

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

September 13, 1995

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

**RE: Request for Hearing De Novo in Case 11334 (Order R-5771-D)**

Dear Mr. Kellahin:

Your request for a hearing de novo in the above-referenced case is denied. The Commission recently heard this case and issued an order dated April 18, 1995. The Commission's denial (by taking no action) of Phillips' Application for Rehearing of that order constitutes the Commission's final action in this case. The Commission notes that Phillips has appealed the Commission's April 18 order to the District Court in Roosevelt County.

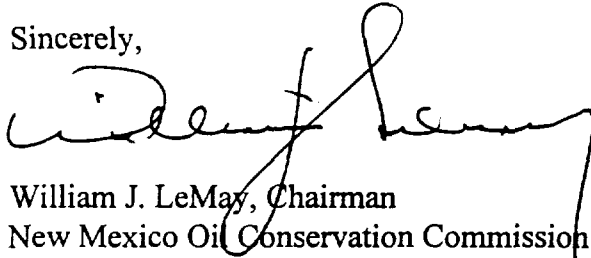
Rather than wait on the results of its appeal of the Commission's April 18 order, Phillips chose to file a new case before the OCD on June 19, 1995, asking the Division Examiner to overturn the Commission's April 18 order based upon what Phillips characterized as "new data". On July 31, the Division dismissed Phillips' June 19 application because of the recently-issued currently effective Commission order. Phillips then filed for a hearing de novo of the Division July 31 order, which is the subject of this letter.

The procedural route taken by Phillips in this matter is unusual. Not only has Phillips appealed the April 18 Commission order to District Court, it also filed an application at the Division Examiner level requesting that the Examiner issue a decision overturning the Commission April 18 order. This collateral attack on the Commission April 18 order by starting again at the Division level was dismissed by the Division by order dated July 31, 1995. The application for a hearing de novo of the

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July 31, 1995 Division order will be treated in a like manner by the Commission --- denied because this matter has recently been heard by the Commission with a currently effective order issued by the Commission on April 18, 1995, and because your application in Case No. 11334 to the Division was, in essence, a request for the Division to overrule Commission Order R-5771-C. You have the process reversed.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. LeMay", written over the typed name and title.

William J. LeMay, Chairman  
New Mexico Oil Conservation Commission

cc: William F. Carr, Attorney for Enserch  
William Weiss, OCC Commissioner  
Jami Bailey, OCC Commissioner