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Thursday, February 06, 2003

To: Carol Leach New Mexico EMNRD	Fax : 505-476-3220 Phone:
To: Tom Mills, Deputy Secretary New Mexico EMNRD	Fax : 505-476-3220 Phone:
To: Stephen C. Ross Oil Conservation Commission	Fax : 476-3220 Phone:

From: William F. Carr	Fax : 505-983-6043 Phone: 505-988-4421
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Message:

Attached is the prehearing statement for Richardson Operating Co.
Thank you.

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February 6, 2003

BY FACSIMILE

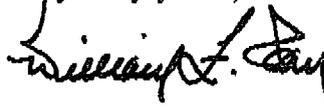
Tom Mills, Deputy Secretary
State of New Mexico
Energy, Minerals and Natural Resources Department
P. O. Box 6429
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: San Juan Coal Company's Application for a Hearing *de novo* Before the Secretary in the Application of Richardson Operating Company to Establish a special "Infill Well" Area within the Basin-Fruitland Coal Gas Pool as an Exception to Rule 4 of the Special Rules for this Pool, San Juan County, New Mexico.

Dear Mr. Mills:

Enclosed for filing in the above referenced case is the Pre-Hearing Statement of Richardson Operating Company

Very truly yours,



William F. Carr
of Holland & Hart LLP

WFC:keh
cc by facsimile:
Carol Leach
Stephen C. Ross

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**

**IN THE MATTER OF THE APPLICATION OF
RICHARDSON OPERATING COMPANY TO
ESTABLISH A SPECIAL "INFILL WELL" AREA
WITHIN THE BASIN-FRUITLAND COAL GAS
POOL AS PROVIDED BY RULE 4 OF
THE SPECIAL RULES FOR THIS POOL,
SAN JUAN COUNTY, NEW MEXICO.]**

**OIL CONSERVATION COMMISSION CASE NO.
12734 (De Novo), ORDER R-11775-B.
(Request for de novo review by the Secretary of the
Energy, Minerals and Natural Resources Department)**

RICHARDSON OPERATING COMPANY'S PRE-HEARING STATEMENT

PARTIES

PARTY:

Richardson Operating Company
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Denver, Colorado 80203
Attention: David Richardson

San Juan Coal Company

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RICHARDSON OPERATING COMPANY' STATEMENT

Richardson Operating Company's position in this case is that Oil Conservation Division Order No. R-11775-B does not contravene the public interest. The role of the Secretary is defined and limited by NMSA 1978, §70-2-26 which authorizes the Secretary to determine if a Commission order contravenes the public interest and "enter such order or decision as may be required under the circumstances, having due regard for the conservation of the state's oil, gas and mineral resources." The Secretary is required therefore to review the circumstances of this case and determine if the Commission must change its order.

The Oil Conservation Commission Order No. R-11775-B does not contravene the public interest for it honors the leases and protocol agreements between the San Juan Coal Company and the Bureau of Land Management; it prevents the waste of natural gas; it does not prevent the production of coal; it recognizes and is consistent with the state-federal ownership of the subject lands and the established regulatory scheme governing the development of oil, gas and coal.

Under the circumstances of this case, the Secretary must consider the following central facts: (1) most of the lands involved in this dispute are federal lands; (2) the oil and gas leases covering the subject properties predate the coal leases; (3) prior to acquiring Federal Coal Lease NMNM-99144 covering lands at issue in this review, and as a condition precedent to the issuance of that lease, San Juan Coal drafted and signed a Protocol Agreement in which it agreed, among other things, that "valid existing rights under federal oil and gas leases . . . will be honored"; (4) this Coal Lease contains special stipulations which recognize the priority of the oil and gas rights and provide that San Juan will resolve with the owners of the oil and gas rights the issues it now asks the secretary to consider; (5) the economic issues San Juan brings to the Secretary for review were reviewed with the BLM and the State Director has determined that the interests of the federal government are served not by determining which of the resources should be produced but by developing both resources: gas first and then the coal; and (6) the mine safety issues that San Juan has raised before the Secretary are issues covered by the Federal Regulations adopted pursuant to the Federal Mine Health and Safety Act ("MSHA").

If the Secretary directs the Commission to amend Order No. R-11775-B as requested by San Juan Coal Company, the resulting order would contravene the public interest:

1. It would authorize the waste of gas, which in turn would result in the loss of royalty income to the State of New Mexico and the Federal Government.
2. The amended order would authorize the production of coal prior to the recovery of the gas, contrary to the Protocol Agreement between San Juan and the Bureau of Land Management. Furthermore, the order would be contrary to the decision of the State Director that both resources should be produced and the benefits of both obtained;
3. San Juan seeks amendments that would take an order of the Oil Conservation Commission consistent with the underlying leases, agreements, and the established regulatory scheme for the development of oil, gas and coal and alter the order so it conflicts with the special stipulations in Federal Coal Lease NMNM-99144. The federal government has insisted this conflict never occur when it delegates administrative responsibilities to the State.
4. San Juan seeks amendments to the Commission Order that, if adopted, would conflict with the provisions of the Protocol Agreement between San Juan and the BLM. The Protocol Agreement addressed and resolved the very issues that San Juan now asks the Secretary to review. Execution of this agreement was a condition precedent to San Juan's acquisition of the coal rights involved in this case.
5. To accept San Juan's arguments would require the Secretary to rule on issues affecting wells on federal lands where she has no jurisdiction or authority. This jurisdiction rests with the Bureau of Land Management, the agency responsible for the management of these resources and has exercised this authority through the Protocol Agreement and lease stipulations. Under the circumstances of this case, each new infill well that could be drilled under the Order is located on Federal land — no additional infill wells can be drilled in San Juan's Mine Districts on State lands.
6. San Juan requests that the Secretary decide issues of mine safety beyond her jurisdiction and authority and are, instead, governed by the Federal Mine Safety and Health Act Regulations.
7. San Juan asks the Secretary to decide matters that are in contravention of the established regulatory scheme governing the development of oil, gas and coal.

8. San Juan seeks an order it can use in subsequent negotiations with oil and gas operators to undervalue these oil and gas resources.
9. San Juan seeks an order it can use with MSHA to avoid federally mandated safety standards. Although San Juan has discussed its mine operations with MSHA, it has not formally sought, nor has it received, any relief from MSHA concerning existing producing wells in Mine Districts. Instead it wants to bring these issues to the Secretary.

IDENTIFICATION OF THE PORTIONS OF THE COMMISSION RECORD RELEVANT TO THE ISSUES BEFORE THE SECRETARY AND PREVIEW OF THE EVIDENCE

On February 3, 2003, Richardson Operating Company filed its Motion for Clarification in this case. At this time, no response to this motion has been received. The motion was filed to obtain from the Secretary a determination of the issues briefed by the parties at her request. Since she has declined or failed to respond to the motion and has not defined the term "public interest" or to even identify the basic standards she intends to apply in determining if the public interest is contravened by the Commission Order, Richardson Operating has no choice but to designate the entire record made before the Oil Conservation Commission as the record in this case.¹

As to specific issues that the Secretary may consider relevant, Richardson identifies the following portions of the Commission record:

Priority of oil and gas leases (Contract Issues). These references to the record in this case address the issues concerning the priority of the oil and gas rights and the lease stipulations and other agreements that define the relationships between the parties and the state and federal governments.

Commission's Record on Appeal Pages: 31-87; 301-302; 669-674; 680-739; 742-758; 762-806; 823-843; 980-989 and 1995-1996.

Mine Safety and Health Act. (Mine Safety). These references to the record in this case address the role of MSHA in this case. They also address the MSHA standards applicable to this case, San Juan Coal's efforts to resolve with MSHA the mine safety and health issues related to the presence of fracture stimulated coalbed methane gas well within the Mine Districts it now seeks to raise before the Secretary, the scope of MSHA authority and the resulting limitations on the authority of the Secretary to consider and act on the issues as requested by San Juan.

¹ The Commission prepared its "Record of Appeal" consisting of pages 1 through 2127 and assigned a unique number to each page of each document including witness testimony, exhibits, and pleading.

Commission's Record on Appeal Pages: 283-295; 303-308; 339-344; 358; 380-397; 452-453; 467-480; 807-810; and 820-843.

Economics of the Coalbed Methane Gas. These references to the record in this case address the value of Richardson's coalbed methane gas that is at risk in this case.

Commission's Record on Appeal Pages: 87-242; 567-568; 826-843; 875-956; and 1393-1993.

Wells Outside the Mine Districts: These portions of the record address the application as it applies to infill wells located within the application area but outside any San Juan Coal Company Mine District.

Commission's Record on Appeal Pages: 312

Acceleration of Gas Recovery Prior to the Mining of the Coal. These references to the record in this case address the request by the BLM to accelerate the production of the coalbed methane gas before mining the coal.

Commission's Record on Appeal Pages: 290-291; 785; 801; 835-843 and 1232-1234.

PROCEDURAL MATTERS

Richardson Operating Company's Motion for Clarification or the Secretary's January 29th Order.

Respectfully submitted,

KELLAHIN & KELLAHIN

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CERTIFICATE OF SERVICE

I certify that on February 6, 2003 I served a copy of the foregoing document to the following by

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