

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

RECEIVED

MAY 21 2004

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

Oil Conservation Division  
1220 S. St. Francis Drive  
Santa Fe, NM 87505  
CASE NO. 13049

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

CASE NO. 13048

ORDER NO. R-11962 *De Novo*

**REPLY PURSUANT TO MOTION TO COMPEL**

EGL Resources, Inc. and Robert Landreth, for their Reply pursuant to their May 10, 2004 Motion To Compel Devon Energy Production Company's compliance with the Division's March 2, 2004 Subpoena Duces Tecum, state:

The Motion to Compel

On March 12, 2004, at a conference on Devon's objections to the Division's March 2, 2004 subpoena, we informed the parties that EGL/Landreth would withdraw subpoena items 7 and 8 if Devon's counsel would confirm that Devon would not challenge the designation of EGL as operator of the Rio Blanco well under Order No. R-11962. On April 15, 2004, Devon made clear its intentions to pursue such a challenge in its separate Response to the Motion to Dismiss.

Under NMSA 1978 § 70-2-8, avoidance of the obligation to comply with the Division's subpoenas is allowed only on a showing to the Commission's satisfaction that the "*books, papers or records*" sought are "*not pertinent to some question lawfully before such commission...for determination.*" Here, Devon has utterly failed to make such a showing. Its unsupported assertion of "no relevance" is inadequate.

Following the dismissal by EGL/Landreth of their Application for Hearing De Novo in Case No. 13085<sup>1</sup>, there remains only one issue that has been properly placed before the Commission for determination: The propriety of the request for relief set forth in Devon's Application that it be designated operator of the well located on the pooled unit, relief that was denied by Order No. R-11962. By asking the Commission to rescind the Division's designation of EGL Resources as operator of the well and naming it as operator instead, Devon has placed its experience of drilling, completing and operating similar Devonian formation wells directly at issue. It is for this reason, among others, that EGL/Landreth have sought the AFE and well cost information for Devon's adjacent Rio Blanco 33 Federal Well No. 1 set forth at items 7 and 8 of the March 2, 2004 subpoena. In a challenge to operatorship, the ability of the party seeking to be named successor operator to operate the well, including its ability to contain costs, will necessarily be an issue. In view of the issue that Devon itself has placed before the Commission, it is impossible for Devon to demonstrate an absence of pertinence under § 70-2-8.

The excuse-making that Devon has prolonged for more than ten weeks should be put at an end. Devon has produced most of the other materials and information from its Rio Blanco 33 Federal Well No. 1 that were listed in the subpoena and it should be made to produce the well cost information as well.

#### The Motion to Dismiss

With no regard for procedural protocol, Devon uses its Response to the Motion To Compel as an opportunity to work-in one more shot at the separate April 6, 2004 Motion to Dismiss after briefing on that matter has been completed. In its after-the-fact

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<sup>1</sup> Devon did not file an application for hearing de novo in that case and the matter has been dismissed in-full.

response, Devon states that the basis for the EGL/Landreth Motion To Dismiss was “without authority”. That’s an astonishing assertion given the eight pages of authorities cited to in our April 21st Reply, *including* the excerpted quotes of the findings of Order No. R-11962 in this case explaining that the agency could not consider issues outside the original Application.

Devon has refuted none of those authorities.

Devon further disregards the proper procedure for seeking relief from this agency. NMSA 1978 § 70-2-7 provides: “*The oil conservation division...shall prescribe by rule its rules of order or procedure in hearing or other proceedings before it under the Oil and Gas Act.*” The Division has accordingly promulgated specific procedures for invoking agency action at 19.15.14.1203 NMAC:

19.15.14.1203 INITIATING A HEARING:

*A. The division, the attorney general, any operator or producer or any other person may apply for a hearing. The application shall be signed by the person seeking the hearing or by an attorney representing that person. Two copies of the application must be filed and shall state:*

- (1) the name of the applicant;*
  - (2) the name or general description of the common source or sources of supply or the area affected by the order sought;*
  - (3) briefly, the general nature of the order or rule sought;*
  - (4) a list of the names and addresses of persons to whom notice has been sent;*
  - (5) a proposed notice advertisement for publication; and*
  - (6) any other matter required by these rules or order of the division.*
- (emphasis added).*

Devon totally disregards the requirements of Rule 1203 by raising new, hypothetical issues it conjures-up late in the game that are far beyond the scope of relief requested in its original compulsory pooling Application. Instead, Devon attempts to improperly bootstrap novel requests for relief that are (1) vague, (2) not set forth in a

properly filed application before the Division, and (3) are not supported by proper notice to affected interest owners.<sup>2</sup>

As currently framed, the issues Devon claims it wants the Commission to pursue are ambiguous. They also appear to have only a hypothetical basis. Why should the Commission issue an advisory opinion on operations? What geologic issues are there when both parties proposed to drill at the same location? What subsequent operations is Devon speculating about? Exactly what provisions for subsequent operations, notice and election is Devon proposing and why? How does Devon propose the Commission implement gas balancing and why?

Devon does not tell us and none of these matters are reflected in its Application.

The Commission should honor the Division's previous procedural ruling in this case, set forth at findings 15 through 17 of Order No. R-11962, and direct Devon to file a proper application with the Division stating with specificity and clarity the exact relief it seeks along with the Division's authority for granting such. Devon should also be directed to provide requisite notice to all the interest owners of record. The vague and improperly raised matters should accordingly be dismissed from this case.

Respectfully submitted,

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

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<sup>2</sup> Devon has notified only two of the seventeen interest owners of record.

**Certificate of Mailing**

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 31<sup>st</sup> day of May, as follows:

Carol Leach, Esq.  
New Mexico Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87504

Gail MacQuesten, Esq.  
New Mexico Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87504

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

James Bruce, Esq.  
Post Office Box 1056  
Santa Fe, New Mexico 87504-1056



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J. Scott Hall

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

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MAY 10 2004

Oil Conservation Division  
1220 S. St. Francis Drive  
Santa Fe, NM 87505

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

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

CASE NO. 13048

ORDER NO. R-11962 *De Novo*

**MOTION TO COMPEL**

EGL RESOURCES, INC., ("EGL"), and ROBERT LANDRETH, ("Landreth"), move the Commission to enter its order compelling Devon Energy Production Company to produce certain documents and materials pursuant to the Subpoena Duces Tecum issued by the Division on March 2, 2004. As grounds, movants state:

1. At the request of EGL and Landreth, on March 2, 2004, in anticipation of the Commission hearing scheduled for April 8<sup>th</sup>, the Division Director issued a Subpoena Duces Tecum instructing Devon to produce on March 12, 2004, certain documents and materials from the Devon Rio Blanco 33 Federal Well No. 1. Among the materials sought, the Subpoena identified the following items: "7. *A copy of the AFE that was prepared for execution by Devon's partners.*" and "8. *All documents or a summary reflecting actual expenditures from commencement of operations on the well through the setting of the liner through the Devonian at total depth.*" A copy of the Subpoena Duces Tecum is attached hereto as Exhibit "A".

2. On March 11, 2004, Devon and Southwestern Energy Production Company filed their Joint Objections to the subpoena. Devon objected to producing materials responsive to subpoena items 7 and 8 on grounds they were “not relevant”. On March 12, 2004, counsel for the Energy, Minerals and Natural Resources Department convened a conference on the objections, a number of which were resolved. During the conference, it was indicated that EGL and Landreth would withdraw subpoena items 7 and 8, if Devon were to abandon its challenge to the operatorship of the Rio Blanco 4 Federal Well No. 1. Devon’s counsel promised to follow-up on the question. That question was answered on April 15, 2004 in Devon’s Response To EGL-Landreth Motion To Dismiss. Devon stated unequivocally that it would continue to challenge the designation of EGL as operator of the referenced well.

3. By letter dated April 16, 2004, (Exhibit “B”), Devon’s counsel was requested to deliver the materials responsive to subpoena items 7 and 8. To date, Devon has failed to respond to the request in any way.

4. The Commission and the Division, following the New Mexico courts, have always applied the broadest relevance standard in the conduct of discovery. Carter v. Burns Constr. Co., 85 N.M. 27, 31, 508 P.2d 1324, 1328 (Ct.App. 1973); cert. denied 85 N.M. 5, 508 P.2d 1302 (1973). Under the standards applicable here, in view of issues Devon plans to pursue at the de novo hearing, the materials sought by subpoena items 7 and 8 are clearly relevant, and Devon may not avoid compliance with the March 2, subpoena.

WHEREFORE, EGL Resources, Inc. and Robert Landreth request the Commission enter its order compelling Devon to comply with the Division's Subpoena Duces Tecum without further delay.

Respectfully submitted,

MILLER STRATVERT P.A.

By: T. J. Scott Hall

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 10 day of May, as follows:

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

Carol Leach, Esq.  
New Mexico Energy, Minerals and Natural Resources Dept.  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87504

Gail MacQuesten, Esq.  
New Mexico Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87504

James Bruce, Esq.  
Post Office Box 1056  
Santa Fe, New Mexico 87504-1056

T. J. Scott Hall  
J. Scott Hall



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

**IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION FOR THE PURPOSE OF  
CONSIDERING:**

**APPLICATION OF EGL RESOURCES, INC.  
AND ROBERT LANDRETH FOR POOL EXTENSION  
FOR THE NORTH BELL LAKE-DEVONIAN  
GAS POOL, OR ALTERNATIVELY, FOR POOL  
CREATION AND SPECIAL POOL RULES, AND  
EXPANSION OF GAS SPACING AND PRORATION  
UNIT LEA COUNTY, NEW MEXICO.**

**RECEIVED**

MAR 2 2004

Oil Conservation Division  
1220 S. St. Francis Drive  
Santa Fe, NM 87505

**CASE NO. 13085  
ORDER NO. R-12106  
DE NOVO**

**SUBPOENA DUCES TECUM**

TO: Devon Energy Production Company, LP  
c/o Thomas Kellahin, Esq.  
Post Office Box 2265  
Santa Fe, New Mexico 87504

Pursuant to Section 70-2-8, NMSA (1978), and Rule 1211 of the New Mexico Oil Conservation Division's Rules of Procedure, you are hereby ORDERED to appear at 9:00 a.m., March 12, 2004, at the offices of the Oil Conservation Division, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505 and to produce and make available to EGL Resources, Inc. and Robert Landreth and their attorney, J. Scott Hall, Esq., for copying, the documents and items specified below.

This subpoena is issued on application of EGL Resources, Inc. and Robert Landreth through their attorneys Miller Stratvert P.A., Post Office Box 1986, Santa Fe, New Mexico 87504.

Dated this \_\_\_\_ day of March, 2004.

NEW MEXICO OIL CONSERVATION DIVISION

For the Director  
David K. Brooker  
Assistant General Counsel  
By: Lori Wrotenbery, Director

**EXHIBIT 'A'**

**TO SUBPONEA DUCES TECUM  
TO DEVON ENERGY PRODUCTION COMPANY, L.P.  
IN THE NEW MEXICO OIL CONSERVATION COMMISSION  
CASE NO. 13085**

For the Devon Rio Blanco 33 Federal Well No. 1; Section 33, T-22-S, R-34-E, NMPM,  
Lee County, New Mexico:

1. All open-hole and cased-hole logs for the interval from 50' above the top of the Devonian formation to total depth.
2. All mud logs for the interval from 50' above the top of the Devonian to total depth.
3. All DST reports, including pressure charts, fluid recovery data and observed flow rates, together with service company analysis thereof with respect to reservoir parameters.
4. All daily drilling reports from commencement through completion of the well.
5. All data, analysis and reports for cores and side-wall cores obtained in the Devonian formation.
6. All evidence utilized or which can be utilized in establishing the level of the gas/water contact underlying Section 33.
7. A copy of the AFE that was prepared for execution by Devon's partners.
8. All documents or a summary reflecting actual expenditures from commencement of operations on the well through the setting of the liner through the Devonian at total depth.
9. All completion reports as such become available.