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New Mexico Board of Legal
Specialization Recognized Specialist
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May 28, 2003

HAND DELIVERED

Ms. Lori Wrotenbery, Director
Oil Conservation Division
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Re: **MOTION FOR AN EMERGENCY ORDER**
STAYING OPERATIONS
Division Order R-11962
NMOCD Case 13048
Application of Devon Production
Company, L.P. for Compulsory Pooling,
Lea County, New Mexico



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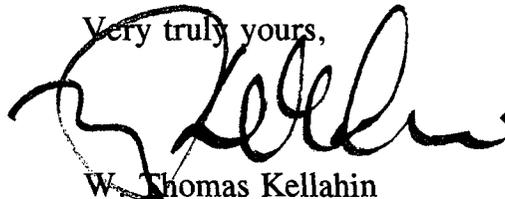
Oil Conservation Division

NMOCD Case 13049
Application of EGL Resources, Inc.
for Compulsory Pooling,
Lea County, New Mexico

Dear Ms. Wrotenbery:

On behalf of Devon Production Company, L.P. please find enclosed our request for an Emergency Stay of Division Order R-11962 pending the entry of a DeNovo Order by the New Mexico Oil Conservation Commission in the referenced cases.

Very truly yours,



W. Thomas Kellahin

cc: **J. Scott Hall, Esq.**
Attorney for EGL Resources, Inc.
Steve Ross, Esq.
Attorney for the Commission
David K. Brooks, Esq.
Attorney for the Division
Devon Energy Production Company, L.P.
Attn: Richard Winchester

**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. 13048

**APPLICATION OF DEVON ENERGY PRODUCTION
COMPANY, L.P. FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO.**

CASE NO. 13049

**APPLICATION OF EGL RESOURCES, INC.
FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

**DEVON ENERGY PRODUCTION COMPANY, L.P.
FOR AN EMERGENCY ORDER
STAYING
EGL RESOURCES, INC. FROM COMMENCING OPERATIONS**

Devon Energy Production Company, L.P. ("Devon"), through its attorneys, Kellahin & Kellahin, and in accordance with Division Rule 1202 (19 NMAC 15.N.1202), hereby moves the Oil Conservation Division and the Oil Conservation Commission for an Emergency Order staying EGL Resources, Inc. from commencing operations before entry of an De Novo Order by the Commission;

AND IN SUPPORT STATES:

RELIEF REQUESTED

1. On May 28, 2003, EGL Resources advised Devon that EGL Resources as early as today commence operations on Devon's Rio Blanco "4" Federal Well No. 1 ("the Well"), Unit F, Section 4, T23S, R34E, Lea County, New Mexico,

3. There exists a dispute between Devon and EGL over operations in the Well in N/2 of Section 4.

4. The commencement of operations by EGL will render moot the issue of operations within this disputed spacing unit.

5. There is good cause to issue an emergency order in this matter in order to maintain the status quo and precluded any party from gaining an unfair advantage over another party while this matter is addressed by the Commission.

BACKGROUND

6. In Case 13048, Devon had sought approval by the Division of the compulsory pooling of a 320-acre spacing unit consisting of the N/2 of Section 4, T23S, R34E to be dedicated to the Devon's Rio Blanco 4 Federal Well No. 1 (API No. 30-025-34515) located in Unit F of Section 4 for any production from the base of the Morrow formation to the base of the Devonian formation.

7. In Case 13049, EGL Resources, Inc. ("EGL") in response to Devon's application filed a compulsory pooling application seeking a 640-acre spacing unit consisting of all of Section 4 to be dedicated to Devon's well.

8. On May 13, 2003, the Division entered order R-11962 granting Devon's application but instead of designation Devon as the operator, awarded operations to EGL.

9. On May 15, 2003, EGL filed an application for a DeNovo Hearing of Division Order R-11962.

10. On May 21, 2003, EGL sent Devon a 30-day election letter to participate in the well.

11. On May 27, 2003, Devon filed an application for a DeNovo Hearing of Division Order R-11962.

12. On May 27, 2003, Devon filed its Motion for a stay Order R-11962.

13. On May 28, 2003, EGL advised Devon that EGL would immediately commence operations

ARGUMENT

14. A Emergency Order Staying EGL from Commencing operations will:

- (a) maintain the status quo;
- (b) Preclude EGL from commencing operations before the Commission can decide why Devon should not be the operator of the 320-acre spacing unit approved by the Division.
- (c) Prevent EGL from rendering the Operatorship issue moot before that issue is decided by the Commission
- (d) Protect Devon's correlative rights by preventing EGL from forcing Devon to elect to participate pursuant to order a Compulsory Pooling order that both EGL and Devon has appealed.

REASONING

15. By its actions, EGL is attempting to preclude the Commission from deciding who should be operator

16. Prior to a Commission's decision, EGL intends to commence of operations thereby precluding Devon from operations despite the Division Order's decision against EGL's proposed spacing unit.

17. EGL never proposed anything other than dedicating this re-entry to a 640-acre spacing unit.

18. EGL and Robert Landreth have both always maintained that Section 4 is part of the North Bell Lake-Devonian Oil Pool that is spaced on 640-acre spacing units.

19. EGL's compulsory pooling application sought the pooling of all of Section 4 pursuant to its interpretation of the pool rules and Division Rule 104

20. Devon maintains that Section 4 is separated from the North Bell Lake-Devonian Oil Pool and its proposed re-entry of the Well and the dedication of the N/2 of Section 4 to the well is in accordance with Division Rule 104.

21. The Division order agrees with Devon that Section 4 is not subject to the North Bell Lake-Devonian Pool rules.

22. But instead of granting Devon's motion to dismiss EGL flawed application, the Division approved EGL as the operator of an spacing unit it has never requested.

CONCLUSION

23. Devon's correlative rights will be impaired if EGL commences operations prior to having this matter resolved either voluntarily or by the Commission.

24. Devon has a right to have the issue of operatorship reviewed De Novo by the Commission.

25. That right is rendered moot unless the Division grants its Emergency Order staying EGL from commencing operations.

26. The entry of an Emergency Order by the Division in accordance with Rule 1202(19NMAC 15.N.1202) will maintain the status quo and will not harm EGL or Landreth.

27. A Stay of operations until an order is entered by the Commission after the De Novo review will protect the rights of the interest owners in this spacing unit and afford them the De Novo hearing as guaranteed by the Oil and Gas Act.

28. A proposed order is attached as Exhibit "A".

WHEREFORE, Devon request that the Oil Conservation Division entry an Emergency Order Staying EGL Resources, Inc. from commencing operations on this subject well pending the entry of a DeNovo Order by the Oil Conservation Commission.



W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504
Attorneys for Devon

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was delivered to all counsel of record this May 28, 2003,



W. Thomas Kellahin

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. 13048
APPLICATION OF DEVON PRODUCTION COMPANY, L.P.
FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO.

CASE NO. 13049
APPLICATION OF EGL RESOURCES, INC.
FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO

**EMERGENCY ORDER OF THE DIVISION
STAYING
EGL RESOURCES, INC. FROM COMMENCING OPERATORS
AS SET FORTH IN ORDER R-11962**

BY THE DIVISION:

This matter having come before the Division upon the application of Devon Production Company ("Devon") for a Emergency Order pursuant to Division Rule 1202 and the Division Director having considered the request and being fully advised in the premises,

NOW, on this 28th day of May, 2003, the Division Director:

FINDS THAT:

(1) Division Order No. R-11962 was entered on May 13, 2003, denying Devon's request to be operator of the pooled spacing unit set forth in Devon's Case 13048.

(2) Cases 13048 and 13049 are set for hearing before the Commission on its July 17, 2003 docket.

(3) Devon has complied with the provision of Division Rule 1220.A and has filed its request for a stay of Division Order R-11962 and staying EGL Resources, Inc. from commencing operations.

IT IS THEREFORE ORDERED THAT:

(1) Division Order No. R-11962 is hereby stayed in its entirety until the Commission rules on the evidence presented at the DeNovo hearing.

(2) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

LORI WROTENBERY
Director

S E A L

KELLAHIN & KELLAHIN
Attorney at Law

W. Thomas Kellahin
New Mexico Board of Legal
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May 27, 2003

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Ms. Lori Wrotenbery, Director
Oil Conservation Division
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

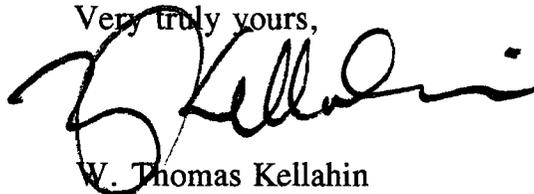
Re: MOTION TO STAY ORDER R-11962
NMOCD Case 13048
Application of Devon Production
Company, L.P. for Compulsory Pooling,
Lea County, New Mexico

NMOCD Case 13049
Application of EGL Resources, Inc.
for Compulsory Pooling,
Lea County, New Mexico

Dear Ms. Wrotenbery:

On behalf of Devon Production Company, L.P. please find enclosed our request for a Stay of Division Order R-11962 pending the entry of a DeNovo Order by the New Mexico Oil Conservation Commission in the referenced cases.

Very truly yours,



W. Thomas Kellahin

cc: **J. Scott Hall, Esq.**
Attorney for EGL Resources, Inc.
Steve Ross, Esq.
Attorney for the Commission
David K. Brooks, Esq.
Attorney for the Division
Devon Energy Production Company, L.P.
Attn: Richard Winchester

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Oil Conservation Division

**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. 13048

**APPLICATION OF DEVON ENERGY PRODUCTION
COMPANY, L.P. FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO.**

CASE NO. 13049

**APPLICATION OF EGL RESOURCES, INC.
FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

**MOTION OF
DEVON ENERGY PRODUCTION COMPANY, L.P.
FOR STAY OF
DIVISION ORDER NO. R-11962**

Devon Energy Production Company, L.P. ("Devon"), through its attorneys, Kellahin & Kellahin, and in accordance with 19 NMAC 15.N.1220.B, hereby moves the Oil Conservation Division and the Oil Conservation Commission for an order staying Oil Conservation Division Order No. R-11962 pending the entry of a **De Novo** Order by the Commission;

AND IN SUPPORT STATES:

BACKGROUND

1. In Case 13048, Devon had sought approval by the Division of the compulsory pooling of a 320-acre spacing unit consisting of the N/2 of Section 4, T23S, R34E to be dedicated to the Devon's Rio Blanco 4 Federal Well No. 1 (API No. 30-025-34515) located in Unit F of Section 4 for any production from the base of the Morrow formation to the base of the Devonian formation.

2. In Case 13049, EGL Resources, Inc. ("EGL") in response to Devon's application filed a compulsory pooling application seeking a 640-acre spacing unit consisting of all of Section 4 to be dedicated to Devon's well.

3. On May 13, 2003, the Division entered order R-11962 granting Devon's application but instead of designating Devon as the operator, awarded operations to EGL. (See Order R-11962, attached as Exhibit A)

4. On May 15, 2003, EGL filed an application for a DeNovo Hearing of Division Order R-11962.

5. On May 21, 2003, EGL sent Devon a 30-day election letter to participate in the well. (See letter dated May 21, 2003, attached as Exhibit B)

6. On May 27, 2003, Devon filed an application for a DeNovo Hearing of Division Order R-11962.

7. On May 27, 2003, Devon will file this Motion for a stay.

ARGUMENT

8. A Stay of Order R-11962 will:

- (a) maintain the status quo;
- (b) Preclude EGL from commencing operations before the Commission can decide why Devon should not be the operator of the 320-acre spacing unit approved by the Division.
- (c) Prevent EGL from rendering the Operatorship issue moot before that issue is decided by the Commission
- (d) Protect Devon's correlative rights by preventing EGL from forcing Devon to elect to participate pursuant to a Compulsory Pooling Order that both EGL and Devon have appealed.

REASONING

9. EGL never proposed anything other than dedicating this re-entry to a 640-acre spacing unit.

10. EGL and Robert Landreth have both always maintained that Section 4 is part of the North Bell Lake-Devonian Gas Pool that is spaced on 640-acre spacing units.

11. EGL's compulsory pooling application sought the pooling of all of Section 4 pursuant to its interpretation of the pool rules and Division Rule 104

12. Devon maintains that Section 4 is separated from the North Bell Lake-Devonian Oil Pool and its proposed re-entry of the Well and the dedication of the N/2 of Section 4 to the well is in accordance with Division Rule 104.

13. The Division order agrees with Devon that Section 4 is not subject to the North Bell Lake-Devonian Pool rules.

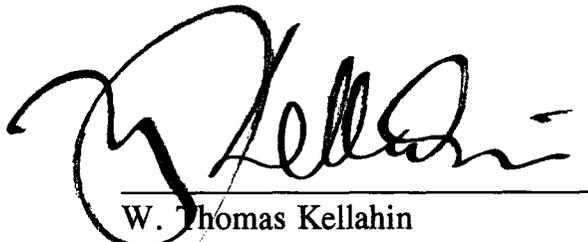
14. But instead of granting Devon's motion to dismiss EGL's flawed application, the Division approved EGL as the operator of an spacing unit it has never requested.

CONCLUSION

14. Devon has a right to have the issue of operatorship reviewed De Novo by the Commission.

15. A Stay of Order R-11962, including staying EGL from commencing operations and preserving Devon's election, until an order is entered by the Commission after the DeNovo review will protect the rights of all the parties and afford them the DeNovo hearing as guaranteed by the Oil and Gas Act.

WHEREFORE, Devon request that the Oil Conservation Division Order R-11962 be stayed in its entirety pending the entry of a DeNovo Order by the Oil Conservation Commission.



W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504
Attorneys for Devon

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was delivered to all counsel of record this May 27, 2003,



W. Thomas Kellahin

**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. 13048

**APPLICATION OF DEVON ENERGY PRODUCTION COMPANY, L.P. FOR
COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.**

CASE NO. 13049

**APPLICATION OF EGL RESOURCES, INC. FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO.**

ORDER NO. R-11962

ORDER OF THE DIVISION

BY THE DIVISION:

These cases came on for hearing at 8:15 a.m. on April 10, 2003, at Santa Fe, New Mexico, before Examiner David K. Brooks.

NOW, on this 13th day of May, 2003, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given, and the Division has jurisdiction of these cases and of the subject matter.

(2) In Case No. 13048, Devon Energy Production Company, L.P. ("Devon"), seeks an order pooling all uncommitted mineral interests from the base of the Morrow to the base of the Devonian formation underlying the N/2 of Section 4, Township 23 South, Range 34 East, NMPM, Lea County, New Mexico, forming a standard wildcat 320-acre gas spacing and proration unit (the "Unit") for all formations or pools spaced on 320 acres within this vertical extent.

(3) In Case No. 13049, EGL Resources, Inc. ("EGL"), seeks an order pooling all uncommitted mineral interests from the base of the Morrow to the base of the Devonian formation underlying all of Section 4, Township 23 South, Range 34 East,



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Order No. R-11962
Page 2

NMPM, Lea County, New Mexico, forming a standard 640-acre gas spacing and proration unit for the North Bell Lake Devonian Gas Pool.

(4) Each applicant seeks to dedicate its proposed unit to Devon's inactive Rio Blanco 4 Federal Well No. 1 (API No. 30-025-34515) located 1,980 feet from the North and West lines (Unit F) of Section 4 ("the well"), which both applicants propose to reenter and deepen to the Devonian formation, diverting the well in the process to a proposed bottom-hole location 1,930 feet from the North and West lines (Unit F) of Section 4.

(5) Inasmuch as approval of one of the subject applications would necessarily require denial of the other, one order should be entered for both cases.

(6) Two or more separately owned tracts are embraced within the proposed units, and/or there are royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the units that are separately owned.

(7) Both Devon and EGL are owners of oil and gas working interests within the proposed units. Each applicant has the right to drill to a common source of supply within the units.

(8) There are interest owners in the proposed units that have not agreed to pool their interests.

(9) Robert E. Landreth, an owner within each of the proposed units, appeared in person and through counsel in support of the application of EGL, and in opposition to the application of Devon.

(10) Land testimony and exhibits introduced at the hearing indicate the following:

(a) The working interest in the N/2 of Section 4 is owned by Devon (12.5%), Southwestern Energy Production Company (12.5%), EGL (25%), and Robert E. Landreth (50%).

(b) The working interest in all of Section 4 is owned by Devon (6.25%), Southwestern Energy Production Company (6.25%), EGL (25%) and Robert E. Landreth (62.5%).

(11) Division Rule 104 [19.15.3.104 NMAC] is unambiguous. It provides, in pertinent part:

Case No. 13048/13049

Order No. R-11962

Page 3

A. Classification of Wells: Wildcat And Development Wells

(1) Wildcat Well

(b) In all counties except San Juan, Rio Arriba, Sandoval, and Mc Kinley, a wildcat well is any well to be drilled the spacing unit of which is a distance of one mile or more from:

(i) the outer boundary of any defined pool that has produced oil or gas from the formation to which the well is projected to be drilled; and

(ii) any well that has produced oil or gas from the formation to which the proposed well is projected.

(12) According to the undisputed evidence, the outer boundary of the spacing unit for the well (the west line of Section 4, Township 23 South, Range 34 East) is exactly one mile from the outer boundary of the North Bell Lake Devonian Gas Pool (the east line of Section 6 of the same township and range), as said pool is defined by Order No. R-6424 entered in Case No. 6962.

(13) No well that has produced from the Devonian formation is located within one mile of the well.

(14) The well is a wildcat well, and the appropriate spacing unit for the well is 320 acres, pursuant to Rule 104.C(2) [19.15.3.104.C(2) NMAC].

(15) In effect, EGL's application for a 640-acre unit in Case No. 13049 seeks to expand the North Bell Lake Devonian Pool. Case No. 13049 was not filed nor advertised as an application to expand pool boundaries, nor does the evidence establish that notice of the application or the hearing thereof was given to all Division-designated operators in the pool as would be required for an application for a special pool order pursuant to Rule 1207.A(4) [19.15.N.1207.A(4) NMAC].

(16) The geologic and engineering testimony concerning the potential drainage radius of the well in the Devonian formation raises matters of which the Division cannot take cognizance in the context of these applications.

(17) Accordingly, EGL's application, to the extent that it asks for creation of a 640-acre unit comprised of all of Section 4 should be dismissed, without prejudice to any subsequent application to expand the Unit in the context of an application to expand the limits of the North Bell Lake Devonian Gas Pool.

Case No. 13048/13049

Order No. R-11962

Page 4

(18) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Unit the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, Devon's application in Case No. 13048 for the creation of a 320-acre unit comprised of the N/2 of Section 4 should be approved by pooling all uncommitted interests, whatever they may be, in the oil and gas within the Unit.

(19) The evidence established that both parties have been extensively involved in the development of this prospect.

(20) The parties are in agreement concerning the desirability of developing the Unit by deepening the well to test the Devonian formation, and are in general agreement concerning the plan for conducting this operation.

(21) The parties are in agreement regarding the appropriate risk penalty and administrative overhead charge.

(22) Devon's AFE for the proposed operation is somewhat higher than EGL's. However, EGL's witnesses testified that this difference was not significant.

(23) There is no evidence that either applicant is not a prudent operator, or that either applicant would economically recover more oil or gas than would the other by virtue of being awarded operations hereunder.

(24) The Oil Conservation Commission admonished, in Finding Paragraph (24) of Order No. R-10731-B, entered in Case No. 11677, that:

In the absence of compelling factors such as geologic and prospect differences, ability to operate prudently, or any reason why one operator would economically recover more oil or gas by virtue of being awarded operations than the other would, working interest control . . . should be the controlling factor in awarding operations.

(25) In this case, Robert E. Landreth has joined in EGL's proposal, giving EGL 75% "working interest control," as that term is defined in Order No. R-10731-B. Southwest Energy Production Company has joined in Devon's proposal, giving Devon 25% working interest control.

(26) EGL should be designated the operator of the well and of the Unit.

Case No. 13048/13049
Order No. R-11962
Page 5

(27) Any pooled working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 200% thereof as a reasonable charge for the risk involved in drilling the well.

(28) Reasonable charges for supervision (combined fixed rates) should be fixed at \$5,000 per month while drilling and \$500 per month while producing; provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*."

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of Devon in Case No. 13048, all uncommitted interests, whatever they may be, in the oil and gas from the base of the Morrow to the base of the Devonian formation underlying the N/2 of Section 4, Township 23 South, Range 34 East, N.M.P.M., Lea County, New Mexico, are hereby pooled, forming a standard 320-acre wildcat gas spacing and proration unit for all formations within this vertical extent.

The Unit shall be dedicated to the Rio Blanco 4 Federal Well No. 1, (API No. 30-025-34515) located 1980 feet from the North and West lines (Unit F) of Section 4 ("the well").

(2) The operator of the Unit shall commence reentry and deepening of the well on or before September 30, 2003, and shall thereafter continue operations with due diligence to test the Devonian formation.

(3) In the event the operator does not commence operations on the well on or before September 30, 2003, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause.

(4) Should the well not be drilled to completion in the Devonian, or be abandoned, within 120 days after commencement thereof, the operator shall appear before the Division Director and show cause why Ordering Paragraph (1) should not be rescinded.

(5) Upon final plugging and abandonment of the well, the pooled unit created by this Order shall terminate, unless this order has been amended to authorize further operations.

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(6) BGL is hereby designated the operator of the well and of the Unit.

(7) After pooling, uncommitted working interest owners are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Unit, including unleased mineral interests, who are not parties to an operating agreement governing the Unit.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Unit an itemized schedule of estimated costs of re-entering, sidetracking, deepening, re-completing and re-equipping the well ("well costs").

(8) Within 30 days from the date the schedule of estimated well costs is furnished, any pooled working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges. Pooled working interest owners who elect not to pay their share of estimated well costs as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."

(9) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs within 90 days following completion of the proposed re-entry and re-completion. If no objection to the actual well costs is received by the Division, and the Division has not objected within 45 days following receipt of the schedule, the actual well costs shall be deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(10) Within 60 days following determination of reasonable well costs, any pooled working interest owner who has paid its share of estimated costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator the amount, if any, that the estimated well costs it has paid exceed its share of reasonable well costs.

(11) The operator is hereby authorized to withhold the following costs and charges from production:

- (a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner; and

Case No. 13048/13049

Order No. R-11962

Page 7

(b) as a charge for the risk involved in drilling the well,
200% of the above costs.

(12) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs.

(13) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$5,000 per month while drilling and \$500 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "Accounting Procedure-Joint Operations." The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to pooled working interest owners.

(14) Except as provided in Ordering Paragraphs (11) and (13) above, all proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in Lea County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

(15) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(16) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

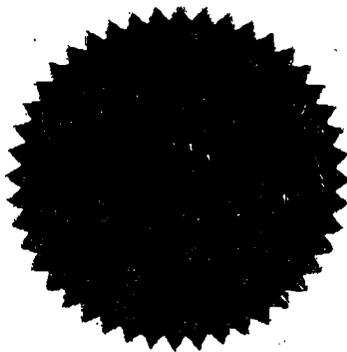
(17) The operator of the well and Unit shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(18) EGL's application, to the extent that it seeks creation of a 640-acre unit comprised of all of Section 4 is dismissed, without prejudice to any subsequent application to expand the Unit in the context of an application to expand the limits of the North Bell Lake Devonian Pool.

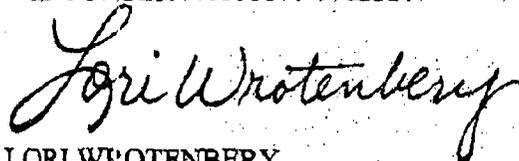
Case No. 13048/13049
Order No. R-11962
Page 8

(19) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



STATE OF NEW MEXICO
OIL CONSERVATION DIVISION



LORI WROTENBERY
Director

SEAL



E. G. L. Resources, Inc. 508 West Wall Street, Suite 1250 P.O. Box 10888 Midland, Texas 79702 915.687.6560 telephone 915.682.5852 facsimile

5/21/2003

Richard Winchester
Devon Energy Company
20 North Broadway, Suite 1500
Oklahoma City, OK 73102

Via Certified Mail

405-552-8113

RE: Rio Blanco #4 well
T23S, R34E, NMPM
Section 4: N/2
Eddy County, NM

Dear Richard:

Under Order No. R-11982 EGL Resources, Inc. was named Operator to to deepen the captioned well and form a Unit covering N/2 of Section 4, T23S, R34E to test the Devonian Formation at a depth of approximately 15,000 feet. Attached is an Authority for Expenditure (AFE).

Your participation is based on Paragraph 10 (a) of the order but is possible that it may change based upon the upcoming Commission Hearing.

We have contracted with Patterson Drilling for a rig to move on this location on or about June 11, 2003. Please review this information, sign the AFE and return with your share of the cost at your earliest convenience.

Thank you for your consideration and should you have any questions, please call 915.688.4360. I am,

Very truly yours,


W. Wesley Perry
President

The undersigned agrees to this proposal, signed this the _____ day of _____, 2003.

Devon Energy Company

by: _____

Name: _____

Title: _____



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

IN THE MATTER OF THE APPLICATION OF
EGL RESOURCES, INC.
FOR COMPULSORY POOLING
LEA COUNTY, NEW MEXICO

RECEIVED

MAY 29 2003

CASE NO. 13049

Oil Conservation Division

IN THE MATTER OF THE APPLICATION OF
DEVON ENERGY PRODUCTION COMPANY, L.P.
FOR COMPULSORY POOLING
LEA COUNTY, NEW MEXICO

CASE NO. 13048

**RESPONSE OF
E.G.L. RESOURCES, INC. AND ROBERT LANDRETH
TO DEVON'S MOTION FOR STAY**

E.G.L. Resources, Inc., ("EGL"), and Robert Landreth, ("Landreth"), for their response to Devon Energy Production Company's Motion For Stay, state:

In a motion filed by it on May 27, 2003,¹ Devon applied for a stay of a Division compulsory pooling order. Subsequent to filing its motion, on May 28th, counsel for the Energy, Minerals and Natural Resources Department called to advise that Devon had also filed a Request for an Emergency Order. A copy of the Request for Emergency Order was received by fax at 4:14 p.m. on May 28th and that filing was found to have no substantive difference from Devon's first motion. Accordingly, this Response addresses both filings.

SUMMARY

Devon has not satisfied the established regulatory criteria for the issuance of a stay order and therefore its motion must be denied. With Devon's express encouragement, EGL moved a rig onto location on May 28, 2003 and has begun

¹ Devon's motion was not served on counsel until May 28th.

operations. Consequently, EGL and Landreth will incur “gross negative consequences”, including significant economic damages, if Devon’s request for a stay order is issued.

BACKGROUND FACTS

Both EGL and Devon had the right to drill on the subject lands and both sought to operate the Rio Blanco “4” Federal Well No. 1 for purposes of conducting relatively identical reentry and sidetracking operations to the Devonian formation. The only significant difference between the EGL and Devon proposals was that EGL contended that 640 acre spacing applied while Devon asserted that 320 acre “wildcat” well spacing was applicable. Accordingly, Devon’s Application in Case No. 13048 sought the creation of a 320-acre unit. EGL’s Application in Case No. 13049 sought the creation of a 640-acre unit. The Division consolidated the two applications for hearing on April 10, 2003 and subsequently issued Order No. R-11962 on May 13, 2002.

Devon was previously the operator of the Rio Blanco well pursuant to an Operating Agreement and a Communitization Agreement limited to rights from surface to the base of the Morrow formation. The Rio Blanco well last produced Morrow formation gas in March of 2000. A subsequent effort to recomplete the well in the Atoka formation in June 2000 was unsuccessful. As a consequence of the production cessation in 2000, the Communitization Agreement and Operating Agreement expired by their own terms. EGL consequently has the right to utilize the well bore for the Rio Blanco “4” Federal Well No. 1 as a tenant in common, a matter that is undisputed by Devon.

At the Division hearing on the pooling applications, operator experience, geology, well costs, risk penalties and the fact that pre-application negotiations occurred were not at issue. The Division also found: *“There is no evidence that either applicant is not a prudent operator, or that either applicant would economically recover more oil or gas*

than would the other by virtue of being awarded operations hereunder.” (Order No. R-11962, at finding 23.)

In Order No. R-11962, the Division interpreted its well spacing and acreage dedication requirements under Rule 104 and determined that 320-acre spacing applied. Accordingly, the Order pooled the Devonian formation mineral interests underlying the N/2 of Section 4 to form a 320-acre spacing unit. Citing to the precedent established under Order No. R-10731-B, the Division noted in Order No. R-11962 that EGL and Landreth controlled 75% of the working interest in the 320 acre unit while Devon owned only a 12.5% interest. Correspondingly, EGL was designated operator of the well under the Order.

Under the Order, the Division also invited EGL and Landreth to file a subsequent application to expand the 320-acre unit in the context of an application to extend the limits of the North Bell Lake Devonian Gas Pool, the pool rules for which provide for 640-acre spacing units. (Order No. R-11962, finding 17). EGL and Landreth filed such an application with the Division on May 23, 2003.

On May 15, 2003, following the issuance of Order No. R-11962, EGL and Landreth filed an Application for Hearing De Novo in order to have the Commission further consider the Division’s interpretation of its acreage dedication rules consistent with established precedent.² Devon filed its own Application for Hearing De Novo on May 27th.

On May 21, 2003 EGL sent its AFE reflecting the estimated well costs under Order No. R-11962 to Devon’s landman.

² In Order No. R-9493, the Division pooled the Devonian formation underlying these very same lands and formed a 640-acre spacing and proration unit.

On or about May 21, 2003, EGL's president had a conversation with Devon's landman advising him that EGL was proceeding with the re-entry and drilling operation on the Rio Blanco well. In that conversation, Devon's landman "encouraged [EGL] to proceed as soon as possible." (See correspondence from Wes Perry dated May 26, 2003, Exhibit 1, attached.)

On the morning of May 28, 2003, EGL moved a workover rig onto the location and proceeded with operations. EGL and Landreth have also contracted for a large drilling rig, a consultant, workover crews, other personnel and equipment at significant expense. (*Id.*)

CRITERIA FOR STAY ORDERS

Devon seeks the extraordinary relief of a stay of a Division compulsory pooling order (Order No. R-11962) for only one reason: the order is the subject of a de novo appeal to the OCC and therefore the status quo should be maintained. Otherwise, Devon offers no grounds for the issuance of a stay.

Rule 1220(B) of the Rules and Regulations of the Oil Conservation Division, 19 NMAC 15.N.1220(B), permit the Director to enter a stay of a Division order "*...if a stay is necessary to prevent waste, protect correlative rights, protect public health and the environment or prevent gross negative consequences to any affected party...*".

POINTS AND AUTHORITIES

Devon fails to establish that (1) waste is threatened, (2) correlative rights are in jeopardy, (3) public health or the environment are at risk, or (4) that "*gross negative consequences*" will accrue to any party from the Division's order.

At no time has Devon asserted that EGL could not properly operate the Rio Blanco well. Devon's only argument is that drilling should wait until the Commission can

decide the “operatorship issue”. Such “generalized concerns” are insufficient grounds for the issuance of a stay order. (Order No. R-11663; *Application of McElvain Oil and Gas Properties, Inc. for Compulsory Pooling, Rio Arriba County, New Mexico*; Case No. 12705.) Devon does not assert that it will suffer harm if the order is not granted. It does not have a lease expiration situation and it is threatened with no other loss.

EGL and Landreth on the other hand, with their operations in-progress, will incur significant harm, including monetary damages, if Devon succeeds in interrupting drilling operations.

As established in the attached correspondence from EGL’s president (Exhibit 1):

1. A rig is on location and workover operations are already under way.
2. EGL and Landreth have already contracted with Patterson Drilling Company for a deep drilling rig that is scheduled to move on location soon.
3. If operations are interrupted, the Patterson rig deal may be lost and the rig may become unavailable for some time.
4. Rig availability has become “tight” and drilling costs are increasing. It is not likely that EGL could obtain another drilling rig at a rate as low as the current rate under its contract with Patterson.
5. Production revenues will become delayed.
6. In connection with operations, EGL and Landreth have already contracted with consultants, crews, other personnel and equipment at significant costs that cannot be recouped but will instead be recurrent costs if operations are disrupted and subsequently re-started.

EGL and Landreth bear 75% of these costs. Unquestionably, the losses that will

accrue to them if operations are disrupted would constitute the “gross negative consequences” that Rule 1220(B) is intended to avert.

Finally, it should also be borne in mind that as operator and owner of an interest in the lands, under established agency precedent, EGL is fully authorized to enter onto the lands and commence operations, regardless of the pendency of the agency’s disposition of a compulsory pooling order. In Order No. R-11700-B, also in the context of a similar request for stay, the Commission has said:

“34. It has long been the practice in New Mexico that the operator is free to choose whether to drill first, whether to pool first, or whether to pursue both contemporaneously. The Oil and Gas Act explicitly permits an operator to apply for compulsory pooling after the well is already drilled. See NMSA 1978, § 70-2-17(C) (the compulsory pooling powers of the Division may be invoked by an owner or owners “. . . who has the right to drill has drilled or proposed to drill a well [sic] . . .”).”

(Case Nos. 12731/12744; *Application Of TMBR/Sharp Drilling, Inc. For An Order Staying David H. Arrington Oil & Gas, Inc. From Commencing Operations, Lea County, New Mexico.*)

CONCLUSION

Devon is improperly using the Division’s extraordinary relief processes as a tool for challenging operatorship of a well. However, Devon has failed to satisfy even a single one of the requirements under Rule 1220(B) for the issuance of a stay of the Division’s compulsory pooling order. Regardless, even without the issuance of a stay, Devon remains free to challenge the operatorship of the well pursuant to its De Novo appeal, should it choose to do so. EGL and Landreth, on the other hand, will suffer significant harm should Devon’s request for extraordinary relief be granted. Correspondingly, Devon’s motion should be denied.

MILLER STRATVERT P.A.

By: 

J. Scott Hall
Attorneys for EGL Resources, Inc. and
Robert Landreth
Post Office Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 29th day of May 2003, as follows:

Thomas Kellahin, Esq.
Post Office Box 2265
Santa Fe, New Mexico 87504
Attorney for Devon Energy Production Company, LP

Carol Leach, Esq.
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 98504



J. Scott Hall



E. G. L. Resources, Inc. 508 West Wall Street, Suite 1250 P.O. Box 10886 Midland, Texas 79702 915.687.6560 telephone 915.682.5852 facsimile

5/28/2003

Scott Hall
Miller Stratvert PA
150 Washington Ave., Suite 300
P.O. Box 1986
Santa Fe, NM 87504-1986

Via Fax #: 505-989-9857

RE: Rio Blanco Federal 4-1
T23N, R34E, NMPM
Section 4
Lea County, New Mexico

Dear Scott:

Today EGL Resources, Inc. moved in a workover rig on the captioned well. Our procedure includes pulling tubing, setting a bridge plug over the Atoka zone and a second bridge plug for the whipstock.

The reasons why it is important for EGL continue are:

1. A Patterson Rig has been contracted and will be moving to this location soon. This workover operation readies the well prior the Patterson Rig move in.
2. If the well is not ready, EGL may lose the Patterson Rig and it may not become available again for some time. EGL will be unable to obtain a Patterson Rig at a rate as low as the current contracted rate. This incurs significant economic damage for reasons that rig prices are escalating and other rigs may not be available at all. By not taking advantage of the current high gas prices, further delays create significant loss of revenue for the working and royalty interest owners.
3. EGL has contracted with a consultant, workover crews, other personnel and equipment and will incur wasted expenses if we terminate operations today.
4. Significantly, on or about May 21, 2003, Richard Winchester with Devon indicated Devon was interested in moving forward and encouraged us to proceed as soon as possible.

If you have any questions, please call 915.686.4360. I am,

Very truly yours,


W. Wesley Perry
President

EXHIBIT NO. 1