

Renovo Case

11996

June 1994

Correspondance



NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
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(505) 827-7131

June 18, 1999

Mr. J. Scott Hall
Miller, Stratvert, & Torgerson, P.A.
Post Office Box 1986
Santa Fe, New Mexico 87504

Mr. J. E. Gallegos
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505

**Re: Application of Pendragon Energy Partners, Inc. et al. to Confirm Production
from the Appropriate Common Source of Supply,
San Juan County, New Mexico
No. 11996 *de novo***

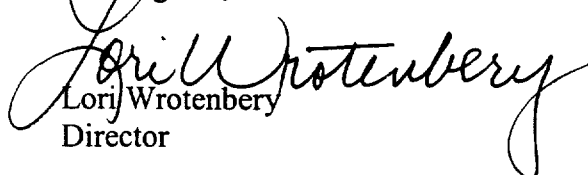
Gentlemen:

On June 4, 1999, Pendragon Energy Partners, Inc., Pendragon Resources, L.P. and J.K. Edwards Associates, Inc. ("Pendragon") filed a Motion to Schedule Witness Presentation to which there has been no response to date. On June 10, 1999, Pendragon filed a Motion in Limine to which Whiting Petroleum Corporation and Maralex Resources, Inc. ("Whiting") filed a Response in Opposition to Pendragon's Motion in Limine on June 17, 1999.

Pendragon proposes to present one of its expert witnesses, Dave O. Cox, on either August 19 or 20, 1999, as Mr. Cox will be out of the country from July 30 to August 15, 1999. Pendragon's motion is hereby granted so long as Mr. Cox is available on August 19, 1999, in the event the hearing requires three days rather than four days.

Pendragon in its Motion in Limine primarily complains about Whiting's introduction of materials from other proceedings in the examiner hearing Case No. 11996. Apparently materials were admitted into the record on the basis of administrative or judicial notice. Pendragon will have its opportunity to object to the introduction of any evidence when it is tendered at the *de novo* hearing. Pendragon's Motion in Limine is hereby denied.

Best regards,


Lori Wrotenbery
Director

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

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

OCD CASE NO.
11996

99 JUN 17 PM 2:40

OIL CONSERVATION DIV.

WHITING'S RESPONSE IN OPPOSITION
TO PENDRAGON'S MOTION IN LIMINE

Whiting Petroleum Corporation and Maralex Resources, Inc. (collectively "Whiting"), hereby file their Response in Opposition to the Motion in Limine filed in this matter by applicants (collectively "Pendragon"). Pendragon's Motion in Limine seeks to deprive the Commission of relevant evidence, sworn testimony, and exhibits admitted in prior Division proceedings which relate directly to the issues before the Commission in this proceeding. Moreover, Pendragon's Motion misrepresents the nature of the materials previously admitted in the Division proceeding, misapprehends the nature of a de novo hearing before the Commission, and ignores well-established rules regarding the admissibility of evidence in administrative proceedings. The Motion is fatally flawed in its failure to specifically identify the exhibits (or portions thereof) which it seeks to exclude.

In specific response to Pendragon's Motion, Whiting states as follows:

I.

**BACKGROUND FACTS SUPPORTING ADMISSIBILITY
OF DIVISION ORDERS, TRANSCRIPTS AND EXHIBITS**

1. This proceeding involves a consideration of the Fruitland Formation and the Pictured Cliffs formation in the San Juan Basin, Township 26 North, Ranges 12 and 13 West. Until its Chaco wells were shut-in by Injunction of the Santa Fe County District Court entered July 7, 1998, Pendragon operated several "Pictured Cliffs" wells, referred to herein as the Chaco wells, which actually produced coal bed gas from the Fruitland formation owned by Whiting. Whiting operates several coal bed gas wells in the area, the Gallegos Federal wells.

2. Pendragon's pending Application seeks an order from the Commission finding that Pendragon is producing from the appropriate common source of supply in its Chaco wells, i.e., the Pictured Cliffs formation. It is undisputed that Pendragon does not own any rights in the Fruitland formation and has no right to produce coal gas from that formation. Whiting is the exclusive owner of Fruitland coal rights in the area. Recent pleadings filed by Pendragon indicate that Pendragon now admits that there is communication between the Pictured Cliffs and Fruitland formation in certain of its Chaco wells. Pendragon has not yet specified the theory upon which it intends to rely at the Commission hearing to support its application that Pendragon is producing from the Pictured Cliffs formation given that concession.

3. The Division has historically held several administrative proceedings regarding the Basin-Fruitland Coal Gas Pool which implicate

necessarily the relationship between that pool and the directly underlying Pictured Cliffs formation. Sworn evidence was taken, scientific investigation was presented, and exhibits were introduced on the establishment of the Basin-Fruitland Coal Gas Pool in Case No. 9420 (see Division Orders R-8768 and R-8768-A). Case No. 9421 was a related proceeding before the Division, resulting in entry of Orders R-8769 and R-8769-A, in which the Division, in association with the creation of the Basin-Fruitland Coal Gas Pool, restricted and constructed the vertical limits and redesignated the Pictured Cliffs pool in the area at issue in this proceeding. Evidence was introduced in those proceedings on the proper delineation of the boundary between the Fruitland Formation and the Pictured Cliffs formation, and the Division delineated the Basin-Fruitland Coal Gas Pool in paragraph (10) of Order R-8768 based upon the evidence presented. Evidence was also introduced on the relationship between the two formations and the possible risk of communication resulting from fracture stimulations.

4. At the Division hearing in this case in July 1998, Whiting requested that the Division take administrative notice of several exhibits which were part of the official division record in Cases 9420 and 9421, as well as the Preliminary Injunction Order entered in the district court proceeding. Those exhibits were:

- (1) Order No. R-8768;
- (2) Order No. R-8768-A;
- (3) Order No. R-8769;
- (4) Order No. R-8769-A;

(5) The Preliminary Injunction issued by the Santa Fe County District Court on July 7, 1998 shutting-in Pendragon's Chaco wells;

(6) The presentation of the Coalbed Methane Committee submitted to the Division in connection with and admitted as an Exhibit in Case No. 9420; and

(7) The official Division hearing transcripts and exhibits from Cases 9420 and 9421.

5. Those materials were relevant to the two key issues in the Division hearing, and similarly are relevant and material to the two primary issues in the Commission hearing. First, these exhibits will help establish that Pendragon perfed its Chaco wells in the Fruitland Formation, and failed to limit it perfs to the Pictured Cliffs Formation. Second, these exhibits will help establish that Pendragon knew and intended that its fracture stimulations on the Chaco wells would communicate with the Fruitland formation and that Pendragon intended to steal Whiting's gas in planning its fracture stimulations on the Chaco wells.

6. At the Division hearing, Whiting tendered these materials and asked the Division to take administrative notice of them. Counsel for Pendragon did not expressly object to the admission, and they were accepted by the hearing examiner and admitted. See excerpts from Division transcript, July 30, 1998, pp. 589-90, attached as Exhibit A.

7. Pendragon's Motion in Limine does not identify the exhibits, or portions of exhibits which were introduced at the Division hearing which it

seeks to exclude from evidence at the Commission hearing. The Motion seeks only to preclude “the wholesale introduction into the record of transcripts, exhibits and other materials from previous hearings or trials.”

II.

ARGUMENT AND AUTHORITIES

8. Rules governing admissibility of evidence before an administrative agency are relaxed. Both hearsay and non-hearsay testimony may be considered, though the residuum rule requires that administrative action be supported by admissible evidence. An administrative body is not required to follow the formal rules of evidence. In re Termination of Boespflug, 114 N.M. 771, 774, 845 P.2d 865, 868 (Ct. App. 1992). Administrative proceedings must confirm to fundamental principles of justice and the requirements of due process of law. Uhden v. New Mexico Oil Conservation Commission, 112 N.M. 528, 530, 817 P.2d 721, 723 (1991).

9. The Commission has expressly recognized the standard for admissibility of evidence in Rule 1212, which provides as follows:

Full opportunity shall be afforded all interested parties at a hearing to present evidence and to cross-examine witnesses. In general, the rules of evidence applicable in a trial before a court without a jury shall be applicable, provided that such rules may be relaxed, where, by doing so, the ends of justice will be better served. No order shall be made which is not supported by competent legal evidence.

10. A de novo hearing simply means that the Commission will hear this case anew. Green v. Kase, 113 N.M. 76, 823 P.2d 318 (1992.) In

Green, the Court held that on a de novo appeal the court should not require the trier of fact to review the entire transcript from the case below. Id. Even then, the Division hearing transcript can be used for impeachment at the Commission hearing and “for any other evidentiary purpose.” Id. At 113 N.M. at 78 (authorizing use of Human Rights Commission hearing transcript in de novo appeal to district court).

11. The fact that the hearing before the Commission is de novo has no bearing on the Commission taking administrative notice of Division orders, transcripts of sworn testimony or exhibits from prior Division hearings in related proceedings. City of Albuquerque v. Leatherman, 74 N.M. 780, 399 P.2d 108 (1965) (district court may take judicial notice of municipal ordinance in de novo appeal from municipal court); Attorney General v. New Mexico Public Service Commission, 111 N.M. 636, 808 P.2d 606 (1991) (court could take judicial notice of unappealed PSC decision in related case); Miller v. Smith, 59 N.M. 235, 282 P.2d 715 (1955) (court could take judicial notice of closely interwoven cases); Transcontinental Bus Systems, Inc. v. State Corp. Commission, 56 N.M. 158, 241 P.2d 829 (1952) (administrative agency can take administrative notice of results reached in other cases if notice made of record and facts noted are specified).

12. It is unclear what Pendragon fears from the knowledge to be gained by the Commission’s learning of the extensive inquiry and understanding of the subject formations contained in prior Division orders, transcripts of sworn testimony, and exhibits admitted in related proceedings which pertain to and

foreshadow some of the very issues being litigated here. At a minimum, Pendragon should be required to specify the specific documents or portions of transcripts to which it objects, and demonstrate, if it can, why such evidence is irrelevant or otherwise inadmissible.

13. The very reason that the district court referred this matter to the agency, at Pendragon's repeated urging, is the institutional expertise the Commission has accumulated from dealing with complex oil and gas issues. Now Pendragon wants all that experience ignored. The Commission should not be required to hear this case in a vacuum, uninformed by prior Division Orders in related proceedings which help delineate the parties' rights, the boundary between the formations at issue, and which help establish that Pendragon knew (both itself and through its agent Paul Thompson) that it was perfring its Chaco wells in the Fruitland Formation and that its fracture stimulations were certain to cause communication with the Fruitland Formation. (David Catanach, the Division hearing examiner in Cases 9420 and 9421 can authenticate the Division Orders if Pendragon objects to the administrative notice procedure).

14. It is undisputed that the Honorable Art Encinias has entered a preliminary injunction in the related district court proceeding shutting in Pendragon's Chaco wells. The Division entered a similar order in this proceeding. Again, it is unclear whether Pendragon objects to the Commission taking administrative notice of the Preliminary Injunction order and, if so, the basis for the objection.

15. Exhibit 6 in the Division hearing was a copy of the Presentation and Exhibits for the San Juan Basin Coalbed Methane Spacing Study, which was introduced and accepted as an exhibit in Division Case No. 9420. The San Juan Basin Coalbed Methane Committee was commissioned in 1989 by the New Mexico Oil Conservation Division and the Colorado Oil and Gas Conservation Commission to assist in the development of appropriate field wide rules for well spacing and conservation related to coalbed methane development in the Basin. A.M. "Mickey" O'Hare, who will testify on behalf of Whiting in the Commission proceeding, was a member of the Coalbed Methane Committee and can authenticate the report. Paul Thompson, the contractor who oversaw the fracture stimulation work on the Pendragon Chaco wells, was also a member of the Coalbed Methane Committee. The study is relevant because it includes findings upon which the Division relied in Case No. 9420 for the creation of the Basin-Fruitland Coal Gas Pool, including estimates of coal seam gas reserves in place, identification of the physical characteristics of coal seam gas, the geologic model and reservoir models for the Fruitland formation, and other findings which are relevant and material to the issues the Commission will be called upon to decide in this proceeding.

16. Exhibit 7 admitted in the Division proceeding was a copy of the transcripts of the hearings before the Division in Cases 9420 and 9421. Admittedly, the entire transcript from those proceedings is unnecessary to the issues presented in this proceeding. Whiting does intend to submit for the Commission's reconsideration select portions of these transcripts which relate to


(1) the method (and factors considered) by which the Division delineated the Basin-Fruitland Coal Gas Pool in Case No. 9420 and restricted the Pictured Cliffs formation in Case No. 9421, (2) the evidence related to the interface and interaction between the Fruitland formation and the Pictured Cliffs formation in the area in question, (3) the method by which the Division has previously established the boundary between the Fruitland formation and the Pictured Cliffs formation, (4) evidence regarding the different characteristics of coal seam gas and conventional gas produced through the Pictured Cliffs formation, and (5) evidence accepted by the Division in the early 1990s, regarding which Pendragon had actual and constructive notice, of the possibility of communication between the two formations resulting from improper fracture stimulations.

17. All of the exhibits regarding which the Division took administrative notice in the Division proceeding are relevant and material to the issues before the Commission in this proceeding, and represent Division orders, exhibits and transcripts of prior Division proceedings in related cases, or the contemporaneous district court preliminary injunction in the lawsuit Whiting has filed against Pendragon. All of these exhibits should be accepted by the Commission under the standard of fundamental fairness and because the admission of such exhibits will serve the ends of justice and provide the Commission with a full and complete historical background for the issues raised by Pendragon's Application.

WHEREFORE, based upon the points and authorities, respectfully requests that the Commission deny Pendragon's Motion in Limine in its entirety, and grant such further relief to which Whiting is entitled.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By 
J.E. GALLEGOS
MICHAEL J. CONDON
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

Attorneys for Whiting Petroleum
Corp. and Maralex Resources,
Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of Whiting's Response in Opposition to Pendragon's Motion in Limine to be mailed on this 12th day of June, 1999 to the following:

J. Scott Hall, Esq.
Miller, Stratvert & Torgerson, P.A.
P.O. Box 1986
Santa Fe, NM 87501-1986


MICHAEL J. CONDON

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED BY)
 THE OIL CONSERVATION DIVISION FOR THE)
 PURPOSE OF CONSIDERING:) CASE NO. 11,996
)
 APPLICATION OF PENDRAGON ENERGY)
 PARTNERS, INC., AND J.K. EDWARDS)
 ASSOCIATES, INC., TO CONFIRM PRODUCTION)
 FROM THE APPROPRIATE COMMON SOURCE OF)
 SUPPLY, SAN JUAN COUNTY, NEW MEXICO)

REPORTER'S TRANSCRIPT OF PROCEEDINGS, Volume IIIEXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

July 30th, 1998

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, July 30th, 1998 (Vol. III), at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
 (505) 989-9317

EXHIBIT "A"

1 the ~~order~~ MR. CARROLL: -- part of a set.

2 MR. CONDON: Yeah, part of a set that were
3 rubber-banded together.

4 5 -- Or 6 is right there.

5 EXAMINER CATANACH: Okay, Exhibits -- Any
6 objection to the admission of those exhibits?

7 MR. HALL: It's -- Clarify for what purpose they
8 are being tendered.

9 You know, the order that issues from this case is
10 supposed to be based on the record and evidence presented
11 in this case.

12 I assume that the Exhibits 5, 6 and 7 are being
13 tendered for the purpose to have you take administrative
14 notice of them, simply.

15 They're not going to be tendered as evidence, *per*
16 *se*; is that correct?

17 MR. CONDON: Well, 1 through 7, I'm asking that
18 you take administrative notice of your orders and the
19 hearing transcript and the exhibits that have been entered
20 in prior administrative proceedings.

21 I think you're entitled -- You know, there was
22 testimony that was given under oath in those proceedings,
23 exhibits that were accepted in the prior proceedings that
24 went into the establishment of the pools and recognition of
25 the stratigraphic locations and the vertical boundaries of

1 the formations that are at issue in this proceeding right
2 here.

3 And so I think it's sworn testimony, it's
4 exhibits that have been admitted and it's information and
5 evidence that you can take into consideration in your
6 ultimate ruling in this case.

7 MR. CARROLL: As well as the preliminary
8 injunction?

9 MR. CONDON: Correct.

10 MR. HALL: The rules and statutes on taking
11 notice provide that an adjudicatory body may take notice of
12 fact.

13 And the problem is, in the transcript of the
14 hearings, for example, there is evidence, there's
15 countervailing evidence, there's argument of counsel,
16 there's opposing materials presented that may or may not
17 constitute fact.

18 So given that understanding, I think you can
19 accord it the weight it deserves.

20 But to the extent that it is not fact you may not
21 take notice of it, so --

22 MR. CARROLL: I think we understand that, Mr.
23 Hall.

24 EXAMINER CATANACH: Okay. With that noted, I
25 will admit Exhibits 1 through 7.

JUN 16 '99 10:01AM

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FROM: J. Scott Hall, Esq.

OPERATOR: Amanda Olsen

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PLEASE REPLY TO SANTA FE

June 16, 1999

BY FACSIMILE TRANSMISSION

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

Re: NMOCD Case No. 11996; Application of Pendragon Energy
Partners, Inc., San Juan County, New Mexico (Order No. R-11133)

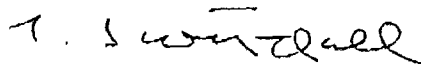
Dear Ms. Wrotenbery:

This morning, I received Whiting's and Maralex's Response In Opposition To Motion To Compel Compliance With Subpoena. In the interests of time, I do not intend to file a reply as I believe this matter has been sufficiently briefed and is ready for decision.

I will see to it that copies of the Whiting/Maralex Response are sent to Commissioners Bailey and Lee.

Thank you.

Very Truly Yours,



J. Scott Hall

JSH:ao

cc: J. E. Gallegos, Esq. (by facsimile)
Lyn Hebert (by facsimile)
Jamie Bailey
Dr. Robert Lee

6304/20253/wrotenbery1t8.doc

GALLEGOS LAW FIRM

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CLIENT: WHITING
CLIENT NO.: 98-266.00

DATE: June 16, 1999

TO: Lori Wortenberry

COMPANY: New Mexico Oil Conservation Division

TELEFAX NO.: (505) 827-8177

FROM: J.E. Gallegos

MESSAGE:

NUMBER OF PAGES INCLUDING COVER SHEET: 2

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GALLEGOS LAW FIRM

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June 16, 1999
(Our File No. 98-266.00)

J.F. GALLEGOS *

VIA TELECOPY

J. Scott Hall
Miller, Stratvert, Torgerson
& Schlenker, P.A.
150 Washington, Suite 300
Santa Fe, New Mexico 87501

Re: Application of Pendragon Energy Partners et al. To Confirm Production
From the Appropriate Common Source of Supply, OCC Case No. 11996

Dear Scott:

This never stops. Since we have learned that if you say something in a pleading or a letter that it is not expressly contravened for you it becomes gospel, I will most briefly respond to your fax of June 15, 1999.

There is no "understanding" that discovery will be exchanged June 23rd. That is something you proposed. Our position is that the exchange should have happened days ago and we are ready to do it now.

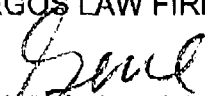
There are no "non-expert documents". Bruce Williams, employed by Whiting, and Mickey O'Hare, employed by Maralex, testified as experts. Your Messrs. Nicols and Blauerer did likewise. The subject materials from Whiting and Maralex they relied upon will be exchanged, as will the Holditch materials, when we are to receive production from Pendragon.

Why don't we stop this and just exchange the documents immediately!

Sincerely,

GALLEGOS LAW FIRM, P.C.

By


J.F. GALLEGOS

JEG:sa

cc: Marilyn Hebert
Lori Wortenberry
Jamie Bailey
Dr. Robert Lee
John Hazlett
Mickey O'Hare
ioc: Michael J. Condon

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Natural Resources-Oil and Gas Law

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

**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**

**OCD CASE NO.
11996**

**WHITING'S AND MARALEX'S RESPONSE
IN OPPOSITION TO MOTION TO COMPEL
COMPLIANCE WITH SUBPOENA**

Whiting Petroleum Corporation and Maralex Resources, Inc. (collectively "Whiting"), hereby file their Response in Opposition to the Motion to Compel Compliance with Subpoena filed in this matter by applicants (collectively "Pendragon"). Pendragon's Motion is based upon half-truths and misrepresentations, and represents a monumental waste of the Commission's valuable time and resources. Whiting has been ready, willing and able for weeks to mutually exchange documents with Pendragon as agreed upon by the parties at the March 30, 1999 Status Conference, as reflected in the Commission's May 11, 1999 Scheduling Order, copy attached as Exhibit A. Pendragon has only its own unwillingness to exchange documents to blame for the fact that it has not yet received the Whiting documents in this matter.

In specific response to Pendragon's Motion, Whiting states as follows:

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OIL CONSERVATION DIV.

1. Pendragon filed its Application for Hearing De Novo on or about February 18, 1999. Whiting filed its Application for Hearing De Novo as to Limited Issues on February 23, 1999.

2. Pendragon issued subpoenas duces tecum to Maralex, Whiting, and Whiting's expert witness (Holditch) on or about February 25, 1999.

3. In response to Pendragon's subpoenas, Whiting filed a Motion for Stay of Proceedings and to Quash Subpoenas Duces Tecum on March 3, 1999. A copy of that Motion is attached hereto as Exhibit B, because Pendragon attached only "excerpts" as Exhibit D to its Motion.

4. On March 30, 1999, a Status Conference was held before the Commission's counsel. Counsel for Whiting and counsel for Pendragon attended the Conference. At that Conference, the parties reached an agreement that they would mutually exchange underlying raw data including but not limited to production data, pressure data, and other data which pertained to the Chaco wells and the Whiting coal seam gas wells at issue in the Application. Counsel for Pendragon agreed that Pendragon would mutually produce such raw data without the need for a separate subpoena to be served by Whiting. Although the parties originally agreed to the mutual exchange on or before April 30, that deadline was extended by mutual agreement.

5. On May 11, 1999, the Commission issued its Scheduling Order attached as Exhibit A. On the issue of discovery, the Commission ruled: "Each party was to have provided the documents requested by the other party by

April 30, 1999.” The Commission’s Order clearly contemplated a mutual exchange of raw data and non-objectionable (a interpretive analysis) documents.

6. Whiting stands ready, willing and able to exchange data with Pendragon on the previously agreed mutual production basis. Whiting has been prepared for a mutual exchange of documents, and has been attempting to accomplish such, since May 21, 1999. Attached as Exhibits C and D are copies of correspondence dated May 21, 1999 and June 3, 1999 from Whiting’s counsel to Pendragon’s counsel.

7. For reasons known only to Pendragon, Pendragon continues to insist that Whiting be required to produce underlying, raw data first, with nebulous promises of reciprocation by Pendragon at some point in the future. Not only is such a proposal inconsistent with the parties’ prior agreements, but it threatens to impede Whiting’s ability to prepare for the Commission hearing. Whiting has already had experience before the Division with Pendragon refusing to produce relevant documents. In the proceeding before the Division, Pendragon produced water production data related to the Chaco wells,¹ only one (1) day prior to the Division hearing and only then under order from the Division’s counsel.

WHEREFORE, Whiting respectfully requests that the Commission deny Pendragon’s Motion, set a date certain for the mutual exchange of underlying, raw data pertaining to all wells at issue in this Application, and for such further relief as the Commission deems proper.

¹ The very fact that there are significant water production reports associated with the Chaco wells confirms that those wells are not producing from the Pictured Cliffs formation.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By 

J.E. GALLEGOS

MICHAEL J. CONDON

460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

Attorneys for Whiting Petroleum
Corp. and Maralex Resources,
Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of Whiting's and Maralex's Response in Opposition to Motion to Compel compliance with Subpoena to be mailed on this 15th day of June, 1999 to the following:

J. Scott Hall, Esq.
Miller, Stratvert & Torgerson, P.A.
P.O. Box 1986
Santa Fe, NM 87501-1986


MICHAEL J. CONDON



MAY 12 '99 PM 1:28

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.

SCHEDULING ORDER

The parties to this *de novo* case pending before the Oil Conservation Commission ("Commission") are: Pendragon Energy Partners, Inc., Pendragon Resources, L.P., and J.K. Edwards Associates, Inc. ("Pendragon"); and Whiting Petroleum Corporation and Maralex Resources, Inc. ("Whiting"). Pendragon is represented by J. Scott Hall; Whiting is represented by J.E. Gallegos and Michael Condon.

The parties' attorneys met with the Commission attorney, Marilyn S. Hebert, on March 30, 1999, to discuss the following: a schedule for discovery including the subpoena issues raised by the parties; witness and exhibit lists; the use of prefiled prepared written testimony; stipulation as to facts; and the length and schedule for the *de novo* hearing.

The following is the schedule for discovery and filing dates in advance of the *de novo* hearing:

Discovery

Documents: Each party was to have provided the documents requested by the other party by **April 30, 1999.**

EXHIBIT "A"

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amc
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Witness lists: The parties must file with the Oil Conservation Division ("Division") a list of the witnesses they intend to call to testify at the *de novo* hearing by **June 4, 1999**. The parties must indicate on the witness list those witnesses who will be called as expert witnesses.

All discovery must be completed by **July 16, 1999**.

Prepared Written Testimony and Exhibit List

The parties must file with the Division prepared written testimony including exhibits of their expert witnesses by **July 23, 1999**. The expert witness must be present at the *de novo* hearing to adopt, under oath, his prepared written testimony, subject to cross-examination and motions to strike. The pages of the prepared written testimony must be numbered and must contain line numbers on the left-hand side of the page. The parties must file with the Division four copies of each witness's testimony.

By **July 23, 1999**, the parties must file a list of those exhibits they intend to introduce at the *de novo* hearing that are not part of the prepared written testimony.

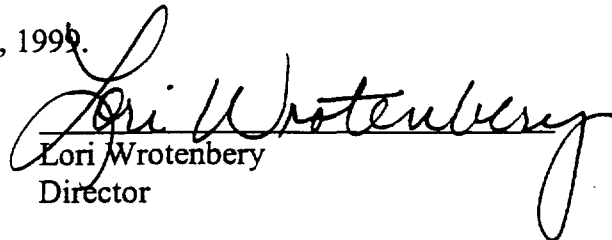
Stipulation of Facts

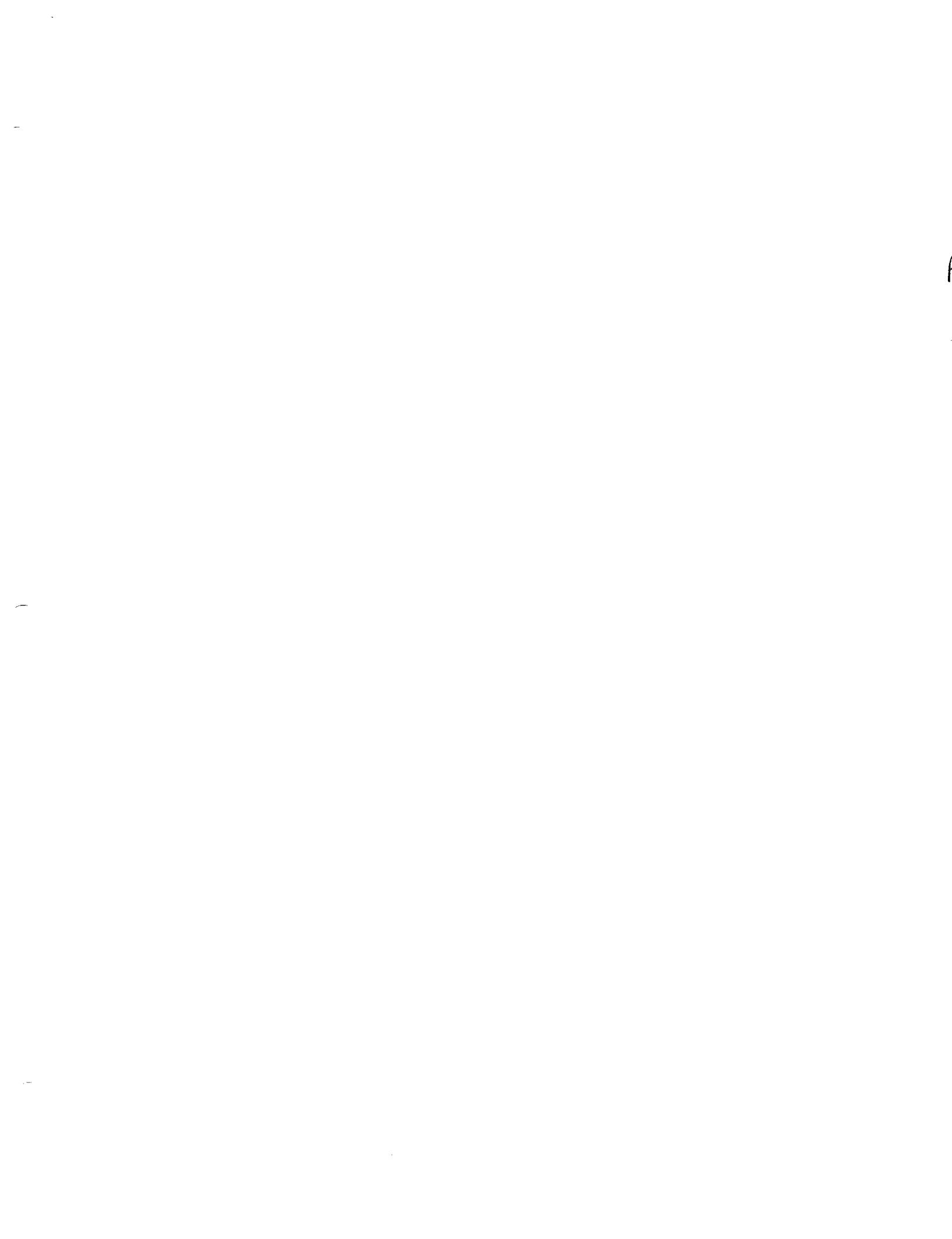
The stipulation as to facts shall be filed with the Division by **July 23, 1999**.

Hearing Dates

The parties have indicated that the *de novo* hearing will require four or more days. The dates for the *de novo* hearing are **August 12, 13, 19 and 20, 1999**.

Done this 11th day of May, 1999.


Lori Wrotenbery
Director



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

**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**

OCD CASE NO. 11996

OIL CONSERVATION DIV.
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**MOTION FOR STAY OF PROCEEDINGS
AND TO QUASH SUBPOENAS DUCES TECUM**

Whiting Petroleum Corporation ("Whiting") and Maralex Resources, Inc.

("Maralex") (collectively "Whiting"), hereby request that the Oil Conservation Division ("OCD") and the Oil Conservation Commission ("OCC") enter their Order staying all further proceedings in this case and quashing subpoenas duces tecum served by applicants (collectively "Pendragon"). A stay of proceedings is justified in order to foster administrative economy and lessen the burden and expense on Whiting and Pendragon. An exhaustive and thorough decision was issued in this matter on February 5, 1999 by the OCD. Pendragon has already demonstrated an intent to unnecessarily complicate these proceedings and increase the administrative burden by filing its misnamed Motion for Partial Stay of Order R-11133. Pendragon's latest Motion, which seeks relief not requested in the OCD proceeding, and relief which is unauthorized by statute or rule, would require a separate evidentiary hearing if the OCC decides to hear that Motion.

All issues that would be tried to the OCC in a de novo appeal will necessarily be determined in the pending litigation in Santa Fe District Court styled

Whiting, et al. v. Pendragon, et al. Cause No. D-0101-CV-980129S. Granting this Motion will assure both parties' right to a full and complete adjudication of their claims without duplication of effort and cost.

As grounds for this Motion, Whiting states as follows:

FACTUAL BACKGROUND

1. Whiting filed its Complaint for Tortious Conduct, and for Damages and Equitable Relief on May 26, 1998. Whiting simultaneously filed a Verified Application for Preliminary Injunction seeking to have defendants' Chaco gas wells, located in the San Juan Basin, San Juan County, New Mexico, shut-in. Whiting owns interests in the Basin-Fruitland Coal Gas pool, (a/k/a the Fruitland Formation) which overlies the Pictured Cliffs Formation in which Pendragon owns interests and from which the Chaco gas wells are authorized to produce.

2. Whiting contends that Pendragon caused communication with the Fruitland formation by restimulation work performed on the Chaco gas wells in 1995, and that Pendragon has produced Whiting's coal seam gas from the Chaco gas wells since 1995. Following hearing on June 29, 1998, the Court entered a Preliminary Injunction based on a finding that Pendragon was, and had been since 1995, converting Whiting's gas. A copy of the Preliminary Injunction is attached as Exhibit A.

3. Pendragon, on May 26, 1998, filed its Application to Confirm Production from the appropriate Common Source of Supply in OCD Case No. 11996. Pendragon's Application concerns the same Chaco wells shut-in by the Court's Preliminary Injunction Order. Pendragon sought an Order finding that there was no communication between the Fruitland and Pictured Cliffs formation, and holding that

Whiting and Pendragon were producing only from the respective formation in which each owned its interest.

4. On July 6, 1998, the Court entered its Order denying Pendragon's Motion to Dismiss for Lack of Subject Matter Jurisdiction. Pendragon had argued that the Court lacked jurisdiction over the dispute based on Pendragon's Application. The Court denied Pendragon's Motion, specifically retaining jurisdiction of all claims that were not susceptible of relief through the OCD. The Court, as a matter of comity, deferred to the OCD on matters within the jurisdiction of the OCD. A copy of the Court's July 6, 1998 Order is attached as Exhibit B.

5. The OCD held an exhaustive three-day fact-finding hearing in this matter on July 28-30, 1998. Pendragon contended at that hearing, and in proposed findings submitted to the OCD, that its restimulation work could not have caused communication with the Fruitland Formation based on Pendragon's theory that the physical characteristics of the Fruitland Formation would prevent communication between the formations. Both parties incurred significant expense, and the OCD was significantly burdened, by the time, effort and cost associated with the hearing.

6. On August 21, 1998, within days of submitting its proposed Findings to the OCD, Pendragon filed its Answer and Counterclaim in the District Court proceeding, in which it alleges that there is communication between the Fruitland Formation and the Pictured Cliffs Formation. These allegations are inconsistent with the position taken by Pendragon before the OCD.

7. On September 29, 1998, the District Court entered its Order Extending the Preliminary Injunction until further order of the Court pending the decision from the OCD. A copy of that Order is attached as Exhibit C.

8. On November 10, 1998, on Pendragon's Motion to Stay Discovery, the District Court entered an Order of Stay of Discovery "pending resolution of the merits of the administrative proceeding by the New Mexico Oil Conservation Division in NMOCD Case No. 11996, or until further order of the Court." A copy of that Order is attached as Exhibit D. Whiting has moved the Court for its Order lifting the stay on discovery. Pendragon has refused to agree to that Motion.

9. On February 5, 1999, the OCD issued its Order of the Division in this matter. The Division found that Pendragon, in stimulating its Pictured Cliffs wells, had caused communication with the Fruitland coal zone in which plaintiffs exclusively owned interests; that Pendragon had been producing gas belonging to Whiting since 1995 from those wells, and that Pendragon's actions had violated the correlative rights of Whiting. The OCD ordered that the wells be shut-in pending further Order of the Division, and invited Pendragon to attempt to work out an allocation formula with Whiting, or appear before the OCD in order to present evidence to the OCD of a proper allocation.

10. Pendragon has made no effort to develop an allocation formula. Pendragon filed its Application for Hearing De Novo on February 18, 1999. Whiting, in order to preserve its right to appeal in the case, filed an Application for Hearing de Novo as to Limited Issues on February 23, 1999.

11. Pendragon has had subpoenas issued by the OCD directed to Whiting, Maralex, and Whiting's expert witnesses who appeared and testified at the OCD hearing in July, 1998, S.A. Holditch and Associates, Inc., College Station, Texas ("Holditch").¹ Copies of those subpoenas are attached as Exhibits E-G.

12. On March 1, 1999, Pendragon filed a Motion for Partial Stay of Order R-11133. It is certainly understandable that Pendragon is unhappy with portions of that Order. However, in ordering that Pendragon's Chaco wells be shut-in, the OCD reached the same conclusion as the Honorable Art Encinias in the district court proceeding. Following the exhaustive evidentiary hearing before the OCD, the OCD found that the Pictured Cliffs Formation was in a state of depletion prior to Pendragon's restimulation work in 1995, that the Pendragon restimulation efforts were not solely attributable to overcoming skin damage in the wells, that production from the Whiting coal seam gas wells had been affected by production from the Chaco wells, that the fracture stimulations performed on the Chaco wells resulted in fracturing of the Fruitland coal formation, that Pendragon failed to present sufficient evidence to establish that the fracture stimulations on the Whiting coal seam gas wells resulted in the fracturing of the Pictured Cliffs formation, that the Pendragon restimulation procedures in 1995 caused communication between the Pictured Cliffs formation and the Fruitland formation, and that the communication caused by Pendragon's restimulation procedures "has resulted in the violation of Whiting's correlative rights." The OCD expressly noted that "Pendragon presented no proposed resolution in the event the Division determines that

¹ The subpoena was addressed to and served upon Schlumberger Technology Corp., which purchased Holditch in 1998.

communication between the Basin-Fruitland coal and WAW Fruitland Sand – Pictured Cliffs Gas Pools has been established within its Chaco wells.”

13. Apparently, Pendragon is not satisfied that it stole Whiting’s gas for three years before both the District Court and the OCD ordered Pendragon to stop. In the ultimate act of chutzpah, Pendragon now has filed its Motion for Partial Stay, which does not really seek a stay of that Order, but rather asks the OCD and/or OCC to overturn Order R-11133, award relief contrary to that requested by Pendragon before the OCD, save Pendragon from its own failure to introduce evidence to justify its Application to the OCD, overturn the Division’s Findings prior to a hearing on the de novo appeal, and order the Whiting coal seam gas wells shut-in on a theory which has already been rejected by the OCD.² There is no authority in either the Oil and Gas Act or the applicable rules and regulations for Pendragon’s latest procedural maneuvering.

14. Counsel for Pendragon has indicated that he anticipates that a hearing before the OCC will take even longer than the three long days of testimony before the Examiner, and counsel for Whiting concur in that projection.

LEGAL ARGUMENT AND AUTHORITY

I. THE OCC SHOULD STAY PROCEEDINGS ON THE DE NOVO APPEAL

15. NMSA 1978 Section 70-2-13 (1995 Repl.) provides that any party of record adversely affected by a decision of the OCD shall have the right to have the matter heard do novo before the OCC upon application filed with the Division. No specific procedure for the conduct of such de novo appeals is contained in the statute. OCD Rule 1220 provides that the matter or proceeding be set for hearing before the

² Whiting will file a separate, substantive response to Pendragon’s Motion.

OCC at the first available hearing date following the expiration of fifteen (15) days from the date such application is filed with the OCD.

16. This case is unique in several ways. First, it is clear that the parties are unable to agree on anything except that each vigorously disputes the position of the other. Second, unlike most administrative cases, there is a pending lawsuit between these same parties where all the same issues that would be heard by the OCC will necessarily be tried by the district court, regardless of any decision ultimately issued by the OCC. The district court can and will entertain issues that the OCC cannot. The OCC has no power to award either compensatory or punitive damages. While the OCC can shut-in wells, it cannot grant broad injunctive relief nor decide issues of ownership. As Pendragon's actions since the entry of the OCD Order in this matter indicate, one or both parties will appeal any decision by the OCC to the First Judicial District Court, where the lawsuit previously filed by Whiting is already pending.

17. This dispute is also unique in the time, effort, cost and expense which will be required if the OCC sets this matter for hearing on the de novo appeals. The hearing days before the OCD Examiner started at 8:30 a.m. and went until after 6:00 p.m., and after 7:00 the final day. Numerous witnesses were called. All of the experts were from out-of-state. Significant administrative time and expense, as well as the time and expense of the parties was incurred in presenting the matter for evidentiary hearing before the OCD. A huge block of administrative time was consumed in preparing the Order of the Division, as reflected by the detail, depth and precision of that Order. Any de novo hearing before the OCC promises to be more involved, time-consuming and expensive than that before the OCD.

18. Pendragon's Motion for Partial Stay of Order R-11133 presages an effort by Pendragon in this administrative proceeding to substantially increase the administrative burden in the hopes that the OCD or OCC will grant Pendragon relief to which it is not entitled, regarding which it has submitted no substantive supporting evidence, and which is inconsistent with the findings of the Division in Order R-11133. Pendragon's Motion for Partial Stay is specious, and seeks to turn what will otherwise be a complicated and involved hearing on the *de novo* appeal into a series of mini-trials on preliminary motions. The best and most effective way to deal with the promised onslaught of pleadings which the parties and the administrative agency can expect from Pendragon is to stay all proceedings in this matter in order to allow the district court to schedule evidentiary hearings on motions, set the case for trial, and resolve the dispute between the parties.

19. An administrative agency has the inherent authority to regulate its docket, and to take such action as it believes is necessary in the interest of administrative economy, in order to preserve administrative resources, and lessen the cost, burden and expense of private parties in the resolution of disputes. A stay of proceedings before the OCC in order to allow the parties to litigate their claims in the district court will benefit administrative economy, and lessen the burden and cost on the parties necessary to secure an ultimate resolution of their dispute. A stay of proceedings before the OCC will not deprive any party of their right to fully litigate any issue, nor will it deprive any party of their right to a full day in court. In fact, since both the district court and the OCD have confirmed that Pendragon has been converting Whiting's gas and violating Whiting's correlative rights, Pendragon's request for the

OCC de novo hearing only serves to delay the day Whiting can obtain a damages judgment for Pendragon's wrongs.

II. **ALTERNATIVELY – ANY HEARING BEFORE THE OCC SHOULD OCCUR ONLY AFTER DISCOVERY**

20. If the OCC is to hear this de novo appeal, the OCC should, at a minimum, authorize both parties to conduct discovery in the form of requests for production and depositions of witnesses each intends to call at the hearing. The record of any proceeding before the OCC will constitute the administrative evidentiary record regarding this dispute. Any appeal from an OCC decision is limited to a review of the record of the hearing held before the OCC. NMSA 1978, §§ 70-2-25B and 26 (1995 Repl.).

21. Administrative proceedings must conform to the fundamental principles of justice and due process requirements. This requires that the administrative process authorize pre-trial discovery under appropriate circumstances such as exist here. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975). Discovery procedures are expressly authorized under NMSA 1978, § 70-2-8 (1995 Repl.).

22. Whiting was hampered in the proceeding before the OCD in this case by Pendragon's attempt to stonewall production of documents prior to the hearing. Some documents were produced by Pendragon, but only upon order of the OCD, one (1) day prior to the hearing. Whiting anticipates that Pendragon will similarly attempt to resist a fair and full exchange of evidence, expert opinions, and facts related to the matters raised by Pendragon's application, if in fact Pendragon still stands on its original Application before the OCC.

23. If the OCC is to hear this de novo appeal, it should set this matter for hearing in August or September, 1999, establish a schedule for mutual production of documents between the parties, an exchange of witness lists, setting a timetable for discovery in the form of depositions of the parties' representatives and experts who will testify at any OCC hearing, and require that the parties provide the OCC with a Pre-Hearing Report which sets out, to the extent possible, stipulated facts which the parties can identify following discovery.

III. **THE SUBPOENAS SERVED BY PENDRAGON SHOULD BE QUASHED**

24. Pendragon has served a subpoena in this matter on Schlumberger, in order to secure documents from Holditch, Whiting's expert witness in the administrative proceeding. Holditch is not a party, and has its offices in College Station, Texas. The subpoena seeks all documents in the possession of Holditch related to this dispute, including documents that would constitute work product.

25. The service of the subpoena on Holditch is invalid under Rule 1-045B(3), NMRA 1999. The subpoena was issued by the OCD from Santa Fe, New Mexico, and served on CT Corporation. The OCD's subpoena power is set by Statute (§ 70-2-8) and rule, and is no greater than the power authorized by Rule 1-045 NMRA 1999. The subpoena power of an administrative agency is limited. A court or administrative agency can require a subpoenaed party to appear within a geographic area within one hundred (100) miles of where the person resides, is employed or transact business. Rule 1-045. College Station, Texas, where the Holditch documents are maintained, is more than one hundred (100) miles from Santa Fe.

26. Rule 1-026B(5) NMRA 1999 sets limits on discovery from expert witnesses without an order from the Court. Pendragon has not sought permission from the OCD or the OCC for the expanded discovery it seeks from Holditch. Unless the parties agree otherwise, any discovery from experts should be limited to that provided under Rule 1-026B(5) NMRA 1999, which authorizes a party to serve interrogatories seeking disclosure of the subject matter of testimony, the opinions, and a summary of the grounds for each opinion. In no event is Pendragon entitled to discovery of the Holditch work product.

27. To the extent Pendragon seeks raw data, that raw data is prepared and maintained by Whiting. Any raw data in the possession of Holditch is duplicative of raw data which has or will be produced by Whiting in the context of this proceeding. To the extent that Pendragon's request for production is not limited to raw data, but includes a request for interpretations, analysis and other materials comprising the work product of Holditch, Whiting objects to the request. The policy of the OCD and OCC requires the turnover of raw data, but not interpretations thereof made or prepared by the parties subpoenaed. See Commission ruling dated February 15, 1991 in Case No. 10211 (application of Santa Fe Energy Operating Partners, L.P. for compulsory pooling). The subpoena served on Schlumberger should be quashed.

28. Pendragon has also served subpoenas on Whiting and Maralex. On the grounds previously stated, any discovery in this proceeding should be stayed in order to allow the parties to litigate all pending issues in the district court proceeding. If the OCC intends to hear this matter, any discovery should be stayed pending a Pre-Hearing Conference at which time a schedule for any further administrative

proceedings, including discovery, may be established and the parties' rights and obligations regarding discovery identified and clarified.

29. There is presently no hearing on the de novo appeal scheduled before the OCC. A preliminary conference is scheduled for March 30, 1999. If the OCC grants the Motion for Stay of Proceedings, production of documents pursuant to the subpoenas is unnecessary. If the OCC denies such motion, Whiting requests that it have sufficient time after a discovery schedule is agreed upon to produce documents reflecting raw data.

WHEREFORE, Whiting respectfully requests that the OCC stay all proceedings in this matter and defer to the district court of Santa Fe County for resolution of all issues between the parties. Alternatively, if the OCC determines that it will hear this matter on the de novo appeal, it should quash the subpoena issued and improperly served on Holditch, and quash the subpoenas issued and served on Whiting and Maralex until such time as the Pre-Hearing Conference is held and a orderly discovery and hearing schedule is established.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By


J.E. GALLEGOS

MICHAEL J. CONDON

460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

Attorneys for Whiting Petroleum Corp.
and Maralex Resources, Inc.

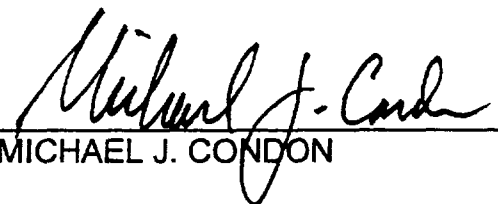
CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing Motion for Stay of Proceedings and to Quash Subpoenas Duces Tecum to be mailed on this 3rd day of March, 1999 to the following:

J. Scott Hall, Esq.
Miller, Stratvert & Torgerson, P.A.
P.O. Box 1986
Santa Fe, NM 87501-1986

Rand Carroll, Esq.
New Mexico Oil Conservation Division
2040 South Pacheco Street
Santa Fe, NM 87505

Marilyn S. Hebert, Esq.
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505



MICHAEL J. CONDON

Michael's Drive
ing 300
Fe, New Mexico 87505
Phone No. 505-983-6686
Fax No. 505-986-1367
Fax No. 505-986-0741

May 21, 1999
(Our File No. 98-266.00)

J.E. GALLEGOS *

VIA TELECOPY

J. Scott Hall
Miller, Stratvert, Torgerson
& Schlenker, P.A.
150 Washington, Suite 300
Santa Fe, New Mexico 87501

Re: Whiting et al. v. Pendragon et al. SF-CV-98-01295
Application of Pendragon OCD No. 11996

Dear Scott:

This is in reply to your fax of this date and to two letters from you dated May 18, 1999 which were received today. I will try to cover all pending items.

Order Allowing Testing. I have faxed a copy of the Order received today to our clients and to Holditch and Associates. I will be discussing it with them by phone on Monday. Please be advised, however, that I have business travel out of state next Tuesday through Thursday, and meetings set on the Friday when I return. After Memorial Day I will get back to you in the first week in June on how we will proceed. This should not cause any time problem given the testimony filing and hearing schedule we are under.

Exchange of Data. By referencing only your subpoenas to our technical people you have perhaps forgotten what transpired at the March 30, 1999 pre-hearing conference in regard to the Whiting objection to your subpoenas. It was understood that there would be a mutual exchange of raw data and information. We received the materials from both Brad Robinson and Walt Ayers some time back, as I informed you, but it has been a very time consuming task to apply Bates numbers. Our paralegals are having to deal with items like long rolls of well log copies. The like materials (most of it duplication) is being transmitted to us by Whiting and Maralex. If you tell me when your clients and experts will be prepared to make a contemporaneous exchange we will have a date to aim for.

Ex-Part Communications With Commissioners. We thought and still believe that proper procedure is to file pleadings with the Commission secretary. If something needs to come to a Commissioner's attention before the hearing it is the function of the

EXHIBIT "C"

*New Mexico Board of Legal Specialization
Recognized Specialist in the area of
Natural Resources-Oil and Gas Law

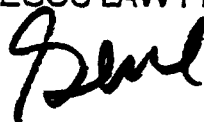
agency to distribute it. I regard it as improper, ex-parte communication for you to be sending pleadings to the Commissioners directly. While presumably, if they needed them, copies would be distributed, your Reply filed May 19, 1999 included a transparent attempt to introduce one very selective piece of testimony from the Examiner Hearing. There is no apt comparison (as you attempt in your fax) between that device and our offering in open hearing and the Examiner accepting the quite relevant hearing record on the Basin-Fruitland Pool Rules. I realize that you have taken it upon yourself to also send copies of our pleadings to the Commissioners. But let the agency do its job and decide what goes to the Commissioners.

I will be in touch week after next as indicated above.

Sincerely,

GALLEGOS LAW FIRM, P.C.

BY:



J.E. GALLEGOS

JEG/rjr

Fxc: Lynn Hebert
John Hazlett
Sherwin Artus
Mickey O'Hare
loc: Michael J. Condon
Michael P. Gross
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June 3, 1999
(Our File No. 98-266.00)

J.E. GALLEGOS *

J. Scott Hall
Miller, Stratvert, Torgerson
& Schlenker, P.A.
150 Washington, Suite 300
Santa Fe, New Mexico 87501

Re: Whiting Petroleum Corp., et al. v. Pendragon, et al.;
Santa Fe County Cause No. SF-CV-98-01295

Dear Scott:

Please be advised as follows.

Surety Bond. Attached is a study which demonstrates the dollar amount to be secured by a bond of your clients as a condition of the order temporarily lifting the preliminary injunction and allowing testing which shuts- in certain Gallegos Federal wells. I have made the calculation as directed by Judge Encinas. The amount required is \$118,000.

Terms of Order. We are interested in learning whether your clients will agree to substitute the Chaco No. 5 well for the No. 4, or do a test with each of those wells? If so, we will work with you on presenting an appropriate Order to the Court.

Exchange of documents. We have all of the Holditch data and materials and the same from Maralex. Whiting's documents are expected to arrive tomorrow. Allowing time for copying and stamping we will be willing to make an exchange for the like underlying data and source documents of your clients and experts next week. Please let me know when this can be accomplished.

Sincerely,

GALLEGOS LAW FIRM, P.C.

By


J.E. GALLEGOS

JEG:sa

fxc: David Frawley
Mickey O'Hare

ioc: Michael J. Condon
Michael P. Gross

EXHIBIT "D"

* New Mexico Board of Legal Specialization
Recognized Specialist in the area of
Natural Resources-Oil and Gas Law

Whiting/Maralex Tax Credit And Gas Sales Loss From Pendragon Pressure Tests ¹

- Gallegos Federal 26-12-6 No.2 30 days
 - Gas Sales/Tax Credits $\$2,500.58 \times 87.5\% \times 30 = \$65,640.22$
- Gallegos Federal 26-12-7 No. 1 30 days
 - Gas Sales/Tax Credits $\$2,182.93 \times 87.5\% \times 20 = \$38,201.27$
- Gallegos Federal 26-13-12 No. 1 10 days
 - Gas Sales/Tax Credits $\$1,625.86 \times 87.5\% \times 10 = \$14,226.28$

Grand Total \$118,067.76

¹ The shut-in days and impacted wells are based on ¶ 2 (c) of Pendragon's Motion to Conduct Reservoir Pressure Tests.

OIL CONSERVATION DIV
99 JUN 11 PM 5:03

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

IN THE MATTER OF:

**APPLICATION OF PENDRAGON ENERGY
PARTNERS, INC., PENDRAGON RESOURCES, L.P.,
And EDWARDS ENERGY CORPORATION TO CONFIRM
PRODUCTION FROM THE APPROPRIATE COMMON
SOURCE OF SUPPLY, SAN JUAN COUNTY, NEW MEXICO**

**CASE NO. 11996
ORDER NO. R-11133
De Novo**

**MOTION TO COMPEL
COMPLIANCE WITH SUBPOENA**

Pendragon Energy Partners, Inc., Pendragon Resources, LP and Edwards Energy Corporation, (together, "Pendragon"), moves the Commission enter its order compelling Whiting Petroleum Corporation and Maralex Resources, Inc., (together, "Whiting"), to comply with the Subpoenas Duces Tecum issued by the Commission. Pendragon also requests the Commission's expedited consideration of this matter. In support, Pendragon states:

1. At Pendragon's request, the Commission issued subpoenas duces tecum to Schlumberger/S.A. Holditch and Associates on February 17, 1999 (Exhibit A) and to Whiting and Maralex on February 25, 1999 (Exhibits B and C).

2. The February 17, 1999 subpoena sought, generally, the “underlying data” being utilized by Whiting’s experts at S.A. Holditch and Associates in conjunction with these proceedings. (See Exhibit A).¹ On the other hand, the subpoenas to Whiting and Maralex sought documents and materials of a different type, including gas analyses, produced water analyses, water hauling invoices and regulatory filings. The subpoenas also directed Whiting and Maralex to supplement their prior production of documents. (See Exhibits B and C). These subpoenas were directed to Whiting and Maralex as parties to these proceedings and did not cover “expert data” of any type.

3. On March 3, 1999, Whiting filed its Motion For Stay Of Proceedings And To Quash Subpoenas Duces Tecum. Despite its express language, Whiting objected to the February 17, 1999 subpoena directed to S.A. Holditch on the grounds it sought the experts’ work product and interpretational materials. Whiting stated a separate objection to the subpoenas directed to Whiting and Maralex, contending only that discovery be stayed until the Commission ruled on Whiting’s Motion For Stay Of Proceedings. (See Excerpts from Whiting’s motion, Exhibit D.)

4. In view of Whiting’s misinterpretation of the Holditch subpoena, counsel conferred and quickly resolved Whiting’s expert “work product and interpretive materials” objection. (See Excerpts from Pendragon’s Response For Stay Of Proceedings And To Quash Subpoenas Duces Tecum, Exhibit E.) With respect to the subpoenas to Whiting and Maralex, Pendragon noted to the Commission that Whiting had made no substantive,

¹ In accordance with the NMOCD’s practice, such materials are discoverable under NMRA 1-026.B(5) and 1-034. See also, NMRA 11-703 and 11-705.

technical or procedural objection. Instead, it was pointed out that their objection to those subpoenas was wholly contingent on their effort to have the Commission stay these proceedings.

5. Subsequently, on March 30, 1999, the Commission's counsel convened a case status conference attended by counsel for the parties. Discovery issues were discussed at the conference, including Whiting's objections to the subpoenas. It was again clarified that the subpoena to Holditch sought none of the expert's work product or interpretive materials. Consequently, it is our recollection (and is reflected in our meeting notes) that the objections to the subpoenas were withdrawn and that the requested documents would be produced by April 30th. With respect to the experts other than Holditch, it was agreed that their "underlying data" as described in the Exhibit "A" attached to the subpoena, would be exchanged by a certain date sometime in advance of the hearing. It was also agreed that the production of "field data" such as water and gas production volumes and pressure data would be exchanged prior to the hearing as well.² Each of these points was memorialized in Pendragon's Memorandum Brief On Discovery Issues filed on April 12, 1999. (See Excerpt, Exhibit F)³.

6. Just before the April 30th date for the production of the documents requested by Pendragon, the undersigned discussed opposing counsel's preoccupation with other litigation in Albuquerque and it was agreed the production of the requested documents

² Whiting and Pendragon have been cooperating in the regular exchange of pressure data for months.

³ At no time did Whiting object to or otherwise contradict this account of the discussion at the March 30th case status conference.

under the February 25th subpoenas to Whiting and Maralex, despite the fact that the record is crystal clear that those subpoenas sought no expert materials at all. (See June 8, 1999 Correspondence from Whiting's counsel, Exhibit G.) Even though the production of documents under the subpoenas to Whiting and Maralex was never linked to the resolution of the "work product" and "interpretation" objections interposed to the expert's subpoena, Whiting has improperly lumped these issues together as a device to further delay the production of "non-expert" documents.

CONCLUSION

Order R-11133 was issued on February 5, 1999 and received on February 11th. Pendragon's Application for Hearing De Novo was filed on February 16, 1999 and was followed shortly thereafter by Whiting's De Novo application on February 23rd. Pendragon wasted no time in initiating its discovery, having the Commission issue subpoenas to the Holditch expert on February 17th and separate subpoenas to Whiting and Maralex on February 25th. On the other hand, Whiting has done nothing to facilitate or otherwise pursue discovery. As with its numerous efforts to shut-down this administrative proceeding, and like its opposition to the reservoir pressure tests, Whiting has demonstrated an obstructionist attitude throughout. As a consequence, it is now near summer, and Whiting has yet to comply with discovery obligations that originated in the middle of the winter.

would be delayed a few more days. However, after the passage of some two and a half weeks, we began to make written inquiry regarding Whiting's compliance with the subpoenas. It was only then that it became clear that the parties had different understandings of their discovery obligations.

7. Whiting now contends that it was agreed that the parties would make a simultaneous exchange of the "underlying data" of all their respective experts on an as yet unspecified date. On the other hand, Pendragon contends there was definite agreement that, given the resolution of the "work product" and "interpretation" objection, the documents requested from the Holditch and Associates experts⁴ were to have been produced by April 30th and that the underlying data of all other experts would be exchanged sometime before the hearing.⁵ Pendragon also takes the position that the documents it had requested by way of the February 25, 1999 subpoenas to Whiting and Maralex were to have been produced on April 30th, as well.

8. Recollections will differ and disagreements over discovery are not unusual. Regardless, counsel are obliged to reconcile their discovery disputes and Pendragon made a good faith effort to do so. (Exhibit G is a compilation of correspondence exchanged between counsel demonstrating this effort.) In the course of this effort, Whiting continued to cite to its earlier experts' "work product" and "interpretation" objection. However, Whiting began to assert that this same objection was applicable to the documents sought


⁴ The requested Holditch documents have been in the possession of Whiting's counsel since late April.

⁵ At the time of the March 30th case status conference, the parties had not yet determined who they would be utilizing as expert witnesses. Indeed, Whiting was still scrambling to identify its experts as recently as late last week.

The Commission should issue its order requiring Whiting's immediate compliance with the subpoenas duces tecum. Moreover, given the delay that has accrued and the imminent expiration of all discovery on July 16th, this motion should be given expedited consideration.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, PA.

By 

J. Scott Hall, Esq.
Post Office Box 1986
Santa Fe, New Mexico 87504
(505) 989-9614

ATTORNEYS FOR PENDRAGON ENERGY
PARTNERS, PENDRAGON RESOURCES, L.P. AND
EDWARDS ENERGY CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Compel Compliance with Subpoena was mailed on this 11 day of June, 1999 to the following:

Dr. Robert Lee
Petroleum Resource Recovery Center
801 Leroy Place
Socorro, New Mexico 87801

Jamie Bailey
New Mexico State Land Office
310 Old Santa Fe Trail
Santa Fe, New Mexico 87504

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

J.E. Gallegos, Esq.
460 St. Michaels Drive, #300
Santa Fe, New Mexico 87505

T. J. Swan-Quill

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

IN THE MATTER OF:

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

CASE NO. 11996
ORDER NO. R-11133

OIL CONSERVATION DIV.
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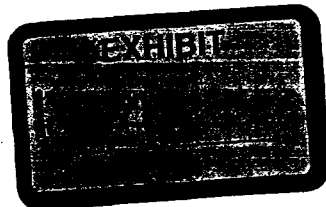
SUBPOENA DUCES TECUM

TO: Schlumberger Technology Corporation
c/o C.T. Corporations Systems
123 E. Marcy Street
Santa Fe, New Mexico 87501

Pursuant to Section 70-2-8, NMSA (1978), and Rule 1211 of the New Mexico Oil Conservation Division's Rules of Procedure, you are hereby ORDERED to appear at 9:00 a.m., on Monday, March 15, 1999, at the offices of the Oil Conservation Division, 2040 South Pacheco, Santa Fe, New Mexico 87505 and to produce the documents and items specified in attached Exhibit A and to make available to Pendragon Energy Partners, Inc. and its attorney, J. Scott Hall, Esq., for copying, all of said documents.

This subpoena is issued on behalf of Pendragon Energy Partners, Inc. through its attorneys Miller, Stratvert & Torgerson, P.A., Post Office Box 1986, Santa Fe, New Mexico 87504. (505) 989-9614

Dated this ____ day of February, 1999.



NEW MEXICO OIL CONSERVATION DIVISION

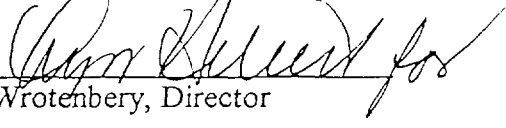
By: 
Lori Wrotenbery, Director

Exhibit A

This Subpoena Duces Tecum seeks the production and inspection of all documents and other materials in the possession of Schlumberger Technology Corporation, f/k/a and as successor to Brazos Resources Development Corporation, f/k/a and as successor to S.A. Holditch and Associates, Inc. and its agent, Bradley Robinson, P.E., relating to the following:

1. All the underlying facts, data and other materials used by you in connection with testimony given by Bradley Robinson and exhibits introduced through Bradley Robinson on July 28-30, 1998 in New Mexico Oil Conservation Division Case No. 11996 (Application of Pendragon Energy Partners, Inc., et al., To Confirm Production From Appropriate Common Source of Supply, San Juan County, New Mexico.)
2. All notes, computations, print-outs, log analyses and other similar materials relating in any way to your evaluation of the Pictured Cliffs formation wells or Fruitland Coal formation wells in the area of the subject Application, or otherwise relating to Bradley Robinson's testimony in the proceeding referenced in Paragraph 1, above.
3. All underlying data, assumptions and other materials actually utilized, or considered but not utilized, in connection with the Frac-Pro hydraulic fracturing computer simulations performed by S.A. Holditch and Associates in this case.
4. All underlying data, assumptions and other materials actually utilized, or considered but not utilized, in connection with the Pro-Mat production data analysis or reservoir volumetric analysis performed by S.A. Holditch and Associates on the Pictured Cliffs formation and/or the Fruitland Coal formation in connection with this case.

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

IN THE MATTER OF:

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

CASE NO. 11996

SUBPOENA DUCES TECUM

To: Whiting Petroleum Corporation
c/o Michael J. Condon, Esq.
Gallegos Law Firm, P.C.
460 St. Michael's Drive, Suite 300
Santa Fe, New Mexico 87501

Pursuant to Section 70-2-8, NMSA (1978), and Rule 1211 of the New Mexico Oil Conservation Division's Rules of Procedure, you are hereby ORDERED to appear at 9:00 a.m., on Thursday, March 17, 1999, at the offices of the Oil Conservation Division, 2040 South Pacheco, Santa Fe, New Mexico 87505 and to produce the documents and items specified in attached Exhibit A and to make available to Pendragon Energy Partners, Inc. and its attorney, J. Scott Hall, Esq., for copying, all of said documents.

This subpoena is issued on behalf of Pendragon Energy Partners, Inc. through its attorneys Miller, Stratvert & Torgerson, P.A., Post Office Box 1986, Santa Fe, New Mexico 87504. (505) 989-9614

Dated this 25TH day of February, 1999.

NEW MEXICO OIL CONSERVATION DIVISION

By: _____

Lori Wrotenbery, Director



EXHIBIT 'A'

1. Any supplemental documents or materials responsive to the subpoena dated February 4, 1998 and June 9, 1998 not previously produced.
2. All pressure data from the subject subject Gallegos Fruitland Coal wells from June 1998 to the present, including any data recorded, but not reported, along with any data collected on week-ends and holidays.
3. All gas, oil, and water production data from the subject Gallegos Fruitland Coal wells from the completion of the well through the present not previously provided.
4. All analyses of water and gas produced from the subject Chaco Pictured Cliffs wells and the subject Gallegos Fruitland Coal wells, including any BTU analyses, not previously provided.
5. All documents relating to all water produced and disposed of from the subject Gallegos Fruitland Coal wells, including proration reports, gauged tank volumes, disposal volumes, water disposal records, water hauling invoices, reports, reporting forms C-115's, C-133's, C-134's, etc.

RETURN OF SERVICE

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the _____ day of February, 1998, in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the Subpoena Duces Tecum.

Person making service

SUBSCRIBED AND SWORN to before me this _____ day of February, 1998.

Judge, notary, or other officer
authorized to administer oaths

My Commission Expires:

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

IN THE MATTER OF:

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

CASE NO. 11996

SUBPOENA DUCES TECUM

To: Maralex Resources, Inc.
c/o Michael J. Condon, Esq.
Gallegos Law Firm, P.C.
460 St. Michael's Drive, Suite 300
Santa Fe, New Mexico 87501

Pursuant to Section 70-2-8, NMSA (1978), and Rule 1211 of the New Mexico Oil Conservation Division's Rules of Procedure, you are hereby ORDERED to appear at 9:00 a.m., on Wednesday, March 17, 1999, at the offices of the Oil Conservation Division, 2040 South Pacheco, Santa Fe, New Mexico 87505 and to produce the documents and items specified in attached Exhibit A and to make available to Pendragon Energy Partners, Inc. and its attorney, J. Scott Hall, Esq., for copying, all of said documents.

This subpoena is issued on behalf of Pendragon Energy Partners, Inc. through its attorneys Miller, Stratvert & Torgerson, P.A., Post Office Box 1986, Santa Fe, New Mexico 87504. (505) 989-9614

Dated this 25th day of February, 1999.

NEW MEXICO OIL CONSERVATION DIVISION

By: 

Lori Wrotenbery, Director



EXHIBIT 'A'

1. Any supplemental documents or materials responsive to the subpoena dated February 4, 1998 and June 9, 1998 not previously produced.
2. All pressure data from the subject Gallegos Fruitland Coal wells from June 1998 to the present, including any data recorded, but not reported, along with any data collected on week-ends and holidays.
3. All gas, oil, and water production data from the subject Gallegos Fruitland Coal wells from the completion of the well through the present not previously provided.
4. All analyses of water and gas produced from the subject Chaco Pictured Cliffs wells and the subject Gallegos Fruitland Coal wells, including any BTU analyses, not previously provided.
5. All documents relating to all water produced and disposed of from the subject Gallegos Fruitland Coal wells, including proration reports, gauged tank volumes, disposal volumes, water disposal records, water hauling invoices, reports, reporting forms C-115's, C-133's, C-134's, etc.

RETURN OF SERVICE

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the _____ day of February, 1998, in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the Subpoena Duces Tecum.

Person making service

SUBSCRIBED AND SWORN to before me this _____ day of February, 1998.

Judge, notary, or other officer
authorized to administer oaths

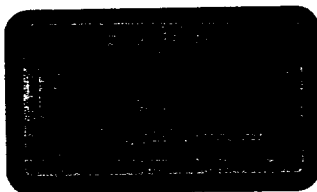
My Commission Expires:

23. If the OCC is to hear this de novo appeal, it should set this matter for hearing in August or September, 1999, establish a schedule for mutual production of documents between the parties, an exchange of witness lists, setting a timetable for discovery in the form of depositions of the parties' representatives and experts who will testify at any OCC hearing, and require that the parties provide the OCC with a Pre-Hearing Report which sets out, to the extent possible, stipulated facts which the parties can identify following discovery.

III. THE SUBPOENAS SERVED BY PENDRAGON SHOULD BE QUASHED

24. Pendragon has served a subpoena in this matter on Schlumberger in order to secure documents from Holditch, Whiting's expert witness in the administrative proceeding. Holditch is not a party, and has its offices in College Station, Texas. The subpoena seeks all documents in the possession of Holditch related to this dispute, including documents that would constitute work product.

25. The service of the subpoena on Holditch is invalid under Rule 1-045B(3), NMRA 1999. The subpoena was issued by the OCD from Santa Fe, New Mexico, and served on CT Corporation. The OCD's subpoena power is set by Statute (§ 70-2-8) and rule, and is no greater than the power authorized by Rule 1-045 NMRA 1999. The subpoena power of an administrative agency is limited. A court or administrative agency can require a subpoenaed party to appear within a geographic area within one hundred (100) miles of where the person resides, is employed or transact business. Rule 1-045. College Station, Texas, where the Holditch documents are maintained, is more than one hundred (100) miles from Santa Fe.



26. Rule 1-026B(5) NMRA 1999 sets limits on discovery from expert witnesses without an order from the Court. Pendragon has not sought permission from the OCD or the OCC for the expanded discovery it seeks from Holditch. Unless the parties agree otherwise, any discovery from experts should be limited to that provided under Rule 1-026B(5) NMRA 1999, which authorizes a party to serve interrogatories seeking disclosure of the subject matter of testimony, the opinions, and a summary of the grounds for each opinion. In no event is Pendragon entitled to discovery of the Holditch work product.

27. To the extent Pendragon seeks raw data, that raw data is prepared and maintained by Whiting. Any raw data in the possession of Holditch is duplicative of raw data which has or will be produced by Whiting in the context of this proceeding. To the extent that Pendragon's request for production is not limited to raw data, but includes a request for interpretations, analysis and other materials comprising the work product of Holditch, Whiting objects to the request. The policy of the OCD and OCC requires the turnover of raw data, but not interpretations thereof made or prepared by the parties subpoenaed. See Commission ruling dated February 15, 1991 in Case No. 10211 (application of Santa Fe Energy Operating Partners, L.P. for compulsory pooling). The subpoena served on Schlumberger should be quashed.

28. Pendragon has also served subpoenas on Whiting and Maralex. On the grounds previously stated, any discovery in this proceeding should be stayed in order to allow the parties to litigate all pending issues in the district court proceeding. If the OCC intends to hear this matter, any discovery should be stayed pending a Pre-Hearing Conference at which time a schedule for any further administrative

proceedings, including discovery, may be established and the parties' rights and obligations regarding discovery identified and clarified.

29. There is presently no hearing on the de novo appeal scheduled before the OCC. A preliminary conference is scheduled for March 30, 1999. If the OCC grants the Motion for Stay of Proceedings, production of documents pursuant to the subpoenas is unnecessary. If the OCC denies such motion, Whiting requests that it have sufficient time after a discovery schedule is agreed upon to produce documents reflecting raw data.

WHEREFORE, Whiting respectfully requests that the OCC stay all proceedings in this matter and defer to the district court of Santa Fe County for resolution of all issues between the parties. Alternatively, if the OCC determines that it will hear this matter on the de novo appeal, it should quash the subpoena issued and improperly served on Holditch, and quash the subpoenas issued and served on Whiting and Maralex until such time as the Pre-Hearing Conference is held and a orderly discovery and hearing schedule is established.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By


J.E. GALLEGOS

MICHAEL J. CONDON

460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

Attorneys for Whiting Petroleum Corp.
and Maralex Resources, Inc.

OIL CONSERVATION DIV.
59 MAR 12 AM 11:58

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

IN THE MATTER OF:

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

CASE NO. 11006
ORDER NO. R-11135

**RESPONSE TO
MOTION FOR STAY OF PROCEEDINGS
AND TO QUASH SUBPOENAS DUCES TECUM**

Pendragon Energy Partners, Inc., Pendragon Resources, L.P., and Edwards Energy Corporation¹, (together, "Pendragon"), for their response to the Whiting/Maralex Motion For Stay and Motion to Quash, state:

Whiting and Maralex seek to revisit earlier orders of the Division and the District Court which both determined that this agency's exercise of jurisdiction over this case is proper. Having previously lost on this same point not once, but three times now, it is surprising that Whiting and Maralex would make this dead-horse argument once again. Not only is this true of the unnecessary jurisdictional motion, but of the motion to quash as well. Rather than contravene the earlier rulings of the Division and the District Court, the Commission should reject the Whiting/Maralex delaying motion and allow this proceeding to go forward with dispatch.

¹ Successor to J.K. Edwards and Associates, Inc.

EXHIBIT

time to prepare. Nothing prevents Whiting and Maralex from obtaining their own documents subpoenas other than their own inaction.

THE MOTION TO QUASH SUBPOENAS

At the outset, we note that Whiting and Maralex appeared to be operating under the misapprehension that the subpoena duces tecum served on the Schlumberger/Holditch witness sought more than the expert's underlying facts, data or materials. The subpoena does not seek interpretations, analysis or other materials constituting the expert's work product, and accordingly, we do not seek any materials that the Division and Commission traditionally do not require to be produced of experts. ✓

We conferred with counsel in an effort to reconcile this particular discovery dispute and, subject to counsel's further discussion with the expert witness, it is believed that this particular objection has been resolved. It is understood, however, that this agreement between counsel is subject to Whiting's larger objection to the conduct of discovery pending a ruling on the Motion for Stay of Proceedings. Should this situation change, the Commission will be advised.

With respect to the remaining subpoenas, Whiting and Maralex make no substantive, technical or procedural objection. Their motion for an order quashing those subpoenas is based wholly on their larger request for the Commission to stay this administrative proceeding. Accordingly, the points and authorities set forth in the first section of this Response are applicable and no further comment is necessary.

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

BEFORE THE NEW MEXICO OIL CONSERVATION COMMISSION

IN THE MATTER OF:

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

CASE NO. 11996
ORDER NO. R-11133
De N...

PENDRAGON'S MEMORANDUM BRIEF
ON DISCOVERY ISSUES

Pendragon Energy Partners, Inc., Pendragon Resources, L.P. and Edwards Energy Corporation¹, (together, "Pendragon"), through counsel, submit this Memorandum Brief pursuant to certain issues raised at the March 30, 1999 pre-hearing conference convened before the Commission's counsel. At the conference, a number of items were discussed and agreement was reached on the following:

1. In view of the planned requirement for pre-filed testimony for experts,² counsel agreed to confer on a form of a pre-hearing scheduling order to include, among other things, deadlines for the conduct of discovery, the filing of objections to the pre-filed testimony and rulings thereon;

2. The parties will identify witnesses and supply exhibit lists by a date certain.

¹ F/k/a J.K. Edwards Associates, Inc.

² The possibility of pre-filed testimony for fact witnesses was expressly precluded at the prehearing conference. Consequently, the ramifications of such a concept were not discussed.



3. The objections to the presently pending discovery are resolved and Whiting Petroleum Corporation's Motion to Quash Subpoenas is withdrawn.

4. In connection with item 3, above, it was agreed that the expert's "underlying data" and other materials sought under the Division's March 8, 1999 subpoena on Schlumberger/Brazos/S.A. Holditch would be provided by the expert. Pendragon affirmed that it did not seek interpretations, work-product or other similar information under the subpoena. It was agreed that the subpoenaed materials would be produced by the end of April.

5. With respect to all other experts, the parties similarly agreed to exchange their experts' "underlying data" by a date certain in advance of the hearing.

6. The parties agreed to supplement their prior production of "field data", such as production and pressure data, a certain number of days in advance of the hearing.

7. Counsel will confer and attempt to narrow the issues by filing a Stipulation in advance of the hearing.

8. A four to five-day hearing would be scheduled in late June or early July; The issue of extra-statutory discovery was also raised, but on discussion, the practical problems precipitated by such a process and the limits of the agency's authority to provide for the same created some concern. Accordingly, it was agreed the matter would be briefed.

It is Pendragon's position that the present practices and procedures for discovery under NMSA 1978, Section 70-2-8 (1995) and Rule 1221 are both efficient and adequate. Moreover, the expansion of existing discovery procedures without more explicit statutory

MILLER, STRATVERT & TORGERSON, P. A.
LAW OFFICES

RANNE B. MILLER
ALAN C. TORGERSON
ALICE TOMLINSON LORENZ
GREGORY W. CHASE
ALAN KONRAD
LYMAN G. SANDY
STEPHEN M. WILLIAMS
STEPHAN M. VIDMAR
ROBERT C. GUTIERREZ
SETH V. BINGHAM
JAMES B. COLLINS
TIMOTHY R. BRIGGS
ROLPH LUCERO
DEBORAH A. SOLOVE
GARY L. GORDON
LAWRENCE R. WHITE
SHARON P. GROSS
VIRGINIA ANDERMAN
KARTE D. LIGHTSTONE
THOMAS R. WEAVER
TERESA VALES

JOEL T. NEWTON
THOMAS M. DOMME
RUTH O. PREGENZER
JEFFREY E. JONES
MANUEL I. ARRIETA
ROBIN A. GOBLE
JAMES R. WOOD
DANA M. KYLE
KIRK R. ALLEN
RUTH M. FUESS
KYLE M. FINCH
H. BROOK LASKEY
KATHERINE W. HALL
FRED SCHILLER
LARA L. WHITE
PAULA G. MAYNES
DEAN B. CROSS
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PLEASE REPLY TO SANTA FE

May 18, 1999

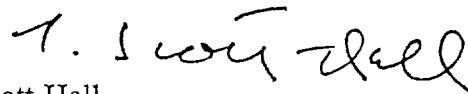
J. E. Gallegos, Esq.
Gallegos Law Firm, P. C.
460 St. Michaels Dr., #300
Santa Fe, New Mexico 87505-7602

Re: NMOCD Case No. 11996; Application of Pendragon Energy, Inc., and J. K. Edwards Associates, Inc.; San Juan County, New Mexico

Dear Gene:

Enclosed are copies of the February 17, 1999 Subpoena *duces tecum* which the Division issued to Schlumberger/Holditch, along with copies of the subpoenas *duces tecum* issued to Whiting and Maralex on February 25th. I appreciate that you have been busy with other matters, but I am anxious to get going on this case. Please let me know when these parties will produce the materials pursuant to the Division's subpoenas.

Very Truly Yours,



J. Scott Hall

JSH/ao

Enclosures: Schlumberger/Holditch, Whiting and Maralex subpoenas

Cc: Marilyn Herbert, Esq. (without enclosures)

6304/20253/Gallegosltr1.doc



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FILED PERKAL TO SANTA FE

May 18, 1999


J. E. Gallegos, Esq.
Gallegos Law Firm, P. C.
460 St. Michaels Dr., #300
Santa Fe, New Mexico 87505-7602

Re: NMOCD Case No. 11996; Application of Pendragon Energy, Inc., and J. K. Edwards Associates, Inc.

Dear Gene:

I recently received a copy of Bradley Robinson's April 26, 1999 transmittal letter regarding the production of raw data and information pursuant to the Division's subpoena *duces tecum*. I am reluctant to respond to Mr. Robinson directly. However, he should be advised to produce the underlying data and materials in compliance with the terms of the Division's subpoena. The subpoena is not limited to data and information that was used to develop testimony in connection with the hearing before the OCD, as Mr. Robinson's letter suggests.

Very Truly Yours,


J. Scott Hall

JSH/ao
6304/20253/Gallegosltr.doc

900 Southwest Parkway East
College Station, Texas 77840
Phone: (409) 764-1122
Fax: (409) 764-8157

April 26, 1999

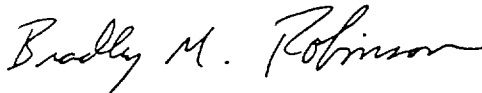
Mr. J. E. Gallegos
Gallegos Law Firm, P.C.
460 St. Michael's Drive
Building 300
Santa Fe, NM 87505

Dear Gene,

Enclosed is the raw data and information that was used to develop the opinion testimony of Mr. Walter Ayers and myself for the New Mexico OCD hearing. We understand that the transmittal of these data to you in this manner fully satisfies our obligations in connection with the Subpoena Duces Tecum we received from Miller, Stratvert & Togerson, PA dated February 22, 1999. By copy of this letter to Mr. Scott Hall of Miller, Stratvert & Togerson, PA, we ask that he confirm the accuracy of this understanding in a letter to my attention at the above address.

If you have any questions regarding these data, please call Walt or myself.

Sincerely,



Bradley M. Robinson, P.E.
Technology Manager – Stimulation

cc: J. Scott Hall, Miller, Stratvert & Togerson, PA

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460 St. Michael's Drive
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MAY 25 1999

& SONS, INCORPORATED
SANTA FE, NEW MEXICO

May 21, 1999
(Our File No. 98-266.00)

J.E. GALLEGOS *

VIA TELECOPY

J. Scott Hall
Miller, Stratvert, Torgerson
& Schlenker, P.A.
150 Washington, Suite 300
Santa Fe, New Mexico 87501

Re: Whiting et al. v. Pendragon et al. SF-CV-98-01295
Application of Pendragon OCD No. 11996

Dear Scott:

This is in reply to your fax of this date and to two letters from you dated May 18, 1999 which were received today. I will try to cover all pending items.

Order Allowing Testing. I have faxed a copy of the Order received today to our clients and to Holditch and Associates. I will be discussing it with them by phone on Monday. Please be advised, however, that I have business travel out of state next Tuesday through Thursday, and meetings set on the Friday when I return. After Memorial Day I will get back to you in the first week in June on how we will proceed. This should not cause any time problem given the testimony filling and hearing schedule we are under.

Exchange of Data. By referencing only your subpoenas to our technical people you have perhaps forgotten what transpired at the March 30, 1999 pre-hearing conference in regard to the Whiting objection to your subpoenas. It was understood that there would be a mutual exchange of raw data and information. We received the materials from both Brad Robinson and Walt Ayers some time back, as I informed you, but it has been a very time consuming task to apply Bates numbers. Our paralegals are having to deal with items like long rolls of well log copies. The like materials (most of it duplication) is being transmitted to us by Whiting and Maralex. If you tell me when your clients and experts will be prepared to make a contemporaneous exchange we will have a date to aim for.

Ex-Part Communications With Commissioners. We thought and still believe that proper procedure is to file pleadings with the Commission secretary. If something needs to come to a Commissioner's attention before the hearing it is the function of the

agency to distribute it. I regard it as improper, ex-parte communication for you to be sending pleadings to the Commissioners directly. While presumably, if they needed them, copies would be distributed, your Reply filed May 19, 1999 included a transparent attempt to introduce one very selective piece of testimony from the Examiner Hearing. There is no apt comparison (as you attempt in your fax) between that device and our offering in open hearing and the Examiner accepting the quite relevant hearing record on the Basin-Fruitland Pool Rules. I realize that you have taken it upon yourself to also send copies of our pleadings to the Commissioners. But let the agency do its job and decide what goes to the Commissioners.

I will be in touch week after next as indicated above.

Sincerely

GALLEGOS LAW FIRM, P.C.

BY: 
J.E. GALLEGOS

JEG/rjr

Fxc: Lynn Hebert
John Hazlett
Sherwin Artus
Mickey O'Hare
loc: Michael J. Condon
Michael P. Gross
Caroline C. Woods

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JAMES J. WIDLAND, COUNSEL

PLEASE REPLY TO SANTA FE

May 21, 1999

BY FACSIMILE: 505-986-1367

J. E. Gallegos, Esq.
Gallegos Law Firm, P. C.
460 St. Michaels Dr., #300
Santa Fe, New Mexico 87505-7602

Re: NMOCD Case No. 11996; Application of Pendragon Energy, Inc., and J. K. Edwards Associates, Inc.; San Juan County, New Mexico

Dear Gene:

As discussed today, I understand you will review the Commission's May 19th Order Authorizing Reservoir Pressure Testing and will advise with respect to Whiting's position on seeking the District Court's permission to restore the Chaco No. 4 well to production and on the need for a bond. I'd appreciate knowing your clients' position as soon as possible so the testing can get under way.

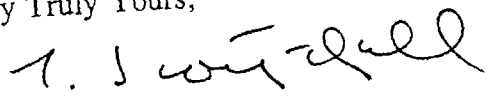
With respect to your objections to attaching excerpts from the Division hearing to our most recent Reply brief, you must recognize that in your Response, Whiting raised the new claim that Pendragon had changed its position. We were fully entitled to respond to the issue and appropriately did so. However, I agree with your comments that in the context of this de novo proceeding, the Commission should not decide the merits of this case based on the record from other matters. Accordingly, I hope we may avoid the situation that arose in the Division Examiner hearing when Whiting sought to incorporate the entirety of the record from the hearing on the pool rules for the Basin-Fruitland Coal Gas Pool (Case No. 9420).

Finally, providing the Commissioners with copies of the pleadings filed by both parties was cleared by Lyn Hebert some time ago. I'm not sure why Whiting would object to my doing this, but I will certainly follow the directions of the Commission's counsel in this regard.

J. E. Gallegos
May 21, 1999
Page Two

It is hoped we may receive a quick response from Whiting on the testing issue.

Very Truly Yours,



J. Scott Hall

JSH/ao

Cc: Marilyn Hebert, Esq.

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June 3, 1999
(Our File No. 98-266.00)

RECEIVED

J.E. GALLEGOS *

7 1999

J. Scott Hall
Miller, Stratvert, Torgerson
& Schlenker, P.A.
150 Washington, Suite 300
Santa Fe, New Mexico 87501

RECEIVED
JUNE 10 1999
SANTA FE COUNTY

Re: Whiting Petroleum Corp. et al. v. Penragon et al.
Santa Fe County Cause No. SF-CV-98-01295

Dear Scott:

Please be advised as follows.

Surety Bond. Attached is a study which demonstrates the dollar amount to be secured by a bond of your clients as a condition of the order temporarily lifting the preliminary injunction and allowing testing which shuts-in certain Gallegos Federal wells. I have made the calculation as directed by Judge Encinas. The amount required is \$118,000.

Terms of Order. We are interested in learning whether your clients will agree to substitute the Chaco No. 5 well for the No. 4, or do a test with each of those wells? If so, we will work with you on presenting an appropriate Order to the Court.

Exchange of documents. We have all of the Holditch data and materials and the same from Maralex. Whiting's documents are expected to arrive tomorrow. Allowing time for copying and stamping we will be willing to make an exchange for the like underlying data and source documents of your clients and experts next week. Please let me know when this can be accomplished.

Sincerely,

GALLEGOS LAW FIRM, P.C.

By


J.E. GALLEGOS

JEG:sa

fxc: David Frawley
Mickey O'Hare

ioc: Michael J. Condon
Michael P. Gross

*New Mexico Board of Legal Specialization
Recognized Specialist in the area of
Natural Resources-Oil and Gas Law

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

IN THE MATTER OF:

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

CASE NO. 11906
ORDER NO. 5-1133
De N.

PENDRAGON'S MEMORANDUM BRIEF
ON DISCOVERY ISSUES

Pendragon Energy Partners, Inc., Pendragon Resources, L.P. and Edwards Energy Corporation¹, (together, "Pendragon"), through counsel, submit this Memorandum Brief pursuant to certain issues raised at the March 30, 1999 pre-hearing conference convened before the Commission's counsel. At the conference, a number of items were discussed and agreement was reached on the following:

1. In view of the planned requirement for pre-filed testimony for experts,² counsel agreed to confer on a form of a pre-hearing scheduling order to include, among other things, deadlines for the conduct of discovery, the filing of objections to the pre-filed testimony and rulings thereon;
2. The parties will identify witnesses and supply exhibit lists by a date certain.

¹ F/k/a J.K. Edwards Associates, Inc.

² The possibility of pre-filed testimony for fact witnesses was expressly precluded at the prehearing conference. Consequently, the ramifications of such a concept were not discussed.

3. The objections to the presently pending discovery are resolved and Whiting Petroleum Corporation's Motion to Quash Subpoenas is withdrawn.

4. In connection with item 3, above, it was agreed that the expert's "underlying data" and other materials sought under the Division's March 8, 1999 subpoena on Schlumberger/Brazos/S.A. Holditch would be provided by the expert. Pendragon affirmed that it did not seek interpretations, work-product or other similar information under the subpoena. It was agreed that the subpoenaed materials would be produced by the end of April.

5. With respect to all other experts, the parties similarly agreed to exchange their experts' "underlying data" by a date certain in advance of the hearing.

6. The parties agreed to supplement their prior production of "field data", such as production and pressure data, a certain number of days in advance of the hearing.

7. Counsel will confer and attempt to narrow the issues by filing a Stipulation in advance of the hearing.

8. A four to five-day hearing would be scheduled in late June or early July;

The issue of extra-statutory discovery was also raised, but on discussion, the practical problems precipitated by such a process and the limits of the agency's authority to provide for the same created some concern. Accordingly, it was agreed the matter would be briefed.

It is Pendragon's position that the present practices and procedures for discovery under NMSA 1978, Section 70-2-8 (1995) and Rule 1221 are both efficient and adequate. Moreover, the expansion of existing discovery procedures without more explicit statutory

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JAMES J. WIDLAND, COUNSEL

PLEASE REPLY TO SANTA FE

June 4, 1999

BY FACSIMILE: 505-986-1367

J. E. Gallegos, Esq.
Gallegos Law Firm, P. C.
460 St. Michaels Dr., #300
Santa Fe, New Mexico 87505-7602

Re: NMOCD Case No. 11996; Application of Pendragon Energy, Inc., and J. K. Edwards Associates, Inc.; San Juan County, New Mexico

Dear Gene:

This letter is an additional effort to obtain your voluntary compliance with the Commission's subpoenas duces tecum issued to Schlumberger/Holditch on February 17, 1999 and to Whiting and Maralex on February 25th. Although earlier requests for compliance have been made, these parties have yet to produce a single document, despite the fact you have acknowledged that the subpoenaed documents have been transmitted to you. Indeed, Mr. Bradley Robinson's April 25, 1999 cover letter transmitting the Schlumberger/Holditch documents to you was copied to me, so there is no dispute that the documents have been available for some time.

I don't believe the recountal of the March 30, 1999 Pre-Hearing Conference set out in your May 21, 1999 letter is altogether accurate. My notes reflect that we resolved all of the objections to the subpoenas and it was agreed that the subpoenaed materials would be produced by the end of April. With respect to experts other than Schlumberger/Holditch, it was agreed that non-interpretive "underlying data" would be exchanged by a date certain in advance of the hearing. It was also agreed that the prior production of "field data" such as production and pressure data would be supplemented in advance of the hearing as well. All of these agreed points were repeated in Pendragon's Memorandum Brief On Discovery Issues filed on April 12th. (See Excerpt, attached.) In addition, my notes also reflect that counsel agreed that it would not be necessary to utilize formal subpoenas as a means to obtain documents as a simple letter request would suffice.

In a subsequent telephone conference with the Commission's counsel, you discussed our April 12th brief and, except for my reference to a possible hearing date in July, no other objection to the outline of the agreed points was made. Indeed, the April 30th deadline for the production of documents requested was repeated in the Commission's May 11, 1999 Scheduling Order. Nowhere in my notes, the briefing, the correspondence or the Commission's orders is it referenced that the production of the subpoenaed documents would be delayed until a contemporaneous exchange of all experts' underlying data was made at an unspecified date sometime in the future. While we anticipate participating in such an exchange for all the other experts, such a procedure does not apply to the materials under the earlier subpoenas. I believe it was understood by all that you were under a clear obligation to produce the subpoenaed documents on or before April 30th.

Once again, I ask for your voluntary compliance in producing the subpoenaed materials as soon as possible

Very Truly Yours,



J. Scott Hall

JSH/ao

Enclosure - Excerpt

Cc: Marilyn Hebert, Esq.
Al Nicol

6304/20253/Gallegosltr3.doc

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Telefax No. 505-986-0741

June 7, 1999
(Our File No. 98-266.00)

J.E. GALLEGOS *

VIA TELECOPY

J. Scott Hall
Miller, Stratvert, Torgerson
& Schlenker, P.A.
150 Washington, Suite 300
Santa Fe, New Mexico 87501

Re: Application of Pendragon Energy Partners; NMOCC Case No. 11996

Dear Scott:

Your fax of June 4th in which you want the Holditch documents immediately, but we would obtain your experts information at some indeterminate date "in advance of the hearing.", is disingenuous to say the least. We have not forgotten the experience before the Examiner hearing when Pendragon had supposedly produced its records but only by Rand Carroll ordering you to do so did we receive a stack of water production records the day before the hearing. Those records had obviously been copied but held back by you.

At the March 30, 1999 conference with Commission counsel our Motion to Quash the subpoenas you now refer to came up on the agenda along with the discovery schedule. The motion to quash was resolved by a mutual agreement. The agreement was that all experts would produce their raw data and underlying source records and materials. They would not have to produce interpretative information (which was a big problem with your subpoenas). You stated this was agreeable and it would be unnecessary to issue subpoenas to your experts. My notes reflect that agreement as: "On or before April 30 date the parties will exchange expert underlying data." The Scheduling Order of May 11, 1999 accordingly provides: "Each party was to have provided the documents requested by the other party by April 30, 1999." The Order does not say "Holditch documents" but rather documents of each party.

We are no more delinquent than Pendragon in not making the exchange by April 30. But we have the materials and when, and only when, we are assured that we are going to receive the complete requisite data from your experts will we produce ours. Once again if you suggest a date—and it can be this week—we will be prepared to make the mutual exchange.

* New Mexico Board of Legal Specialization
Recognized Specialist in the area of
Natural Resources-Oil and Gas Law

In connection with the documents to be provided from your experts we request the following:

1. You said at the March 30, 1999 conference Pendragon would "have the same experts as the prior hearing." We have now seen two affidavits by Dave O. Cox. If Mr. Cox is to be a witness, then his materials must be included.

2. The affidavit of Mr. Cox attached to your April 22, 1999 Motion for Testing attached Exhibits B,C and D each of which reflect "Opened Chaco 1, 4, 5 to catch gas samples". Obviously, your clients' data must include the information on the gas samples. I am attaching a copy of Exhibit C for your reference. You should also provide the data to show for what period of time those wells were "opened".

Finally, last week we received a copy of a transmittal letter to the Commission reciting that a Response was being delivered to our Motion For Fair Testing. Attached to the letter was not a response, but a copy of our own motion. I sent a fax calling this to the attention of you and your paralegal, but have heard nothing.

Sincerely,

GALLEGOS LAW FIRM, P.C.

By


J.E. GALLEGOS

JEG:sa

Attachment

fxc: Marilyn Herbert
John Hazlett
Mickey O'Hare

ioc: Michael J. Condon
Caroline C. Woods

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ROSS B. PERKAL, COUNSEL
JAMES J. WIDLAND, COUNSEL

PLEASE REPLY TO SANTA FE

June 8, 1999

BY FACSIMILE: 505-986-1367

J. E. Gallegos, Esq.
Gallegos Law Firm, P. C.
460 St. Michaels Dr., #300
Santa Fe, New Mexico 87505-7602

Re: NMOCD Case No. 11996; Application of Pendragon Energy, Inc., and J. K.
Edwards Associates, Inc.; San Juan County, New Mexico

Dear Gene:

In your June 7th letter, you made no objection to the immediate production of documents under the subpoenas issued by the Commission to Whiting and Maralex on February 25th.

May we plan on receiving those documents tomorrow?

I look forward to hearing from you.

Very Truly Yours,


J. Scott Hall

JSH/ao

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JAMES J. WIDLAND, COUNSEL

PLEASE REPLY TO SANTA FE

June 8, 1999

BY FACSIMILE: 505-986-1367

J. E. Gallegos, Esq.
Gallegos Law Firm, P. C.
460 St. Michaels Dr., #300
Santa Fe, New Mexico 87505-7602

Re: NMOCD Case No. 11996; Application of Pendragon Energy, Inc., and J. K.
Edwards Associates, Inc.; San Juan County, New Mexico

Dear Gene:

I acknowledge your fax letter of June 7, 1999. As I have previously written to your firm, you will see it is not my practice to engage in the personal animosity your letter invites. Suffice it to say that Pendragon always complied with its discovery obligations in a timely, and oft-times expedited, manner. Indeed, the delivery of the water production documents you represent was delayed until the day before the July 28, 1998 Examiner hearing were not even requested by you until July 13, 1998. (See attached copy of your letter request.) You are also incorrect when you say their production was ordered.

As before, please regard my June 4th letter and this letter as a sincere effort to obtain your voluntary compliance with your past-due discovery obligations. In this regard, a couple of points are worth noting:

First, nowhere does your June 7th letter mention or otherwise contest the obligation to produce the documents under the Commission's February 25, 1999 subpoenas to Whiting and Maralex by the April 30th deadline. Please do so without further delay.

Second, it is obvious we are at odds over what was agreed to at the March 30th scheduling conference with respect to the procedures for requesting and producing expert data. My understanding was clearly set out in our April 12th memorandum brief. (Excerpt attached.) In that filing, it was unequivocally stated as follows:

"4. ...It was agreed that the subpoenaed materials would be produced by the end of April."

That same filing went on to say:

"5. With respect to all other experts, the parties similarly agreed to exchange their experts' "underlying data" by a date certain in advance of the hearing."

Significantly, you never contested these items. (Although you did object to my reference to a July hearing date.) Moreover, while you have sent no requests for production to me, your letter states no good grounds for further delaying production of the subpoenaed documents you have had in your possession for six weeks now. Indeed, you had offered to produce the subpoenaed documents to me before; Surely you recall that just after our telephone conference with Lyn Hebert in early April on the subject of pre-filed testimony, we stayed on the line to discuss the acknowledged delay in the document production and you even offered to work over the week-end to prepare the materials for my review. Consequently, your change in position since that conversation is surprising.

Instead of continuing to debate these matters, the Commission will expect counsel to engage in a good faith effort to resolve their discovery disputes. Accordingly, I propose the following:

- (1) The subpoenaed Whiting and Maralex documents be produced on Wednesday, June 9th.
- (2) The subpoenaed Schlumberger/Holditch documents be produced on Wednesday, June 9th.
- (3) The underlying data for all other experts be exchanged by Wednesday, June 23rd, without the need for document production requests or subpoenas.
- (4) The parties will propound their respective document production requests for all other materials no later than June 16, 1999 in order to allow for compliance with the discovery deadline one month later.

With respect to item 3, you have not yet complied with the Commission's Scheduling Order which required you to file your witness list by June 4th. Please provide me with the same as soon as possible.

This is a reasonable basis for settling this discovery dispute and will allow other discovery to proceed before the July 16, 1999 deadline according to an established procedure. Such a process should serve to eliminate further discovery disputes.

Please let me hear from you today.

E.J. Gallegos, Esq.

06/08/99

Page 3

Very Truly Yours,

A handwritten signature in cursive script that reads "J. Scott Hall".

J. Scott Hall

JSH/ao

Enclosure(s) – as stated

Cc: Marilyn Hebert, Esq. (by facsimile transmission)

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GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
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Telefax No. 505-986-0741

July 13, 1998
(Our File No. 98-266.00)

MICHAEL J. CONDON

VIA TELECOPY

J. Scott Hall
Miller, Stratvert, Torgerson
& Schlenker, P.A.
150 Washington, Suite 300
Santa Fe, New Mexico 87501

Re: Pendragon Application NMOCD Case No. 11996

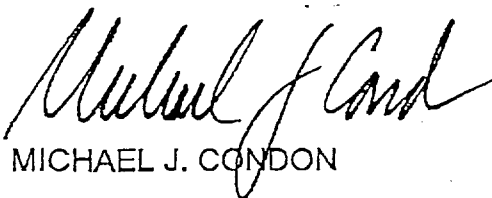
Dear Scott:

In addition to the documents we have received and have already requested, we would also like to request copies of the complete well files, including but not limited to any documents pertaining to water production, for the Chaco wells. A copy of our subpoena defining the Chaco wells is attached for your review. If water was hauled from any of those wells, we would like the water hauling tickets and any other related documents. If any pits were constructed at the site for water disposal, we would like all documents related to that process. Thank you for your cooperation.

Very truly yours,

GALLEGOS LAW FIRM, P.C.

By


MICHAEL J. CONDON

MJC:sa

fxc: Mickey O'Hare
John Hazlett
ioc: J.E. Gallegos

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

IN THE MATTER OF:

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

CASE NO. 11996
ORDER NO. 8-1113
De No.

PENDRAGON'S MEMORANDUM BRIEF
ON DISCOVERY ISSUES

Pendragon Energy Partners, Inc., Pendragon Resources, L.P. and Edwards Energy Corporation¹, (together, "Pendragon"), through counsel, submit this Memorandum Brief pursuant to certain issues raised at the March 30, 1999 pre-hearing conference convened before the Commission's counsel. At the conference, a number of items were discussed and agreement was reached on the following:

1. In view of the planned requirement for pre-filed testimony for experts,² counsel agreed to confer on a form of a pre-hearing scheduling order to include, among other things, deadlines for the conduct of discovery, the filing of objections to the pre-filed testimony and rulings thereon;
2. The parties will identify witnesses and supply exhibit lists by a date certain.

¹ F/k/a J.K. Edwards Associates, Inc.

² The possibility of pre-filed testimony for fact witnesses was expressly precluded at the prehearing conference. Consequently, the ramifications of such a concept were not discussed.

3. The objections to the presently pending discovery are resolved and Whiting Petroleum Corporation's Motion to Quash Subpoenas is withdrawn.

4. In connection with item 3, above, it was agreed that the expert's "underlying data" and other materials sought under the Division's March 8, 1999 subpoena on Schlumberger/Brazos/S.A. Holditch would be provided by the expert. Pendragon affirmed that it did not seek interpretations, work-product or other similar information under the subpoena. It was agreed that the subpoenaed materials would be produced by the end of April.

5. With respect to all other experts, the parties similarly agreed to exchange their experts' "underlying data" by a date certain in advance of the hearing.

6. The parties agreed to supplement their prior production of "field data", such as production and pressure data, a certain number of days in advance of the hearing.

7. Counsel will confer and attempt to narrow the issues by filing a Stipulation in advance of the hearing.

8. A four to five-day hearing would be scheduled in late June or early July;

The issue of extra-statutory discovery was also raised, but on discussion, the practical problems precipitated by such a process and the limits of the agency's authority to provide for the same created some concern. Accordingly, it was agreed the matter would be briefed.

It is Pendragon's position that the present practices and procedures for discovery under NMSA 1978, Section 70-2-8 (1995) and Rule 1221 are both efficient and adequate. Moreover, the expansion of existing discovery procedures without more explicit statutory

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June 8, 1999
(Our File No. 98-266.00)

J.E. GALLEGOS *

VIA TELECOPY

J. Scott Hall
Miller, Stratvert, Torgerson
& Schienker, P.A.
150 Washington, Suite 300
Santa Fe, New Mexico 87501

Re: Application of Pendragon Energy Partners; NMOCC Case No. 11996
DOCUMENT EXCHANGE

Dear Scott:

I am obliging you with a prompt reply to your fax of this date concerning the discovery of source data used by the respective experts in this matter.

First, what you have written in your memorandum brief of April 12, 1999 is far from definitive on this issue. I can think of very little that I have agreed with in any of your pleading, but we cannot take the time or bother the Commission with disputing every self-serving statement you make. My fax to you yesterday accurately recounted the discussion and the clear purpose of the Scheduling Order specifying that "Each party was to have provided the documents . . ."

Next, your proposal that Whiting, Maralex and Holditch provide the "subpoenaed" documents is equally off the mark. The subpoenas were clearly objectionable because of the requirement for work product, interpretation, etc. That is why we filed motions to quash. That is why the matter was taken up at the March 30, 1999 conference. That is why there was a mutual agreement to exchange the underlying data and records used by the experts. It is absolutely incredible that you are now trying to depart from that agreement after all this time.

This should really be a rather simple problem and require no more of these letters. I suggest that we make the exchange of documents this Friday, June 11, 1999. If you cannot have your experts' data ready by then, please specify a date next week.

I am at a loss to understand your proposal number (4) about document requests. I thought it was understood that the parties would supplement the initial exchange as

J. Scott Hall
June 8, 1999
Page 2

more data and information was accumulated. There is no mystery here. Everyone understands what is expected from the other. If you would like to set a specific date before July 16, 1999 for supplementation, that would be a good idea and we will be pleased to cooperate.

Unless we can proceed with the agreed and ordered mutual exchange, and you insist on the "subpoenaed" materials from our experts two weeks before we are to receive only the underlying data from yours, then this matter will – unfortunately – require resolution by the Director.

Sincerely,

GALLEGOS LAW FIRM, P.C.

By


J.E. GALLEGOS

JEG:sa

fxc: Marilyn Hebert, Esq.
John Hazlett
Mickey O'Hare
ioc: Michael J. Condon
Caroline C. Woods

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

IN THE MATTER OF:

**APPLICATION OF PENDRAGON ENERGY
PARTNERS, INC., PENDRAGON RESOURCES, L.P.,
And EDWARDS ENERGY CORPORATION TO CONFIRM
PRODUCTION FROM THE APPROPRIATE COMMON
SOURCE OF SUPPLY, SAN JUAN COUNTY, NEW MEXICO**

**CASE NO. 11996 (De Novo)
ORDER NO. R-11133**

**MOTION IN LIMINE
(De Novo Hearing Record)**

99 JUN 10 AM 4:12

OIL CONSERVATION DIV.

Pendragon Energy Partners, Inc., Pendragon Resources, L.P. and Edwards Energy Corporation (together, "Pendragon") by and through their counsel of record, Miller, Stratvert & Torgerson, P.A. move that the Oil Conservation Commission ("Commission") disallow the uncontrolled and wholesale introduction into evidence of transcripts, exhibits and similar materials from any previous administrative case, Division level hearing, or district court case. In support Pendragon states:

1. The Applicants and opponents both filed their respective applications for a hearing de novo pursuant to NMSA 1978, § 70-2-13 (1987 Repl.) in February of this year.
2. The Commission is authorized by statute and rules to conduct hearings de novo. NMSA 1978, § 70-2-13 (1987 Repl.) ; See also, NMAC 15.N § 1220.
3. The Commission offers full opportunity to all interested parties of record to present evidence and to cross-examine witnesses. NMAC 15.N § 1212.

4. In general, the rules of evidence applied in non-jury civil actions in the district courts are applicable to hearings conducted by the Division and the Commission.

Id.

5. At the 1998 Examiner hearing in this matter, Whiting and Maralex introduced a number of materials from other proceedings, including the wholesale introduction of the Division's complete file from Case Nos. 9420 and 9421, the original rulemaking proceeding in 1988 establishing the pool rules for the Basin-Fruitland coal pool. Tendered under the argument that the Division could take administrative notice of such things, those materials included exhibits introduced by the proponents and opponents in that rulemaking proceeding, the entire hearing transcript, and even the hearing examiner's personal notes and drafts of orders. (See July 39, 1998 hearing transcript excerpt, Case No. 11996, Exhibit A, attached.) As a consequence, the record was burdened by several additional pounds of largely extraneous, argumentative materials, very little of which constituted actual "fact" for purposes of taking administrative notice. Such "record dumping" is impermissible, particularly where the hearing body is to render an order based on the record created under the supervision of the Commission at the hearing. (See, NMSA 1978 § 70-2-13 [1987 Rep].)

6. A "trial de novo" is "a trial anew in the sense that the first reviewing court considers the issues presented on its own, 'not bound, controlled or necessarily influenced, in any way,' by the action of the inferior tribunal." Clayton v. Farmington City Council, 120 N.M. 448, 454, 902 P.2d 1051, 1057 (Ct. App. 1995) quoting Farmers Development Co. v. Rayado Land & Irrigation Co., 18 N.M. 1, 9, 133 P. 104, 106 (1913) overruled, Kelley v. Carlsbad Irrigation Dist., 71 N.M. 464, 467, 379 P.2d 763, 764

(1963).¹ The unrestricted, wholesale admission of transcripts, exhibits, or other like materials from previous administrative hearings, Division level hearing, or district court cases would influence the trial de novo.

7. The Clayton Court reviewed a statute that provided for the Court's de novo review to be governed by the rules of civil procedure. Clayton v. Farmington City Council, 120 N.M. at 454, 902 P.2d at 1057. Similarly, in this case, the Division is directed by statute to provide de novo review and by rule to apply the rules of evidence applied in non-jury civil actions in the district courts. NMSA 1978, § 70-2-13 (1987 Repl.); See also, NMAC 15.N § 1212. The Clayton Court held that this language appears "to allow, if not mandate, an entirely new evidentiary inquiry by the district court. Clayton v. Farmington City Council, 120 N.M. at 454, 902 P.2d at 1057, (emphasis added.)

8. The New Mexico Supreme Court in Farmer, clarified that a hearing or trial de novo requires the tribunal to form its own conclusions and enter judgment as proof warrants and the law requires. Farmers' Development Co. V. Rayado Land & Irr. Co., 18 N.M. at 2, 133 P.2d at 106. The Farmer Court explains that during a hearing or trial de novo, the tribunal is not called upon to determine whether the lower court erred in the action taken or in the order entered. Id.

¹ The Kelley Court overruled Farmers to the extent that it permitted the district court, on appeal to hear new or additional evidence and to form its own conclusion based on the additional evidence. Kelley v. Carlsbad Irrigation District, 71 N.M. 404, 467, 379 P.2d 763, 766 (1963). The Kelley decision appears to be an aberration because the Supreme Court in 1974, expressly stated:

There can be no doubt that the constitutional and statutory provisions for a proceeding 'de novo as cases originally docketed in the district court' are inconsistent with our decision in Kelley v. Carlsbad Irrigation District, supra, insofar as we held that on appeals from the engineer: (1) The district court cannot hear new or additional evidence. (2) The district court cannot form its own conclusions based upon new or additional evidence . . . Application of Carlsbad Irrigation District, 87 N.M. 149, 152, 530 P.2d 943, 946 (1974).

9. It is important to note that some of the facts underlying the decision in Farmer are distinguishable. The Farmer Court interpreted Chapter 49, Sess. Laws 1907. Id. That act, Section 66, of Chapter 49, Sess. Laws 1907, provided that the tribunal conducting the de novo review: (1) certify the record of all proceedings and (2) consider the evidence taken in the previous hearing original evidence. Id. In this case, the Oil and Gas Act authorizes the Commission to conduct hearings de novo. NMSA 1978, § 70-2-13; See also, NMAC 15.N § 1212. Although the Oil and Gas Act provides for hearings de novo, it does not direct the Commission to admit into evidence any evidence taken in a previous hearing. Neither does it call for the Commission to certify the record of previous proceedings. Id.

It is clear that the legislature intended that the Commission conduct a “pure” de novo review; otherwise, the legislature would have directed the Commission otherwise as it has done in other statutes. See High Ridge Hinkle Joint Venture v. City of Albuquerque, 1998 WL 896338 (1998) (The plain language of a statute is the primary indicator of legislative intent; therefore, courts are to give words used in a statute their ordinary meaning unless the legislature indicates a different intent.) If the legislature had intended that the Commission rely on evidence from previous proceedings, then the statute would clearly direct the Commission to do so.

10. The parties should not be allowed to incorporate the entire records from previous proceedings because a hearing de novo should provide the parties a full evidentiary hearing not limited to transcripts of previous proceedings. Green v. Kase, 113 N.M. 76, 78, 823 P.2d 318, 320 (1992).

11. If the Commission admits any of the previous records, then the admissions should be limited only to those parts of the record for which judicial notice may be taken pursuant to NMRA 1999, 11-201 as follows:

- B. Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either.
- (1) generally known within the community, or
 - (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, or
 - (3) notice is provided for by statute.

12. Evidence in the form of transcripts, exhibits, etc., from any previous administrative case, Division level hearing or district court case must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. NMRA 1999, §11-403.

13. Evidence in the form of transcripts, exhibits, etc., from any previous administrative case, Division level hearing or district court case must be excluded because it is hearsay and does not fall under any of the exceptions to hearsay. NMRA 1999, 11-801; 11-803; 11-804.

Conclusion

A hearing de novo should provide the parties a full evidentiary hearing not limited to or prejudiced by the transcripts or other unlimited materials from previous proceedings. A hearing or trial de novo requires the tribunal to form its own conclusion based on an entirely new evidentiary inquiry. A trial de novo should operate as a new

inquiry during which the Commission considers the issues presented on its own, not bound, controlled or necessarily influenced, in any way by prior action.

WHEREFORE, Pendragon requests that Commission enter its order prior to the deadline for the filing of pre-filed testimony and before the hearing de novo precluding the wholesale introduction into the record of transcripts, exhibits and other materials from previous hearings or trials.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By J. Scott Hall

J. Scott Hall, Esq.
Carla Prando, Esq.
Post Office Box 1986
Santa Fe, New Mexico 87504
(505) 989-9614

Attorneys for Pendragon Energy Partners,
Inc., Pendragon Resources, L.P. and
Edwards Energy Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing to be hand-delivered on this 12 day of June, 1999 to the following:

Marylyn Hebert, Esq.
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

J.E. Gallegos, Esq. and
Michael Condon, Esq.
Gallegos Law Firm, P.C.
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505

J. Scott Hall

Carla Prando

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

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION DIVISION FOR THE)
PURPOSE OF CONSIDERING:) CASE NO. 11,996
)
APPLICATION OF PENDRAGON ENERGY)
PARTNERS, INC., AND J.K. EDWARDS)
ASSOCIATES, INC., TO CONFIRM PRODUCTION)
FROM THE APPROPRIATE COMMON SOURCE OF)
SUPPLY, SAN JUAN COUNTY, NEW MEXICO)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS, Volume III

EXAMINER HEARING

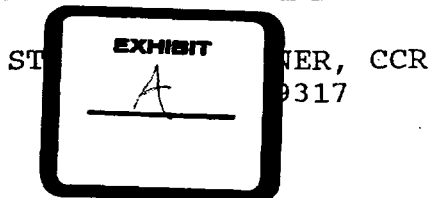
BEFORE: DAVID R. CATANACH, Hearing Examiner

July 30th, 1998

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, July 30th, 1998 (Vol. III), at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *



1 MR. CARROLL: -- part of a set.

2 MR. CONDON: Yeah, part of a set that were
3 rubber-banded together.

4 5 -- Or 6 is right there.

5 EXAMINER CATANACH: Okay, Exhibits -- Any
6 objection to the admission of those exhibits?

7 MR. HALL: It's -- Clarify for what purpose they
8 are being tendered.

9 You know, the order that issues from this case is
10 supposed to be based on the record and evidence presented
11 in this case.

12 I assume that the Exhibits 5, 6 and 7 are being
13 tendered for the purpose to have you take administrative
14 notice of them, simply.

15 They're not going to be tendered as evidence, *per*
16 *se*; is that correct?

17 MR. CONDON: Well, 1 through 7, I'm asking that
18 you take administrative notice of your orders and the
19 hearing transcript and the exhibits that have been entered
20 in prior administrative proceedings.

21 I think you're entitled -- You know, there was
22 testimony that was given under oath in those proceedings,
23 exhibits that were accepted in the prior proceedings that
24 went into the establishment of the pools and recognition of
25 the stratigraphic locations and the vertical boundaries of

1 the formations that are at issue in this proceeding right
2 here.

3 And so I think it's sworn testimony, it's
4 exhibits that have been admitted and it's information and
5 evidence that you can take into consideration in your
6 ultimate ruling in this case.

7 MR. CARROLL: As well as the preliminary
8 injunction?

9 MR. CONDON: Correct.

10 MR. HALL: The rules and statutes on taking
11 notice provide that an adjudicatory body may take notice of
12 fact.

13 And the problem is, in the transcript of the
14 hearings, for example, there is evidence, there's
15 countervailing evidence, there's argument of counsel,
16 there's opposing materials presented that may or may not
17 constitute fact.

18 So given that understanding, I think you can
19 accord it the weight it deserves.

20 But to the extent that it is not fact you may not
21 take notice of it, so --

22 MR. CARROLL: I think we understand that, Mr.
23 Hall.

24 EXAMINER CATANACH: Okay. With that noted, I
25 will admit Exhibits 1 through 7.

MILLER, STRATVERT & TORGERSON, P. A.
LAW OFFICES

RANNE B. MILLER
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WILLIAM K. STRATVERT, COUNSEL
PAUL W. ROBINSON, COUNSEL
RALPH WM. RICHARDS, COUNSEL
ROSS B. PERKAL, COUNSEL
JAMES J. WIDLAND, COUNSEL

PLEASE REPLY TO SANTA FE

June 8, 1999

BY FACSIMILE: 505-986-1367

J. E. Gallegos, Esq.
Gallegos Law Firm, P. C.
460 St. Michaels Dr., #300
Santa Fe, New Mexico 87505-7602

Re: NMOCD Case No. 11996; Application of Pendragon Energy, Inc., and J. K.
Edwards Associates, Inc.; San Juan County, New Mexico

Dear Gene:

I acknowledge your fax letter of June 7, 1999. As I have previously written to your firm, you will see it is not my practice to engage in the personal animosity your letter invites. Suffice it to say that Pendragon always complied with its discovery obligations in a timely, and oft-times expedited, manner. Indeed, the delivery of the water production documents you represent was delayed until the day before the July 28, 1998 Examiner hearing were not even requested by you until July 13, 1998. (See attached copy of your letter request.) You are also incorrect when you say their production was ordered.

As before, please regard my June 4th letter and this letter as a sincere effort to obtain your voluntary compliance with your past-due discovery obligations. In this regard, a couple of points are worth noting:

First, nowhere does your June 7th letter mention or otherwise contest the obligation to produce the documents under the Commission's February 25, 1999 subpoenas to Whiting and Maralex by the April 30th deadline. Please do so without further delay.

E.J. Gallegos, Esq.

06/08/99

Page 2

Second, it is obvious we are at odds over what was agreed to at the March 30th scheduling conference with respect to the procedures for requesting and producing expert data. My understanding was clearly set out in our April 12th memorandum brief. (Excerpt attached.) In that filing, it was unequivocally stated as follows:

"4. ...It was agreed that the subpoenaed materials would be produced by the end of April."

That same filing went on to say:

"5. With respect to all other experts, the parties similarly agreed to exchange their experts' "underlying data" by a date certain in advance of the hearing."

Significantly, you never contested these items. (Although you did object to my reference to a July hearing date.) Moreover, while you have sent no requests for production to me, your letter states no good grounds for further delaying production of the subpoenaed documents you have had in your possession for six weeks now. Indeed, you had offered to produce the subpoenaed documents to me before; Surely you recall that just after our telephone conference with Lyn Hebert in early April on the subject of pre-filed testimony, we stayed on the line to discuss the acknowledged delay in the document production and you even offered to work over the week-end to prepare the materials for my review. Consequently, your change in position since that conversation is surprising.

Instead of continuing to debate these matters, the Commission will expect counsel to engage in a good faith effort to resolve their discovery disputes. Accordingly, I propose the following:

- (1) The subpoenaed Whiting and Maralex documents be produced on Wednesday, June 9th.
- (2) The subpoenaed Schlumberger/Holditch documents be produced on Wednesday, June 9th.
- (3) The underlying data for all other experts be exchanged by Wednesday, June 23rd, without the need for document production requests or subpoenas.
- (4) The parties will propound their respective document production requests for all other materials no later than June 16, 1999 in order to allow for compliance with the discovery deadline, one month later.

With respect to item 3, you have not yet complied with the Commission's Scheduling Order which required you to file your witness list by June 4th. Please provide me with the same as soon as possible.

This is a reasonable basis for settling this discovery dispute and will allow other discovery to proceed before the July 16, 1999 deadline according to an established procedure. Such a process should serve to eliminate further discovery disputes.

Please let me hear from you today.

E.J. Gallegos, Esq.

06/08/99

Page 3

Very Truly Yours,

A handwritten signature in cursive script, appearing to read "J. Scott Hall".

J. Scott Hall

JSH/ao

Enclosure(s) – as stated

Cc: Marilyn Hebert, Esq. (by facsimile transmission)

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JAMES J. WIDLAND, COUNSEL

PLEASE REPLY TO SANTA FE

June 8, 1999

BY FACSIMILE: 505-986-1367

J. E. Gallegos, Esq.
Gallegos Law Firm, P. C.
460 St. Michaels Dr., #300
Santa Fe, New Mexico 87505-7602

Re: NMOCD Case No. 11996; Application of Pendragon Energy, Inc., and J. K.
Edwards Associates, Inc.; San Juan County, New Mexico

Dear Gene:

In your June 7th letter, you made no objection to the immediate production of documents under the subpoenas issued by the Commission to Whiting and Maralex on February 25th.

May we plan on receiving those documents tomorrow?

I look forward to hearing from you.

Very Truly Yours,


J. Scott Hall

JSH/ao

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OIL CONSERVATION DIV.

99 JUN -8 PM 4: 52

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

IN THE MATTER OF:

**APPLICATION OF PENDRAGON ENERGY
PARTNERS, INC., PENDRAGON RESOURCES, L.P.,
And EDWARDS ENERGY CORPORATION TO CONFIRM
PRODUCTION FROM THE APPROPRIATE COMMON
SOURCE OF SUPPLY, SAN JUAN COUNTY, NEW MEXICO**

CASE NO. 11996
ORDER NO. R-11133
De Novo

**REQUEST FOR PRODUCTION
(MARALEX)**

TO: Maralex Resources, Inc.
C/o J.E. Gallegos, Esq.
Gallegos Law Firm, P.C.
460 St. Michaels Drive, Suite 300
Santa Fe, New Mexico 87501

You are requested to produce the documents and items specified in the attached Exhibit A and make available to Pendragon Energy Partners, Inc. and its attorneys, Miller, Stratvert & Torgerson, P.A., J. Scott Hall, for copying, all of said documents on or before July 8, 1999.

Dated this 8 day of June, 1999.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, PA.

By J. Scott Hall

J. Scott Hall, Esq.
Post Office Box 1986
Santa Fe, New Mexico 87504
(505) 989-9614

ATTORNEYS FOR PENDRAGON ENERGY
PARTNERS, PENDRAGON RESOURCES, L.P.
AND EDWARDS ENERGY CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Request For Production was hand-delivered on this 8 day of June, 1999 to the following:

Marilyn Hebert, Esq.
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

J.E. Gallegos, Esq.
460 St. Michaels Drive, #300
Santa Fe, New Mexico 87505



J. Scott Hall, Esq.

Request for Production to Maralex

EXHIBIT A

1. All documents related in any way to the venting, flaring or other production and disposition of gas prior to reporting first gas production from the Fruitland Coal Wells that are the subject of this proceeding, including any run tickets, lease operating expense materials, joint interest billings, regulatory applications and permits for the same.
2. All documents related to in any way to the production and disposition of water prior to reporting first gas production from the Fruitland Coal Wells that are the subject of this proceeding, including any run tickets, lease operating expense materials, joint interest billings, and any regulatory reporting for the same.
3. All frac records (in both computer disc and paper format, if available), including, but not limited to (i) proposed frac designs, (ii) Nolte plots for frac jobs, (iii) frac job reports, (iv) tracer surveys, and (v) all related materials, including rates, pressures, volumes and rheologies for all fluids for all frac jobs performed on all Fruitland coal wells owned and/or operated by Maralex (as contract operator or otherwise) in the Largo Canyon and Hart Canyon areas.

OIL CONSERVATION DIV.

99 JUN -8 PM 4: 52

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

BEFORE THE NEW MEXICO OIL CONSERVATION COMMISSION

IN THE MATTER OF:

**APPLICATION OF PENDRAGON ENERGY
PARTNERS, INC., PENDRAGON RESOURCES, L.P.,
And EDWARDS ENERGY CORPORATION TO CONFIRM
PRODUCTION FROM THE APPROPRIATE COMMON
SOURCE OF SUPPLY, SAN JUAN COUNTY, NEW MEXICO**

**CASE NO. 11996
ORDER NO. R-11133
De Novo**


**REQUEST FOR PRODUCTION
(RESERVOIR PRESSURE TEST DATA)**

TO: Whiting Petroleum Corporation
and
Maralex Resources, Inc.
C/o J.E. Gallegos, Esq.
Gallegos Law Firm, P.C.
460 St. Michaels Drive, Suite 300
Santa Fe, New Mexico 87501

You are requested to produce the documents and items specified in the attached Exhibit A and make available to Pendragon Energy Partners, Inc. and its attorneys, Miller, Stratvert & Torgerson, P.A., J. Scott Hall, for copying, all of said documents on or before July 8, 1999, or as soon as such materials are available.

Dated this 8 day of June, 1999.

MILLER, STRATVERT & TORGERSON, PA.

By 
J. Scott Hall, Esq.
Post Office Box 1986
Santa Fe, New Mexico 87504
(505) 989-9614

ATTORNEYS FOR PENDRAGON ENERGY
PARTNERS, PENDRAGON RESOURCES, L.P.
AND EDWARDS ENERGY CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Request
For Production was mailed on this 8 day of June, 1999 to the following:

Marilyn Hebert, Esq.
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

J.E. Gallegos, Esq.
460 St. Michaels Drive, #300
Santa Fe, New Mexico 87505

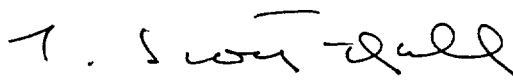

J. Scott Hall, Esq.

EXHIBIT A

1. All of the data and materials derived from or related in any way to the reservoir pressure testing to be performed by Whiting and Maralex pursuant to the procedures set forth in the June 1, 1999 affidavit of Bradley M. Robinson (Holditch Reservoir Technologies) attached to the Motion To Require Comprehensive And Fairly Designed Testing In Connection With Reservoir Pressure Tests. (By this request, Pendragon does not seek the production of interpretive or protected work product materials or information.)

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

JUN -7 PM 3:55

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

CASE NO. 11996
DE NOVO

OPPONENTS' WITNESS LIST

Whiting Petroleum Company and Maralex Resources Inc. submit the following as
the list of witnesses they expect to present at the De Novo hearing in this matter:

EXPERT WITNESSES

Walter Ayers

James T. Brown

A. M. O'Hare (Also Fact Witness)

Bradley Robinson

Michael Zuber

FACT WITNESSES

Bob Bayless

Matthew Dodson

Kevin McCord

Whiting/Maralex reserve the right to call any witness identified by the applicants.

Whiting/Maralex reserve the right to call rebuttal witnesses made necessary by the
introduction of evidence by applicants.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By 
J.E. GALLEGOS
MICHAEL J. CONDON
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

Attorneys for Whiting and Maralex

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of Opponents' Witness List to be served by U.S. Mail on this 20th day of June, 1999 to the following counsel for defendants:

J. Scott Hall
Miller, Stratvert, Torgerson & Schlenker, P.A.
150 Washington Avenue
Santa Fe, New Mexico 87501


J.E. GALLEGOS

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

June 7, 1999
(Our File No. 98-266.00)

J.E. GALLEGOS *

VIA TELECOPY

J. Scott Hall
Miller, Stratvert, Torgerson
& Schlenker, P.A.
150 Washington, Suite 300
Santa Fe, New Mexico 87501

Re: Application of Pendragon Energy Partners; NMOCC Case No. 11996

Dear Scott:

Your fax of June 4th in which you want the Holditch documents immediately, but we would obtain your experts information at some indeterminate date "in advance of the hearing.", is disingenuous to say the least. We have not forgotten the experience before the Examiner hearing when Pendragon had supposedly produced its records but only by Rand Carroll ordering you to do so did we receive a stack of water production records the day before the hearing. Those records had obviously been copied but held back by you.

At the March 30, 1999 conference with Commission counsel our Motion to Quash the subpoenas you now refer to came up on the agenda along with the discovery schedule. The motion to quash was resolved by a mutual agreement. The agreement was that all experts would produce their raw data and underlying source records and materials. They would not have to produce interpretative information (which was a big problem with your subpoenas). You stated this was agreeable and it would be unnecessary to issue subpoenas to your experts. My notes reflect that agreement as: "On or before April 30 date the parties will exchange expert underlying data." The Scheduling Order of May 11, 1999 accordingly provides: "Each party was to have provided the documents requested by the other party by **April 30, 1999.**" The Order does not say "Holditch documents" but rather documents of each party.

We are no more delinquent than Pendragon in not making the exchange by April 30. But we have the materials and when, and only when, we are assured that we are going to receive the complete requisite data from your experts will we produce ours. Once again if you suggest a date—and it can be this week—we will be prepared to make the mutual exchange.

*New Mexico Board of Legal Specialization
Recognized Specialist in the area of
Natural Resources-Oil and Gas Law

In connection with the documents to be provided from your experts we request the following:

1. You said at the March 30, 1999 conference Pendragon would "have the same experts as the prior hearing." We have now seen two affidavits by Dave O. Cox. If Mr. Cox is to be a witness, then his materials must be included.

2. The affidavit of Mr. Cox attached to your April 22, 1999 Motion for Testing attached Exhibits B,C and D each of which reflect "Opened Chaco 1, 4, 5 to catch gas samples". Obviously, your clients' data must include the information on the gas samples. I am attaching a copy of Exhibit C for your reference. You should also provide the data to show for what period of time those wells were "opened".

Finally, last week we received a copy of a transmittal letter to the Commission reciting that a Response was being delivered to our Motion For Fair Testing. Attached to the letter was not a response, but a copy of our own motion. I sent a fax calling this to the attention of you and your paralegal, but have heard nothing.

Sincerely,

GALLEGOS LAW FIRM, P.C.

By


J.E. GALLEGOS

JEG:sa

Attachment

fxc: Marilyn Herbert
John Hazlett
Mickey O'Hare

ioc: Michael J. Condon
Caroline C. Woods

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JUN - 7

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RALPH WM. RICHARDS, COUNSEL
ROSS B. PERKAL, COUNSEL
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June 4, 1999

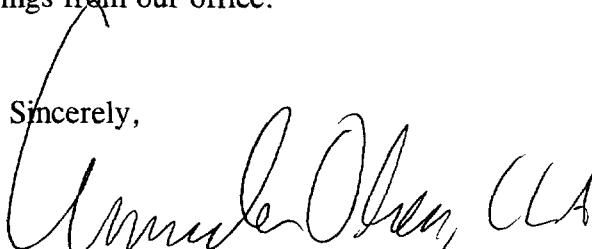
Lori Wrotenbery, Chairman
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: NMOCD Case No. 11996; Application of Pendragon Energy
Partners, Inc. to Confirm Production from Appropriate Common
Source of Supply, San Juan County, New Mexico (Order No. R-11133)

Dear Ms. Wrotenbery:

Enclosed is correspondence recently sent to NMOCC commissioners and counsel in the above-referenced matter forwarding various pleadings from our office.

Sincerely,


Amanda Olsen, CLA
Paralegal

JSH:ao
Enclosure:

6304/20253/wrotenbery1t5.ao.doc

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WILLIAM K. STRATVERT, COUNSEL
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JAMES J. WIDLAND, COUNSEL

PLEASE REPLY TO SANTA FE

June 4, 1999

Marilyn Hebert, Esq.
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

J. E. Gallegos, Esq.
Gallegos Law Firm
460 St. Michaels Dr., #300
Santa Fe, New Mexico 87505

Ms. Jamie Bailey
New Mexico State Land Office
310 Old Santa Fe Trail
Santa Fe, New Mexico 87505

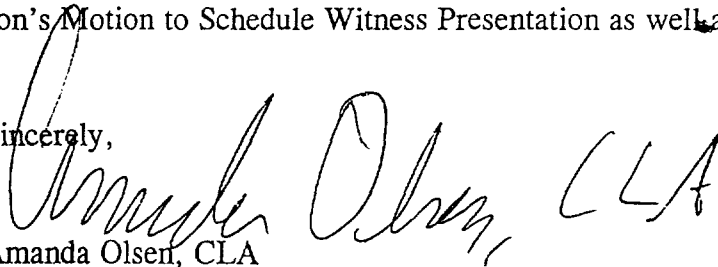
Dr. Robert Lee
Petroleum Recovery Research Center
NM Institute of Mining Technology
801 Leroy Place
Socorro, New Mexico 87801-4796

Re: NMOCC Case No. 11996; Application of Pendragon Energy, Partners, et al
San Juan County, New Mexico

Dear Counsel and Commissioners

Enclosed is a copy of Pendragon's Motion to Schedule Witness Presentation as well as
copy of Applicant's Witness List.

Sincerely,


Amanda Olsen, CLA
Paralegal

/ao

Enclosure(s) - as stated

6304/20253/Counsel trans ltr.doc

MILLER, STRATVERT & TORGERSON, P. A.
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WILLIAM K. STRATVERT, COUNSEL
PAUL W. ROBINSON, COUNSEL
RALPH WM. RICHARDS, COUNSEL
ROSS B. PERKAL, COUNSEL
JAMES J. WIDLAND, COUNSEL

PLEASE REPLY TO SANTA FE

June 4, 1999

Ms. Jamie Bailey
New Mexico State Land Office
310 Old Santa Fe Trail
Santa Fe, New Mexico 87505

Dr. Robert Lee
Petroleum Recovery Research Center
NM Institute of Mining Technology
801 Leroy Place
Socorro, New Mexico 87801-4796

Re: NMOCC Case No. 11996; Application of Pendragon Energy Partners, et al., San Juan County, New Mexico

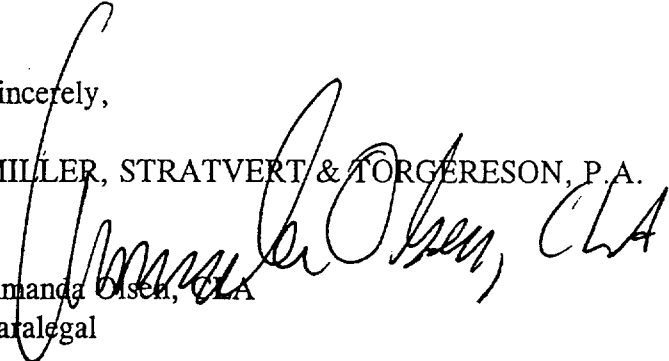
Dear Ms. Bailey and Dr. Lee:

Enclosed is a copy of Whiting's Motion to Require Comprehensive and Fairly Designed Testing in Connection with Reservoir Pressure Tests as well as a copy of our response to the same. I had attempted to forward these to you yesterday, but fear that the wrong documents were sent to you. I hope that in sending these correct documents to you, that I have cleared any confusion for which I am responsible.

Please accept my apologies.

Sincerely,

MILLER, STRATVERT & TORGERSON, P.A.


Amanda Olsch, CLA
Paralegal

/ao

Enclosure(s) – as stated

cc: J. E. Gallegos, Esq.
Marilyn Herbert, Esq.
Lori Wrotenbery

6304/20253/Bailey&Lee1ltr.ao.doc

MILLER, STRATVERT & TORGERSON, P. A.
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WILLIAM K. STRATVERT, COUNSEL
PAUL W. ROBINSON, COUNSEL
RALPH W. RICHARDS, COUNSEL
ROSS B. PERKAL, COUNSEL
JAMES J. WIDLAND, COUNSEL

PLEASE REPLY TO SANTA FE

June 3, 1999

Marilyn Hebert, Esq.
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

J. E. Gallegos, Esq.
Gallegos Law Firm
460 St. Michaels Dr., #300
Santa Fe, New Mexico 87505

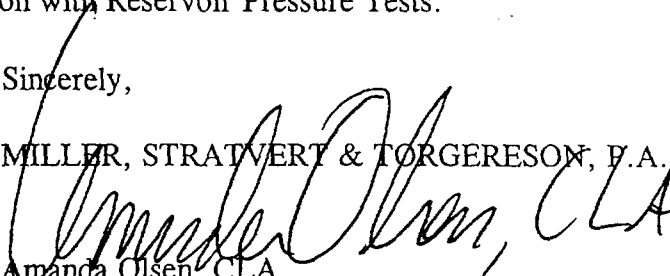
Re: NMOCC Case No. 11996; Application of Pendragon Energy, Partners, et al
San Juan County, New Mexico

Dear Counsel:

Enclosed is a copy of Pendragon's Response to Motion to Require Comprehensive and Fairly Designed Testing in Connection with Reservoir Pressure Tests.

Sincerely,

MILLER, STRATVERT & TORGERSON, P.A.


Amanda Olsen, CLA
Paralegal

/ao

Enclosure(s) - as stated

6304/20253/Counsel trans ltr.doc

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

BEFORE THE NEW MEXICO OIL CONSERVATION COMMISSION

IN THE MATTER OF:

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

CASE NO. 11996
ORDER NO. R-11133
De Novo

APPLICANTS' WITNESS LIST

Pendragon Energy Partners, Inc., Pendragon Resources, LP and
Edwards Energy, Inc., in conformance with the Commission's May 11, 1999
Scheduling Order, hereby identify the following individuals as witnesses
who may be called to testify at the hearing De Novo in this matter:

- Al Nicol [expert]
- Roland Blauer [expert]
- Mike Conway [expert]
- Dave Cox [expert]
- Bruce Kramer [expert]
- Ken Ancel [expert]
- Jack McCartney [expert]
- Neil Whitehead [expert]
- Paul Thompson
- Any witness identified by opponents

- Any rebuttal witnesses as may be necessary

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, PA.

By J. Scott Hall

J. Scott Hall, Esq.
Post Office Box 1986
Santa Fe, New Mexico 87504
(505) 989-9614

ATTORNEYS FOR PENDRAGON ENERGY
PARTNERS, PENDRAGON RESOURCES, L.P.
AND EDWARDS ENERGY CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Conduct Reservoir Pressure Test was mailed on this 4 day of June, 1999 to the following:

Dr. Robert Lee
Petroleum Resource Recovery Center
801 Leroy Place
Socorro, New Mexico 87801

Jamie Bailey
New Mexico State Land Office
310 Old Santa Fe Trail
Santa Fe, New Mexico 87504

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

J.E. Gallegos, Esq.
460 St. Michaels Drive, #300
Santa Fe, New Mexico 87505

J. Scott Hall

J. Scott Hall, Esq.

6304/20253/Applicants Wit List

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

BEFORE THE NEW MEXICO OIL CONSERVATION COMMISSION

IN THE MATTER OF:

**APPLICATION OF PENDRAGON ENERGY
PARTNERS, INC., PENDRAGON RESOURCES, L.P.,
And EDWARDS ENERGY CORPORATION TO CONFIRM
PRODUCTION FROM THE APPROPRIATE COMMON
SOURCE OF SUPPLY, SAN JUAN COUNTY, NEW MEXICO**

**CASE NO. 11996
ORDER NO. R-11133
De Novo**

MOTION TO SCHEDULE WITNESS PRESENTATION

Applicants, Pendragon Energy Partners, Inc., et al., move the Commission to enter its order authorizing the presentation of one of its witnesses during the August 19 and 20, 1999 session of the hearing de novo.

In support, Pendragon states:

On May 11, 1999, the Commission, through the Division Director, issued its Scheduled Order, setting the hearing de novo for August 12, 13, 19 and 20, 1999. One of Pendragon's expert witnesses, Dave O. Cox, has advised he has a previously scheduled commitment out of the country from July 30th to August 15th. Accordingly, Pendragon proposes to present Mr.

Cox before the Commission on either August 19th or 20th. Mr. Cox's prepared written testimony will be filed with the Commission by July 23, 1999 in compliance with the Scheduling Order.

The pre-filing of testimony will facilitate the presentation of Mr. Cox's testimony on the later date. Pendragon wishes to avoid delaying the scheduled hearing in any event.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, PA.

By J. Scott Hall

J. Scott Hall, Esq.

Post Office Box 1986

Santa Fe, New Mexico 87504

(505) 989-9614

ATTORNEYS FOR PENDRAGON ENERGY
PARTNERS, PENDRAGON RESOURCES, L.P.
AND EDWARDS ENERGY CORPORATION

CERTIFICATE OF SERVICE

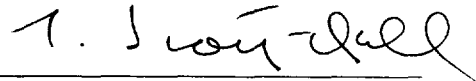
I hereby certify that a true and correct copy of the foregoing Motion to Conduct Reservoir Pressure Test was mailed on this 4 day of April, 1999 to the following:

Dr. Robert Lee
Petroleum Resource Recovery Center
801 Leroy Place
Socorro, New Mexico 87801

Jamie Bailey
New Mexico State Land Office
310 Old Santa Fe Trail
Santa Fe, New Mexico 87504

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

J.E. Gallegos, Esq.
460 St. Michaels Drive, #300
Santa Fe, New Mexico 87505



J. Scott Hall, Esq.

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WILLIAM K. STRATVERT, COUNSEL
PAUL W. ROBINSON, COUNSEL
RALPH WM. RICHARDS, COUNSEL
ROSS B. PERKAL, COUNSEL
JAMES J. WIDLAND, COUNSEL

PLEASE REPLY TO SANTA FE

June 4, 1999

BY FACSIMILE: 505-986-1367

J. E. Gallegos, Esq.
Gallegos Law Firm, P. C.
460 St. Michaels Dr., #300
Santa Fe, New Mexico 87505-7602

Re: NMOCD Case No. 11996; Application of Pendragon Energy, Inc., and J. K. Edwards Associates, Inc.; San Juan County, New Mexico

Dear Gene:

This letter is an additional effort to obtain your voluntary compliance with the Commission's subpoenas duces tecum issued to Schlumberger/Holditch on February 17, 1999 and to Whiting and Maralex on February 25th. Although earlier requests for compliance have been made, these parties have yet to produce a single document, despite the fact you have acknowledged that the subpoenaed documents have been transmitted to you. Indeed, Mr. Bradley Robinson's April 25, 1999 cover letter transmitting the Schlumberger/Holditch documents to you was copied to me, so there is no dispute that the documents have been available for some time.

I don't believe the recountal of the March 30, 1999 Pre-Hearing Conference set out in your May 21, 1999 letter is altogether accurate. My notes reflect that we resolved all of the objections to the subpoenas and it was agreed that the subpoenaed materials would be produced by the end of April. With respect to experts other than Schlumberger/Holditch, it was agreed that non-interpretive "underlying data" would be exchanged by a date certain in advance of the hearing. It was also agreed that the prior production of "field data" such as production and pressure data would be supplemented in advance of the hearing as well. All of these agreed points were repeated in Pendragon's Memorandum Brief On Discovery Issues filed on April 12th. (See Excerpt, attached.) In addition, my notes also reflect that counsel agreed that it would not be necessary to utilize formal subpoenas as a means to obtain documents as a simple letter request would suffice.

In a subsequent telephone conference with the Commission's counsel, you discussed our April 12th brief and, except for my reference to a possible hearing date in July, no other objection to the outline of the agreed points was made. Indeed, the April 30th deadline for the production of documents requested was repeated in the Commission's May 11, 1999 Scheduling Order. Nowhere in my notes, the briefing, the correspondence or the Commission's orders is it referenced that the production of the subpoenaed documents would be delayed until a contemporaneous exchange of all experts' underlying data was made at an unspecified date sometime in the future. While we anticipate participating in such an exchange for all the other experts, such a procedure does not apply to the materials under the earlier subpoenas. I believe it was understood by all that you were under a clear obligation to produce the subpoenaed documents on or before April 30th.

Once again, I ask for your voluntary compliance in producing the subpoenaed materials as soon as possible

Very Truly Yours,



J. Scott Hall

JSH/ao

Enclosure - Excerpt

Cc: Marilyn Hebert, Esq.
Al Nicol

6304/20253/Gallegosltr3.doc

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

IN THE MATTER OF:

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

99 JUN - 3 PM 4: 59
OIL CONSERVATION DIV

CASE NO. 11996
ORDER NO. R-11133
De Novo

PENDRAGON'S RESPONSE
TO
MOTION TO REQUIRE COMPREHENSIVE AND FAIRLY DESIGNED
TESTING IN CONNECTION WITH RESERVOIR PRESSURE TESTS

Pendragon Energy Partners, Inc., Pendragon Resources, LP and Edwards Energy Corporation, (together, "Pendragon") for their Response to the Whiting/Maralex Motion for alternative reservoir testing, state:

THE PENDRAGON TESTING

At the outset, Pendragon generally disputes the Whiting/Maralex assertions to the effect that the reservoir testing Pendragon proposed was based on "false premises", biased or incorrectly designed. The fact that the Commission approved the testing proposed by Pendragon speaks for itself.

Pendragon further rejects the Whiting/Maralex contention that the Commission has failed to assert control over the testing procedure in a fair manner.

Pursuant to the Commission's May 19, 1999 Order Allowing Reservoir Pressure Testing, Pendragon filed a motion with the District Court to obtain the Court's permission to restore one of its shut-in Pictured Cliffs wells to production for ten days in conjunction with the testing procedure it proposed. On June 2, 1999, at a court hearing on the motion, Whiting and Maralex again opposed the testing procedure proposed by Pendragon and further demanded that Pendragon supply a bond or other security to compensate Whiting and Maralex for the production revenues and tax credits they claim would be lost while their three coal wells were temporarily shut-in.

The Commission should be advised that Pendragon has determined^h it is unable to afford the onerous security amount demanded by Whiting and Maralex. As a consequence, Pendragon will not proceed with its reservoir pressure testing and its motion to do so is accordingly withdrawn.

THE WHITING/MARALEX TESTING

Pendragon does not oppose the reservoir testing proposed by Whiting and Maralex in their June 1, 1999 motion.

For the present, Pendragon takes no position with respect to the propriety of the testing design and procedure Whiting and Maralex propose, reserving instead the right to address such matters at the hearing De Novo.

Pendragon will cooperate with the Whiting/Maralex tests in every way, provided that the testing is done at their own cost and provided further that any physical operations involving Pendragon's wells be performed only by Pendragon's field personnel in coordination with Whiting's technical staff.

We understand that the data derived from the Whiting/Maralex testing will be supplied to Pendragon and the Division as soon as it is obtained. Whiting and Maralex are encouraged to commence their testing procedures at the earliest opportunity so that the data can be made available sufficiently

in advance of the August 12, 1999 hearing to allow for its meaningful review.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, PA.

By J. Scott Hall

J. Scott Hall, Esq.
Post Office Box 1986
Santa Fe, New Mexico 87504
(505) 989-9614

ATTORNEYS FOR PENDRAGON ENERGY
PARTNERS, PENDRAGON RESOURCES, L.P.
AND EDWARDS ENERGY CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Conduct Reservoir Pressure Test was mailed on this 3 day of June, 1999 to the following:

Dr. Robert Lee
Petroleum Resource Recovery Center
801 Leroy Place
Socorro, New Mexico 87801

Jamie Bailey
New Mexico State Land Office
310 Old Santa Fe Trail
Santa Fe, New Mexico 87504

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

J.E. Gallegos, Esq.
460 St. Michaels Drive, #300
Santa Fe, New Mexico 87505



J. Scott Hall, Esq.

6304/20253/Resp to Mot for Testing

GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

June 3, 1999
(Our File No. 98-266.00)

RECEIVED

J.E. GALLEGOS *

7 1999

J. Scott Hall
Miller, Stratvert, Torgerson
& Schlenker, P.A.
150 Washington, Suite 300
Santa Fe, New Mexico 87501

Re Whiting Petroleum Corp. et al. v. Pendragon et al.
Santa Fe County Cause No. SF-OV-98-01295

Dear Scott:

Please be advised as follows.

Surety Bond. Attached is a study which demonstrates the dollar amount to be secured by a bond of your clients as a condition of the order temporarily lifting the preliminary injunction and allowing testing which shuts-in certain Gallegos Federal wells. I have made the calculation as directed by Judge Encinas. The amount required is \$118,000.

Terms of Order. We are interested in learning whether your clients will agree to substitute the Chaco No. 5 well for the No. 4, or do a test with each of those wells? If so, we will work with you on presenting an appropriate Order to the Court.

Exchange of documents. We have all of the Holditch data and materials and the same from Maralex. Whiting's documents are expected to arrive tomorrow. Allowing time for copying and stamping we will be willing to make an exchange for the like underlying data and source documents of your clients and experts next week. Please let me know when this can be accomplished.

Sincerely,

GALLEGOS LAW FIRM, P.C.

By


J.E. GALLEGOS

JEG:sa

fx: David Frawley
Mickey O'Hare

ioc: Michael J. Condon
Michael P. Gross

*New Mexico Board of Legal Specialization
Recognized Specialist in the area of
Natural Resources-Oil and Gas Law

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

IN THE MATTER OF:

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

CASE NO. 11996
ORDER NO. 5-11-03
De N.

PENDRAGON'S MEMORANDUM BRIEF
ON DISCOVERY ISSUES

Pendragon Energy Partners, Inc., Pendragon Resources, L.P. and Edwards Energy Corporation¹, (together, "Pendragon"), through counsel, submit this Memorandum Brief pursuant to certain issues raised at the March 30, 1999 pre-hearing conference convened before the Commission's counsel. At the conference, a number of items were discussed and agreement was reached on the following:

1. In view of the planned requirement for pre-filed testimony for experts,² counsel agreed to confer on a form of a pre-hearing scheduling order to include, among other things, deadlines for the conduct of discovery, the filing of objections to the pre-filed testimony and rulings thereon;
2. The parties will identify witnesses and supply exhibit lists by a date certain.

¹ F/k/a J.K. Edwards Associates, Inc.

² The possibility of pre-filed testimony for fact witnesses was expressly precluded at the prehearing conference. Consequently, the ramifications of such a concept were not discussed.

3. The objections to the presently pending discovery are resolved and Whiting Petroleum Corporation's Motion to Quash Subpoenas is withdrawn.

4. In connection with item 3, above, it was agreed that the expert's "underlying data" and other materials sought under the Division's March 8, 1999 subpoena on Schlumberger/Brazos/S.A. Holditch would be provided by the expert. Pendragon affirmed that it did not seek interpretations, work-product or other similar information under the subpoena. It was agreed that the subpoenaed materials would be produced by the end of April.

5. With respect to all other experts, the parties similarly agreed to exchange their experts' "underlying data" by a date certain in advance of the hearing.

6. The parties agreed to supplement their prior production of "field data", such as production and pressure data, a certain number of days in advance of the hearing.

7. Counsel will confer and attempt to narrow the issues by filing a Stipulation in advance of the hearing.

8. A four to five-day hearing would be scheduled in late June or early July;

The issue of extra-statutory discovery was also raised, but on discussion, the practical problems precipitated by such a process and the limits of the agency's authority to provide for the same created some concern. Accordingly, it was agreed the matter would be briefed.

It is Pendragon's position that the present practices and procedures for discovery under NMSA 1978, Section 70-2-8 (1995) and Rule 1221 are both efficient and adequate. Moreover, the expansion of existing discovery procedures without more explicit statutory

6/1/99

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

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

CASE NO. 11996

69 MAY 32 PM 2:52

OIL CONSERVATION DIVISION

**MOTION TO REQUIRE COMPREHENSIVE AND FAIRLY DESIGNED
TESTING IN CONNECTION WITH RESERVOIR PRESSURE TESTS**

Whiting Petroleum Corporation and Maralex Resources, Inc. (collectively "Whiting") hereby move, pursuant to Order No. R-8768, NMSA 1978 § 70-2-12A (1995 Repl.), and the Commission's inherent power, for the Commission's Supplemental Order authorizing control and direction over the reservoir pressure tests approved by the Commission's Order of May 19, 1999. Whiting requests that certain appropriate test procedures and protocols for the testing be specified. As grounds for this Motion, Whiting states as follows:

1. On May 18, 1999, counsel for the applicant hand-delivered to the Commission Pendragon's Reply Pursuant to the Motion to Conduct Reservoir Pressure Tests, which included as Exhibit 1 the Second Affidavit of Dave O. Cox. By the time counsel for Whiting had received those papers by regular mail, on May 19, 1999, the Commission on May 19, 1999 had entered its Order Allowing Reservoir Pressure Testing. That Order was not received by Whiting's counsel until May 21, 1999.

2. Only after the Commission had already entered its Order to allow testing sought by Pendragon has there been opportunity for Whiting's experts to study and understand the test design proposed by Pendragon's expert Professor Cox. **That**

test design and the respective reservoir (Fruitland coal and Pictured Cliff Sandstone) quality assumptions being employed by Professor Cox are biased, incorrect and so destined not to yield objective evidence but rather a pre-determined result.

3. The Order Allowing Reservoir Pressure Testing was entered before Whiting had digested, let alone had a fair opportunity to address the five page, single spaced Second Affidavit of Professor Cox (made May 18, 1999). Whiting will not, however, contest the allowing of reservoir pressure testing if the test design, protocol and calculation assumptions are controlled so that potentially helpful and objective evidence may be yielded. In support of this Motion, Whiting attaches the Supplemental Affidavit of Bradley M. Robinson Addressing the Affidavit of Dave O. Cox.

FALSE PREMISES AND BIAS

4. Pendragon has never been forthright and above board throughout this regulatory proceeding. It came to the Oil Conservation Division with an application "To Confirm Production From The Appropriate Common Source of Supply." Its entire argument and evidence to the Santa Fe County district court and the Division were (prior to the Division Order No. R-11133 issued February 18, 1999 that is was producing the gas from its Chaco wells from and only from the Pictured Cliffs formation and there was no communication between the Fruitland formation, owned by Whiting, and the Pendragon owned Pictured Cliffs. As made manifestly clear by the district court's decision granting a Preliminary Injunction and the Division's Order in this case, Pendragon's position was not supported by the evidence.

5. Pendragon has now switched positions. Even though Whiting completed and stimulated its Fruitland wells in 1992 with no effect on the Chaco wells, even though in 1995 when Pendragon hydraulically fractured the Chaco wells there was an immediate and dramatic gas flow increase in the old Pictured Cliffs wells, Pendragon now concedes there is communication between the formations but wants to attribute it to Whiting's stimulations. Pendragon's latest ploy is to have an expert purpose reservoir pressure testing that is so planned and will adopt such assumptions as to inevitably provide a result supporting Pendragon's belated new theory. The flaws in Professor Dave Cox's requested testing include, without being exhaustive, the following:

A. He pretends that he will be measuring radial pressure flow in reservoirs in their natural state, when the wells in question connect man-made high permeability propped fractures extending hundreds of feet from the wellbores.

B. So that his prophecy or expected result will be achieved he has purpose to assume the most extreme permeability value thinkable of 150 millidarcies for the Pictured Cliffs and the lowest of 20 millidarcies to the Fruitland.

C. He rejects the obvious benefit and necessity of installing high resolution electronic pressure gauges in the Fruitland wells which can demonstrate pressure response to the turn-on of Chaco wells.

D. Professor Cox selects one and only one of the Chaco wells to be produced for the tests – the Chaco No. 4. The Chaco No. 5 is situated to better facilitate the transient effect in the Gallegos Federal wells.

FAIR DESIGN AND PROTOCOL

6. Applying generally accepted petroleum engineering standards and with a view to obtaining some useable information Whiting purposes that this testing experiment be not another of Pendragon's artifices but instead it be mutually designed and carefully prescribed and controlled by the Commission.

7. Whiting's expert engineer offers the following to achieve fair and useable testing:

A. To avoid disagreement about assumed transient response time in the Fruitland coal there should be an interference test performed between two coal wells that are not in communication with the Pictured Cliffs. Both parties agree that the Gallegos Federal 26-13-1 Nos. 1-1 and 1-2 are in that category and we recommend a pulse test be conducted between those two wells. The test would include monitoring the bottomhole pressure in the 1-2 well, using electronic pressure gauges, while creating a series of pressure pulses through alternating production and shut-in cycles in the 1-1 well. (It may be necessary to shut-in additional wells, e.g., the 26-12-12 No. 1, to promote stabilization in the area surrounding the 1-2 well).

B. The permeability of the coal and the Pictured Cliffs are crucial variables in the calculations proposed by Professor Cox. The permeability has not been measured in any of the coal wells in question. (We have calculated permeability in the Pictured Cliffs wells, pre-fracture). The best method to measure the Fruitland coal permeability is to conduct injection fall-off tests. This would need to be done on wells not in communication with the Pictured Cliffs, e.g. the Gallegos Federal 26-13-1 Nos. 1-1 and

1-2. Prior to conducting the pulse test described in 7A above, the injection fall off test should be performed on the 1-1 well.

C. It is critical to install electronic pressure gauges in all of the Gallegos Federal wells which, among other things, will record pressure responses when the Chaco wells are turned on. Professor Cox for inconsistent reasons tries to discourage this procedure at Paragraph 10. of his Second Affidavit; however, this is the only part of the entire test that will prove definitively “where” communication exists in the Chaco well or wells that are produced.

D. It is important that the Chaco 5 be produced instead of the Chaco 4 in the ten-day flow period. Alternate production of the Chaco No. 5 well and then, in sequence, the Chaco No. 4 well could be included if Pendragon desires. The Chaco No. 5 is closer to the Gallegos Federal wells and exhibited the same extraordinary increase in gas production after the fracture stimulations in 1995. See charts attached which were Exhibits 19 and 20 before the Division. Other Chaco wells also reflect communication with the coal since they were stimulated in 1995.

E. Without the proposed pulse test between the Gallegos Federal 1-1 and 1-2 wells, analysis of whole cores from these reservoirs must be performed to determine the formation compressibility. Then, the average fluid saturations between wells must be determined. These values must be measured instead of assumed since they significantly affect the calculations proposed by Professor Cox.

F. Each side should utilize consistent variables in making the pressure analysis (permeability, total compressibility viscosity, etc.) that constitute standard values or true values obtained from described test procedures.

G. Professor Cox and Whiting's expert should promptly exchange all of their input data, assumptions and equations utilized in previous calculations and design of testing procedures.

EXPEDITED CONSIDERATION

8. Whiting requests that the Commission immediately address this matter and that it supplement its May 19, 1999 Order so that the proposed testing may proceed as soon as possible.

9. In making this proposal for supplementation of the May 19, 1999 Order, Whiting does not waive and specifically reserves its rights to object to and request reconsideration of that Order should the control over and essential fairness of design and procedure not be asserted by the Commission.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By  _____

J.E. GALLEGOS
MICHAEL J. CONDON

460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

Attorneys for Whiting and Maralex

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of a Motion to Require Comprehensive and Fairly Designed Testing in Connection with Reservoir Pressure Tests to be served by facsimile and U.S. Mail on this 1st day of June, 1999 to the following counsel for defendants:

J. Scott Hall
Miller, Stratvert, Torgerson & Schlenker, P.A.
150 Washington Avenue
Santa Fe, New Mexico 87501



J. E. GALLEGOS

FILED
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COUNTY OF SANTA FE
NEW MEXICO

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

OIL CONSERVATION DIV
NO. 1001155-000 TO
99 MAY 32 PM 2:53

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

OCD CASE NO. 11996

**SUPPLEMENTAL AFFIDAVIT OF BRADLEY M. ROBINSON
ADDRESSING SECOND AFFIDAVIT OF DAVE O. COX**

**STATE OF TEXAS)
)ss.
COUNTY OF HARRIS)**

I, Bradley M. Robinson, being first duly sworn and under oath, state as follows:

1. I am a petroleum engineer and Technical Manager for Stimulation with Holditch – Reservoir Technologies. A resumé of my background, education, and credentials are attached to this affidavit. I am providing this testimony for Whiting Petroleum Corporation and Maralex Resources, Inc. in support of their request to provide a fair and correct test design on the wells in question in this proceeding and to assist the Oil Conservation Commission.

2. I have previously testified before the Division for Whiting Petroleum and Maralex Resources in this matter. I am familiar with the data that was provided through previous well testing and with the testimony of the professional engineers previously presented in this matter. I have done studies and gathered information

concerning the permeability of the Pictured Cliffs formation in the subject area before stimulations were performed by Pendragon on the Chaco wells.

3. I have reviewed the Motion to Conduct Reservoir Pressure Tests submitted by Pendragon Energy Partners, Inc., et al., together with the attachments. Last week I received and since have reviewed the Second Affidavit of Dave O. Cox.

4. As I previously testified, in my professional opinion based on the standards of the petroleum engineering profession, I believe to a reasonable certainty that Professor Cox is correct in concluding that there is communication between formations open to certain wells involved in this proceeding. In my view there is no further need to determine that point. The testing procedure proposed by Professor Cox will not provide objective evidence concerning where the communication exists nor which of the two formations involved is the source of the gas that was being produced by Pendragon's Chaco wells. However, if the tests are properly performed, there is important information that can be obtained that will help address some of the critical issues.

5. It is our opinion that the input variables used in the example calculations by Professor Cox are not realistic. In fact, it is interesting to note that, based on the variables chosen, he has concluded that the response time through the Pictured Cliffs will be 2-3 days, while the Fruitland coal will be 3 weeks or longer. Professor Cox already knows that previous surface data obtained in the field indicates a transient response time of only a few days. If more realistic values are used, then the difference between the Fruitland and the Pictured Cliffs would not be that significant, if any at all. Additional disputes with the test design and proposed analysis include:

A. The pressure transient tests will not be measuring pressure transient behavior wave through coal or through sandstone by virtue of a simple matrix flow model, but rather through artificially propped hydraulic fractures. (Thus, pressure transient response time through both formations will be much faster than predicted by Professor Cox.)

B. The permeability of 150 millidarcies for the Pictured Cliffs formation assumed by Professor Cox represents an extremely, high value when in fact the average, and a fair assumption to use, would be more along the lines of 40 to 50 millidarcies. Using a realistic value would significantly slow down the transient response time in the Pictured Cliffs.,

C. Likewise, an extremely low permeability of 20 millidarcies has been assumed for the coal. Fruitland coal permeability increases over time as the formation is dewatered. A value of 30-50 millidarcies for the permeability of the coal wells in question is probably more realistic and would accelerate the transient time in the Fruitland. As suggested below, we can eliminate any assumptions of permeability by measuring actual values in representative coal wells.

D. He opposes testing the Gallegos Federal wells arguing in Paragraph 10. of his Second Affidavit that the presence of gas and water (2-phase flow) complicates the analysis. The same situation exists, however, in the Chaco wells which he proposes for testing.

E. Only one Chaco well, the No. 4, is selected for the test while the Chaco No. 5 well is better situated for pressure testing procedures.

6. The following additional tests and design changes for pressure testing need to be specified by the Commission in order to obtain meaningful data and prevent biased results.

A. To avoid disagreement about assumed transient response time in the Fruitland coal there should be an interference test performed between two coal wells that are not in communication with the Pictured Cliffs. Both parties agree that the Gallegos Federal 26-13-1 Nos. 1-1 and 1-2 are in that category and we recommend a pulse test be conducted between those two wells. The test would include monitoring the bottomhole pressure in the 1-2 well, using electronic pressure gauges, while creating a series of pressure pulses through alternating production and shut-in cycles in the 1-1 well. (It may be necessary to shut-in additional wells, e.g., the 26-12-12 No. 1, to promote stabilization in the area surrounding the 1-2 well).

B. The permeability of the coal and the Pictured Cliffs are crucial variables in the calculations proposed by Professor Cox. The permeability has not been measured in any of the coal wells in question. (We have calculated permeability in the *Pictured Cliffs wells, pre-fracture*). The best method to measure the Fruitland coal permeability is to conduct injection fall-off tests. This would need to be done on wells not in communication with the Pictured Cliffs, e.g. the Gallegos Federal 26-13-1 Nos. 1-1 and 1-2. Prior to conducting the pulse test described in 6A above, the injection fall off test should be performed on the 1-1 well.

C. It is critical to install electronic pressure gauges in all of the Gallegos Federal wells which, among other things, will record pressure responses when the Chaco wells are turned on. Professor Cox for inconsistent reasons tries to discourage

this procedure at Paragraph 10. of his Second Affidavit; however, this is the only part of the entire test that will prove definitively “where” communication exists in the Chaco well or wells that are produced.

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E. Without the proposed pulse test between the Gallegos Federal 1-1 and 1-2 wells, analysis of whole cores from these reservoirs must be performed to determine the formation compressibility. Then, the average fluid saturations between wells must be determined. These values must be measured instead of assumed since they significantly affect the calculations proposed by Professor Cox.

F. Each side should utilize consistent variables in making the pressure analysis (permeability, total compressibility viscosity, etc.) that constitute standard values or true values obtained from described test procedures.

G. Professor Cox and I should promptly exchange all of our input data, assumptions and equations utilized in previous calculations and design of testing procedures.

FURTHER AFFIANT SAYETH NOT.

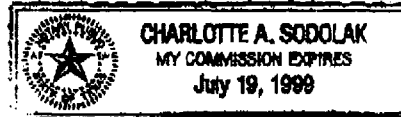
Bradley M. Robinson
Bradley M. Robinson

SUBSCRIBED AND SWORN before me on this 1st day of June, 1999
by Bradley M. Robinson.

Charlotte A. Sodalak
Notary Public

My Commission Expires:

July 19, 1999



BRADLEY M. ROBINSON

VICE PRESIDENT - PRODUCTION SPECIALIST

AREAS OF SPECIALIZATION

- Fracture treatment design and optimization for low permeability reservoirs
- Well completions and stimulation treatments in coalbed methane reservoirs
- Field supervision of well completions, hydraulic fracture treatments, and workovers
- Reservoir modeling of multi-layer, multi-phase formations
- Evaluation of problem wells and well performance
- Reserve evaluation and economic analysis
- Pressure transient analysis of conventional and low permeability oil and gas reservoirs

PROFESSIONAL EXPERIENCE

S. A. HOLDITCH & ASSOCIATES, INC.

Current Title: VICE PRESIDENT - PRODUCTION SPECIALIST

August 1982 - Present

Responsible for coordination and management of production and completion engineering projects, including development of drilling and openhole data acquisition programs, design and supervision of initial well completions and workovers, transient well test design and analysis, hydraulic fracture stimulation design and supervision. Also responsible for reserves evaluation and economic analysis of new or existing wells. Areas of specialization include low permeability gas sands, coal bed methane reservoirs and horizontal wells.

Has been directly responsible for the analysis, design and field supervision of well completions and fracture stimulation treatments for oil and gas fields in Indonesia, Brazil, Argentina, Australia, Japan and nearly every major producing area within the United States. Geographic areas of specialization in the U.S. include Gulf Coast, Permian Basin and Rocky Mountains. Served as assistant project manager for the Gas Research Institute's Tight Gas Sands and Horizontal Gas Well Research Programs. Responsible for the preparation and supervision of complete coring, logging, completion and testing programs of numerous multi-well development projects. Also responsible for economic analysis of slimhole completions in South Texas.

S. A. HOLDITCH & ASSOCIATES, INC.
SENIOR PETROLEUM ENGINEER
October 1979 - August 1982

Involved in all aspects of reservoir and production engineering for both conventional and low permeability oil and gas fields in the U.S. and abroad.

Responsible for the evaluation of production and pressure transient data for one operator active in the development of low permeability Wilcox sands of south Texas. Also optimized, designed and supervised massive hydraulic fracture treatments in this field. Directly coordinated and participated in the analysis of several hundred wells in the Wilcox (Lobo) trend for classification as a "tight" gas formation by the FERC.

Involved in the evaluation of hydraulic fracturing techniques utilized in the East Texas Cotton Valley sands. Acted as drilling and completion coordinator for 35+ well drilling program in central Texas. Was responsible for all phases of engineering related to the development of a low permeability reservoir in Australia.

MARATHON OIL COMPANY
RESERVOIR ENGINEER
January 1979 - October 1979

Responsibilities included reserves and economic analysis of new drilling prospects in West Texas, New Mexico and Oklahoma. Recommended workover and development prospects in established fields. Responsible for open hole log analyses, completion prognoses and post-completion production and pressure transient analysis. Performed waterflood study on shallow oil sands in west Texas field using two-dimensional, two-phase simulator to optimize injection and production patterns; designed pilot project for same field.

Other responsibilities included reserves determination and production forecasts for operated and non-operated properties in the Midland District. Represented Marathon on the SACROC Unit Engineering Committee and the Seminole San Andres Unit Engineering Committee. Was responsible for monitoring the injection and performance of these CO₂ and waterflood projects.

ASSOCIATE PRODUCTION ENGINEER
May 1977 - January 1979

Primary responsibilities included completion and workover recommendations on new and old wells. Helped supervise all completion and workover operations and directly responsible for open hole and cased hole logging and perforating. Monitored and upgraded salt water disposal systems, including one field with 80,000 BWPD production. Also was responsible for monitoring and recommending workovers on water injection wells in a Marathon operated waterflood unit.

Area of responsibility included twenty fields with approximately 400 active and inactive wells in West Texas.

EDUCATION

Texas A&M University - B.S. Petroleum Engineering (May 1977)
Texas A&M University - M.S. Petroleum Engineering (May 1986)

PROFESSIONAL AFFILIATIONS

Society of Petroleum Engineers - AIME
Pi Epsilon Tau
Registered Professional Engineer - Texas

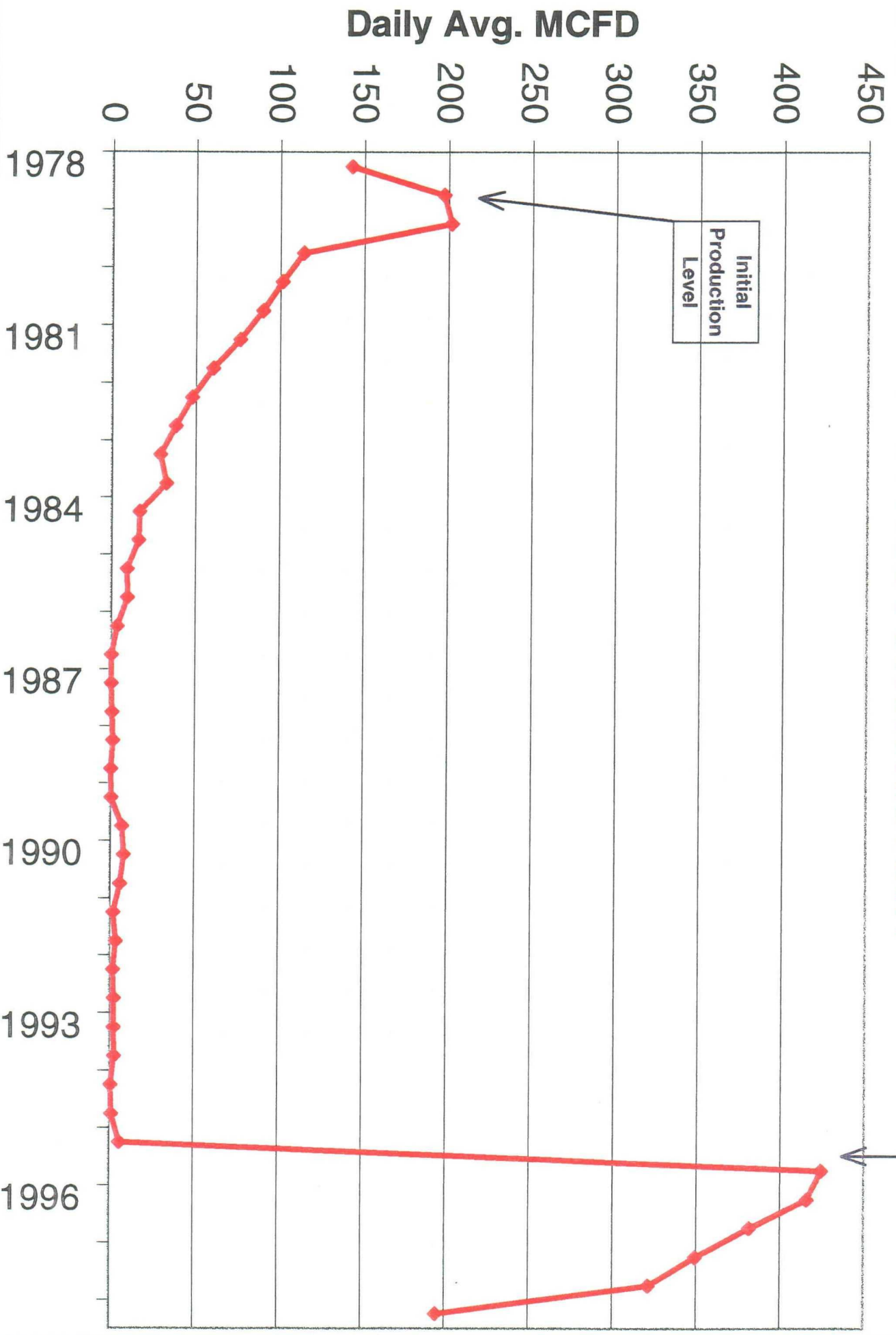
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- Robinson, B. M. and Holditch, S. A.: "The Gas Research Institute's Staged Field Experiment Project," presented at the 1992 International Gas Research Conference, Orlando, Nov. 16-19.
- Syfan Jr., F. E. and Robinson, B. M.: "Analysis Point to Untapped Potential in Tight Gas Sand," *Fort Worth Basin - A Case History*, "Oil & Gas Journal" (April 1992), 55-62.
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- Holditch, S. A., Robinson, B. M., and Whitehead, W. S.: "The Analysis of Complex Travis Peak Reservoirs in East Texas," paper SPE 16427 presented at the 1987 SPE/DOE Low Permeability Reservoirs Symposium, Denver, CO, May 18-19.
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CHACCO 4 GAS PRODUCTION HISTORY



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