

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

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION,  
THROUGH THE ENVIRONMENTAL BUREAU CHIEF, FOR AN ORDER  
REQUIRING MARALO, LLC TO REMEDIATE HYDROCARBON  
CONTAMINATION AT AN ABANDONED WELL AND BATTERY SITE; LEA  
COUNTY, NEW MEXICO.

CASE NO. 13142 de novo

SURFACE OWNER'S RESPONSE IN OPPOSITION TO  
MARALO, LLC's MOTION FOR STAY

COMES NOW, Jay Anthony, by and through counsel, and files his Response in  
Opposition to Maralo, LLC's Motion for Stay, and states as follows:

I. INTRODUCTION

Anthony is in receipt of Staff's Response to the Motion for Stay and agrees with the positions set forth therein. As such, Anthony does not oppose a stay pending a grant and resolution of a *de novo* hearing before the Oil Conservation Commission. **Anthony does oppose** a stay pending resolution of his separate civil action against Maralo in the District Court for the Fourth Judicial District.

This Response will not burden the Commission by reiterating Staff's arguments. Instead, it will serve to more fully enlighten the Commission about the pending civil litigation and to expose Maralo's disingenuousness in seeking a stay here based on that lawsuit.

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## II. ARGUMENT

Jay Anthony is the owner of ranching property located near Jal, New Mexico on which oil and gas operations have been conducted for many years by various oil and gas companies and operators. Anthony recently filed suit against several defendants, including Maralo, for contamination of the surface, subsurface and groundwater on his property.

Maralo has denied liability for such contamination. Maralo also filed a summary judgment motion seeking immediate dismissal of Anthony claims on two grounds. Maralo first argued that Anthony's common law claims are barred because he purportedly had knowledge of the contamination outside the statute of limitations claims for injury to his property. As evidence of such knowledge Maralo relied on the fact that Anthony made a complaint to the OCD about Maralo's contamination as early as 1999. As such, rather than attempting to defend on the merits, Maralo seeks to escape liability on grounds that Anthony simply waited too long to sue in district court. Maralo's insistence that the district court will determine whether it is a "responsible party" will thus never even be addressed if Maralo gets its initial wish for summary judgment.

Maralo also sought immediate judgment on Anthony's claim that Maralo contaminated Anthony's groundwater. In support of its argument, Maralo merely pointed to an OCD decision not to proceed against it for groundwater cleanup. What Maralo failed to advise the court about, however, was that the groundwater contamination had not been fully delineated at the time that the OCD decided against proceeding in this regard.

Maralo's avoidance strategy is thus made painfully obvious. When before a district court it relies on administrative action as grounds to keep the court from substantively addressing the merits of Anthony's claims. And, when before the Commission it relies on judicial action to as a basis of putting off an ordered remediation plan. Maralo should not be allowed to pit the State's administrative structure against the State's judicial system in an effort to avoid the consequences of its conduct.

As is noted in Staff's Response, the OCD has proceeded against Maralo pursuant to the Oil and Gas Act, while Anthony proceeds in district court pursuant to the common law of tort and unjust enrichment. These two tracks are independent and should be allowed to proceed as such. Maralo should not be unduly rewarded like a spoiled child that plays one parent against another to obtain that which is unwarranted.

Respectfully submitted this <sup>7</sup> day of July, 2004.

HEARD, ROBINS, CLOUD,  
LUBEL, & GREENWOOD, L.L.P.

By:  

Bill Robins III  
Texas State Bar No. 17083790  
David Sandoval  
New Mexico State Bar No. 6603

ATTORNEYS FOR JAY ANTHONY

**Certificate of Service**

I certify that I mailed a copy of Surface Owner's Response in Opposition to Maralo, LLC's Motion for Stay, by first class mail, to

W. Thomas Kellahin  
Kellahin & Kellahin  
P.O. Box 2265  
Santa Fe, NM 87504  
Attorney for Maralo, LLC

Rick G. Strange  
Cotton, Bledsoe, Tighe & Dawson  
P.O. Box 2776  
Midland, TX 79702,  
Attorney for Maralo, LLC

Gail MacQuesten  
Assistant General Counsel  
Energy, Minerals and Natural Resources Department of  
the State of New Mexico  
1220 S. St. Francis Drive  
Santa Fe, NM 87505  
Attorney for The New Mexico Oil Conservation Division

this 7<sup>th</sup> day of July, 2004.

  
David Sandoval

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

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COUNTY, NEW MEXICO.**

**CASE NO. 13142 de novo**

**THE NEW MEXICO OIL CONSERVATION DIVISION'S RESPONSE TO  
MARALO, LLC'S MOTION FOR STAY**

The Oil Conservation Division (the "Division") does not oppose a stay of Division Order R-12152 pending a decision by the Oil Conservation Commission (the "Commission") on the de novo hearing in this matter. The Division does oppose, however, any request for a stay of Division Order R-12152 pending the decision of the Fourth Judicial District Court in the civil lawsuit filed by the surface owner, and will oppose any request to continue the hearing before the Commission until after the resolution of the civil case.

**Background**

In this case the Division seeks an order requiring Maralo, LLC ("Maralo") to remediate the hydrocarbon contamination at a well and tank battery site. Maralo is the operator of record for the site. After an evidentiary hearing heard November 20, 2003, the Division entered Order R-12152 requiring Maralo to submit a work plan to the Division's Environmental Bureau, and to complete remediation of the site within six months of the Bureau's approval of that plan. Maralo requested a de novo hearing before

environment. 19.15.3.116.B and D NMAC. The person responsible for compliance and corrective action is therefore determined under the Act and the rules adopted under the Act. A district court's determination of liability under the laws of negligence, gross negligence, trespass, nuisance, unjust enrichment and conversion will not determine the responsible person under the Oil and Gas Act and its rules.

#### Conclusion

The Division does not oppose the entry of a stay of Order R-12152 pending the entry of a final order of the Commission following the de novo hearing in this matter. However, the Division respectfully requests that the Commission deny Maralo's request that the order be stayed until a determination after a de novo hearing conducted after the conclusion of the civil case. The determination of responsibility for remediation under the Act and its rules is independent of any determination made in the civil action.

RESPECTFULLY SUBMITTED,  
this 2nd day of July, 2004 by



Gail MacQuesten  
Assistant General Counsel  
Energy, Minerals and Natural  
Resources Department of the State of  
New Mexico  
1220 S. St. Francis Drive  
Santa Fe, NM 87505  
(505) 476-3451

Attorney for The New Mexico Oil  
Conservation Division

#### Certificate of Service

I certify that I mailed a copy of this pleading, by first class mail, to

W. Thomas Kellahin  
Kellahin & Kellahin  
P.O. Box 2265  
Santa Fe, NM 87504  
Attorney for Maralo, LLC

Rick G. Strange  
Cotton, Bledsoe, Tighe & Dawson  
P.O. Box 2776  
Midland, TX 79702,  
Attorney for Maralo, LLC

David Sandoval  
Heard, Robins, Cloud, Lubel & Greenwood, LLP  
300 Paseo de Peralta, Suite 200  
Santa Fe, NM 87501  
Attorney for Jay Anthony

this 20<sup>th</sup> day of July, 2004.

  
Gail MacQuesten