

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

TELEPHONE (505) 982-4265

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)

December 11, 1996

**VIA FACSIMILE
(505) 827-8177**

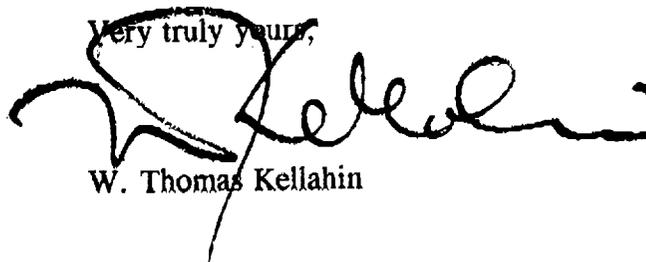
Mr. William J. LeMay, Director
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

**Re: BURLINGTON'S RESPONSE TO PENWELL'S MOTION FOR A STAY
NMOCD Cases 11613 and 11622
Order R-10709**

Dear Mr. LeMay:

On behalf of Burlington, I received a copy of Penwell's Motion for a Stay of Order R-10709 for the referenced cases. We request that you not act on this Motion until I can file Burlington's response which I will file with you this morning.

Very truly yours,



W. Thomas Kellahin

cc: Rand Carroll, Esq. OCD
Michael E. Stogner, Hearing Examiner
Burlington Resources Oil & Gas Company
Attn: Don Davis
William F. Carr, Esq.
Attorney for Penwell Energy, Inc.

**BEFORE THE
OIL CONSERVATION DIVISION
NEW MEXICO DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES**

IN THE MATTER OF THE APPLICATION
OF BURLINGTON RESOURCES OIL AND
GAS COMPANY FOR COMPULSORY
POOLING, LEA COUNTY, NEW MEXICO.

CASE NO. 11613

IN THE MATTER OF THE APPLICATION
OF PENWELL ENERGY, INC. FOR
COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO.

CASE NO. 11622
ORDER NO. R-10709

**MOTION OF PENWELL ENERGY, INC.
FOR STAY OF DIVISION ORDER NO. R-10709**

PENWELL ENERGY, INC. ("Penwell"), through its attorneys, Campbell, Carr, Berge and Sheridan, P. A., hereby moves the Oil Conservation Division and Oil Conservation Commission for an order staying Oil Conservation Division Order No. R-10709 pending de novo review by the Commission:

1. On October 30, 1996, the above-referenced competing pooling applications of Burlington Resources Oil & Gas Company ("Burlington") and Penwell Energy, Inc. ("Penwell") came on for hearing before a Division Examiner.

2. On November 26, 1996, the Oil Conservation Division entered Order No. R-10709 granting the application of Burlington and denying the companion application of Penwell. Order No. R-10709 pools the NW/4 SE/4 of Section 24, Township 22 South, Range 32 South, NMPM, Lea County, New Mexico, designates Burlington operator of the

well and provides that the well shall be commenced on or before December 31, 1996.

3. An Application for Hearing De Novo was filed by Penwell on November 26, 1996. The next Commission hearing is scheduled for January 16, 1997.

4. Penwell seeks a stay of Division Order No. R-10709 to enable it to have the Commission review these competing pooling applications in a de novo hearing. The Oil and Gas Act provides:

When any matter or proceeding is referred to an examiner and a decision is rendered thereon, any party of record adversely affected shall have the **right** to have the matter heard de novo before the commission upon application filed with the division within thirty days from the time any such decision is rendered.

NMSA 1978, Section 70-2-13. Pursuant to this Section of the Act, **Penwell has a right to a de novo hearing.** If a stay is not granted, by the time of the next Commission hearing, the well will be drilling, the issues which Penwell and others have a right to have reviewed by the Commission will be moot and the Penwell's right to a hearing will effectively be lost.

5. Penwell seeks an opportunity to show the Commission that for over 17 months Burlington was unable to get even one other interest owner in this spacing unit to voluntarily join in its proposal for the development of this acreage. However, one month after Penwell acquired its interest in this acreage **every other owner** in the acreage other than Burlington had agreed for Penwell to drill the well and, therefore, at the Examiner hearing, Penwell represented **86.6%** of the owners of this acreage. In other words, those who will bear 86.6% of the costs of developing this acreage agreed that Penwell should operate the well and that

Penwell's AFE and proposed administrative and overhead costs were appropriate.

6. Penwell should prevail in a de novo hearing for it will show the Division that Order No. R-10709 violates the Oil and Gas Act. The Division's pooling authority may be exercised only after a good faith effort has been made to reach a voluntary agreement for the development of this acreage. See, NMSA 1978, Sec.70-2-17(C). The reason for this requirement is that the pooling of mineral interests involves the taking of property interests from the owner thereof and giving that interest to another. Accordingly, the Oil and Gas Act requires that the affected parties be given the opportunity to voluntarily "pool their interests and develop their lands as a unit" before the State of New Mexico makes that decision for them. In this case, **86.6%** of the owners had decided how they want to develop their lands. The Division, however, because of concern about the purposes of the Oil and Gas Act, decided to ignore the agreement of these owners and give operations to a **13.4%** interest owner with overhead and administrative costs which are **20% higher** than those agreed upon by all of the other owners in this tract. Order No. R-10709 not only violates the purpose of the Oil and Gas Act, it is inconsistent with the express provisions thereof.

7. Penwell has a right to have this issue reviewed de novo by the Commission. Without a stay, before the de novo hearing, the time for Penwell to make an election to avoid a risk penalty will have run, the well will be drilling, and Penwell's right to a hearing de novo will in fact have been denied.

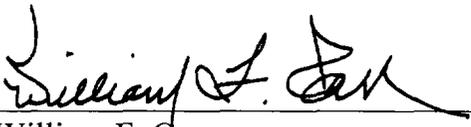
8. A stay of Order No. R-10709 until the de novo review in January 1997 will

protect the rights of the interest owners in this spacing unit and afford them the de novo hearing as guaranteed by the Oil and Gas Act.

WHEREFORE, Penwell Energy, Inc. requests that Oil Conservation Division Order No. R-10709 be stayed in its entirety pending a de novo hearing by the Oil Conservation Commission.

Respectfully submitted,

CAMPBELL, CARR, BERGE
& SHERIDAN, P.A.

By: 
William F. Carr
Post Office Box 2208
Santa Fe, New Mexico 87504-2208

ATTORNEYS FOR PENWELL ENERGY, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Stay was hand-delivered this 6th day of December, 1996 to W. Thomas Kellahin, Esq. Kellahin & Kellahin, 117 North Guadalupe Street, Santa Fe, New Mexico 87501.


William F. Carr