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October 2, 2001

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**OIL CONSERVATION
DIVISION**

Via Fax and U.S. Mail

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

Re: Case 12734; application of Richardson Operating Company

Dear Ms. Wrotenbery:

Enclosed is San Juan Coal Company's Reply in Support of Motion for a Continuance. If the Division decides to continue the matter, or would like a pre-hearing meeting on the motion, please let me know. I need to know whether to bring company representatives to Santa Fe for the hearing.

Thank you.

Very truly yours,


James Bruce

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:

APPLICATION OF RICHARDSON OPERATING
COMPANY TO ESTABLISH A SPECIAL
"INFILL WELL" AREA WITHIN THE BASIN-
FRUITLAND COAL GAS POOL AS AN EXCEPTION
TO RULE 4 OF THE SPECIAL RULES FOR THIS
POOL, SAN JUAN COUNTY, NEW MEXICO.

Case No. 12734

REPLY IN SUPPORT OF MOTION FOR A CONTINUANCE

San Juan Coal Company ("SJCC") requested that the above matter, which is scheduled for hearing on October 4, 2001, be continued to the Examiner hearing scheduled for December 6, 2001. Richardson Operating Company ("Richardson") filed a response agreeing to a two week continuance, but stating that SJCC had no standing in this matter, and that it is not entitled to notice. These matters are addressed below.

1. Lack of Standing: Richardson's application seeks approval to drill additional wells on lands subject to coal leases owned by SJCC, and alleges that SJCC's Mining Plan will "unreasonably interfere with Richardson's ability and right to produce the coalbed methane gas within the Fruitland Coal-Gas formation." **Application, ¶14.** Moreover, Richardson itself focuses on SJCC's Mining Plan as the stated ground for its application. **Application, ¶15.** Clearly, Richardson has placed SJCC's Mining Plan at issue and, therefore, SJCC is an interested party. Rule 4(b) of the Special Rules and Regulations for the Basin-Fruitland Coal Gas Pool, governing Richardson's application, states that "any

... interested party may appear and participate in such hearing." Division Rule 1212.A states that "[f]ull opportunity shall be afforded all interested parties at a hearing before the Commission or a Division Examiner to present evidence and cross-examine witnesses." For Richardson to base its application on SJCC's plans, and yet state that it has no standing to even appear in the case is simply without merit.

2. Entitlement to Notice: Although the focus of Richardson's application is SJCC's leases and Mining Plan, SJCC was not given written notice of the application. SJCC independently learned of the application on September 18, 2001. Rule 4(b) mentioned above does not specifically require written notice to SJCC. However, that rule is not the final arbiter of notice requirements. NMSA 1978 §70-2-23 states in part:

[B]efore any rule, regulation or order, including revocation, change, renewal or extension thereof, shall be made under the provisions of this act, a public hearing shall be held at such time, place and manner as may be prescribed by the division. The division shall first give reasonable notice of such hearing ... and at any such hearing any person having an interest in the subject matter of the hearing shall be entitled to be heard. ...

Under the statute, written notice should have been given to SJCC. See Johnson v. New Mexico Oil Conservation Comm'n, 127 N.M. 120, 978 P.2d 327 (1999).

Furthermore, since SJCC's property rights may be adversely affected and the mineability of the coal seam compromised by any order issued in this matter by the Division or the Commission, SJCC has a constitutional right to notice. Uhden v. New Mexico Oil Conservation Comm'n, 112 N.M. 528, 817 P.2d 721 (1991).

3. Scope of Application: The issues which may be raised by SJCC concern spontaneous combustion, overall mine safety, and resource conservation. This also affects the safety of oil and gas operations within the area of SJCC's underground coal mine. This is within the scope of the Division's authority under the Oil and Gas Act. **NMSA 1978 §70-2-12.**

WHEREFORE, SJCC requests that an eight week continuance be granted.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record via facsimile transmission this 2nd day of October, 2001:

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