

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

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION FOR THE PURPOSE OF  
CONSIDERING:

APPLICATION OF CURRY AND THORNTON  
FOR AN UNORTHODOX OIL WELL LOCATION  
AND A NON-STANDARD PRORATION UNIT,  
CHAVES COUNTY, NEW MEXICO,

CASE NO. 9617  
(DE NOVO)

APPLICATION OF STEVENS OPERATING  
CORPORATION TO AMEND DIVISION  
ORDER NO. R-8917, DIRECTIONAL  
DRILLING AND AN UNORTHODOX OIL WELL  
LOCATION, CHAVES COUNTY, NEW MEXICO

**APPLICATION FOR REHEARING OF  
CURRY AND THORNTON  
AND  
STEVENS OPERATING CORPORATION,  
OR, IN THE ALTERNATIVE, APPLICATION  
FOR AMENDMENT OF ORDER NO. R-9035**

COME NOW, CURRY AND THORNTON and STEVENS OPERATING  
CORPORATION (hereinafter referred to as "Applicants") and for their Application for  
Rehearing, or, in the alternative, Application for Amendment of Order No. R-9035, state:

1. The North King Camp-Devonian Pool was discovered in 1988 and Special

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OIL CONSERVATION DIVISION

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OIL CONSERVATION DIVISION

Pool Rules for this pool were promulgated by the Division, including provisions for 160-acre spacing and special well location requirements.

2. Applicants own the leasehold interest on the W/2 of Section 9, Township 14 South, Range 29 East and in Division Case 9617 sought authorization to drill a well thereon at an unorthodox location and to dedicate to the well a non-standard proration unit comprised of the E/2 W/2 of Section 9. This application was granted by Division Order No. R-8917 which penalized production from Applicants' well.

3. In Case 9670, Applicants sought authorization to reenter an existing well in the W/2 of Section 9 and directionally drill to the previously approved bottom hole location. This application was granted by Division Order No. R-8917-A.

4. Timely applications for rehearing were filed by Applicants and the cases were consolidated and heard de novo by the Commission on October 19, 1989.

5. The Commission entered Order No. R-9035 in these cases on November 2, 1989 and Applicants hereby seek a rehearing pursuant to N.M.Stat. Ann. §70-2-25 (1978) and in support of their application assert that Order No. R-9035 is invalid for, as more fully set out below, it is contrary to law; arbitrary, capricious and unreasonable and not supported by substantial evidence.

A. ORDER NO. R-9035 IS CONTRARY TO LAW FOR IT WILL RESULT IN THE DRILLING OF AN UNNECESSARY WELL THEREBY CAUSING WASTE.

Order No. R-9035 drastically reduces the allowable for the North King Camp-Devonian Pool. On the Santa Fe Exploration #1 Holmstrom well the allowable is reduced

from the standard 515 barrels of oil per day to a penalized 125 (.53 x 235) barrels per day. (Finding 23). The 49 barrels per day (.21 x 235) allowable of the #1 Deemar was a penalty from a recoverable reserves penalized allowable of 216 barrels per day (.21 x 1030) based on acre feet of pay. (Finding 14). The undrilled NE/4 was penalized from a recoverable reserves allowable of 268 barrels per day (.26 x 1030) to 61 barrels per day (.26 x 235).

The basis for this harsh reduction in allowables is that "allowables must be established which . . . discourage the drilling of additional wells which are not needed and would constitute waste." (Finding 21). The Commission is trying to discourage drilling of a well in the NE/4 of Section 9. By reducing #1 Holmstrom allowable to 25% of its former allowable and almost half its former producing rate of 213 barrels per day, the Commission has almost halved the cash flow to E/2 owners thus encouraging the drilling of another well in order to recover the cash flow lost by the unjustified lowering of allowables. The allowable of 61 barrels assigned to the NE/4 is insufficient to deter drilling since the well would pay out the cost of drilling in 22 months, would recover approximately 392,340 barrels of oil, yield some \$4,800,000 on an investment of \$600,000 or about 8 to 1 return on investment.

Since the purpose of reducing allowables is to prevent waste (Finding 21), and no waste will be prevented, the allowables should not be reduced on the basis of this factually false pretense which violates both the letter and spirit of the Oil and Gas Act.

B. ORDER NO. R-9035 IS ARBITRARY, CAPRICIOUS, UNREASONABLE AND CONTRARY TO LAW FOR, ALTHOUGH IT IS INTENDED TO "ENCOURAGE" VOLUNTARY UNITIZATION, IT CONTRAVENES THE COMMISSIONS' STATUTORY AUTHORITY.

The only basis in the Oil and Gas Act for allowable penalties are the prevention of waste and the protection of correlative rights. The harsh production penalties imposed by the unrequested low allowables set by Order No. R-9035 amounts to economic coercion which is unrelated to either waste prevention or to protection of correlative rights. Therefore, with no basis in statute, the reduced allowables are arbitrary, capricious and unreasonable.

The Commission, however, asserts that another basis for the allowable reduction is to "encourage voluntary unitization." (Finding 21). The sanction for not voluntarily unitizing the pool, however, is a reduction in cash flow from wells in the pool by 75% and an ultimate net revenue loss of 25% due to increased years of operating expense. When this loss is considered, it is clear that Order No. R-9035 does not "encourage" voluntary unitization but, instead, invokes the economic coercion of reduced income and loss of capital to force unitization of the pool.

New Mexico's forced unitization statute provides solely for secondary recover units unlike the one the Commission is "encouraging" here. N.M.Stat. Ann. §70-7-1 (1978). Since the Commission may only carry out those functions assigned to it by the legislature (See, Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809, 818 (1962), its use of economic coercion to force the unitization of this pool is contrary to the express provisions of the Statutory Unitization Act as well as clearly

contrary to its duties under the Oil and Gas Act. The reduced allowables are accordingly arbitrary, capricious and contrary to law.

C. ORDER NO. R-9035 VIOLATES APPLICANTS' DUE PROCESS RIGHTS.

The guarantees of procedural due process require that a person whose property is taken by state action be given notice and an opportunity to be heard in the proceedings which result in the taking.

The property loss to Applicants as a result of Commission Order No. R-9035 includes:

1. the actual loss of income, through the increased expenses of long delayed production resulting from low allowables and
2. the loss of the present worth of the oil and gas reserves through long delayed production caused by low allowables.

Attached as Exhibit A to this Application are Appraisal reports prepared by expert witness Scott Hickman after Order R-9035 was issued and based on the Commission's figure of 10,714 acre feet in the pool. These tables show the effects of the 49 BOPD allowable versus the proposed 200 BOPD allowable (not considering attic oil):

Allow. Barrels	Life Years	Initial Yearly Cash Flow	Reserves Barrels	Future Net Revenue	Discounted Present Worth @ 10%
49	31	\$ 244,425	567,000	\$7,388,335	\$2,417,967
200	10	\$1,034,630	676,000	\$9,241,645	\$6,206,521

This economic loss of 109,000 barrels, \$2 million actual and \$4 million present worth constitutes a deprivation of a protected property interest.<sup>1</sup>

Neither applicants nor E/2 owners had notice that the Commission contemplated penalizing allowables in order to compel unitization. The public advertisements, previous hearings concerning the pool, previous practices by the Oil Conservation Division and Commission, and the lack of statutory authority or court cases authorizing unitization, all combined to leave all parties to this hearing completely unprepared to argue the merits of unitization or the coercive use of low allowables to induce unitization.

Without notice of the Commission's plans to reduce allowables and force the parties to "voluntarily" unitize, Applicants were unable to prepare and respond to this issue and their procedural due process rights were violated.

Applicants substantive due process rights were also violated. Substantive due process is defined as the guarantee that a persons property not be taken for arbitrary reasons. Here, the Commission's actions were designed to force unitization of this pool - - an action expressly outside the Statutory Unitization Act and the arbitrary low allowable for this pool set by Order No. 9035 amounts to an arbitrary taking of property in violation of Applicants substantive due process rights.

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<sup>1</sup> This is the evidence that would have been presented by Applicants if they had received proper notice of the Commission intention to force unitization through allowable restrictions and will be presented if Rehearing is granted in this case.

D. THE COMMISSION'S EQUATING OF ACRE FEET AND RECOVERABLE RESERVES IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, IS CONTRARY TO THE RECORD, AND IS ARBITRARY, CAPRICIOUS AND UNREASONABLE.

The Commission correctly followed New Mexico statute and the Continental decision by allocating production in this pool on the basis of recoverable reserves. However, its finding that oil pay or oil-saturated rock is approximately the same as recoverable reserves is in error for it fails to recognize that attic oil is not recoverable. (Finding 15).

Recoverable reserves means the oil underlying a tract recoverable by a well thereon. There are 65,000 barrels of oil in the SE/4 not recoverable by the Holmstrom #1 Well since these reserves lie above the top of that well in this water drive reservoir. This unrecoverable attic oil in the pool was discussed at length by witnesses and the Commissioners at the October 19, 1989 hearing. Transcript pages & lines: 49:3,6,7,8; 111:23-25; 153:10-24; 160:15-19; 252:16-25 through 256:8; Ahlen Exhibit 3: the "yellow green wedge shape" on the Holmstrom tract west and above the #1 Holmstrom; Hickman Exhibit 12 unnumbered lines 7 and 13.

The attic oil (listed in Hickman Exhibit 12, unnumbered Line 7, "Non-Productive Reservoir Volume," with a total of 878 acre feet) constitutes 8.2% of the 10,714 acre feet of Devonian Oil Pay recognized by the Commission in Finding 14(a). After deducting the .6% attributable to the Deemar #1, 7.6% of the total oil attributable to the E/2 of Section 9 is attic oil. Since the percentage of attic oil remains the same regardless of whether or not the Commission reduces the total acre feet to 10, 714 from the Hickman total of

15,004 acre feet, and since attic oil lies only at the structurally higher portions of the Holmstrom tracts, it is unaffected by the smaller areal extent found by the Commission.

Thus deducting the net 7.6% attic oil unrecoverable in the E/2 of Section 9 and the .6% from the Deemar in the W/2 of the Section, the recoverable reserves, excluding unrecoverable attic oil, would be as follows:

(a) Within the total field there are approximately 9835 acre feet of Devonian oil pay or oil saturated rock volume (10,714 acre feet minus Hickman Line 7 total of 878 acre feet attic oil.)

(b) Underlying the E/2 of Section 9 (Deemar #1), there is approximately 2,459 acre feet of recoverable Devonian oil pay or 25% of the recoverable reserves in the pool total for an allowable of 59 (.25 x 235) barrels of oil per day.

(c) Underlying the SE/4 of Section 9 (Holmstrom #1), there is approximately 5213 acre feet of recoverable Devonian oil pay or 53% of the recoverable reserves in the pool total for an allowable of 125 barrels of oil per day.

(d) Underlying the NE/4 of Section 9 there is approximately 2,163 acre feet of recoverable Devonian oil pay or 22% of the recoverable reserves in the pool total for an allowable of 56 barrels of oil per day.

The Commission qualifies its equation of recoverable oil and oil saturated rock with the condition that wells must be ". . . positioned to permit recovery." This condition does not save this erroneous finding since the wells in the E/2 of Section 9 are not positioned to permit the recovery (Transcript citations above) thus the final wording itself contradicts



to permit the recovery (Transcript citations above) thus the final wording itself contradicts the conclusion of the finding.

Of particular importance here is the statutory definition of correlative rights N.M.Stat. Ann. §70-2-17 (1978) which affords each owner in a pool "the opportunity to produce his just and equitable share of oil or gas . . . under his property . . ." The E/2 owners have not availed themselves of the opportunity to produce the oil under their tracts. The location of their well precludes recovery of this attic oil and, therefore, these unrecoverable reserves should not have been included in the allowable formula.

In this pool and on the record in this case, net acre feet of pay is not approximately the same thing as recoverable reserves. The Commission's finding that they are the same, is not supported by substantial evidence and, in fact, is contrary to it. The order is therefore arbitrary, capricious and unreasonable.<sup>2</sup>

WHEREFORE, CURRY AND THORNTON and STEVENS OPERATING CORPORATION pray that the Commission:

- A. Grant their Application for Rehearing of Cases 9617 and 9670,
- B. Or, in the alternative, amend Order No. R-9035 to provide for an allowable for the North King Camp-Devonian Pool based on the record of the October 19, 1989 Commission hearing as follows:

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<sup>2</sup> Commission Finding 17 states "only unorthodox locations such as the Stevens well could drain . . . the attic oil . . ." This confirms that the attic oil is not recoverable by the #1 Holmstrom and proves the error of Finding 15 where the Commission concludes that net acre feet of pay is approximately the same as recoverable reserves.

1. A total pool allowable of 973 barrels of oil per day to be allocated as follows:

#1 Deemar: 25% Recoverable reserves and 242 barrels of oil per day allowable

#1 Holmstrom: 53% recoverable reserves and 515 barrels of oil per day allowable

NE/4: 22% recoverable reserves and 216 barrels of oil per day allowable.

If the Commission finds for applicants on Rehearing grounds A, B and C here and above but against Applicants on ground D then Applicant prays that the Commission provide for an allowable as follows:

1. A total pool allowable of 1030 barrels of oil per day to be allocated as follows:

#1 Deemar: 21% of 1030 barrels or 216 barrels of oil per day

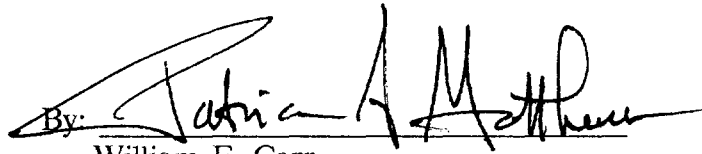
#1 Holmstrom: 53% of 1030 barrels or 546 barrels of oil per day

NE/4: 26% of 1030 barrels or 268 barrels of oil per day

EXHIBIT A

Respectfully submitted,

CAMPBELL & BLACK, P.A.

By: 

William F. Carr  
Patricia A. Matthews  
Attorneys for  
CURRY AND THORNTON and STEVENS  
OPERATING CORPORATION

STEVEN-DEEMAR FED -1  
 N KING CAMP DEVONIAN  
 CHAVES, NM  
 (CASE B) NO UNIT; W/PLUGBACK  
 49 BOPD Allowable

DATE: 11/09/89  
 TIME: 10:07.58  
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RESERVES AND ECONOMICS

STEVENS OPERATING CO

AS OF NOVEMBER 1, 1989

T. SCOTT HICKMAN & ASSOC  
 PETROLEUM ENGINEERS

-END- MO-YR	---GROSS PRODUCTION---		---NET PRODUCTION---		--PRICES--		-----OPERATIONS, M\$-----			CAPITAL COSTS, M\$	CASH FLOW BTAX, M\$	10.00 PCT CUM. DISC BTAX, M\$	
	OIL, MMBL	GAS, MMCF	OIL, MMBL	GAS, MMCF	DIL \$/B	GAS \$/M	NET OPER REVENUES	SEV+ADU+ WF TAXES	NET OPER EXPENSES				
12-89	2.981	.000	2.385	.000	19.00	.00	45.315	2.571	2.000	.000	40.744	40.422	
12-90	17.885	.000	14.308	.000	19.00	.00	271.852	15.427	12.000	.000	244.425	269.886	
12-91	17.885	.000	14.308	.000	19.00	.00	271.852	15.427	12.000	.000	244.425	478.490	
12-92	17.885	.000	14.308	.000	19.00	.00	271.852	15.427	12.000	.000	244.425	668.130	
12-93	17.885	.000	14.308	.000	19.00	.00	271.852	15.427	12.000	.000	244.425	840.530	
12-94	17.885	.000	14.308	.000	19.00	.00	271.852	15.427	12.000	.000	244.425	997.257	
12-95	17.885	.000	14.308	.000	19.00	.00	271.852	15.427	12.000	.000	244.425	1139.736	
12-96	17.885	.000	14.308	.000	19.00	.00	271.852	15.427	12.000	.000	244.425	1269.263	
12-97	17.885	.000	14.308	.000	19.00	.00	271.852	15.427	12.000	.000	244.425	1387.014	
12-98	17.885	.000	14.308	.000	19.00	.00	271.852	15.427	12.000	.000	244.425	1494.061	
12-99	17.885	.000	14.308	.000	19.00	.00	271.852	15.427	12.000	.000	244.425	1591.376	
12- 0	17.885	.000	14.308	.000	19.00	.00	271.852	15.427	12.000	.000	244.425	1679.844	
12- 1	17.885	.000	14.308	.000	19.00	.00	271.852	15.427	12.000	.000	244.425	1760.270	
12- 2	17.885	.000	14.308	.000	19.00	.00	271.852	15.427	12.000	.000	244.425	1833.384	
12- 3	17.885	.000	14.308	.000	19.00	.00	271.852	15.427	12.000	.000	244.425	1899.852	
S TOT	253.371	.000	202.697	.000	19.00	.00	3851.243	218.549	170.000	.000	3462.694	1899.852	
REM.	308.629	.000	246.903	.000	19.00	.00	4691.157	266.213	324.303	175.000	3925.641	2417.967	
TOTAL	562.000	.000	449.600	.000	19.00	.00	8542.400	484.762	494.303	175.000	7388.335	2417.967	
CUM.	5.000	.000					NET OIL REVENUES (M\$)	8542.400		-----PRESENT WORTH PROFILE-----			
ULT.	567.000	.000					NET GAS REVENUES (M\$)	.000		DISC	PW OF NET	DISC	PW OF NET
							TOTAL REVENUES (M\$)	8542.400		RATE	BTAX, M\$	RATE	BTAX, M\$
										-----	-----	-----	-----
BTAX RATE OF RETURN (PCT)			100.00				PROJECT LIFE (YEARS)	31.423	.0	7388.335	30.0	931.245	
BTAX PAYOUT YEARS			.72				DISCOUNT RATE (PCT)	10.000	2.0	5554.028	35.0	814.358	
BTAX PAYOUT YEARS (DISC)			.05				GROSS OIL WELLS	1.000	5.0	3857.766	40.0	726.408	
BTAX NET INCOME/INVEST			43.22				GROSS GAS WELLS	.000	8.0	2862.000	45.0	657.824	
BTAX NET INCOME/INVEST (DISC)			214.00				GROSS WELLS	1.000	10.0	2417.967	50.0	602.828	
									12.0	2084.724	60.0	520.054	
INITIAL W.I. FRACTION			1.000000				INITIAL NET OIL FRACTION	.800000	15.0	1722.215	70.0	460.640	
FINAL W.I. FRACTION			1.000000				FINAL NET OIL FRACTION	.800000	18.0	1466.257	80.0	415.846	
PRODUCTION START DATE			11- 1-89				INITIAL NET GAS FRACTION	.000000	20.0	1334.819	90.0	380.816	
MONTHS IN FIRST LINE			2.00				FINAL NET GAS FRACTION	.000000	25.0	1093.945	100.0	352.637	

STEVEN-DEENAR FED -1  
 N KING CAMP DEVONIAN  
 CHAVES, NM  
 (CASE E) NO UNIT; W/PLUGBACK  
 200 BOPD Allowable

DATE: 11/10/89  
 TIME: 13:41.37  
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RESERVES AND ECONOMICS

STEVENS OPERATING CO

AS OF NOVEMBER 1, 1989

T. SCOTT HICKMAN & ASSOC  
 PETROLEUM ENGINEERS

-END- MO-YR	---GROSS PRODUCTION---		---NET PRODUCTION---		---PRICES---		-----OPERATIONS, M\$-----			CAPITAL COSTS, M\$	CASH FLOW BTAX, M\$	10.00 PCT CUM. DISC BTAX, M\$
	OIL, MBBL	GAS, MMCF	OIL, MBBL	GAS, MMCF	OIL \$/B	GAS \$/M	NET OPER REVENUES	SEV+ADU+ WF TAXES	NET OPER EXPENSES			
12-89	12.167	.000	9.734	.000	19.00	.00	184.946	10.495	2.000	.000	172.451	171.089
12-90	73.000	.000	58.400	.000	19.00	.00	1109.600	62.970	12.000	.000	1034.630	1142.391
12-91	73.000	.000	58.400	.000	19.00	.00	1109.600	62.970	12.000	.000	1034.630	2025.393
12-92	73.000	.000	58.400	.000	19.00	.00	1109.600	62.970	12.000	.000	1034.630	2828.122
12-93	73.000	.000	58.400	.000	19.00	.00	1109.600	62.970	12.000	.000	1034.630	3557.876
12-94	73.000	.000	58.400	.000	19.00	.00	1109.600	62.970	12.000	.000	1034.630	4221.288
12-95	73.000	.000	58.400	.000	19.00	.00	1109.600	62.970	12.000	.000	1034.630	4824.390
12-96	73.000	.000	58.400	.000	19.00	.00	1109.600	62.970	12.000	.000	1034.630	5372.665
12-97	73.000	.000	58.400	.000	19.00	.00	1109.600	62.970	12.000	.000	1034.630	5871.097
12-98	49.916	.000	39.933	.000	19.00	.00	758.727	43.058	48.000	200.000	467.669	6075.389
12-99	24.917	.000	19.934	.000	19.00	.00	378.746	21.494	32.767	.000	324.485	6206.521
12- 0												
12- 1												
12- 2												
12- 3												
S TOT	671.000	.000	536.801	.000	19.00	.00	10199.219	578.807	178.767	200.000	9241.645	6206.521
REN.	.000	.060	.000	.000	.00	.00	.000	.000	.000	.000	.000	6206.521
TOTAL	671.000	.000	536.801	.000	19.00	.00	10199.219	578.807	178.767	200.000	9241.645	6206.521
CUM.	5.000	.000					NET OIL REVENUES (M\$)	10199.219			-----PRESENT WORTH PROFILE-----	
ULT.	676.000	.000					NET GAS REVENUES (M\$)	.000			DISC	PW OF NET
							TOTAL REVENUES (M\$)	10199.219			RATE	BTAX, M\$
BTAX RATE OF RETURN (PCT)			100.00				PROJECT LIFE (YEARS)	9.849	.0	9241.645	30.0	3555.533
BTAX PAYOUT YEARS			.19				DISCOUNT RATE (PCT)	10.000	2.0	8464.151	35.0	3203.658
BTAX PAYOUT YEARS (DISC)			.09				GROSS OIL WELLS	1.000	5.0	7479.182	40.0	2916.467
BTAX NET INCOME/INVEST			47.21				GROSS GAS WELLS	.000	8.0	6668.706	45.0	2678.745
BTAX NET INCOME/INVEST (DISC)			71.44				GROSS WELLS	1.000	10.0	6206.521	50.0	2479.454
									12.0	5796.428	60.0	2165.635
INITIAL W.I. FRACTION			1.000000				INITIAL NET OIL FRACTION	.800000	15.0	5263.381	70.0	1931.063
FINAL W.I. FRACTION			1.000000				FINAL NET OIL FRACTION	.800000	18.0	4811.617	80.0	1749.843
PRODUCTION START DATE			11- 1-89				INITIAL NET GAS FRACTION	.000000	20.0	4547.865	90.0	1605.960
MONTHS IN FIRST LINE			2.00				FINAL NET GAS FRACTION	.000000	25.0	3993.435	100.0	1489.084

**CERTIFICATE OF SERVICE**

I do hereby certify that I caused a true and correct copy of the Application for Rehearing of Curry and Thornton and Stevens Operating Corporation, etc. to be mailed to the following:

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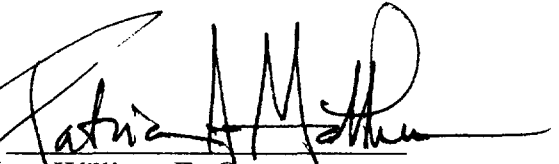
Paul A. Cooter  
P.O. Box 1357  
Santa Fe, New Mexico 87504-1357

On this 22 day of November, 1989.

Respectfully submitted,

CAMPBELL & BLACK, P.A.

By



A handwritten signature in black ink, appearing to read 'Patricia A. Matthews', is written over a horizontal line. The signature is stylized and cursive.

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Patricia A. Matthews  
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**ATTORNEYS FOR CURRY AND  
THORNTON and STEVENS  
OPERATING CORPORATION**