IMPORTANT

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GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

September 26, 1997
(Our File No. 97-170.01)

JASON E. DOUGHTY*

VIA FAX AND EXPRESS MAIL

The Honorable Byron Caton
District Judge, Division III
920 Municipal Dr., Suite 2
Farmington, NM 87401

RE: Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D
February 12, 1983; et al. v. Burlington Resources Oil & Gas
Company; Cause No. CV-97-572-3

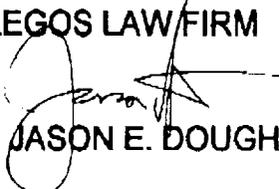
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GALLEGOS LAW FIRM

By:


JASON E. DOUGHTY

Enclosures

cfx: Marilyn S. Hebert, Esq. (w/enclosures)
W. Thomas Kellahin, Esq. (w/enclosures)
John Bemis, Esq. (w/enclosures)

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
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Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

September 25, 1997
(Our File No. 97-170.1)

J.E. GALLEGOS *

VIA TELECOPY

W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

VIA TELECOPY

Marilyn S. Hebert
NM Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: **JOHNSON, TRUSTEE FOR BARD et al. v. BURLINGTON
RESOURCES OIL AND NEW MEXICO OIL CONSERVATION
COMMISSION; San Juan County Cause No. CV-97-572-3**

Dear Tom and Lyn:

After Lyn and I spoke this morning and she indicated the need for one more day on the briefing schedule, Tom and I had a conversation about the procedure. It seems that Tom thinks it advisable not to expedite the hearing and work through the Rule 74 process. Of course, it is the Judge who set the early hearing and directed that we develop a schedule on that basis. Obviously, he has the final word.

Based on my discussion with Tom and knowing that Judge Caton much dislikes counsel communicating by letter or telephone, I have prepared a draft "joint motion". It is attached for your comment and contribution.

Please use every effort to get back to me on this immediately. While I will be out of the office tomorrow, I will be in contact with Jason Doughty and any suggested revisions will be relayed to me promptly.

Sincerely,

GALLEGOS LAW FIRM, P.C.

By



J.E. GALLEGOS

JEG:sa
Attachment
ioc: Jason E. Doughty

**STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT**

**Timothy B. Johnson, Trustee for Ralph A.
Bard, Jr. Trust U/A/D February 12, 1983; et al.,**

Plaintiffs,

vs.

Cause No. CV 97-572-3

**Burlington Resources Oil & Gas Company, a
corporation, and the New Mexico Oil
Conservation Commission,**

Defendants.

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all the statements & briefs the same document?

2. Rule 1-074 Timing. Counsel for Burlington Resources Oil and Gas Company submits that the matter should proceed by observing the filings and the time frames specified in Rule 1-074 J. through O. In keeping with that procedure, the Court would set due dates for serving and filing briefs and affidavits to be followed by a date for oral argument.

*which will the
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SUBMITTED:

J.E. GALLEGOS
 JASON E. DOUGHTY
 460 St. Michael's Drive, Bldg. 300
 Santa Fe, New Mexico 87505
 (505) 983-6686

Attorney for Plaintiffs

APPROVED:

Marilyn Hebert
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Attorney for New Mexico Oil Conservation
Commission

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504

Attorney for Burlington Resources Oil
and Gas Company

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

Timothy B. Johnson, Trustee for Ralph A.
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J.E. GALLEGOS
JASON E. DOUGHTY
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

Attorney for Plaintiffs

APPROVED:

Marilyn Hebert
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Attorney for New Mexico Oil Conservation
Commission

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504

Attorney for Burlington Resources Oil
and Gas Company



NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

September 23, 1997

Gregory T. Ireland, Clerk
Eleventh Judicial District
103 South Oliver Drive
Aztec, NM 87410

Re: Johnson et al. v. Burlington Resources Oil & Gas Co. et al.
No. CV 97-572-3

Dear Mr. Ireland:

Enclosed please find the original and a copy of the title page for the record on appeal to be filed in the above-referenced case pursuant to Rule 1-074, NMRA 1997. Also enclosed are copies of the pleadings and papers filed with the New Mexico Oil Conservation Commission including a copy of the final decision being appealed. The remaining documents required by the rule have been filed by the Plaintiffs.

Please conform and return to me the copy of the title page in the enclosed stamped envelope. Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marilyn S. Hebert".

Marilyn S. Hebert

cc: W. Thomas Kellahin
J.E.Gallegos

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

TELEPHONE (505) 982-4285

TELEFAX (505) 982-2047

W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

FACSIMILE COVER SHEET

DATE: September 23, 1997

NUMBER OF PAGE -5-

TIME: 4:00 PM

TO: Gene Gallegos, Esq.

FROM: W. THOMAS KELLAHIN

OF: Gallegos Law Firm

FAX NO: (505) 986-1367 or 986-0741

TO: Lyn Hebert, Esq.

OF: Oil Conservation Commission

FAX NO: (505) 827-8177

TO: John Bemis, Esq.

OF: Burlington Resources Oil & Gas Company

FAX NO: (505) 326-9880

REF: **Johnson et al. v. Burlington and Oil Commission
San Juan County Cause CV-97-572-3**

copies of September 23, 1997, letter to court with proposed order.

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KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
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NATURAL RESOURCES-OIL AND GAS LAW

TELEPHONE (505) 982-4285

TELEFAX (505) 982-2047

JASON KELLAHIN (RETIRED 1991)

September 23, 1997

VIA FACSIMILE AND REGULAR MAIL
(505) 334-1940

Honorable Byron Caton
District Judge
Eleventh Judicial District Court
103 South Oliver Drive
Aztec, New Mexico 87410

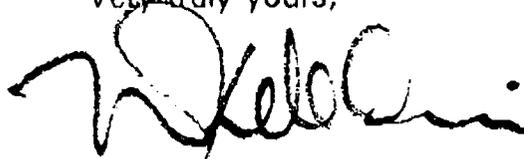
**Re: Proposed Order denying Motions to dismiss and to strike
and Staying Commission Order R-10815 as to Plaintiffs
Johnson, Trustee for Bard et al. v. Burlington Resources
and New Mexico Oil Conservation Commission, San Juan
County Cause CV-97-572-3**

Dear Judge Caton:

Because Mr. Gallegos and I are not able to agree on the content of the order to be submitted to you for the September 15, 1997 hearing, I am enclosing my proposed order. Mr. Gallegos will also submit to you his proposed order.

It was my understanding that you considered Mr. Gallegos' clients to be in a unique situation such that they were entitled to actual notice while you were satisfied that anybody else had adequate notice by the general publication procedures used by the Commission. Mr. Gallegos' proposed order excludes this distinction. My proposed order explains why you stayed Order R-10815 only as to Mr. Gallegos' clients.

Very truly yours,



W. Thomas Kellahin

cfx: Gene Gallegos, Esq.
Lyn Hebert, Esq.
John Bemis, Esq.

**STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT**

**TIMOTHY B. JOHNSON, Trustee for
Ralph A. Bard, Jr. et al.,**

Plaintiffs,

vs

CV-97-572-3

**BURLINGTON RESOURCES OIL & GAS
COMPANY, a corporation and the
NEW MEXICO OIL CONSERVATION COMMISSION**

**ORDER DENYING MOTIONS TO DISMISS
AND TO STRIKE AND STAYING
COMMISSION ORDER R-10815 AS TO
PLAINTIFFS**

THIS MATTER came before the Court on September 15, 1997 for hearing on all pending motions with the plaintiffs appearing by their attorney, J. E. Gallegos, the defendant New Mexico Oil Conservation Commission ("Commission") by its attorney Marilyn S. Hebert and defendant Burlington Resources Oil and Gas Company ("Burlington") appearing by its attorney W. Thomas Kellahin. The Court has considered the pleadings, briefs and legal authorities and received argument of counsel and is fully advised. The Court concludes as follows and IT IS SO ORDERED.

1. Plaintiffs have correctly followed the provisions of Section 70-7-25B NMSA 1978 in bringing this case from the executive branch of government to the Courts for judicial review. Once the case is within the jurisdiction of the Court, NMRA 1997 Rule 1-074 provides meritorious procedures for the disposition of the appeal. Under the circumstances there is little, if any, difference between what the Court has been provided by Plaintiffs through its Verified Petition for Review and what would have been filed as a Notice of Appeal. The parties should henceforth comply with the requirements of Rule 1-074. Accordingly, the defendant's motions to dismiss and Burlington's motion to strike are denied.

2. The decision in **Uhden v. New Mexico Conversation Commission**, 112 N.M. 528, 817 P.2d 721 (1991) is controlling regarding plaintiff's motion to stay Commission Order R-10815 pending appeal. Commission Order R-10815 changed the Division General Rule 104 which, among other things, deals with the size of spacing units in the San Juan Basin. Burlington failed to provide plaintiff's with notice of the Commission hearing which resulted in Order R-10815. Because at the time of that hearing, Burlington had plans to form a 640-acre spacing unit for a wildcat well to be drilled in Section 9, T31N, R10W, NMPM, San Juan County, New Mexico, and because Burlington also knew the identities and addresses of the plaintiffs who owned property interests in

Section 9, Burlington's failure to provide notice to them of the Commission hearing was a denial of plaintiff's right to due process under the United States and New Mexico constitutions. In accordance with Udden, supra., as to these plaintiff's only, Order R-10815 was not an exercise of general rule making by the Commission but rather an adjudication affecting the property rights of these plaintiffs for which Burlington had the burden to notify them. Therefore plaintiffs' motion to stay is granted.

3. This Order staying Commission Order R-10815 applies only to the plaintiffs in this proceeding and is granted without requirement of bond.

Honorable Byron Caton, District Judge

submitted by:

By: 
W. Thomas Kellahin, Esq.
counsel for Burlington

noted:

J. E. Gallegos, Esq.
attorney for Plaintiffs

Marilyn S. Hebert, Esq.
attorney for Commission

| | | | |
|------------|------------------------|----------------|------------------------------|
| FRANK-MAIL | TO: Lyn Teberst OCC | FROM: Kellahin | DATE: 9/23/97 |
| | FAX #: | FAX #: | PAGES INCLUDING THIS PAGE: 2 |

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047**COPY****FACSIMILE COVER SHEET**

DATE: September 23, 1997 NUMBER OF PAGES -2-

TIME: 9:45 AM (Santa Fe time)

TO: Jason Doughty, Esq.
Gene Gallegos, Esq. FROM: W. THOMAS KELLAHIN

OF: Gallegos Law Firm

FAX NO: (505) 986-1367 or 986-0741

REF: **Johnson et al. v. Burlington and Oil Commission**
San Juan County Cause CV-97-572-3

Dear Jason:

Gene asked me to fax to you, my suggested changes:

It was very clear that Judge Caton considered that with the exception of your clients, all other owners had adequate notice by the general publication procedures used by the Commission. Because your clients were in a unique situation, he felt that they were entitled to receive "actual" notice.

I suggest the following change in your draft of order paragraph (2): save the first sentence and delete the balance of the paragraph and replace it with the following which I think more completely states the Judge's decision.

"Commission Order R-10815 changed the Division General Rule 104 which, among other things, deals with the size of spacing units in the San Juan Basin. Burlington failed to provide plaintiff's with notice of the Commission hearing which resulted in Order R-10815. Because at the time of that hearing, Burlington had plans to form a 640-acre spacing unit for a wildcat well to be drilled in Section 9, T31N, R10W, NMPM,

Jason Doughty, Esq.
September 23, 1997
Page 2.

San Juan County, New Mexico, and because Burlington also knew the identities and addresses of the plaintiffs who owned property interests in Section 9, Burlington's failure to provide notice to them of the Commission hearing was a denial of plaintiff's right to due process under the United States and New Mexico constitutions. In accordance with Uhdén, supra., as to these plaintiff's only, Order R-10815 was not an exercise of general rule making by the Commission but rather an adjudication affecting the property rights of these plaintiffs for which Burlington had the burden to notify them. Therefore plaintiffs' motion to stay is granted."

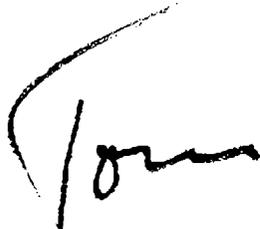
I suggest the first sentence of paragraph 3 be changed as follows:

"3. This Order staying Commission Order R-10815 applies only to the plaintiffs in this proceeding and is granted without requirement of bond."

Please call me if you would like to discuss.

Regards,

cfx: John Bemis, Esq.
Lyn Hebert, Esq.



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GALLEGOS LAW FIRM

A Professional Corporation

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CLIENT: LaForce
CLIENT NO.: 97-170.01

DATE: September 23, 1997

TO: Marilyn S. Hebert

COMPANY:

TELEFAX NO.: 827-8177

FROM: Jason E. Doughty

MESSAGE:

NUMBER OF PAGES INCLUDING COVER SHEET: 5

IMPORTANT

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GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

September 23, 1997
(Our File No. 97-170.01)

JASON E. DOUGHTY*

VIA FEDERAL EXPRESS

The Honorable Byron Caton
District Judge, Division III
920 Municipal Dr., Suite 2
Farmington, NM 87401

RE: Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D
February 12, 1983; et al. v. Burlington Resources Oil & Gas
Company; Cause No. CV-97-572-3

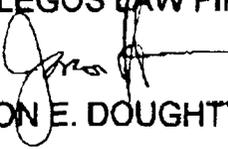
Dear Judge Caton:

Enclosed please find two originals of our form of order reflecting your rulings from the bench at the hearing in the referenced matter held on September 15, 1997. Marilyn Hebert, counsel for the New Mexico Oil Conservation Division telephonically approved this form yesterday, September 22, 1997. However, Mr. Kellahin, counsel for Burlington Resources, does not concur and wishes to submit his own form of order. Should you decide to execute our order, I would greatly appreciate your having the clerk file same and return an endorsed copy to us in the enclosed, postage-paid envelope.

If you have questions or comments concerning the foregoing, please give me a call.

Very truly yours,

GALLEGOS LAW FIRM

By: 
JASON E. DOUGHTY

Enclosures

cfx: Marilyn S. Hebert, Esq. (w/enclosures)
W. Thomas Kellahin, Esq. (w/enclosures)
John Bemis, Esq. (w/enclosures)

**STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT**

Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983; et. al.,)

Plaintiffs,)

vs.)

Cause No. CV-97-572-3

Burlington Resources Oil & Gas Company, a corporation, and The New Mexico Oil Conservation Commission,)

Defendants.)

**ORDER DENYING MOTIONS TO DISMISS AND
TO STRIKE AND STAYING COMMISSION
ORDER 4-10815 AS TO PLAINTIFFS**

THIS MATTER came before the Court on September 15, 1997 for hearing on all pending motions with the plaintiffs appearing by their attorney, J.E. Gallegos, the defendant New Mexico Oil Conservation Commission ("Commission") by its attorney Marilyn S. Hebert and defendant Burlington Resources Oil and Gas Company ("Burlington") appearing by its attorney W. Thomas Kellahin. The Court has considered the pleadings, briefs and legal authorities and received arguments of counsel and is fully advised. The Court concludes as follows and IT IS SO ORDERED.

1. Plaintiffs have correctly followed the provisions of Section 70-7-25B. NMSA 1978 in bringing this case from the executive branch of government to the Courts for judicial review. Once the case is within the jurisdiction of the Court, NMRA 1997 Rule 1-074 provides meritorious procedures for the disposition of the appeal.

Under the circumstances there is little, if any, difference between what the Court has been provided by plaintiffs through its Verified Petition for Review and what would be filed as a Notice of Appeal. Should there be anything further to be provided the Court under the Rule 1-074 procedures, the plaintiffs shall make such filing. Accordingly, the defendants' motions to dismiss and Burlington's motion to strike are denied.

2. The decision in Uhden v. New Mexico Oil Conservation Commission, 112 N.M. 528, 817 P.2d 721 (1991) is controlling regarding plaintiffs' motion to stay Commission Order R-10815 pending appeal. Knowing of its plan to pool the interests of the plaintiffs for a wildcat well on 640-acre spacing and knowing the identities and whereabouts of the plaintiffs, Burlington's failure to provide notice to them of the spacing case proceeding underlying Order R-10815 was a denial of due process under the United States and New Mexico constitution. That spacing change case was not an exercise of general rule making by the Commission but rather resulted from an application by Burlington seeking a particular decision and order of the Commission and Burlington had the burden to notify the plaintiffs of its application as parties whose property could be affected. The plaintiffs' motion to stay is granted.

3. This Order staying Commission Order R-10815 applies only to the plaintiffs in this proceeding and is granted without requirement of bond. The Court expedites hearing of the appeal in this matter setting trial on October 7, 1997. The stay of Commission Order R-10815 shall remain in effect through that date, until further order of the Court.

Honorable Byron Caton, District Judge

SUBMITTED:



**J.E. GALLEGOS
JASON E. DOUGHTY
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686**

Attorney for Plaintiffs

APPROVED:

Telephonically approved on September 22, 1997

**Marilyn Hebert
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505**

**Attorney for New Mexico Oil Conservation
Commission**

**W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504**

**Attorney for Burlington Resources Oil
and Gas Company**

GALLEGOS LAW FIRM

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Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

J.E. GALLEGOS *

September 22, 1997
(Our File No. 97-170.1)

VIA TELECOPY

W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

Re: **JOHNSON, TRUSTEE FOR BARD et al. v. BURLINGTON
RESOURCES OIL AND NEW MEXICO OIL CONSERVATION
COMMISSION**
San Juan County Cause No. CV-97-572-3

Dear Tom:

Tomorrow I will be traveling out-of-state so I wanted to tell you where we stand on matters, since you are out of town today.

On the Order reflecting Judge Caton's rulings on the 15th, at the request of Lyn Hebert, we are adding in the last paragraph the word "only" to modify plaintiffs. Send to Jason Doughty or call him with wording changes that you propose. He will check with me and try to wrap up that item so the Order can be sent to Judge Caton.

As to further proceedings, I purpose the following:

1. Simultaneous briefs to be served and overnighted to the court on October 1, 1997.
2. Additional evidence, if any, relating only to the notice issue to be supplied by affidavit on the same schedule as the briefs.
3. Advise the court that 1½ hours will be sufficient for presenting legal argument and there will be no testimony.

W. Thomas Kellahin
September 22, 1997
Page 2

When you provide thoughts on the wording of the order, please give us your reaction and suggestion on the foregoing.

Sincerely,

GALLEGOS LAW FIRM, P.C.

By


J.E. GALLEGOS

JEG:rr
cc: Lyn Hebert
ioc: Jason E. Doughty



NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

September 18, 1997

Via Facsimile Transmission

J. E. Gallegos
Gallegos Law Firm
460 St Michael's Drive
Building 300
Santa Fe, New Mexico 87505

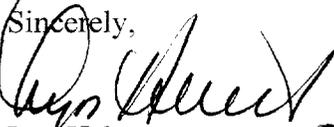
**Re: Johnson, Trustee for Bard et al. v. Burlington et al.
San Juan County Cause No. CV 97-572-3**

Dear Gene:

I have reviewed the proposed order in the above-referenced case, and with one exception, agree that it accurately reflects the Judge's order from the bench. I believe, however, that Judge Caton specifically found that the stay of the Commission's spacing rule applied, or is effective, only as to the 61 named plaintiffs. He found that all other parties received sufficient notice. I do not know to what other parties the Judge was referring; perhaps he was referring to all other interest owners in the pool who were not, in fact, parties to this case. That brings up an interesting question as to how these interest owners' due process rights are affected by the rule and the Judge's order. In any event, I believe the order should reflect the Judge's finding as to all those who are not the 61 plaintiffs.

As to the interplay between the statute and the rule, paragraph No. 1 of the proposed order is reflective of the Judge's determination. I know you are aware that there are pages of "papers and pleadings" filed with the Commission in Case No. 11745 such as Burlington's Opposition Brief, Johnson's Reply to that brief, etc. These are not in the record before the district court. Rule 1-074H(2) includes these documents as part of the record on appeal. While Section 70-2-25 may have been substantially complied with, the same cannot be said for Rule 74. Perhaps if you and Tom Kellahin discuss the proposed order on Tuesday, September 23, you could also discuss this aspect of the record and let me know if there are documents you would like sent to the court.

Sincerely,


Lyn Hebert

cc: Tom Kellahin



TRANSACTION REPORT

SEP-18-97 THU 01:15 PM

| DATE | START | RECEIVER | TX TIME | PAGES | TYPE | NOTE | M# |
|--------|----------|----------|---------|-------|------|------|----|
| SEP-18 | 01:13 PM | 99861367 | 1'28" | 2 | SEND | OK | |

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TELEPHONE (505) 982-4285
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W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

FACSIMILE COVER SHEET

DATE: September 18, 1997 NUMBER OF PAGES -1-
TIME: 11:20 AM (Santa Fe time)

TO: Gene Gallegos, Esq. FROM: W. THOMAS KELLAHIN
OF: Gallegos Law Firm
FAX NO: (505) 986-1367 or 986-0741

REF: Johnson et al. v. Burlington and Oil Commission
San Juan County Cause CV-97-572-3

COPY

Dear Gene:

Thank you for your letter of September 17th. I have forwarded it to John Bemis for his comments. Unfortunately, I will be out of town on Monday and I would appreciate you letting me discuss your proposed order with you on Tuesday morning.

While I have not completely analyzed your proposed order, I would like the order to reflect Judge Caton's decision's that your clients were in a unique circumstance which entitled them to notice and that other property owners would not be entitled to that notice. In addition, I would like the order to also reflect more clearly that the stay of Commission Order R-10815 applies only as to your clients.

I will fax you my proposed language on this on Tuesday morning.

Regards,



cfx: John Bemis, Esq.
Lyn Hebert, Esq.

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GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. (505) 983-6686
Telefax No. (505) 986-0741 or (505) 986-1367

CLIENT: LaForce
CLIENT NO.: 97-170.01

DATE: September 17, 1997

TO: Marilyn S. Hebert

COMPANY:

TELEFAX NO.: 827-8177

FROM: J.E. Gallegos

MESSAGE:

NUMBER OF PAGES INCLUDING COVER SHEET: 6

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Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

J.E. GALLEGOS *

September 17, 1997
(Our File No. 97-170.1)

VIA TELECOPY

W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

Re: **JOHNSON, TRUSTEE FOR BARD et al. v. BURLINGTON
RESOURCES OIL AND NEW MEXICO OIL CONSERVATION
COMMISSION**
San Juan County Cause No. CV-97-572-3

Dear Tom:

Order on Motions. Attached please find a form of Order which I purpose to present to Judge Caton to express the rulings he made Friday. While I do not expect your "approval", I do solicit your comment and that of Lyn Hebert by copy of this letter should you think the Order is not true to the court's announced decision. Please send a fax or leave word with your reactions. I am in a deposition today and out of town Thursday and Friday.

Further Proceedings. My thinking is not crystallized, but let me give you my initial ideas and then we can discuss it next Monday. Certainly there is no need for even a full day of trial. I think an hour or two is all that would be needed. We could so advise the judge so that he does not have to bounce that other setting. The appeal is mainly on the record, except in this instance because the plaintiffs were not included in the proceeding, we will want to supplement the record with proof concerning their ownership and knowledge of Burlington about who and where they are. I do not think these facts are really contested by Burlington and can be supplied by affidavit. In addition, there is the additional issue raised by our appeal that the spacing order is not supported by the evidence and we wish to brief that. I am thinking any party wishing to file additional papers would do so on October 1st, or some other date we agree.

W. Thomas Kellahin
September 17, 1997
Page 2

When I am back in the office on Monday, September 22nd, I will attempt to set up a conference call or meeting so that you, Lyn and I can work out an agreement.

Sincerely,

GALLEGOS LAW FIRM, P.C.

By 
J.E. GALLEGOS

JEG:rr
Enclosure
fxc: Marilyn S. Hebert (w/encl.)

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

Timothy B. Johnson, Trustee for Ralph A.)
Bard, Jr. Trust U/A/D February 12, 1983; et. al.,)
)
Plaintiffs,)
)
vs.)
)
Burlington Resources Oil & Gas Company, a)
corporation, and The New Mexico Oil)
Conservation Commission,)
)
Defendants.)

Cause No. CV-97-572-3

**ORDER DENYING MOTIONS TO DISMISS AND
TO STRIKE AND STAYING COMMISSION
ORDER 4-10815 AS TO PLAINTIFFS**

THIS MATTER came before the Court on September 15, 1997 for hearing on all pending motions with the plaintiffs appearing by their attorney, J.E. Gallegos, the defendant New Mexico Oil Conservation Commission ("Commission") by its attorney Marilyn S. Hebert and defendant Burlington Resources Oil and Gas Company ("Burlington") appearing by its attorney W. Thomas Kellahin. The Court has considered the pleadings, briefs and legal authorities and received arguments of counsel and is fully advised. The Court concludes as follows and IT IS SO ORDERED.

1. Plaintiffs have correctly followed the provisions of Section 70-7-25B. NMSA 1978 in bringing this case from the executive branch of government to the Courts for judicial review. Once the case is within the jurisdiction of the Court, NMRA 1997 Rule 1-074 provides meritorious procedures for the disposition of the appeal. Under the circumstances there is little, if any, difference between what the Court has been provided

by plaintiffs through its Verified Petition for Review and what would be filed as a Notice of Appeal. Should there be anything further to be provided the Court under the Rule 1-074 procedures, the plaintiffs shall make such filing. Accordingly, the defendants' motions to dismiss and Burlington's motion to strike are denied.

2. The decision in Uhden v. New Mexico Oil Conservation Commission, 112 N.M. 528, 817 P.2d 721 (1991) is controlling regarding plaintiffs' motion to stay Commission Order R-10815 pending appeal. Knowing of its plan to pool the interests of the plaintiffs for a wildcat well on 640-acre spacing and knowing the identities and whereabouts of the plaintiffs, Burlington's failure to provide notice to them of the spacing case proceeding underlying Order R-10815 was a denial of due process under the United States and New Mexico constitution. That spacing change case was not an exercise of general rule making by the Commission but rather resulted from an application by Burlington seeking a particular decision and order of the Commission and Burlington had the burden to notify the plaintiffs of its application as parties whose property could be affected. The plaintiffs' motion to stay is granted.

3. This Order staying Commission Order R-10815 applies to the plaintiffs in this proceeding and is granted without requirement of bond. The Court expedites hearing of the appeal in this matter setting trial on October 7, 1997. The stay of Commission Order R-10815 shall remain in effect through that date, until further order of the Court.

Honorable Byron Caton, District Judge

Submitted:

Attorney for Plaintiffs

Noted:

Attorney for New Mexico Oil Conservation
Commission

Attorney for Burlington Resources Oil
and Gas Company

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

September 4, 1997
(Our File No. 97-170.01)

VIA FEDERAL EXPRESS

Gregory T. Ireland,
Court Administrator/Clerk
Eleventh Judicial District Court
103 South Oliver Drive
Aztec, New Mexico 87410

RE: Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D
February 12, 1983; et al. v. Burlington Resources Oil & Gas
Company; Cause No. CV-97-572-3

Dear Mr. Ireland:

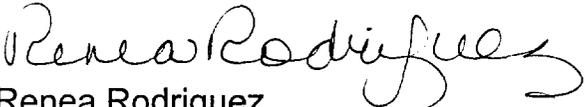
Enclosed for filing on behalf of our clients, Timothy B. Johnson, Trustee for Ralph A. Bard, Jr., Trust U/A/D/ February 12, 1983, et al. are the following documents for filing with the Court:

1. An original and one copy of Plaintiffs' Memorandum Brief in Response to Defendant New Mexico Oil Conservation Commission's Motion to Dismiss;
2. An original and one copy of Plaintiffs' Answer Brief in Response to the Motion to Strike of Burlington Resources Oil & Gas Company;
3. An original and one copy of Plaintiffs' Memorandum Brief in Response to Defendant Burlington Resources Oil and Gas Company's Motion to Dismiss.

Please endorse the additional copies and return them to our office in the enclosed self-addressed, stamped envelope. Thank you for your assistance in this matter. Should you have any questions, please contact me.

Very truly yours,

GALLEGOS LAW FIRM


Renea Rodriguez

Enclosures

cc: Marilyn S. Hebert, Esq. (w/enclosures)
W. Thomas Kellahin, Esq. (w/enclosures)
John Bemis, Esq. (w/enclosures)

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

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TELEFAX (505) 982-2047

W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

FACSIMILE COVER SHEET

DATE: September 5, 1997
TIME: 4:00 PM

NUMBER OF PAGE -5-

TO: Gene Gallegos, Esq.
OF: Gallegos Law Firm
FAX NO: (505) 986-1367 or 986-0741

FROM: W. THOMAS KELLAHIN

TO: Lyn Hebert, Esq.
OF Oil Conservation Commission
FAX NO: (505) 827-8177

TO: John Bemis, Esq.
OF Burlington Resources Oil & Gas Company
FAX NO: (505) 326-9880

REF: **Johnson et al. v. Burlington and Oil Commission
San Juan County Cause CV-97-572-3**

copies of September 5, 1997, letter to court with motion and
proposed order to reschedule motion hearing.

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KELLAHIN AND KELLAHIN

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W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

September 5, 1997

VIA FACSIMILE
(505) 334-1940

Honorable Byron Caton, District Judge
Eleventh Judicial District Court
103 South Oliver Drive
Aztec, New Mexico 87410
Attn: Karen Smith

COPY

Re: Joint Request to Reschedule Motion Hearing
Johnson, Trustee for Bard et al. v. Burlington Resources
and New Mexico Oil Conservation Commission, San Juan
County Cause CV-97-572-3

Dear Ms. Smith:

In accordance with our telephone conversation this afternoon, I am enclosing a Motion and Order requesting a rescheduling of the motion hearing now pending for September 11, 1997.

You have advised me that you will send out new notices for the rescheduling of this hearing. I appreciate your assistance.

Very truly yours,



W. Thomas Kellahin

cfx: Gene Gallegos, Esq.
Lyn Hebert, Esq.
John Bemis, Esq.

**STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT**

**TIMOTHY B. JOHNSON, Trustee for
Ralph A. Bard, Jr. et al.,**

Plaintiffs,

vs

CV-97-572-3

**BURLINGTON RESOURCES OIL & GAS
COMPANY, a corporation and the
NEW MEXICO OIL CONSERVATION COMMISSION**

**MOTION TO RESCHEDULE
MOTION HEARING**

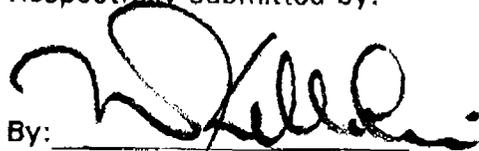
Burlington Resources Oil & Gas Company ("Burlington") hereby moves the Court to reschedule the motion hearing currently scheduled for 11:00 am, Thursday, September 11, 1997 and as grounds therefore states:

(1) previous to receiving this court's setting, counsel for Burlington has been required to appear on September 11, 1997 in Midland Texas for the taking of his deposition.

(2) all counsel of record have been informed of this request and have agreed to vacate this setting and to advise the court that all counsel are available on any of the following dates: September 15, 16 or 22, 1997.

Wherefore, Burlington hereby requests that the motion hearing now scheduled for September 11, 1997 be vacated and rescheduled.

Respectfully submitted by:



By:
W. Thomas Kellahin
KELLAHIN & KELLAHIN
P.O. Box 2265
Santa Fe, New Mexico 87504
(505) 982-4285

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing motion was transmitted by facsimile this 5th of September, 1997 to the office of:

Gene Gallegos, Esq.
Gallegos Law Firm
460 St. Michael's Drive, Bldg 300
Santa Fe, New Mexico 87505

Lyn Hebert, Esq.
Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

A handwritten signature in black ink, appearing to read 'W. Thomas Kellahin', written over a horizontal line.

W. Thomas Kellahin

**STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT**

**TIMOTHY B. JOHNSON, Trustee for
Ralph A. Bard, Jr. et al.,**

Plaintiffs,

vs

CV-97-572-3

**BURLINGTON RESOURCES OIL & GAS
COMPANY, a corporation and the
NEW MEXICO OIL CONSERVATION COMMISSION**

ORDER VACATING SETTING

This matter coming before the Court upon the motion of Burlington Resources Oil & Gas Company to reschedule the motion hearing currently scheduled for 11:00 am, Thursday, September 11, 1997 and good cause appearing,

IT IS ORDERED THAT the hearing scheduled for September 11, 1997 at 11:00 am for all pending motions is hereby vacated.

Byron Caton, District Judge

Respectfully submitted by:

By: 
W. Thomas Kellahin, Esq.
counsel for Burlington

| | | | | |
|-----------------------|--|-----------------------|--|------------------------------|
| TO: <i>Lyn Hebert</i> | | W THOMAS KELLAHIN | | PAGE 01 |
| FAX #: | | FROM: <i>KELLAHIN</i> | | DATE: <i>9/2/97</i> |
| | | FAX #: | | PAGES INCLUDING THIS PAGE: 1 |
| | | PHONE #: | | TOPS 1485K |

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN

NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

JASON KELLAHIN (RETIRED 1991)

September 2, 1997

DRAFT

**VIA FACSIMILE AND REGULAR MAIL
(505) 334-1940**

Honorable Byron Caton
District Judge
Eleventh Judicial District Court
103 South Oliver Drive
Aztec, New Mexico 87410

**Re: Joint Request to Reschedule Motion Hearing
Johnson, Trustee for Bard et al. v. Burlington Resources
and New Mexico Oil Conservation Commission, San Juan
County Cause CV-97-572-3**

Dear Judge Caton:

Today, we received notification from you that all pending motions in the case would be heard at 11:00 AM on Thursday, September 11, 1997.

Unfortunately, I have a conflict which requires me to be in Midland, Texas on September 11 for the taking of my deposition. I have contacted Mr. Gallegos on behalf of the petitioners and Ms. Hebert on behalf of the Commission and have obtained their concurrence to request rescheduling this hearing.

We have discussed this among ourselves and wish to inform the Court that if your schedule permits it, all counsel are available on any of the following dates: September 15, 16 or 22, 1997.

Very truly yours,

DRAFT
W. Thomas KellaHIN

cfx: Gene Gallegos, Esq.
Lyn Hebert, Esq.

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. (505) 983-6686
Telefax No. (505) 986-0741 or (505) 986-1367

CLIENT: LaForce
CLIENT NO.: 97-170.01

DATE: September 2, 1997

TO: Marily S. Hebert

COMPANY: New Mexico Oil Conservation Division

TELEFAX NO.: 505-827-8177

FROM: J. E. Gallegos

MESSAGE:

NUMBER OF PAGES INCLUDING COVER SHEET: 2

IMPORTANT

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GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

September 2, 1997
(Our File No. 97-170.1)

J.E. GALLEGOS *

VIA TELECOPY

W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

Re: **JOHNSON, TRUSTEE FOR BARD et al. v. BURLINGTON**
RESOURCES OIL AND NEW MEXICO OIL CONSERVATION
San Juan County Cause No. CV-97-572-3

Dear Tom:

On receipt of your fax I attempted to phone, but got only the answering machine.

For obvious reasons we would like not to delay the hearing set by Judge Caton any longer than absolutely necessary. Since you have a conflict on September 11th, how about September 15 or 16? If not one of those dates, my schedule is clear for September 22.

Your fax did not indicate that Marilyn Hebert, counsel for the Commission, has been contacted about this. I checked with her and learned that any of the above three dates are also acceptable to her.

I suggest that we do a joint letter to Judge Caton advising of your schedule conflict and proposing those alternative dates. Let us hear from you as soon as possible.

Sincerely,

GALLEGOS LAW FIRM, P.C.

By 
J.E. GALLEGOS

JEG:sa

fx: Marilyn S. Hebert
cc: Executive Commission
ioc: Jason E. Doughty

*New Mexico Board of Legal Specialization
Recognized Specialist in the area of
Natural Resources-Oil and Gas Law

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

August 29, 1997
(Our File No. 97-170.01)

VIA FEDERAL EXPRESS

Gregory T. Ireland,
Court Administrator/Clerk
Eleventh Judicial District Court
103 South Oliver Drive
Aztec, New Mexico 87410

RE: Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust
U/A/D February 12, 1983; et al. v. Burlington Resources
Oil & Gas Company.
Cause No. CV-97-572-3

Dear Mr. Ireland:

Enclosed herewith is an original and one copy of Plaintiff's Memorandum Brief in Response to Defendant New Mexico Oil Conservation Commission's Motion to Dismiss.

Please file the Memorandum and return to us an endorsed copy of the Memorandum in the self-addressed stamped envelope enclosed herewith.

Thank you for your cooperation.

Very truly yours,

GALLEGOS LAW FIRM


Renea Rodriguez

Enclosures

cc: Marilyn S. Hebert, Esq. ✓
W. Thomas Kellahin, Esq.
John Bemis, Esq.



NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

August 14 , 1997

Gregory T. Ireland, Clerk
Eleventh Judicial District
103 South Oliver Drive
Aztec, NM 87410

Re: Johnson et al. v. Burlington Resources Oil & Gas Co. et al.
No. CV 97-572-3

Dear Mr. Ireland:

Enclosed please find the original and one copy of the following:

1. New Mexico Oil Conservation Commission's Motion to Dismiss;
2. Oil Conservation Commission's Memorandum Brief in Support of its Motion to Dismiss

Please file the originals in the above-referenced case and return the conformed copies to me in the enclosed stamped, self-addressed envelope.

Thank you for your assistance.

Sincerely


Marilyn S. Hebert

cc: W. Thomas Kellahin
Jason E. Doughty

GALLEGOS LAW FIRM

A Professional Corporation

AUG - 5 1997

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

August 4, 1997
(Our File 97-170.1)

JASON E. DOUGHTY*

VIA FAX 827-8177

Lyn Hebert
Legal Counsel
Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

RE: **Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983, et al., v. Burlington Resources Oil and Gas Co. and the NMOCC, San Juan County District Court, Cause No. 97-572**

Dear Ms. Hebert:

Thank you for your call last Wednesday, July 30, 1997 wherein you voiced the opinion that Rule 1-074 of the New Mexico Rules of Civil Procedure is the applicable rule governing the referenced appeal to the San Juan County District Court instead of §70-2-25(B) of the Oil and Gas Act.

After reviewing Rule 74, Section 70-2-25(B) of the Oil and Gas Act, as well as the relevant case law, we are confident that our appeal was properly filed pursuant to the express statutory requirements of §70-2-25(B) of the Oil and Gas Act.

Rule 74 was made effective January 1, 1996 "pursuant to a court order dated November 15, 1995." See notes following Rule 74. The New Mexico legislature established the detailed statutory appeals procedure set forth at §70-2-25 for appeals from Commission orders. Where the legislature has established statutory steps for perfecting an appeal from an administrative proceeding, compliance with such requirements is jurisdictional. See Garbagni v. Metropolitan Investments, Inc., 110 N.M. 436, 439, 796 P.2d 1132, 1135 (Ct. App.), cert. denied, 110 N.M. 330, 795 P.2d 1022 (1990) (citing In re Application of Angel Fire Corp.; In re Application No. 0436-A Into 3841, 101 N.M. 579, 686 P.2d 269 (Ct. App. 1984); Angel Fire Corp. v. C.S. Cattle Co., 96 N.M. 651, 652, 634 P.2d 202, 203 (1981).

Assuming, arguendo, that Rule 74 is applicable to appeals of a Commission Order, our Petition for Review filed in the referenced case contains all the information required by the Rule 74 Notice of Appeal and more. To state that our Petition for Review fails to meet the requirements of Rule 74 simply because it is not styled as a "Notice of Appeal" is a clear form over substance position that does not advance the important issues of this case.

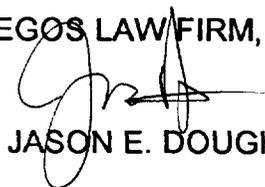
We are anxious to get to the merits of this case. As such, we look forward to receiving the Commission's timely answer to our Petition within the time period allowed by the rules. Please note that should we not receive a timely answer, we shall move the Court for relief against the commission.

Please give me a call should you have questions or comments concerning the foregoing.

Sincerely yours,

GALLEGOS LAW FIRM, P.C.

By:



JASON E. DOUGHTY

ioc: J. E. Gallegos
J. Hall/file

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. (505) 983-6686
Telefax No. (505) 986-0741 or (505) 986-1367

CLIENT:
CLIENT NO.: 97-170.01

DATE: August 4, 1997
TO: Lynn Hebert
COMPANY: OHL - Legal Counsel
TELEFAX NO.: 827-8177
FROM: Jason E. Doughty
MESSAGE:

NUMBER OF PAGES INCLUDING COVER SHEET: 3

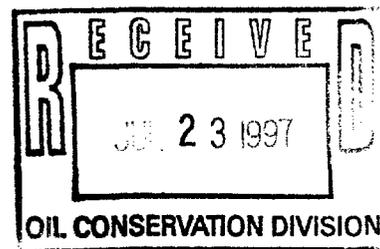
IMPORTANT

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A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741



July 23, 1997
(Our File 97-170.01)

JASON E. DOUGHTY*

VIA HAND DELIVERY

Mr. William LeMay
Director
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

RE: *Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983, et al, v. Burlington Resources Oil & Gas Company, a corporation, and The New Mexico Oil Conservation Commission, San Juan County Cause No. CV-97-572-3*

Dear Mr. LeMay:

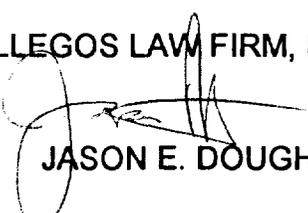
Pursuant to NMSA 1978 Section 38-1-17 (B), enclosed please find plaintiffs' Verified Petition for Review of New Mexico Oil Conservation Commission Administrative Order No. R-10815 in the referenced action and a summons concerning same. Also enclosed please find plaintiffs' Motion to Stay New Mexico Oil Conservation Commission Administrative Order No. R-10815 Pending Appeal and Plaintiffs' Memorandum Brief in Support.

Should you have questions or comments concerning the foregoing, please do not hesitate to give me a call.

Sincerely yours,

GALLEGOS LAW FIRM, P.C.

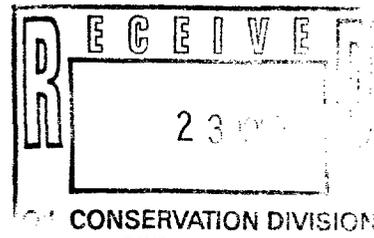
By:


JASON E. DOUGHTY

ioc: J. E. Gallegos
J. Hall/file

A9 rec'd 7/23

STATE OF NEW MEXICO
 COUNTY OF SAN JUAN
 ELEVENTH JUDICIAL DISTRICT



Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust)
 U/A/D February 12, 1983; et. al.,)
)
 Plaintiffs,)
)
 vs.)
)
 Burlington Resources Oil & Gas Company, a corporation,)
 and The New Mexico Oil Conservation Commission,)
)
 Defendants.)

Cause No. CV-97-572-3

SUMMONS
 THE STATE OF NEW MEXICO

TO: The New Mexico Oil Conservation Commission, Defendant(s)
 Address: c/o William LeMay, Director
 2040 S. Pacheco
 Santa Fe, NM 87505

GREETINGS:

You are hereby directed to serve a pleading or motion in response to the petition and motion to stay within thirty (30) days after service of this summons, and file the same, all as provided by law.

You are notified that, unless you serve and file a responsive pleading or motion, the plaintiff will apply to the court for the relief demanded in the complaint.

Attorney or attorneys for plaintiff: J.E. Gallegos
 Jason E. Doughty
 Gallegos Law Firm, P.C.

Address of attorneys for plaintiff: 460 St. Michael's Drive, Bldg. 300
 (or of plaintiff, if no attorney) Santa Fe, NM 87505

The District Court complies with the Americans with Disabilities Act. It is counsel's or a pro se party's obligation to notify the clerk of the Court at least five (5) days before any hearing of the anticipated attendance of a disabled person so that appropriate accommodations can be made. The Court must be notified as to the appropriate type of accommodation which will be necessary.

Additionally, it is counsel's or a pro se party's obligation to notify the Clerk of the Court at least five (5) days in advance of any hearing for which a non-English language interpreter will be required.

WITNESS the Honorable Byron Caton, district judge of the
 11th judicial district court of the State of New Mexico, and the seal of the district court of said
 County, this 23rd day of July 1997.

(SEAL)

Gregory T. Ireland
 Clerk of the District Court
 By: Marcelle French
 Deputy

NOTE: This summons does not require you to see, telephone or write to the District Judge of the Court at this time.
 It does require you or your attorney to file your legal defense in this case in writing with the Clerk of the District court within 30 days after the summons is legally served on you. If you do not do this, the party suing may get a Court Judgment by default against you.

RETURN

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, being duly sworn, on oath, say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served the within Summons in said County on the _____ day of _____, 199__, by delivering a copy thereof, with copy of Complaint attached, in the following manner.

(check one box and fill in appropriate blanks)

- to Defendant _____ (used when Defendant receives copy of Summons or refuses to receive Summons).
- to _____, a person over fifteen (15) years of age and residing at the usual place of adobe of Defendant _____, who at the time of such service was absent therefrom.
- by posting a copy of the summons and Complaint in the most public part of the premises of Defendant _____ (used if no person found at dwelling house or usual place of adobe).
- to _____, an agent authorized to receive service of process for Defendant _____.
- to _____ (parent) (guardian) or Defendant _____ (used when Defendant is a minor or an incompetent person).
- to _____ (name of person), _____ (title of person authorized to receive service) (used when Defendant is a corporation or association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fee:

Signature of Person Making Service

Title (if any)

*Subscribed and sworn to before me this _____ day of _____, 199__.

Judge, Notary or Other Officer Authorized to Administer Oaths

Official Title

*If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.



Attorney General of New Mexico

RECEIVED

PO Drawer 1508
Santa Fe, New Mexico 87504-1508

JUL 29 1997

505/827-6000
Fax 505/827-5826

EMNRD-LEGAL

TOM UDALL
Attorney General

MANUEL TIJERINA
Deputy Attorney General

No. 6534

THE OFFICE OF THE ATTORNEY GENERAL

TRANSMITTAL SLIP

TO: Carol Leach, Esq. SERVED: July 23, 1997
 DEPARTMENT: Energy & Minerals TRANSMITTED: July 28, 1997
 DIVISION: Legal RETURNED: _____

FROM: **Sylvia D. Quintana, Litigation Division**

XX Attachments

CASE NAME AND CAUSE NO.: Timothy B. Johnson, et al. v.
Burlington Resources Oil & Gas Co.; No. CV-97-572-3

The Office of the Attorney General has received a copy of the enclosed pleading. Examination of the allegations made against the State of New Mexico seems to indicate your agency as the state agency (if any) having an interest in the subject matter of the suit.

Please acknowledge receipt of the attached pleading by signing and returning this letter to the Office of the Attorney General immediately.

SIGNED: Denise M Zindel
 DATE: 7-30-97
 DEPARTMENT/DIVISION: Office of the Secretary
EMNRD

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

Rec'd
7/23/97
3:10pm
JED

July 23, 1997
(Our File 97-170.01)

JASON E. DOUGHTY*

VIA HAND DELIVERY

Tom Udall
Attorney General
Bataan Memorail Building, Room 260
Galisteo Street
Santa Fe, New Mexico 87501

RE: *Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983, et al, v. Burlington Resources Oil & Gas Company, a corporation, and The New Mexico Oil Conservation Commission, San Juan County Cause No. CV-97-572-3*

Dear Mr. Udall:

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Should you have questions or comments concerning the foregoing, please do not hesitate to give me a call.

Sincerely yours,

GALLEGOS LAW FIRM, P.C.

By:


JASON E. DOUGHTY

ioc: J. E. Gallegos
J. Hall/file

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust)
U/A/D February 12, 1983; et. al.,)

Plaintiffs,)

vs.)

Cause No. CV-97-572-3)

Burlington Resources Oil & Gas Company, a corporation,)
and The New Mexico Oil Conservation Commission,)

Defendants.)

SUMMONS
THE STATE OF NEW MEXICO

TO: The New Mexico Oil Conservation Commission, Defendant(s)
Address: c/o Tom Udall, Attorney General
New Mexico Attorney General's Office
Santa Fe, NM 87504

GREETINGS:

You are hereby directed to serve a pleading or motion in response to the petition and motion to stay within thirty (30) days after service of this summons, and file the same, all as provided by law.

You are notified that, unless you serve and file a responsive pleading or motion, the plaintiff will apply to the court for the relief demanded in the complaint.

Attorney or attorneys for plaintiff: J.E. Gallegos
Jason E. Doughty
Gallegos Law Firm, P.C.

Address of attorneys for plaintiff: 460 St. Michael's Drive, Bldg. 300
(or of plaintiff, if no attorney) Santa Fe, NM 87505

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1th WITNESS the Honorable Byron Caton, district judge of the
judicial district court of the State of New Mexico, and the seal of the district court of said
County, this 23rd day of July, 1997.

(SEAL)

Gregory T. Ireland
Clerk of the District Court
By: David A. Search
Deputy

NOTE: This summons does not require you to see, telephone or write to the District Judge of the Court at this time.

It does require you or your attorney to file your legal defense in this case in writing with the Clerk of the District court within 30 days after the summons is legally served on you. If you do not do this, the party suing may get a Court Judgment by default against you.

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STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

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(check one box and fill in appropriate blanks)

- to Defendant _____ (used when Defendant receives copy of Summons or refuses to receive Summons).
- to _____, a person over fifteen (15) years of age and residing at the usual place of adobe of Defendant _____, who at the time of such service was absent therefrom.
- by posting a copy of the summons and Complaint in the most public part of the premises of Defendant _____ (used if no person found at dwelling house or usual place of adobe).
- to _____, an agent authorized to receive service of process for Defendant _____.
- to _____ (parent) (guardian) or Defendant _____ (used when Defendant is a minor or an incompetent person).
- to _____ (name of person), _____ (title of person authorized to receive service) (used when Defendant is a corporation or association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fee:

Signature of Person Making Service

Title (if any)

*Subscribed and sworn to before me this
____ day of _____, 199__.

Judge, Notary or Other Officer Authorized
to Administer Oaths

Official Title

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