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June 29, 2004

HAND DELIVERED

Mr. Mark Fesmire, Chairman
Oil Conservation Commission
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

2004 JUN 29 PM 3 22

Re: Motion to Stay Order R-12152
Request for Hearing De Novo

NMOCD CASE 13142
Order No. R-12152
Application of the Division for an order
Requiring Maralo, LLC to remediate hydrocarbon contamination
Lea County New Mexico.

Dear Mr. Fesmire:

On behalf of Maralo, LLC, a party of record adversely affected herein, please find enclosed our Motion for a Stay of Order R-132152 and our request for a Hearing DeNovo before the New Mexico Oil Conservation Commission of the referenced Division Order which granted the Division's application. We request that this matter to set on the Commission's docket current scheduled for September 9.

Very truly yours,

W. Thomas Kellahin

cc: **Gail MacQuesten, Esq.**
Attorney OCD
William C. Olson-OCD
David Sandoval, Esq.
Attorney for Jay Anthony
Rick G. Strange, Esq.
David Lauritzen, Esq.
Attorney for Maralo, LLC
Maralo, LLC

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 REMEDIATE HYDROCARBON CONTAMINATION AT AN ABANDONED WELL AND BATTERY SITE, (Jay Anthony Complaint) LEA COUNTY, NEW MEXICO

2004 JUN 29 PM 3 22

CASE NO. 13142 de novo
Order No. R-12152

MARALO, LLC'S
REQUEST FOR A DE NOVO HEARING
BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION

Comes now Maralo, LLC, a party of record before the New Mexico Oil Conservation Division in Case 13142 and adversely affected by Division Order R-12152 dated June 9, 2004, by its attorneys Kellahin & Kellahin and Cotton, Bledsoe, Tighe & Dawson and pursuant to Section 70-2-13 NMSA-1978, hereby requests that the New Mexico Oil Conservation Commission hold a HEARING DENOVO in this matter.

Respectfully Submitted:

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Midland, Texas 79702
(432) 685-8555
Fax: 432-682-3672
ATTORNEYS FOR MARALO, LLC

CERTIFICATE OF SERVICE

I certify that, in accordance with Division Rule 1208.A, a true and correct copy of this pleading was delivered this 29th day of June 2004 by facsimile to the following:

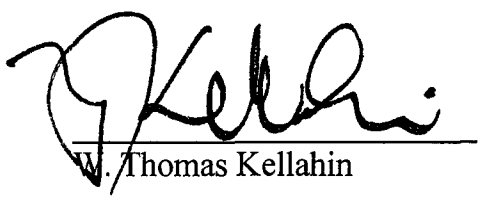
Gail MacQuesten, Esq. 505-476-3462

David Sandoval, Esq. 505-986-0632

David Lauritzen, Esq. 432-682-3672

William C. Olson-OCD 505-476-3462

Maralo, LLC 432-684-9836



W. Thomas Kellahin

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

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; (Jay Anthony Complaint) LEA COUNTY, NEW MEXICO

CASE 13142

2004 JUN 29 PM 3 22

MARALO, LLC'S
MOTION TO STAY DIVISION ORDER R-12152

MARALO, LLC ("Maralo") in accordance with Division Memorandum 3-85 and Rule 1220(B) of the Rules and Regulations of the New Mexico Oil Conservation Division, 19 NMAC 15.N.1220 (B), moves the Division to Stay Division Order R-12152, dated June 9, 2004, pending District Court decision and thereafter a de novo order by the Commission in this case.

In support of this pleading, Maralo states:

SUBJECT MATTER AND PARTIES

The Division's Environmental Bureau Chief ("EBC"), as the applicant, has obtained a Division order requiring Maralo, LLC. ("Maralo") to remediate alleged soil contamination based upon its claim that Maralo is the current operator and violated Division Rules 310 and 313 and therefore is the responsible person to remediate low risk level soil contamination at the abandoned tank battery facility at the former Humble State Well No. 3 site (the "Jay Anthony site") located within Unit A of Section 36, Township 25 South, Range 36 East in Lea County, New Mexico.

The Division rejected Maralo claim that it complied with Division Rule 310 and 313 and that it is not the current operator of this facility and is not a responsible person because it ceased all operations on the Humble State Well No. 3 site in 1988 when it plugged the well and abandoned the site all in accordance with the Division rules applicable at the time.

Jay Anthony ("Anthony") appeared with counsel, as the owner of the surface within Unit A of this section in support of the applicant. This case was filed by the EBC based upon a compliant filed on October 6, 1999 by Anthony.

FACTUAL BACKGROUND

This case concerns an abandoned oil and gas production facility located at the former site of the Humble State Well No. 3 at which all the equipment was removed about October 15, 1988. The EBC claimed that the site was not remediated in accordance with current Division rules and guidelines. **See EBC's response to Maralo motion to dismiss.**

On July 23, 1945, Ralph Lowe drilled the Humble State Well No. 3 at a location in Unit A of Section 3, T25S, R26E, NMPM. On April 19, 1974, Maralo, LLC became operator of this well until October 15, 1998 when it plugged the well with the approval of the Division and **(See Transcript page 40, lines 16-17 and 42, lines 1-5)** on February 2, 1994, the tank battery was abandoned, the equipment removed and disked the site all in accordance with the custom and practice of the industry at the time. On April 1, 1994, Hal J. Rasmussen became the Division designated operator replacing Maralo.

Since 1994, Anthony has been the sole owner of the surface of Unit A and previously he was in partnership with his brother and prior to that his grandfather owned it. He physically moved to the ranch in 1985 and at that time he knew that Maralo was operating this well and had actual knowledge of the condition of the soil at this facility. **(See Transcript pages 109 to 112)**

On October 6, 1999, Anthony filed a complaint with the Division directed at Maralo complaining of "Historical Contamination" and alleging that Maralo had failed to remediate operations located on Unit A.

In addition to this Division case, on January 9, 2004, Anthony filed suit in a New Mexico state district court alleging damage to groundwater and the surface of Anthony's ranch, including Unit A and seeking monetary damages against Maralo and others in which one of the issues is the determination by the Court of whether Maralo is the "responsible person" for this alleged soil contamination. **(See Exhibit "A" Attached-Copy of Anthony District Court Complaint)**

Now some 16-year after Maralo plugged this well and abandoned this site, the Division has ordered that Maralo clean up this abandoned facility despite the fact that the EBC admitted that there is no evidence that Maralo ever used these surface disposal pits. **(See Transcript page 66, lines 1-3; page 79, lines 10-13)**

CRITERIA FOR A STAY ORDER

Division Rule 1220(B) permits 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..."

GROUNDS FOR A STAY

Point I: A Stay Pending a Final Court Order

The determination of the "responsible person" is currently before the district court and the Division should stay this order pending a district court decision. This litigation may decide this key issue and in doing so leave the issues concerning the environmental assessment of the site and the cleanup of the soils for the expertise of the Commission. **See Exhibit 1 Attached--copy of Anthony District Court complaint.**

The Division must Stay Order R-12152 to prevent gross negative consequences to Maralo as the party affected by this order until the District Court, at the request of Anthony, makes a final determination of who is the "responsible person" for this alleged soil contamination and thereafter the Commission enters its de novo order.

Point II: A Stay will protect Maralo's Due Process Rights

The Division has ignored its duty to determining the "responsible person" by simply finding that as a matter of policy Maralo as the current operator is the "responsibility person" and telling Maralo that this issue is a civil matter to be litigated in court. **(See Finding 42 of Order R-12152)** In order to avoid its responsibility to determine the "responsible person" the Division found that "regardless of the process by which it occurred, the soil at the site of the Humble State Well No. 3 has been contamination by hydrocarbons" **(See Finding 50 of Order R-12152)** even though the EBC's expert could not determine the cause of the alleged soil contamination **(See Finding 35 of Order R-12152),** even though the EBC admitted that there is no evidence that Maralo ever used these surface disposal pits. **(See Transcript page 66, lines 1-3; page 79, lines 10-13)** and even though contrary to the Division order, Maralo is not the current operator of the Humble State Well No. 3, a well that was plugged and the site for which was cleaned with the approval of the Division about October 15, 1988.

The Division's flawed regulations do not limit responsibility for clean-up to the entity operating the site at the time the alleged contamination occurred but, instead, requires clean-up by what the Division contended is the current operator. **See EBC proposed order finding 48(d)** The Division's through its flawed regulations is attempting to impose clean-up obligations upon Maralo in violation of Maralo's due process rights. **See EBC proposed order finding 48(d)** A Stay will prevent gross negative consequences to Maralo until both the District Court and the Commission can address these issues.

Point III: A Stay maintains the Status Quo allowing first the District Court time to determine the "responsible person" and then the Commission time to decide this precedent case, including elements of proof, before clean-up is mandated and to overcome the Division failure to properly determine the "responsible person"

For the first time, the Division after an examiner hearing, has decided that the current operator of part of a facility is the "responsible person" to clean up alleged soil contamination occurring more than 16 years ago. The Division accepted the EBC contention that Maralo is the "responsible person" and should be order to remediate this soil contamination. **(See Transcript page 42, lines 15-18)** Maralo contented that it operated the Humble State Well No. 3 in accordance with Division rule then applicable and therefore is not the operator of the facility responsible for remediate of any soil contamination.

Despite its current concerns about the surface, the Division has approved wells and facilities without developing or maintaining a system to record the surface use. The Division does not know and its records fail to disclose that:

(a) while there are the remains of 3 unlined surface pits and 2 tank battery pits (only one pit is associated with the Humble State Well No. 3) within Unit A the Division's records fail to show when, how and by whom each addition or deletion to the site occurred; **(See located plat attached to EBC Exhibit 3)**

(b) while it appears that the tank battery pit associated with the Humble State Well No. 3 may have been used for containment of emulsions, basic sediments and tank bottoms (collectively "tank bottoms") **(See Transcript page 36, lines 24-25 and page 37, lines 1-10)** because of the failures of the Division's record system it is not now impossible to determine the use of the 3 unlined surface pits or the volumes of produced water and associated hydrocarbons disposed into these pits; **(See Transcript page 38, lines 15-18; page 14, lines 17-19 and page 43, lines 14-21)**

(c) also, it is not now possible to determine when the 2 tank batteries were used; **(See Transcript page 38, lines 23-25 and page 43, lines 14-21)**

Despite the fact that it is not possible to determine if the soil contamination was caused by tank overflow rather than improper tank bottom disposal, the EBC has assumed that the cause was improper tank bottom disposal **(See Transcript page 65, lines 1-16)** and the Division could not resolve whether the alleged soil contamination was from tank bottoms or from water disposal occurring prior to May 1, 1967 when the Division prohibited the disposal of produced water into unlined surface pits. (**Findings (46), (48) and (50) of Order R-12152)**

The Division has ignored its responsibility to determine the "responsible person" and in doing so has imposed gross negative consequences upon Maralo.

A Stay is required until the Commission finds that:

a. Maralo ceased all operations on the Humble State Site No. 3, Unit A, Section 36, T25S, R36E, Lea County, New Mexico, in 1988, plugged the well and abandoned the site all in accordance with the Division's rules. Prior to abandonment, Maralo operated the site, including all open receptacles, in accordance with all New Mexico laws and administrative regulations. The Division initiated this proceeding in 2003, fifteen years after Maralo abandoned the site, contending Maralo violated the **New Mexico Administrative Code Title 19 Section 15.5.310A (2000)** ("Rule 313") and **Section 15.5.310A (2000)** ("Rule 310A") based upon conduct that occurred as far back as the 1945.

b. the EBC is attempting to require Maralo to clean this alleged soil contamination in accordance with the Division's surface impoundment closure guideline adopted by the Division after Maralo abandoned this site.

c. The Division's should have denied the EBC's application because it is an impermissible attempt to apply its rules retroactively because the Division is, in effect, punishing Maralo for conduct that was legal and in accordance with all applicable Division rules and regulations at the time it was committed. This violates Maralo's constitutional rights to due process.

d. Maralo is not a responsible person for the soil contamination at this facility and should not be required to remediate the soil within Unit A of this section

e. It is not possible to produce oil without also producing associated water. **(See Transcript page 55, lines 1-20)**

f. It is not possible to produce oil and avoid the production of emulsions and basic sediments. **See Transcript page 53, lines 18-15; page 60, lines 10-13 and page 61, lines 1-25)**

g. The EBC admits that there is no evidence that Maralo ever used these surface disposal pits. **(See Transcript page 66, lines 1-3; page 79, lines 10-13)**

h. Despite evidence that the prior operator used these surface pits and the lack of evidence that Maralo did, it is the EBC's policy to "go after the current operator**". (See Transcript page 66, lines 4-25)**

i. At all times during Maralo's operations of the tank battery associated with the Humble State Well No. 3, Maralo operated in such a manner as would reduce as much as practicable the formation of emulsion and basic sediments "Tank Bottoms" **(See Transcript page 93, lines 13-25 and page 94, lines 1-9)**

j. At no time did Maralo store or retain oil in earthen reservoir and in open receptacles; **(See Transcript page 92, lines 13-17)**

k. The EBC is attempting in this case to retroactively apply its "clean-up" guidelines adopted by the Division in 1993. **(See Transcript page 23, line 5-6)**

l. At all relevant times, the Division did not have rules or regulations concerned the registration, the installation or closure of tank batteries and their associated pits; **(See Transcript page 39, lines 6-12)**

m. It is no longer possible to determine when or how this material was placed in these pits; **(See Transcript page 43, lines 8-13)**

n. A review of Division files fails to disclose the exact location of pits and tank batteries; **(See Transcript page 39, lines 13-24 and page 68, lines 14-16)**

o. The EBC is no longer able to determine who caused this contamination. **(See Transcript page 69, lines 1-3)**

p. On October 28, 1988 the Division approved the plugging and abandoning of the Humble State Well No 3 and approved the site "clean-up". **(See Transcript page 42, lines 2-4)**

q. At all times relevant to this matter, Maralo operated this facility in accordance with Division's Rules 310 and 313 and its operations were consistent with industry practices accepted by the Division during this period and properly disposed of "tank bottoms" associated with the Humble State Well No. 3 tank batteries. **(See Transcript page 54, lines 4-25)**

CONCLUSION

This is not an emergency. This case does not compel the Division to take immediate action to protect groundwater, prevent waste or protect correlative rights. The EBC groundwater tests failed to identify any hydrocarbons and could not link Maralo's operations and any alleged water quality problem on Anthony's ranch. **(See Transcript page 13 lines 1-10)**

Anthony first became aware of this alleged soil contamination about 1985 but waited until 1999 to complain to the Division who then waited until June 2004 to obtain an order requiring remediation of the Anthony site. **(See Transcript page 110, lines 2-14)**

Anthony has already commenced litigation against Maralo and others seeking monetary award for this alleged soil contamination. Delaying the commencement of action for clean-up until the District Court and the Commission can hear and entered an order in this case will not make the alleged soil contamination worse and will allow the District Court and the Commission to do what the Division should have done--enter any order against the operator of the facility responsible to the alleged soil contamination rather than just look to the alleged "current operator."

This is not an emergency. This case does not compel the Division to take immediate action to protect groundwater, prevent waste or protect correlative rights.

The Division must Stay Order R-12152 to prevent gross negative consequences to Maralo as the party affected by this order until the District Court, at the request of Anthony, makes a final determination of who is the "responsible person" for this alleged soil contamination and thereafter the Commission enters its de novo order. In accordance with Division Memorandum 3-85, attached as Exhibit B is a proposed Stay Order.

Wherefore, Maralo, LLC moves that the Division Director enter the attached order staying Order R-12152 in its entirety pending the entry of a District Court decision and thereafter the Commission order after a de novo hearing and review.

Respectfully submitted,

W. Thomas Kellahin
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Rick G. Strange
David Lauritzen
Cotton, Bledsoe, Tighe & Dawson
P. O. Box 2776
Midland, Texas 79702
Attorneys for Maralo, LLC.

CERTIFICATE OF SERVICE

I certify that in accordance with Division Rule 1208.A I caused to be delivered a true and correct copy of this pleading by facsimile or by hand delivery this 29th Jane of 2004 by facsimile to the following:

Gail MacQuesten, Esq.

David Sandoval, Esq.

David Lauritzen

William C. Olson

Maralo, LLC

W. Thomas Kellahin

FOURTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SAN MIGUEL

No. CV 2004 - 14

JAY ANTHONY, Individually and as Assignee of CLARENE BISHOP and JAMIE ANTHONY,
Plaintiffs,

vs.

CHEVRONTEXACO CORPORATION, TEXACO EXPLORATION AND PRODUCTION, INC., CONOCOPHILLIPS COMPANY, SOUTHWEST ROYALTIES, INC., MARALO, LLC, TEXAS-NEW MEXICO PIPELINE COMPANY, SHELL PIPELINE G.P. L.L.C., B.P. AMERICA PRODUCTION COMPANYand FULFER OIL AND CATTLE COMPANY, LLC,

Defendants.

PLAINTIFFS' FIRST AMENDED CIVIL COMPLAINT FOR DAMAGES

COME NOW, JAY ANTHONY, individually, and as assignee of CLARENE BISHOP, and JAMIE ANTHONY (hereinafter sometimes referred to as Plaintiffs), complaining of CHEVRONTEXACO CORPORATION, TEXACO EXPLORATION AND PRODUCTION, INC., CONOCOPHILLIPS COMPANY, SOUTHWEST ROYALTIES, INC., MARALO, LLC, TEXAS- NEW MEXICO PIPELINE COMPANY, SHELL PIPELINE G.P., LLC, B.P. AMERICA PRODUCTION COMPANY and FULFER OIL AND CATTLE COMPANY, LLC, and for cause of action would show unto the Court and Jury as follows:

I.

PARTIES

1. Plaintiffs JAY ANTHONY and JAMIE ANTHONY are ranchers residing and owning property in Jal, Lea County, New Mexico.

2. Defendant CHEVRONTEXACO CORPORATION is a foreign corporation duly organized and existing pursuant to law. It has transacted business in the State of New Mexico at all times relevant hereto but has failed to designate an agent for service of process. Pursuant to New Mexico Statute Annotated, § 38-1-6, service of process may be obtained by serving the New Mexico Secretary of State with two copies of the process in this cause. The New Mexico Secretary of State will then complete service by serving its Chairman of the Board and Chief Executive Officer, Dave O'Reilly, 575 Market Street, San Francisco, California, 94105. Defendant is subject to the jurisdiction of this Court by virtue of transacting business within the State.

3. Defendant TEXACO EXPLORATION AND PRODUCTION, INC. is a foreign corporation duly organized and existing pursuant to law. It may be served with citation by serving its registered agent for service, CSC of Lea County, Inc., 1819 N. Turner Street, Suite G, Hobbs, Lea County, New Mexico, 88240. Defendant is subject to the jurisdiction of this Court by virtue of transacting business within the State.

4. Defendant CONOCOPHILLIPS COMPANY is a foreign corporation duly organized and existing pursuant to law. No service is necessary at this time. Defendant is subject to the jurisdiction of this Court by virtue of transacting business within the State.

5. Defendant SOUTHWEST ROYALTIES, INC. is a foreign corporation duly organized and existing pursuant to law. It may be served with citation by serving its registered agent for service, CT Corporation System, 123 E. Marcy Street, Santa Fe, Santa Fe County, New Mexico, 87501. Defendant is subject to the jurisdiction of this Court by virtue of transacting business within the State.

6. Defendant MARALO, LLC is a foreign corporation duly organized and existing pursuant to law. It may be served with citation by serving its registered agent for service, Michael Gonzales, 105 N. James, Carlsbad, Eddy County, New Mexico, 88220. Defendant is subject to the jurisdiction of this Court by virtue of transacting business within the State.

7. Defendant TEXAS-NEW MEXICO PIPELINE COMPANY is a foreign corporation duly organized and existing pursuant to law. It may be served with citation by serving its registered agent for service, The Corporation Process Company, 220 West Broadway, Suite 200, Hobbs, Lea County, New Mexico, 88241. Defendant is subject to the jurisdiction of this Court by virtue of transacting business within the State.

8. Defendant SHELL PIPELINE G.P., L.L.C. is a foreign corporation duly organized and existing pursuant to law. It may be served with citation by serving its registered agent for service, The Corporation Process Company, 220 West Broadway, Suite 200, Hobbs, Lea County, New Mexico, 88241. Defendant is subject to the jurisdiction of this Court by virtue of transacting business within the State.

9. Defendant BP AMERICA PRODUCTION COMPANY is a foreign corporation duly organized and existing pursuant to law. It may be served with citation by serving its registered agent for service, CSC of Lea County, Inc., 1819 N. Turner St., Suite G, Hobbs, Lea County, New Mexico, 88240. Defendant is subject to the jurisdiction of this Court by virtue of transacting business within the State.

10. Defendant FULFER OIL AND CATTLE COMPANY, LLC is a New Mexico corporation duly organized and existing pursuant to law. It may be served with citation by serving its agent for service, Kimberley Fulfer, 609 West Nevada, Jal, Lea County, New Mexico 88252. Defendant is subject to the jurisdiction of this Court by virtue of transacting business within the State.

11. To the extent that any of the above-named Defendants are conducting business pursuant to a trade name or assumed name, Plaintiff hereby demands that upon answering this suit, that they answer in their correct legal name and assumed name.

II.

VENUE

12. Venue is proper in this case in San Miguel County, New Mexico, pursuant to N.M.S.A. 38-3-1(F) (1978).

III.

BACKGROUND INFORMATION

13. Plaintiffs are the surface interest owners and operators of the Anthony Ranch located in southeast Lea County, New Mexico near the Town of Jal (hereinafter referred to as the "Ranch" or "the Ranch in Question"). In addition, Plaintiff JAY ANTHONY is the assignee of all claims, demands, and causes of action of CLARENE BISHOP against Defendants CHEVRONTEXACO CORPORATION and TEXACO EXPLORATION AND PRODUCTION, INC. related to real property owned by CHARLENE BISHOP in the N/2 of Section 6, T26S, R37E, Lea County, New Mexico ("the Bishop Property").

14. Defendants have engaged in and/or are engaging in oil and gas operations on the Ranch and/or are owners and operators of pipelines that run across the Ranch. Defendant CHEVRONTEXACO CORPORATION and TEXACO EXPLORATION AND PRODUCTION, INC. have also engaged in and/or are engaging in oil and gas operations on the Bishop property.

15. The evidence will show that Defendants have contaminated the surface and subsurface soils of Plaintiffs' Ranch and/or the freshwater aquifer underlying the Ranch. The evidence will further show that Defendants CHEVRONTEXACO CORPORATION and TEXACO EXPLORATION AND PRODUCTION INC. have contaminated the surface and subsurface soils of the Bishop property and/or the freshwater aquifer underlying the Bishop property. In their day-to-day operations, the Defendants have failed to prevent and/or have caused to occur certain spills, leaks, discharges, and releases to the environment of oil, produced water, and other liquids, gases, solids, and/or contaminants resulting from their operations. Defendants have not properly and adequately cleaned up their releases and spills. Consequently, those contaminants have seeped deeper into the subsurface; have become more costly to perform an adequate and proper clean-up; and need to be cleaned-up before further contamination to the surface and subsurface soils and/or a threat to the underlying aquifer occurs. It is possible for the Defendants to conduct their day-to-day operations without polluting the environment, and if such pollution occurs, to promptly and properly clean-up the pollution before it spreads and while it is "economically feasible" to clean-up the contaminants and restore the property to its uncontaminated condition. The pollution can be cleaned-up in an "economically feasible" manner, taking into consideration the natural resources that

have already been polluted and the natural resources that will be polluted if the clean-up is not performed by the Defendants.

16. Defendants owe Plaintiffs the duty to conduct their operations and to maintain their equipment in such a manner that contaminants, pollutants, salt water, hazardous substances, toxic substances, radioactive materials, lead and other heavy metals, and other liquids, gases and solids would not be allowed to contaminate and pollute either the surface and subsurface soils and/or the underlying aquifer. As will be set forth below, the Defendants breached their duties owed to Plaintiffs and such breach has proximately caused damages to the surface and subsurface soils and/or underlying aquifers of Plaintiffs' Ranch, and, with respect to Defendants CHEVRONTEXACO CORPORATION and TEXACO EXPLORATION AND PRODUCTION, INC., such breach has also proximately caused damages to the surface and subsurface soils and/or underlying aquifer of the Bishop property.

IV.

COUNT ONE

NEGLIGENCE AND GROSS NEGLIGENCE

17. Plaintiffs incorporate paragraphs 1 through 16, as herein above alleged.

18. Defendants owe Plaintiffs the duty to exercise ordinary care in the conduct of their operations, and in the manner in which they conduct remediation of contamination

caused by their operations. Each of the Defendants have been negligent and such negligence is a proximate cause of Plaintiffs' damages.

19. Defendants' actions reflect not only the failure to conduct careful and prudent operations, but such gross negligence that they also should be held accountable under the laws and statutes of this State for punitive damages. Accordingly, punitive damages should be assessed against each of the Defendants in an amount to be set within the sole discretion of the jury.

20. Further, the evidence will show that, due to the nature of Defendants' acts or omissions, their conduct constitutes a "continuing tort" as that term is defined, understood and applied under the laws and statutes of the State of New Mexico. Defendants' acts or omissions have permitted additional, new pollution and contamination to occur each subsequent day, and therefore, constitute continuous wrongful conduct. The undisputed geological fact is that every day that the pollutants and contaminants have not been properly cleaned-up, those pollutants and contaminants continue to migrate, polluting more of the surface and subsurface and/or underlying aquifer, going deeper into the soil depending upon repetitive discharges and other changing conditions such as rainfall, polluting more natural resources, and therefore necessitating even more clean-up and remediation to restore the property to its condition prior to the acts that created the pollution and contamination. The wrongful conduct of the Defendants has proximately caused

and will cause additional, new, and different damages each day that the Defendants permit or allow such pollution and contamination to remain on and/or in the surface and subsurface soils and/or the underlying aquifer. This wrongful conduct and the other acts and/or omissions of the Defendants set forth herein equate to continuing torts, as that term is defined and understood under the laws and statutes of the State of New Mexico, for which the Defendants are legally responsible.

21. Plaintiffs specifically plead the "discovery rule", as that term is defined, understood and applied under the laws and statutes of the State of New Mexico, in that, until recently, they neither discovered nor should have discovered in the exercise of reasonable diligence that the acts and omissions of Defendants proximately caused the damages herein described.

V.

COUNT TWO

TRESPASS

22. Plaintiffs incorporate paragraphs 1 through 21 as herein above alleged.

23. Defendants owe Plaintiffs the duty to conduct their operations and maintain their equipment in such a manner so that they do not use more of the surface and subsurface than is reasonably necessary to conduct their operations. Insofar as Defendants' leaks, spills and other releases have polluted and contaminated the surface and subsurface soils and/or the underlying aquifer, then such conduct constitutes a trespass as to the Plaintiffs' property rights, as that term is defined and

understood under the laws and statutes of the State of New Mexico, and until properly cleaned-up and/or remediated, constitutes a continuing threat to the Plaintiffs' property rights.

24. Pursuant to New Mexico law, the Defendants are only allowed to use that portion of the surface and subsurface that is reasonably necessary to conduct their operations. Pursuant to law, Defendants have the duty to conduct their operations in such a manner so as not to trespass on Plaintiffs' property rights, and to conduct their operations in such a manner so as not to pollute and contaminate Plaintiffs' surface and subsurface soils and/or the underlying aquifer. In reality, Defendants have conducted their operations in such a manner that they have used and continue to use more of the surface and subsurface than is reasonably necessary to conduct their operations, they have allowed contaminants and pollutants to remain on the surface and in the subsurface soils and/or in the underlying aquifer, and they have failed to conduct adequate clean-up and adequate remediation so as to remove the potential of these contaminants and pollutants from damaging the surface and the subsurface soils and/or the underlying aquifer. These acts and omissions of the Defendants constitute a trespass, as that term is defined and understood under the laws and statutes of the State of New Mexico, to which Plaintiffs seek the reasonable and necessary cost of clean-up and remediation.

VI.

COUNT THREE

NUISANCE

25. Plaintiffs incorporate paragraphs 1 through 24, as herein above alleged.

26. Defendants owe Plaintiffs the duty to conduct their operations and maintain their equipment in such a manner that they do not create and/or maintain a nuisance, as that term is defined and understood under the laws and statutes of the State of New Mexico. The afore-described acts and omissions of the Defendants unreasonably interferes with, and will continue to unreasonably interfere with the normal and expected use and enjoyment of the surface as well as enjoyment of the underlying aquifer.

27. Plaintiffs seek their actual damages caused as a result of the Defendants' wrongful interference with Plaintiffs' quiet enjoyment of their property.

VII.

COUNT FOUR

UNJUST ENRICHMENT

28. Plaintiffs incorporate paragraphs 1 through 27, as herein above alleged.

29. Defendants have conducted their operations and activities for monetary profit derived from their operations. In so doing, these Defendants had an obligation and duty not to contaminate or pollute Plaintiffs' property. Defendants saved money by

and thereby unjustly profited from their failure to adequately protect the surface and subsurface soils and/or the underlying aquifer. At the expense and detriment of Plaintiffs' property rights, these Defendants have saved money that they should have spent on environmental protection.

30. These acts and omissions of Defendants constitute an unjust enrichment, as that term is defined and understood under the laws and statutes of the State of New Mexico, for which Plaintiffs seek as damages those sums of money that should have been spent, but were not so spent, to adequately protect the surface and subsurface soils and/or the underlying aquifer. Plaintiffs seek the equitable restitution of those benefits, or the "unjust savings" these Defendants have reaped by failing to adequately protect Plaintiffs property. To permit Defendants to not clean-up pollution they have caused, and not assess against them the reasonable and necessary cost of cleaning-up such pollution, would result in the grossest of inequities by permitting Defendants to profit and save money by polluting and not cleaning-up the surface and subsurface soils and/or the underlying aquifer. In addition, Plaintiffs' seek interest from the time Defendants received those benefits or unjust savings until the time of trial. Moreover, since Defendants' intentionally chose to increase their profit margin by not spending the money necessary to clean-up the pollution which they caused, Plaintiffs seek punitive damages against Defendants in an amount to be determined within the sole discretion of the jury.

VIII.

COUNT FIVE

CONVERSION

31. The evidence will further show that Defendant SOUTHWEST ROYALTIES, INC. has wrongfully converted soils from the Ranch for use in its "clean up" operations. Plaintiffs seek the reasonable market value of such wrongfully converted soils, as well as punitive damages against Defendant SOUTHWEST ROYALTIES, INC. in an amount to be determined within the sole discretion of the jury.

IX.

COUNT SIX

DAMAGES

32. Plaintiffs incorporate paragraphs 1 through 31, as herein above alleged.

33. Plaintiffs bring suit for the following damages:

a. The reasonable and necessary mitigation costs of investigating and assessing the Defendants' pollution and contamination of the surface and subsurface soils of the Ranch and the Bishop property and the underlying aquifer- an expense which the Defendants should have incurred, given their duties and responsibilities to investigate and to assess the spacial extent of environmental pollution which their operations have caused;

b. The reasonable and necessary cost of clean-up so as to curtail, prevent, limit and stop further pollution and contamination of the surface and subsurface soils of the Ranch and the Bishop property and the underlying aquifer, and the cost to restore the

Ranch and the Bishop Property to its pre-contamination condition;

c. The reasonable and necessary cost of clean-up to those portions of the Ranch and the Bishop property that have been contaminated by the Defendants' operations;

d. The reasonable and necessary cost of containing the pollution in order to prevent the further spread of contaminants and pollution into the underlying aquifer;

e. The actual damages caused by Defendants' operations;

f. The reasonable and necessary costs and expenses, including but not limited to, Plaintiffs' retained consultants and costs associated with the investigation and assessment of the cause of and spacial extent of the pollution caused by the Defendants' operations;

h. In the alternative, the diminished market value of the Ranch and the Bishop property as a whole, taking into consideration the reasonable and necessary cost of abatement and/or clean-up which in reasonable probability would restore the properties to their pre-contaminated condition, including but not limited to, applying principles of "negative market value", recognized and applied by the oil and gas industry in properties which has been polluted and contaminated by the Defendants' operations;

i. Damages caused by Defendants' interference with Plaintiffs' quiet enjoyment of their property; and

k. Damages caused by Defendant SOUTHWEST ROYALTIES, INC.'s wrongful conversion of Plaintiffs' soils.

34. Should the Defendants attempt to limit or impose some type of ceiling or cap on the reasonable and necessary costs of clean-up and/or restoration, based on some "market value" limitation, then Plaintiffs would show upon a trial of this case that

the Defendants have waived and/or are estopped to assert such defense in view of the fact that it is because of their delay and failure to clean-up their pollution up to this point in time that has caused those costs of clean-up and restoration to be as high as the evidence will show these costs to presently be. That is, if the Defendants had timely and properly repaired their leaks, spills and releases to the environment at the time they occurred and/or were first discovered, the cost of such clean-up and restoration would have been a small fraction of the present cost, and the pollutants and contaminants would have been prevented from spreading deeper and laterally into the surface and subsurface soils and/or the underlying aquifer. However, Defendants intentionally and/or negligently chose not to perform the required clean-up and remediation in a timely manner; consequently, the pollution and contamination has spread beyond its initial impact, the spacial amount of pollution and contamination is considerably increased, and now the cost of abatement, clean-up and restoration are considerably more than they would have been had Defendants discharged their duties and responsibilities in a timely and proper manner. Defendants should not monetarily benefit on account of their intentional and/or negligent inaction and their own failures to timely and properly respond to the needed clean-up and remediation. Accordingly, Defendants have waived and are further estopped to claim any other measure of damage other than the present reasonable and necessary costs to abate, clean-up and remediate the pollution and

contamination in regard to their respective operations and return those contaminated areas to their condition prior to the pollution and contamination.

35. In addition, insofar as Defendants' acts and omissions are found to constitute gross negligence, trespass, nuisance, conversion and/or other intentional acts and omissions, Plaintiffs also seek punitive damages, in an amount to be set within the sound discretion of the jury.

36. Should Plaintiffs' actual damages, as set forth herein, be artificially "capped" so that they do not recover the full value of their damages, the full value of the economic losses they have suffered and/or the full monetary recovery for the property damage which Defendants have caused then such artificial "capping" of Plaintiffs' damages is unconstitutional, amounts to the taking of their property and contravention of the due process of law, and constitutes an illegal, inverse condemnation of their property without just and adequate compensation. Therefore, any such limitations or caps on the full, actual damages which their property has suffered due to the intentional and/or negligent acts of the Defendants is unconstitutional, both in terms of the United States Constitution and the New Mexico Constitution.

X.

REQUEST FOR JURY

37. Plaintiffs request a trial by jury before a jury of twelve.

XI.

PRAYER FOR RELIEF

38. WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendants be cited to appear and answer herein, and that upon final trial that the Plaintiffs have judgment against such Defendants for their actual damages, punitive damages, pre-judgment and post-judgment interest at the legal rate, for their costs of court, and for such other and further relief to which Plaintiffs may be entitled under the facts and circumstances.

Respectfully submitted,

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

By: _____

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ATTORNEYS FOR PLAINTIFFS

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

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE ENVIRONMENTAL BUREAU CHIEF FOR AN ORDER REQUIRING MARALO, LLC TO REMEDIATE HYDRACORBON CONTAMINATION AT AN ABANDONED WELL AND BATTERY SITE, (Jay Anthony Complaint) LEA COUNTY, NEW MEXICO

Case No. 13142
Order R-12152

ORDER OF THE DIVISION
STAYING ORDER R-12152

BY THE DIVISION:

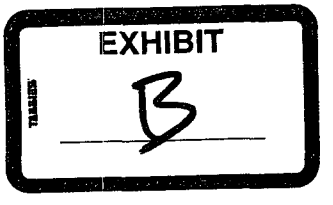
This matter having come before the Division upon the request of Maralo, LLC for a Stay of Division Order R-12152 and the Division Director having considered the Motion and being fully advised in the premises,

NOW, on this ____ day of July 2004, the Division Director:

FINDS:

(1) That Division Order R-12152 was entered on June 9, 2004, upon application of the Division's Environmental Bureau Chief for an order requiring Maralo, LLC to remediate hydrocarbon contamination at an abandoned well and battery site

(2) On June 29, 2004, Maralo file an application with the New Mexico Oil Conversation Commission for a DeNovo hearing to be set for hearing on September 9, 2004.



(3) Maralo has complied with the provisions of Division Memorandum 3-85 by filing on June 29, 2004 its motion for a stay of Division Order R-12152.

(4) Pursuant to Division Rule 1220.B, it is necessary to Stay Division Order R-12152 to prevent gross negative consequences to Maralo, LLC.

IT IS THEREFORE ORDERED:

(1) That Division Order R-12152 is hereby stayed pending the entry of a final order of the Commission following the de novo hearing of this matter.

(2) That 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 date and year hereinabove designated.

OIL CONSERVATION DIVISION

Mark Fesmire
Director