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PLEASE REPLY TO SANTA FE

August 21, 2000

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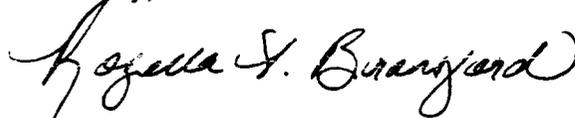
Re: NMOCD Case No. 12479; Application of Pendragon Energy Partners, Inc.

Dear Mr. Gallegos:

Enclosed is an endorsed copy of the Response to Motion to Dismiss or, Alternatively, for Stay of Proceedings in the above-referenced matter.

Please give us a call if you have any questions.

Sincerely,



Rozella A. Bransford
Legal Assistant to J. Scott Hall

RAB
Enclosure

cc: Michael Stogner, Esq. (w/encl.)
Ms. Marilyn Hebert, Esq. (w/encl.)

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

APPLICATION OF PENDRAGON ENERGY
PARTNERS, INC., PURSUANT TO ORDER
NO. R-11133-A TO RESTORE THE CHACO
2-R PICTURED CLIFFS WELL TO PRODUCTION,
SAN JUAN COUNTY, NEW MEXICO

OCD CASE NO. 12479

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OIL CONSERVATION DIV.

RESPONSE TO
MOTION TO DISMISS OR, ALTERNATIVELY,
FOR STAY OF PROCEEDINGS

Applicant, Pendragon Energy Partners, Inc., through its counsel, Miller, Stratvert & Torgerson, P.A., (J. Scott Hall), for its Response to the Motion To Dismiss Or, Alternatively, For Stay of Proceedings filed on behalf of Whiting Petroleum Corporation, et al., states:

INTRODUCTION

Whiting's motion must be denied for four separate but equally compelling reasons:

- (1) Pendragon's application is authorized by the express provisions of Order No. R-11133-A and is unaffected by the appeal.
- (2) Whiting failed to comply with the Commission's requirements for seeking a stay of an order of the agency. Consequently, the terms of Order R-11133-A continue in effect.
- (3) Whiting did not seek rehearing or appeal from any provision of Order R-11133-A. Consequently, it is estopped from seeking the dismissal of this application.

(4) Whiting's motion is an impermissible collateral attack against the agency's order.

BACKGROUND

Whiting continues to exhibit low regard for the Division and its processes. The motion marks Whiting's sixth attempt to thwart the Division or the Commission from performing its administrative functions in these proceedings. In each of the five previous instances, Whiting's improper efforts to either dismiss an application, stay a proceeding, prohibit an appeal or actually enjoin the agency have been summarily denied. This most recent motion does little else than serve-up more of the same dead-horse arguments that Whiting has unsuccessfully tried before. Moreover, by promoting this motion, Whiting is asking to be bailed-out of a mistake in judgment made when it failed to appeal from the applicable provision of Order R-11133-A authorizing the application in this case.

On August 12 - 21st, 1999, the New Mexico Oil Conservation Commission convened a hearing on Pendragon's Application brought pursuant to, inter alia, Rule (3) of the Special Rules and Regulations for the Basin-Fruitland Coal Gas Pool set forth in NMOCD Order No. R-8768, as amended, seeking a determination that its Chaco wells, completed within the vertical limits of the WAW Fruitland Sand-Pictured Cliffs Gas Pool, and that Whiting Petroleum's Gallegos Federal wells completed within the Basin-Fruitland Coal Gas Pool were producing from the appropriate common source of supply. Pendragon also sought further relief, including an order bringing Whiting's non-conforming wells back into compliance with the Division's rules, regulations and orders.

In the course of the administrative proceedings, Whiting and Maralex asserted that Pendragon's Chaco wells were "completed" in and producing gas from a geologic

interval that was part of the Fruitland Sandstone formation owned by Whiting. Whiting's geologic interpretation was disputed and Pendragon contended that the interval in question was part of the Pictured Cliffs formation and that it was entitled to produce the gas from that interval.

At the hearing, both parties contended that the other's hydraulic fracture and acidization well stimulation treatments caused their separately owned formations to come into communication. Both sides also contended that their wells experienced interference and that gas was being produced out of formation as a result. Significantly, at the hearing, Whiting's witnesses admitted that the high volume, high pressure and high injection rate fracture stimulation treatments performed on the Gallegos Federal wells by Maralex Resources caused their wells to come into communication with the Pictured Cliffs formation owned by Pendragon. Conversely, Pendragon asserted and presented evidence that the acid jobs and relatively mild fracture stimulation treatments performed on its Chaco wells remained contained within the Pictured Cliffs formation and did not communicate with the Fruitland Coal Formation owned by Whiting.

On April 26, 2000, after hearing, the Commission issued Order No. R-11133-A which found that all of Pendragon's subject Chaco wells were perforated within the Pictured Cliffs formation of the WAW Fruitland Sand-Pictured Cliffs Gas Pool. By so finding and concluding, the Commission reaffirmed the long-standing interpretation of industry, regulatory agencies and the larger geologic community establishing the vertical boundaries of the Pictured Cliffs formation. The Order also effectively rejected the request of Whiting and Maralex to re-define and re-establish those boundaries. Order R-

11133-A affirmed that the vertical boundaries between the Pictured Cliffs and Fruitland Coal formations conformed to the respective lease ownership of Pendragon and Whiting.

In addition, Order R-11133-A found that the Fruitland and the Pictured Cliffs formations first came into communication because of the fracture stimulation treatments Maralex performed on five of the Whiting Fruitland Coal wells in 1992. (Finding 32.) The Order also found that the fracture treatments performed on four of the Chaco wells in 1995 communicated with the Fruitland Coal formation. Pendragon disputed this particular finding and accordingly appealed the matter to the Santa Fe County District Court. The geologic findings in the Order are not the subject of the appeal.

As a result of the communication between the separately owned formations, the Order identified three categories of gas capable of being produced from the Chaco 1, 2R, 4 and 5 wells: Category I: Gas originally in place in the Pictured Cliffs formation; Category II: Gas from the Fruitland Coal formation that has migrated to the Pictured Cliffs formation through fractures around the Pendragon Chaco wells; and Category III: Gas from the Fruitland Coal formation that has migrated to the Pictured Cliffs formation through fractures around the Whiting Fruitland Coal wells. (Finding 44.) The Order then requires further proceedings before the Division to place these wells back on production. (Decretal Paragraph 4.)

Consistent with the express terms of the Division's earlier Order R-11133, the Commission specifically authorized the administrative relief sought by Pendragon. (See Decretal paragraph 4 of the Commission's Order R-11133-A.) Moreover, the pendency of the appeal from certain discrete findings in Order R-11133-A do not effect this application. Significantly, like the geology findings of Order R-11133-A, the provision of

the Order authorizing the Division to approve restoring the shut-in Pictured Cliffs wells to production is not the subject of the appeal pending before the District Court¹. Correspondingly, there is no need to await the outcome of the appeal. Moreover, because Whiting, et al.² failed to seek rehearing or appeal from any portion of Order R-11133-A, they cannot now be heard to complain about its operation.³ Even more importantly, because they committed the strategic error of waiving the right to appeal, Whiting, et al. cannot now use Case No. 12479 as a forum to cure their mistake or to launch an attack against the provision of the Order authorizing this application. Such would constitute an impermissible collateral attack against the Commission's order.

No one should be misled by Whiting's arguments that the Division is divested of jurisdiction by virtue of the pendency of the appeal. The authorities cited by Whiting are simply inapplicable in this circumstance. Again, Pendragon's application here is limited in scope to that portion of decretal paragraph 4 of Order R-11133-A authorizing the restoration of production. Pendragon's appeal does not seek the reconsideration or modification of that provision. Additionally, Order R-11133-A continues to be effective and, once again, here is another example where Whiting is a victim of its own misjudgment: Like its failure to perfect an appeal of the adverse portions of the order, Whiting made no effort to seek a stay of decretal paragraph 4 pursuant to the procedures

¹ *Pendragon Energy Partners, Inc., et al. v. New Mexico Oil Conservation Commission*, 1st Judicial District Court Cause No. D-0117-CV-2000-1449

² T.H. McElvain Oil and Gas LP was not a party to the de novo proceeding before the Commission.

³ Whiting, et. al first sought to have the Hon. Art Encinias prohibit and enjoin the Hon. Daniel Sanchez's deliberations over *Pendragon Energy Partners, Inc. v. New Mexico Oil Conservation Commission*, calling the appeal from Order No. R-11133-A "unauthorized". Judge Encinias refused to do so, calling Whiting's attempt improper "overreaching". (See July 13, 2000 Memorandum Decision, Exhibit A, attached.) Since then, in an about-face, Whiting and Maralex have sought permission to intervene in the appeal, but to date, the court has not authorized them to do so. Having waived the right to appeal from the Order R-11133-A, neither the purpose of their intervention nor the capacity in which they would participate in the appeal are clear.

set forth under Division Memorandum No. 3-85. Consequently, the Commission's authorization of this application continues to be operative.

Neither should the Division be intimidated by Whiting's invocation of the District Court's preliminary injunction.⁴ What Whiting fails to disclose is the fact that the District Court has previously granted a similar request by Pendragon to lift the injunction in deference to an earlier order of the Commission authorizing reservoir pressure response testing. (See Order Allowing Reservoir Pressure Testing, Ex. "B", attached.) We are confident the court would accord similar deference to an order of the Division issued pursuant to this application.

CONCLUSION

For all the foregoing reasons, Whiting's motion should be denied.

Respectfully submitted

By



J. Scott Hall

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ATTORNEYS FOR
PENDRAGON ENERGY PARTNERS, INC.

⁴ *Whiting Petroleum Corporation, et al. v. Pendragon Energy Partners, Inc., et al.*, 1st Judicial District Court Cause No. CV-98-01295. The Court has stayed any pre-trial discovery activity in the case pending the outcome of the appeal from Order R-11133-A.

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the Response to Motion to Dismiss or, Alternatively, for Stay of Proceedings to be faxed and mailed on this 24 day of August, 2000 to:

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J. Scott Hall

J. Scott Hall

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

NO. D-0101-CV-98-1295

WHITING PETROLEUM COMPANY, et al.
Plaintiffs

vs

PENDRAGON ENERGY PARTNERS, INC., et al.
Defendants

MEMORANDUM DECISION

THIS MATTER came before the court upon the Plaintiffs' Motion to Enjoin. The Defendants timely filed a written Response in opposition to the Motion and, thereafter, the Plaintiffs timely filed a written Reply. Because the Motion, Response and Reply are clear and comprehensive, the court finds no necessity for hearing in order to resolve the matter.

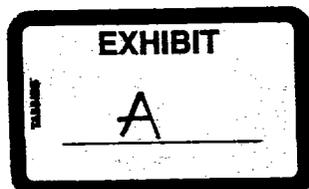
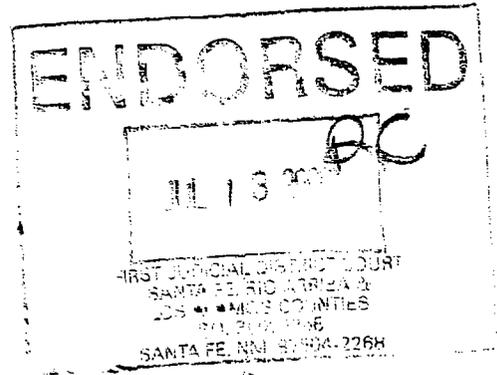
Whiting's request, insofar as it seeks to enjoin Pendragon from pursuing its appellate remedies granted under law, should be summarily denied. Whiting's request, insofar as it seeks to tempt this court into seizing a case assigned to another judge and making the case its own, is overreaching and should be denied. Whiting's request, insofar as it seeks a consolidation of Pendragon's appeal with the present case, is best addressed to the court to which the appeal is assigned. Should Whiting choose to do so, Whiting may convey to the Honorable Daniel Sanchez that this court has no objection to consolidation and will honor Judge Sanchez's decision in this regard.

Conclusion

The Plaintiff's Motion to Enjoin is not well-taken and its should be denied.

Directions to Counsel

Mr. Hall, please prepare a sparely worded form of Order in accordance with the court's decision and circulate the same to opposing counsel for approval as to form and submit the approved form to the court for signature and entry no later than **July 28, 2000 at 9:00 a.m.**



In the event that there is undue delay in securing approval or in the event that there are objections to the form of the Order, please present the proposed form in open court on **July 28, 2000 at 9:00 a.m.** Objections, if any, shall be in writing and filed with the Clerk of the Court with courtesy copies to counsel and the court no later than three (3) working days before the date set for presentment.



ART ENCINIAS, District Judge

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

CASE NO. 11996

DE NOVO

APPLICATION OF PENDRAGON ENERGY PARTNERS, INC.,
PENDRAGON RESOURCES, L.P., AND J. K. EDWARDS
ASSOCIATES, INC. TO CONFIRM PRODUCTION FROM THE
APPROPRIATE COMMON SOURCE OF SUPPLY,
SAN JUAN COUNTY, NEW MEXICO.

MAY 21 1999

& SCHLENKER, P.A.
SANTA FE, NEW MEXICO

ORDER ALLOWING RESERVOIR PRESSURE TESTING

This matter came before the Commission on April 22, 1999, on Pendragon Energy Partners, Inc., Pendragon Resources, L.P., and Edwards Energy Corporation's ("Pendragon") Motion to Conduct Reservoir Pressure Tests. Maralex Resources, Inc. and Whiting Petroleum Corporation ("Whiting") filed a response to the motion, and on May 19, 1999, Pendragon filed its reply. The pleadings have been reviewed and considered.

The proposed testing may yield information relevant to the issues in this case. Therefore, Pendragon's motion is hereby granted, and Pendragon may conduct the testing as proposed in its motion provided Pendragon meets the following conditions:

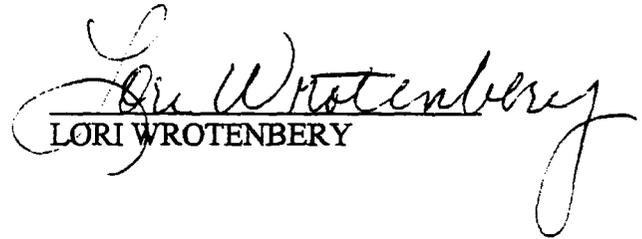
1. Pendragon must obtain permission of the District Court to restore to production the Chaco No. 4 well, which well was ordered shut in by the Court in *Whiting Petroleum Corporation et al. v. Pendragon Energy Partners, Inc., et al.*, First Judicial District, No. D-0101-CV-98-01295.



2. Pendragon must satisfy any financial security the District Court may order for the lost production from Whiting's three wells as well as the ten-day production of the Chaco No. 4 Well.
3. Pendragon must notify Whiting and the New Mexico Oil Conservation Division's Aztec District Office of the dates for the testing so that Whiting and the Aztec District Office can be present for the testing.

Done this 19th day of May, 1999.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION


LORI WROTENBERY