

OIL CONSERVATION DIV.
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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.**

*Application of Richardson Operating
Co.
Record on Appeal, 1270.*

Case No. 12734

**REPLY OF SAN JUAN COAL COMPANY
TO RICHARDSON OPERATING COMPANY'S
RESPONSE TO APPLICATION FOR STAY**

San Juan Coal Company ("San Juan"), by its Application for Stay, respectfully requests, pursuant to Commission Rule 1220, that the Director of the New Mexico Oil Conservation Division ("OCD") stay the effectiveness of the June 6, 2002 Order of the Division, Order No. R-11775, pending consideration of this matter by the Oil Conservation Commission ("Commission"), and if necessary, by the Secretary of the Energy, Minerals and Natural Resources Department. As further grounds for the Stay and in Reply, San Juan states:

1. A stay is appropriate for a number of reasons, as described in San Juan's Application for Stay. If Richardson is allowed to proceed with drilling, recompletion and fracing activities before the Commission and Secretary decide this matter, the damage that San Juan seeks to avoid through de novo review will have occurred already, and the Commission, and possibly the Secretary, will have been deprived of meaningful opportunity to decide the important policy issues arising in this precedent-setting case. In its Response to San Juan's Application for Stay ("Response"), Richardson Operating Company ("Richardson") does not refute this fundamental

basis for the stay. Nor does Richardson contend that the Secretary lacks broad power under the Oil and Gas Act, NMSA 1978 § 70-2-26, to consider impacts on coal resource development in making decisions under the Oil and Gas Act. Moreover, Richardson's Response points to no significant negative consequences to Richardson that would be caused by a stay of several months during further review.

2. This is an unusual case presenting unusual issues for the OCD and Commission. It is unusual in that the OCD and Commission are not ordinarily called upon to address well spacing issues in the context of a development dispute between gas and coal operators. Consequently, the OCD should tread carefully to protect the status quo pending the de novo hearing before the Commission. This is particularly true here where only at the Secretarial review stage is there clear and unambiguous authority to consider the interests and positions San Juan asserts here.¹

3. Most of Richardson's Response rehashes issues on the merits that were presented to the OCD and that San Juan also will seek to address before the Commission. Rather than providing grounds to deny a stay, Richardson's laundry list of issues provides ample illustration that this matter should be maintained in status quo to allow Commission and possibly Secretarial consideration of them. For example, in the "Fundamental Issue" and "Authority" sections of its Response (pp. 4 and 6), Richardson raises issues of whether the OCD has authority to decide how much coal is "wasted" by having to leave protection pillars; whether the State should be concerned that the gas resource that the OCD favors at the expense of coal is worth but a small fraction of the coal resource that is threatened; and whether the Oil and Gas Act provides authority to consider the waste of coal. These are among the important and precedent-setting

¹ While San Juan submits the OCD and Commission have authority to consider its position and avoid the waste of coal, Richardson obviously disputes that position. In any event there appears to be no dispute that the Secretary does have that authority.

issues that the Commission, and the Secretary, if necessary, should be given the opportunity to decide before damage to the coal resource would deprive them of meaningful input.

4. Richardson's repeated statements (see e.g. pp. 3 and 7) that "SJCC is unable to cite to any specific statutory authority which authorizes the Division to protect the coal..." should, in particular, be clarified and presented to the Commission or Secretary. To clarify, San Juan asserts the Oil and Gas Act does provide authority to protect coal; it charges the Secretary, in reviewing a decision, with authority to consider the matter "having due regard for the conservation of the state's oil, gas and mineral resources..." (Emphasis added). NMSA § 70-2-26 (1978). The status quo should be preserved to allow the Commission or Secretary to consider and protect coal which is, of course, a mineral resource. To reject a stay here may be tantamount to depriving the Secretary (or Commission) from undertaking the "due regard" review.

5. Richardson does not contend that the stay would pose any significant problem to Richardson, nor does Richardson refute that denial of the stay would present gross negative consequences to San Juan. Richardson's argument of the "negative consequences" issue is limited to two sentences at the top of page 4 of its Response. Those sentences suggest that requiring Richardson to plug and abandon disputed wellbores and requiring San Juan to mill out casing and mine the coal would be adequate protection. Richardson ignores the fact that much of the substantial damage San Juan seeks to avoid occurs from the fracing of wells. Plugging and abandoning wells and milling out casing does not address concerns about fracing; once a well is fraced, the damage has been done, and gross negative consequences irretrievably fall upon San Juan. San Juan seeks to avoid those consequences by requesting this stay.

6. Richardson's description of how long it will be before mining operations reach Richardson's wells provides further support for the stay. At the bottom of page 2 of the Response, Richardson suggests that if certain wells are not drilled it may be 12-15 years before

mining encounters Richardson's existing wellbores. Why then is a stay of several months problematic to Richardson? Balancing the gross and irreversible negative consequences the denial of a stay could impose upon San Juan against the lack of significant effect on Richardson, the stay should be granted.

7. Richardson's attempt to argue at page 3 of the Response ("Protection of Public Health (Mine Safety)") that Mine Safety & Health Administration regulations adequately address safety concerns raised by San Juan is misdirected. Richardson suggests that all such concerns will be resolved if San Juan leaves a 300 foot protection pillar, and plugs and abandons wellbores. To the extent that this solution would address certain safety concerns, it would do so at the expense of bypassing millions of tons of coal with an estimated royalty loss to the State of New Mexico of many millions of dollars. The issue raised by the stay is not how best to address safety concerns, but rather, it is whether the status quo should be preserved to allow the Commission to consider these issues. The Commission, and possibly the Secretary, should be given the opportunity to decide whether the State is willing to forego this royalty in exchange for meager gas royalties that are but a small fraction of the value of coal royalties.

8. Richardson's argument based upon the BLM decision is also misplaced. First of all, what the BLM has decided so far is not particularly relevant to the OCD's consideration of the stay; San Juan asks that the OCD preserve the status quo to allow the Commission to decide issues before it – not the issues that are on appeal from the BLM State Director's decision. Second, Richardson fails to point out that the BLM State Director's Decision is on appeal.² To the extent that decision is relevant at all, it is certainly not controlling here, and it is subject to reversal.

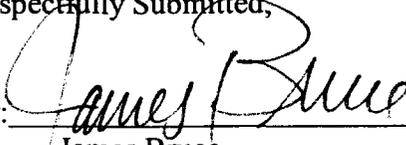
² San Juan also disputes Richardson's characterization of the BLM Decision, but that dispute is not central to this stay request.

9. Richardson requests that a bond of \$50 million be posted in exchange for a stay of a few months. It is highly questionable that Richardson's entire gas reserve is worth \$50 million. To suggest that a stay of a few months in developing, drilling and fracing wells that have not been so developed in the many years the leases have been held would justify a bond in any amount is without basis. To suggest a bond of \$50 million is preposterous. Richardson provides no support for its request for a bond, which is presented much as an after thought in the last line of its Response. No bond should be required.

For the reasons stated above, San Juan respectfully requests that the stay be granted pending consideration of this matter by the Oil Conservation Commission ("Commission"), and if necessary, by the Secretary of the Energy, Minerals and Natural Resources Department.

Respectfully Submitted,

By: _____


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ATTORNEYS FOR SAN JUAN COAL COMPANY

*Application of Richardson Operating
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Record on Appeal, 1274.*

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading was ~~sent~~ to counsel for the OCD, the Commission, and Richardson Operating Company, and mailed to counsel for Dugan Production Corporation this 10th day of July, 2002.

hand delivered
mailed to counsel for

By: *James Bruce*
James Bruce

P. Reply of SJCC to Richardson in OCD (W0240801).DOC