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July 9, 2003

HAND DELIVERED

Ms. Lori Wrotenbery, Chair
Oil Conservation Commission
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Re: Devon's Motion to Remand Cases 13048 and 13049 to the Division for the Purpose of Amending Division Order R-11962 to Include Devon's Plan of Operations

Dear Ms. Wrotenbery:

On behalf of Devon Energy Production Company, L.P. ("Devon"), please find enclosed our referenced motion.

Very truly yours,

W. Thomas Kellahin

Copies hand-delivered to:
Carol Leach, Esq.
Attorney for the Secretary of the Energy, Minerals and Natural Resources Department
David K. Brooks, Esq.
Attorney for the Commission
J. Scott Hall, Esq.
Attorney for EGL Resources, Inc.
David R. Catanach
Division hearing examiner
Devon Energy Production Company, L.P.
Attn: Richardson Winchester

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

CASE 13048 (de novo)

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

CASE 13049 (de novo)

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

ORDER R-11962

DEVON ENERGY PRODUCTION COMPANY, L.P.'S MOTION TO REMAND CASES 13048 AND 13049 TO THE DIVISION FOR THE PURPOSE OF AMENDING DIVISION ORDER-11962 TO INCLUDE DEVON'S PLAN OF OPERATION

DEVON ENERGY PRODUCTION COMPANY, L.P. ("Devon") moves that the New Mexico Oil Conservation Commission ("Commission") remand Division Cases 13048 and 13049, in pending a de novo hearing, to the Division for the purpose of reopening these cases for the purpose of amending Division Order R-11962 to include Devon's plan of operation, including rig access, for the re-entry of the Rio Blanco "4" Well No 1 (Unit F, N/2 Section 4, T22S, R34S). As grounds for this pleading, Devon states:

SUMMARY

On July 2, 2003, Devon filed a motion with the Division to reopen Division Cases 13048 and 13049 for the purpose of amending Division Order R-11962 to include Devon's plan of operation.

Despite the fact that Division retained continuing jurisdiction[1] of these cases for the entry of such further orders as the Division may deem necessary, by letter [2]dated July 7, 2003, David K Brooks, assistance General Counsel, "dismissed" Devon's motion on the grounds that the Division does not have jurisdiction over its orders if the order is subject of a "de novo" hearing before the Commission.[3] Accordingly, Devon's requests that the Commission remand these cases to the Division for the purpose of the matter set forth in this motion.[4]

The operations for the re-entry of the Rio Blanco "4" Well No.1, Unit F, N/2 Section 4, T22S, R34S, are in turmoil. The Division must take immediate action in order to protect Devon and to prevent the loss of reservoir data which may resolve the well spacing unit dispute between Devon and EGL Resources, Inc. ("EGL").

Devon has exhausted all reasonable effort to have EGL commit to a detailed engineering plan of operation for the Devonian formation when the Rio Blanco 4-1 is re-entered. Despite Devon's repeated efforts, EGL continues to refuse to agree to Devon's reasonable Plan of Operation for this re-entry. EGL, it appears, is under the misunderstanding that it alone can decide when, if, and how to test and complete the Devonian formation in this wellbore.

Devon requests that the Division requires that any operations for the Rio Blanco 4-1 be conducted in accordance with Devon's proposed detailed engineering Plan of Operations. **See Devon Exhibit "B" attached.** In addition, Devon requests that the Division also authorize Devon to have access to the rig and the re-entry operations. See standard provisions of a Joint Operating Agreement. **See Devon Exhibit "C" attached.**

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[1] See Ordering Paragraph (19) of Order R-11962

[2] See Mr. Brook's letter, dated July 7, 2003, attached as Devon's Exhibit "A"

[3] See 1978 NMSA Section 70-2-13. Devon disagrees with Mr. Brook's characterization that a "de novo" proceeding amounts to an "appeal" in which the Division is divested of jurisdiction.

[4] By filing this motion with the Commission, Devon is not waiving it rights to dispute Mr. Brook's interpretation of the Division's jurisdiction.

BACKGROUND FACTS

In accordance with all applicable Division rules, Devon filed a compulsory pooling application (Case 13048) requesting that a standard 320-acres consisting of the N/2 of this section be pooled and dedicated the Rio Blanco 4-1. EGL opposed the dedication to a 320-acre gas spacing unit and argued that the well was subject to the North Bell Lake-Devonian Gas Pool[5]. EGL filed a compulsory pooling application (Case 13049) requesting that a 640-acre unit be pooled and dedicated to the Rio Blanco 4-1.

In Order R-11962, dated May 13, 2003, Examiner Brooks dismissed EGL's request for 640-acre dedication and decided that the Division should approve Devon's request that the N/2 of Section 4 pooling, **but then** awarded operations to EGL, who along with Landreth, has a majority working interest ownership of Devon's proposed 320-acre spacing unit. Examiner Brooks awarded operations to EGL under the mistaken opinion that there was no substantial geological dispute between Devon and EGL.[6]

In Cases 13048 and 13049, EGL argued that Section 4 is subject to 640-acre spacing because it is an extension of the North Bell Lake-Devonian Gas Pool. The Division Examiner rejected that claim[7] declaring that Section 4 is subject to 320-acre spacing but then allowed EGL to be the operator of a well dedicated to a 320-acre spacing unit despite the fact that EGL had never proposed a 320-acre spacing unit and continues to dispute it.[8]

On May 29, 2003, EGL/Landreth opposed Devon's motion to stay the Division order that allowed EGL to operate the Rio Blanco 4-1 stating that EGL had a rig on location and created the impression that it was

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[5] Division Order R-6424, dated August 4, 1980

[6] Although, Devon and EGL both proposed to re-enter the same well, the geologic opinions and interpretations of Devon and EGL could not have been more different. The Examiner failed to recognize that he must decide the geologic dispute within the context of the compulsory pooling cases, and over the objection of Devon, declare that the technical evidence was irrelevant after hearing some 4 hours of technical testimony.

[7] The Examiner failed to recognize that he must decide the geologic dispute within the context of the compulsory pooling case, and over Devon's objection declared the technical evidence irrelevant after hearing for than 4 hours of technical testimony.

[8] See Devon Exhibit A, Case 13048

drilling to the Devonian. In fact, EGL simply had a workover rig on location preparing the wellbore for the sidetrack operations. In fact, EGL's proposed drilling rig was not then and is not now the location and EGL has not commenced this re-entry.

Without waiting for the Commission DeNovo hearing on EGL's appeal, EGL alleges it has commenced operations of the re-entry of the Rio Blanco 4-1 despite the facts that the Division has authorized that re-entry for a 320-acre spacing unit that EGL continues to dispute.[9] EGL continues to refuse Devon's proposed plan of operations. **See Scott Hall's letter dated, June 25, 2003, attached as Devon's Exhibit "D".**

CONCLUSION

If EGL is allowed to re-entry the Rio Blanco 4-1 without being required to comply with Devon's proposed Plan of Operations, then Devon will be denied the opportunity to obtain essential reservoir data that may help the Division to decide the Section 4 well spacing dispute between the parties.

WHEREFORE, Devon requests that the Commission remand Cases 13048 and 13049 to the Division and to Re-open these cases to require any re-entry of the Rio Blanco 4-1 to be in accordance Devon's Plan of Operations and to allow Devon access to the rig and well operations. **See Exhibit "B" AND "C" attached.**

Respectfully submitted,

W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504
Attorney for Devon Energy Production Company, L.P.

[9] EGL's proposed drilling rig has not been located at the location of the Rio Blanco 4-1, located in Unit F, S/2 Section 4, T22S, R34E. In fact, EGL simply had a workover rig on location to prepare the wellbore for the sidetrack operations.

CERTIFICATE OF SERVICE

I, W. Thomas Kellahin, certify that a true and correct copy of this pleading was hand delivered on July 9, 2003 to J. Scott Hall, Esq., and attorney for EGL Resources and Robert Landreth.

W. Thomas Kellahin

NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

BILL RICHARDSON
Governor
Joanna Prukop
Cabinet Secretary

Lori Wrotenbery
Director
Oil Conservation Division

July 7, 2003

Mr. W. Thomas Kellahin
Kellahin and Kellahin
P.O.Box 2265
Santa Fe, NM 87504-2265

Mr. J. Scott Hall
Miller, Stratvert & Torgeson, P.A.
P.O.Box 1986
Santa Fe, NM 87504-1986

Re: Cases No. 13048 and 13049: Devon Energy Production Company, L.P.'s Motion to Reopen Cases 13048 and 13049 for the Purpose of Amending Division Order-11962 (sic) to Include Devon's Plan of Operation

Gentlemen:

I am in receipt of the referenced motion, which was filed on July 2, 2003.

All parties to Cases 13048 and 13049 have filed *de novo* appeals to the Oil Conservation Commission. Although OCD procedural rules do not address the issue specifically, it is a fundamental principal of appellate jurisdiction that the filing of an appeal divests the lower court of jurisdiction so long as the appeal is pending.

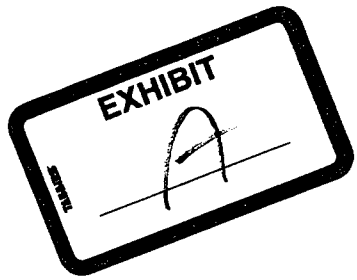
Accordingly, it would be inappropriate to reopen these cases so long as the appeals are pending, and any request for modification of these orders, other than a stay request for which provision is specifically made in Rule 1220.B must be addressed to the Commission.

Accordingly, the captioned Motion to Reopen is dismissed.

Very truly yours,

David K. Brooks

David K. Brooks
Assistant General Counsel



DEVON'S PROPOSED PLAN OF OPERATIONS
FOR THE RE-ENTRY OF THE RIO BLANCO 4-1 WELL

Devon has no material difference of opinion with EGL's plan of operations (attached) up until the point of drilling out the 5" liner, which will top-set the Devonian formation.

From this point forward, Devon has material difference with EGL's plan of operations.

DEFECTS IN EGL'S PROPOSED PLAN:

EGL merely states as their final step of the operations plan, "Note: The remainder of the procedure is pending a final decision about utilizing the drilling rig versus a workover rig for drilling into the Devonian. More information to follow. The basic procedure will provide for drilling a few feet into the Devonian then testing. If no shows or drilling breaks are encountered, testing will likely occur after only drilling about 20 feet into the pay zone. This iteration may be repeated several times before releasing the rig."

EGL spent a lot of time describing how they plan to sidetrack the Rio Blanco 4 Fed #1 and top-set the Devonian with casing, and then goes on to make a generalized statement about operations during drilling the critical Devonian payzone section of the well. No details are provided for the most critical point in the well design.

EGL makes no mention about what type of reservoir analysis they plan to conduct. Devon expressed to EGL during a telephone conference call on Wednesday June 18, 2003 its opinion that it was paramount that open-hole logs are obtained over the Devonian interval. This was further communicated via email, on this same date, by Devon's geologist Steve Hulke to EGL's geologist Jim Brezina.

Further, during this telephone conversation, Devon expressed its views regarding running drillstem tests to evaluate the Devonian. No mention of Drill stem testing is made by EGL in their proposed plan of operations.

Devon also mentioned to EGL that it prefers to use Morco as a mudlogging company. EGL doesn't mention mudloggers during drilling the Devonian pay section.

Other items that lack detail within the EGL plan of operations include.

(1) EGL doesn't mention the size and type of drill pipe it plans to utilize.

(2) EGL doesn't mention if they plan to run open-hole logs.

(3) EGL is not explicit in its description of what reservoir tests it plans to do.

(4) EGL doesn't mention what type of mud system it plans to drill the Devonian with.

(5) EGL doesn't mention when to rig up a mudlogger.

(6) EGL doesn't mention what type of Hydrogen Sulfide detection equipment to Install or what type of H2S safety program it anticipates using, if at all.

(7) Regarding their statement about considering a workover rig versus a drilling rig to drill the open-hole portion of the Devonian, Devon is against this consideration. Devon expressed this opinion to EGL during the conference call noted above.

There will be incremental costs associated with the use of a workover rig. Further, using a workover rig will require that the drilling rig be rigged down and the workover rig be rigged up. All components of the workover rig will require pressure and function testing. These components will already be rigged up and functioning on the drilling rig.

A typical Permian Basin, workover rig is not designed or equipped for 24 hour operations. A drilling rig is designed for 24 hour operation. A typical Permian Basin, workover rig is not designed to work above a multiple ram BOP system that includes an annular BOP and/or a rotating head. Drilling rigs are designed for such operations.

Use of a workover rig will require but not be limited to the following additional rental items, many of which are included in a drilling rig package, which will be already on the well.

Steel pits
Mud pumps
Circulating pumps
Power Swivel
Solids Control Equipment
Well control equipment, BOP, Gas buster, choke manifold, accumulator, etc
Lights – for 24 hour operation.
Trip tanks
Geolograph and Automatic Driller
Power plant
Water Tanks

The above items will have to be rented at incremental cost, when using a workover rig.Further, workover rig crews are not trained as drilling crews. They do not always have well-control certification like drilling crews.

DEVON'S PROPOSED PLAN OF OPERATION:

It is Devon's belief that drilling the Devonian with the drilling rig is the safest, most efficient and cost effective method. Devon's proposed plan of operations for drilling the Devonian pay section would include but not be limited to the following.

1. Have Morco mudlogging rigged up with all equipment calibrated.
2. If not already rigged up, rig up BOP system with proper ram sizes for all drill string components.
3. If not already rigged up, rig up H2S monitoring safety equipment.

4. Assuming the liner top has been tested, TIH with 4 1/8" bit on 2 3/8" x 3 ½" tapered drill string, drill collars may or may not be required. Note: Depending on the ID of the 5" casing line, 2 7/8" drill pipe might be a consideration versus 2 3/8" drill pipe.
5. Tag float collar, circulate hole over to fresh water fluid system. Devonian will be drilled with fresh water.
6. Drill into the top of the Devonian, stop and circulate for samples as required to ensure depth correlations are correct and to prevent us from getting "lost in the hole".
7. After drilling no more than 20' into the Devonian or through the first drilling break, which ever occurs first. POOH for a drillstem test.
8. Drillstem test will be run with a packer set in the casing liner. Rig up all surface flowback equipment. DST will be designed for two flow periods and two shut-in periods. Run dual pressure bombs on bottom with possibly a surface "spider" gauge (to be determined). Perform DST. Note: flow period and shut-in period times will be determined based on how the well responds during testing. Catch samples of all fluids and gas that come to surface. Be aware that Devonian gas can contain H2S. Have all safety equipment available and in working order.
9. POOH with DST tools and TIH to resume drilling.
10. Drill until additional drilling breaks are encountered or faster drilling relative to that which was previously drilled is encountered.
11. POOH for drillstem test and follow steps 8 & 9 above.
12. Continue drilling and drillstem testing, by repeating steps 10, 8, and 9 above.
13. When sufficient gas rates and recoveries have been obtained or water is encountered, stop drilling and POOH.
14. Rig up loggers, under full lubrication if necessary, and run at a minimum a dual lateral log-micro-lat log with SP/GR, a compensated neutron-z-density log w/GR/caliper. Additional logging runs based on hole conditions might include a sonic, formation image FMI log, Magnetic resonance log (CMR/NMR), RFT pressure points might be taken, sidewall cores might be taken. Note: Devon is still investigating tool availability for slim-hole logging. Some of the logs and tests mentioned in step 14 might be impossible to run in slim-hole. They are mentioned, however, to convey Devon's opinion that the more quality log and reservoir data that can be obtained, the better the analysis of original-gas-in-place and recoverable gas estimation will be.
15. TIH with drill pipe, circulate hole clean, POOH lay down drill pipe, rig down drilling rig, install production tree as necessary.
16. Completion is expected to consist of TIH with production tubing and/or packer, swabbing the well "in" to establish production. The need for stimulation will be determined based on production rates/pressures.
17. Devon strongly believes that extended and possibly multiple reservoir pressure build-ups will be required. In this event, detailed procedures will be provided. In general, the procedure will consist of running tandem pressure bombs in the well while it is flowing, taking gradient stops while tripping in the hole and pulling out of the hole. Once the pressure bombs are retrieved, the data will be downloaded and checked for quality assurance and accuracy. LEAVE THE WELL SHUT-IN. DO NOT OPEN THE WELL TO PRODUCTION UNTIL DEVON'S OKLAHOMA CITY OFFICE GIVES THE GO-AHEAD. In the event that enough pressure data has not been obtained, the bombs will be run back in the well.
18. Return well to production.

Article VI.D. of the 1982 A.A.P.L. Form 610 Model Form Operating Agreement

"Each party shall have access to the Contract Area at all reasonable times, at its sole cost and risk to inspect or observe operations, and shall have access at reasonable times to information pertaining to the development or operation thereof, including Operator's books and records relating thereto. Operator, upon request, shall furnish each of the other parties with copies of all forms or reports filed with governmental agencies, daily drilling reports, well logs, tank tables, daily gauge and run tickets and reports of stock on hand at the first of each month, and shall make available samples of cores or cuttings taken from any well drilled on the Contract Area. The cost of gathering and furnishing information to Non-Operator, other than that specified above, shall be charged to the Non-Operator that requests the Information.

MILLER STRATVERT P.A.
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PLEASE REPLY TO SANTA FE

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

June 25, 2003

VIA FACSIMILE
W. Thomas Kellahin, Esq.
Kellahin & Kellahin
117 North Guadalupe Street
Santa Fe, New Mexico 87501

Re: EGL Resources, Inc. Rio Blanco "4" Federal Well No. 1
Section 4, T-23-S, R-34-E, NMPM, Lea County, New Mexico

Dear Tom:

This letter responds to your e-mail dated June 23, 2003.

I am informed that the EGL and Devon drilling engineers held a very productive conference call on June 18, 2003 to discuss the drilling and completion of the Rio Blanco well, as well as those matters raised in Devon's June 9th letter to EGL. During the conference call, the Devon engineers offered a number of constructive suggestions with the result that both companies are in close agreement on a plan of operations. It should be obvious from the discussions on June 18th that EGL has thoroughly thought through and planned the re-entry operation to the benefit of all participants. While EGL and Landreth are receptive to reasonable input from Devon, it must be noted that EGL is the designated operator and, along with Landreth, will be paying at least 75% of the costs of the re-entry.

Although it is under no obligation to do so, the December 4, 2002 plan of operations that was previously provided to Devon is being updated to reflect some of the modifications discussed during the June 18th conference and will be forwarded to Devon as soon as it is completed. It appears that a rig will not be available for two weeks, allowing time to work out final details.

There is no basis for your apparent demand that the parties execute some form of agreement in the next 48 hours. EGL and Landreth have no intention of entering into a signed agreement that

would bind the operator to a plan of operations that might be contra-indicated by actual unanticipated conditions encountered down-hole during drilling.

If Devon wishes to propose a form of agreement whereby it would guaranty the procedure it contemplates, assume 100% of the risks, as well as indemnify EGL and Landreth, my clients would give such a proposal appropriate consideration. In the interim, EGL as operator will proceed to exercise reasonable prudence and diligence in the prosecution of the re-entry and drilling procedures.

Very truly yours,

MILLER STRATVERT P.A.

J. Scott Hall

JSH/glb

cc: Wes Perry
Robert Landreth

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

IN THE MATTER OF THE APPLICATION OF
EGL RESOURCES, INC.
FOR COMPULSORY POOLING
LEA COUNTY, NEW MEXICO CASE NO. 13049

RECEIVED
JUL 11 2003
Oil Conservation Division

IN THE MATTER OF THE APPLICATION OF
DEVON ENERGY PRODUCTION COMPANY, L.P.
FOR COMPULSORY POOLING
LEA COUNTY, NEW MEXICO CASE NO. 13048

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

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

SUMMARY

This is Devon's third attempt to obtain a stay of a Division compulsory pooling order. The motion should be denied for the reasons that (1) it is untimely; (2) does not meet the requirements of Rule 1220.B; (3) presents no new grounds for the motion; and (4) has been made moot.

BACKGROUND

On May 13, 2002, the Division entered Order No. R-11962 pooling Devon's interests and designating EGL Resources, Inc. as operator of the Rio Blanco "4" Federal Well No. 1 located on the N/2 of Section 4, T-23-S, R-34-E.

On May 21, 2003, EGL sent its estimated well costs to Devon and in a telephone conversation that same day Devon's landman expressly encouraged EGL "to proceed

[with the well] as soon as possible." (See Response of EGL Resources, Inc. and Robert Landreth To Devon's Motion For Stay filed on May 29, 2003.)

In a motion filed by it on May 27, 2003, Devon applied for a stay of Order No. R-11962.

On the morning of May 28, 2003, EGL moved a workover rig onto the location and proceeded with operations.

On May 28th, later in the day, Devon filed another motion styled "[Request] for an Emergency Order Staying EGL Resources, Inc. From Commencing Operations". This second motion also sought to stay Order No. R-11962 and to prevent EGL "from commencing operations before entry of a De Novo Order by the Commission". [1]

On May 30, 2003, the Division entered Order No. R-11962-A denying both of the Devon motions. The Division's Order noted both that (1) the consolidated cases were pending before the Commission for a hearing *de novo* and (2) Devon neither alleged nor established the existence of the circumstances under Rule 1220.B that are necessary prerequisites to the issuance of a stay order.

On approximately July 2, 2003, the Division received "Devon Energy Production Company, L. P.'s Motion To Stay Division Order-11962"[2] The motion asks the Division "reconsider" Devon's earlier request for stay

On the week of July 7, 2003, EGL commenced drilling operations on the Section 4 location with a deep drilling rig.

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[1] EGL filed an Application for Hearing De Novo on May 15th. Devon filed its Application for Hearing De Novo on May 27th.

[2] Devon Energy Production Company, L. P.'s Motion To Stay Division Order –11962 And Its Response To EGL Resources, Inc. and Robert Landreth's Motion To Stay (sic)

POINTS

1. The Motion Is Untimely.

It is noted that Devon expressly states it is seeking "reconsideration" of its earlier motions for stay and the order that issued as a result. Properly, under Rule 1220.A of the Division's rules, Devon had until June 29, 2003 to perfect a de novo appeal to the Commission of the Division's May 30, 2003 Order denying Devon's two motions for stay. Devon's third motion was filed on July 2nd and is consequently untimely. It should be further noted that the motion was filed after the Division had been divested of jurisdiction by virtue of Devon's May 27, 2003 Application for Hearing De Novo.

2. Devon Fails To Meet The Requirements of Rule 1220.B

Devon seeks a stay of a Division compulsory pooling order for the reason that the order is the subject of a de novo appeal to the Commission and that EGL/Landreth will have an "unfair advantage" over Devon in these proceedings. (*Devon's [Third] Motion To Stay*, pg. 14.) Devon offers no other grounds for the issuance of a stay.

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

Devon fails to establish, or even allege, that (1) waste is threatened, (2) correlative rights are in jeopardy, (3) public health or the environment are at risk, or (4) that "*gross negative consequences*" will accrue to any party from the Division's compulsory pooling order. Devon does not assert that it will suffer harm if the order is not granted. It does not have a lease expiration situation and it is threatened with no other loss.

Devon's only argument is that drilling should wait until the Commission can hear the de novo applications. Such "generalized concerns" are insufficient grounds for the issuance of a stay order. (Order No. R-11663; *Application of McElvain Oil and Gas Properties, Inc. for Compulsory Pooling, Rio Arriba County, New Mexico*; Case No. 12705.)

3. Devon Presents No New Grounds For Its Third Motion

We have scoured Devon's [Third] Motion To Stay. We have found no allegations or assertions setting forth new grounds for granting the motion, only repetitions of the same old material, just like in *Groundhog Day*.

4. Devon's Motion Is Moot

Devon's third attempt to prevent EGL from operating the Rio Blanco "4" Federal Well No. 1 has been rendered moot by (1) the completion of workover operations, and (2) the commencement of drilling operations. Moreover, Devon's third motion is an impermissible collateral attack on the operation of a Division order that is the subject of a pending *de novo* appeal before the Commission.

CONCLUSION

Devon has a proper remedy to challenge the operation of Order No. R-11962 in the pursuit of its De Novo appeal to the Commission in a hearing on the merits. Otherwise Devon's third motion for stay is wholly unjustified and should be denied.

MILLER STRATVERT P.A.

By: _____
J. Scott Hall
Attorneys for EGL Resources, Inc. and
Robert Landreth

Post Office Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 11 day of July 2003, as follows:

Thomas Kellahin, Esq.
Post Office Box 2265
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Attorney for Devon Energy Production Company, LP

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J. Scott Hall

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

IN THE MATTER OF THE APPLICATION OF
EGL RESOURCES, INC.
FOR COMPULOSRY POOLING
LEA COUNTY, NEW MEXICO CASE NO. 13049

IN THE MATTER OF THE APPLICATION OF
DEVON ENERGY PRODUCTION COMPANY, L.P.
FOR COMPULOSRY POOLING
LEA COUNTY, NEW MEXICO CASE NO. 13048
Order No. R-11962 *De Novo*

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

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

SUMMARY

Devon seeks to have the Division amend an order, now on *de novo* appeal, to require the operator of a well currently drilling to the Devonian formation to comply with a non-operator's Plan of Operations. Devon's motion should be denied for the reasons that (1) it violates appellate protocol; (2) requests unprecedented relief; (3) is without legal basis or authority; and, (4) is barred by the doctrines of waiver and estoppel.

BACKGROUND FACTS

On December 4, 2002, EGL provided a Plan of Operations for the proposed re-entry, whipstock and deepening of the Rio Blanco "4" Federal Well No. 1 located in Section 4, T-23-S, R-34-E. Devon stated no objections to the technical aspects of EGL's plan.

On February 28, 2003, Devon circulated an AFE for a re-entry of the Rio Blanco "4" well to be operated by it, but provided no plan of operation to the interest owners. The competing well proposals begat two compulsory pooling applications that were consolidated for hearing before the Division on April 10, 2003. At the hearing, both EGL and Devon presented similar re-entry, drilling and completion procedures, but aside from some minor cost issues, neither party made an issue of the other's plan.

On May 13, 2002, the Division entered Order No. R-11962 pooling Devon's interests and designating EGL Resources, Inc. as the operator of the Rio Blanco "4" Federal Well No. 1 located on the N/2 of Section 4, T-23-S, R-34-E.

At the Division hearing on the pooling applications, operator experience, geology, well costs, risk penalties and the fact that pre-application negotiations occurred were not at issue. In its order, the Division noted in particular that EGL and Landreth owned 75 percent of the working interest in the pooled unit while Devon owned a 12 ½ percent working interest. The Division also found: "*There is no evidence that either applicant is not a prudent operator, or that either applicant would economically recover more oil or gas than would the other by virtue of being awarded operations hereunder.*" (Order No. R-11962, at finding 23.)

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

On May 21, 2003, Devon and EGL discussed EGL's AFE for the Rio Blanco "4" well, and Devon's landman encouraged EGL to proceed with the workover and re-entry procedure "as soon as possible."

Subsequently, on several occasions, EGL and Devon technical staff consulted each other about EGL's planned operation. On June 18, 2003, the engineering staff of the two companies again conferred on the proposed procedure in a conference call and EGL was satisfied that the parties were in "close agreement" on the operation.

On June 23, 2003, Devon, through its counsel, issued a demand that EGL execute an unspecified agreement for the drilling and completion of the Rio Blanco "4" well "within 48 hours". EGL, through its counsel, responded by noting that as it controlled 75% of the working interest, EGL would proceed in due course as a prudent operator, but also invited Devon to provide it with a form of agreement for consideration. Devon did not respond to the invitation and these motions ensued.

On July 8, 2003, EGL commenced drilling operations on the Rio Blanco "4" well with a deep drilling rig. It is anticipated that the well will be completed by August 15th.

POINTS AND AUTHORITIES

1. Devon's Motion Is Procedurally Impermissible.

In a series of whiplash-inducing motions, Devon first sought on July 2nd to have the Division "Reopen" the consolidated cases "For The Purpose Of Amending Division Order R-11962 To Include Devon's Plan Of Operations." On July 7, 2003, Devon's motion was dismissed when the Division correctly pointed out that it had been divested of jurisdiction by virtue of the appeal of Order No. R-11962 to the Commission. See

Kelly Inn No. 102, Inc. v. Kapnison, 113 N.M. 231, 824 P.2d 1033 (1992). ("An appeal is perfected after the appellant has performed all acts required of him by the statute creating the right to transfer jurisdiction of cause to the superior tribunal.") *Lea County State Bank v. McCaskey Register Co.*, 39 N.M. 454, 49 P.2d 577 (1935).

Two days later on July 9, 2003, Devon filed its Motion To Remand seeking to have the Commission send the matter back to the Division from whence it had been previously booted.

If nothing else, Devon's motion is an impermissible collateral attack against Order No. R-11962.

It is the common practice of the appellate courts to remand jurisdiction of a case back to a trial court only after the appellate court has concluded its deliberations and rendered its decision. However, the procedural substance of the relief sought by Devon is to have the appellate body before which a lower administrative body's adjudicatory order is properly pending on appeal, temporarily divest itself of jurisdiction over the appealed order and remand the same so that the lower body can add new substantive provisions to the order Devon previously appealed, which, we suppose, is then expected to be included within the scope of the appeal that is pending, sort-of, before the Commission. Devon has not shown the existence of such exceptional circumstances to justify the relief it seeks or that the Division would even be inclined to grant it. Consequently, Devon's motion to remand is impermissible. See *Edwards v. Franchini*, 1998-NMCA 128, {Par. 14}, 125 N.M. 734, 738, 965 P.2d 318, 322, cert. denied, 126 N.M. 107, 967 P.2d 447 (1998), cert. denied, 526 U.S. 1124 (1999), reh. denied, 527 U.S. 1064 (1999).

We are unable to locate any corollary authority that would support Devon's motion in the body of law deriving from either judicial or administrative appeals. Of course, all this begs the question of why Devon failed to make an issue of well operations at the Division Examiner hearing in the first place. That question is answered in item 4, below.

Should Devon's motion be granted, and were the Division to re-assume jurisdiction, then the Commission would be compelled to consider what effect the fragmentation of this case would mean for the further disposition of the appeal and all its attendant deadlines and schedules. These questions are answered in item 2.

2. Devon Seeks Unprecedented Relief.

Devon cites to no Commission precedent for the type of relief it seeks. There is none to cite to. The full implications caused by such a disruption to the regular jurisdictional order are unknown, but granting Devon's motion would undoubtedly result in havoc to the agency's appellate process. Conceivably, the Commission could be prevented from advancing its own proceedings while a portion of a matter were remanded back to the Division for further deliberations there. Further, what is to stop Devon or any other dissatisfied appellant from seeking additional remands back to the Division on this or any other subject matter, related or not? The possibilities are endless.

Devon offers no procedural guidelines or precedent and neither the Commission, the Division nor EGL/Landreth are able to reasonably assess the procedural and substantive consequences of what Devon is proposing. Is a hearing contemplated? Devon doesn't say. Surely Devon doesn't expect the Division to order EGL to essentially surrender operations and substitute a drilling and completion program on the strength of a

vague and ambiguous exhibit attached to its motion. Neither could Devon expect EGL and Landreth to acquiesce to such a scheme without a contest.

Devon is attempting to approach the de novo appeal in this case in a piecemeal manner with the result that judicial (or, in this case, administrative) efficiency is disrupted. Devon's motion is clearly contra-indicated under New Mexico law. See *Principal Mutual Life Ins. Co.ds v. Straus*, 116 N.M. 412, 415; 863 P.2d 447, 449 (1993). ("There is a strong policy in New Mexico of disfavoring piecemeal appeals...and of avoiding fragmentation in the adjudication of related legal or factual issues."); *cf. State ex. rel Hyde Park Co. LLC v. Planning Commission of the City of Santa Fe*, 1998-NMCA-146, 125 N.M. 832, 834.

3. There Is No Legal Basis For The Relief Devon Seeks.

The Commission should not open the door to the extraordinary type of relief sought by Devon.

Assuming it could overcome the procedural and jurisdictional obstacles to its motion, Devon would have the Division amend an otherwise unremarkable compulsory pooling order to include provisions "to require any re-entry of the Rio Blanco 4-1 to be in accordance with Devon's Plan of Operations". (Devon's Motion To Remand, pg. 4.) In other words, Devon, the owner of a 12 ½ percent non-operating force-pooled working interest in the well wishes to substitute its judgment for that of the designated operator (translation: "second-guess") on the testing and completion of the well.

It is an impracticable proposition. The motion essentially asks the Commission to allow the Division to compel EGL to surrender operations to Devon. While we speculate that a surrender of operations or removal of operator might conceivably be permissible

under the terms of an operating agreement in only the most extraordinary of circumstances, there is no such contractual provision to be invoked here. Devon lost the opportunity to participate under a voluntarily negotiated agreement long ago. As a result, the relationship of the parties are governed by the specifically prescribed terms of a compulsory pooling order and there are no provisions under the order or in the Division's statutes or rules authorizing the imposition of new "contract" terms after the fact.

Finally, the impracticability of Devon's requested relief is further belied by the fact that EGL's drilling operations have commenced and are well under way. Devon's motion, then, has been well-rendered moot. EGL should be allowed to prosecute drilling and completion operations under the standards applicable to prudent operators and without further interference from Devon.

4. Devon Has Waived Any Right To Seek The Relief Requested.

As indicated above, the Division determined: "*There is no evidence that either applicant is not a prudent operator, or that either applicant would economically recover more oil or gas than would the other by virtue of being awarded operations hereunder.*" (Order No. R-11962, at finding 23.) By failing to make an issue of operatorship or even mention the matter of a drilling plan before the Division while it still had jurisdiction, Devon has waived the right to raise the matter on its appeal to the Commission. *Mitchell v. Allison*, 54 N.M. 56, 213 P.2d 231 (1949). (Question not raised in district court would not be considered by the Supreme Court on appeal.)

CONCLUSION

The Commission should deny Devon's Motion To Remand for the reasons stated above.

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Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 15th day of July 2003, as follows:

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