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July 17, 2003

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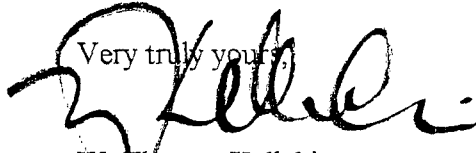
Oil Conservation Division

Ms. Lori Wrotenbery, Chair
Oil Conservation Commission
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Re: Devon's Motion Remand Cases 13048 and 13049 to
the Division for the Purpose of A Consolidated Hearing
with Division Case 13085 to Consider Technical Evidence

Dear Ms. Wrotenbery:

On behalf of Devon Energy Production Company, L.P. ("Devon"), please find enclosed
our referenced motion.

Very truly yours,

W. Thomas Kellahin

Copies hand delivered to:

Carol Leach, Esq.

Attorney for the Secretary of the Energy,
Minerals and Natural Resources Department

David K. Brooks, Esq.

Attorney for the Commission

J. Scott Hall, Esq.

Attorney for EGL Resources, Inc.

David R. Catanach

Division hearing examiner

Devon Energy Production Company, L.P.

Attn: Richardson Winchester

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

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CASE 13048 (de novo)
Oil Conservation Division

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

CASE 13049 (de novo)

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

ORDER R-11962

DEVON ENERGY PRODUCTION COMPANY, L.P.'S
MOTION TO REMAND
CASES 13048 AND 13049
TO THE DIVISION
FOR THE PURPOSE OF
A CONSOLIDATED HEARING
WITH DIVISION CASE 13085
TO CONSIDER TECHNICAL EVIDENCE

DEVON ENERGY PRODUCTION COMPANY, L.P. ("Devon") moves that the New Mexico Oil Conservation Commission ("Commission") remand Division Cases 13048 and 13049 to the Division for the purpose of a consolidated hearing with Division Case 13085 to consider technical evidence affecting all three cases. In addition to its Motion to Remand filed July 2, 2003, and as grounds for its Motion, Devon states:

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Devon's Motion to the Commission to Remand and Re-open Cases 13048 and 13049 for purpose of hearing technical evidence.

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SUMMARY

In Order R-11962, dated May 13, 2003, Examiner Brooks dismissed EGL's request for 640-acre dedication and decided that the Division should approve Devon's request to pool the N/2 of Section 4, **but then** awarded operations to EGL, who along with Landreth, has a majority working interest ownership in Devon's proposed 320-acre spacing unit. Examiner Brooks awarded operations to EGL under the mistaken opinion that there was no substantial geological dispute between Devon and EGL.¹

Division's Order R-11962 included, among other things, an invitation to EGL/Landreth to file a separate case to extend the North Bell Lake-Devonian Gas Pool to included Section 4, T22S, R34E. **See Compulsory Pooling Cases 13048 and 13049.**

On May 15, 2003, EGL/Landreth filed an application for a de novo hearing before the Commission in Order R-11962.

On May 23, 2003, EGL/Landreth filed its application to extend this pool to included Section 4 which is docketed as Division Case 13085. (the Pool Expansion Case)

On June 25, 2003, EGL/Landreth filed an amended application to extend the pool to include Section 4 but in addition, in the alternative, to create a new pool for Section 4 spacing with 1 well per 640-acre spacing unit. The basis for EGL/Landreth's Pool Expansion Case, is its contention that the Division's Compulsory Pooling order was entered without regard to the technical evidence about the Pool Expansion dispute.

In order to simplify the process, Devon files this motion with the Commission to remand the Compulsory Pooling Case back to the Division to be consolidated with the Pool Expansion Case for hearing of all the technical issues involved in this dispute.

¹ Although, Devon and EGL both proposed to re-enter the same well, the geologic opinions and interpretations of Devon and EGL could not have been more different. The Examiner failed to recognize that he must decide the geologic dispute within the context of the compulsory pooling cases, and over the objection of Devon, declare that the technical evidence was irrelevant after hearing some 4 hours of technical testimony.

POINTS AND AUTHORITIES

Devon anticipates that EGL/Landreth will oppose this motion with the same arguments that EGL/Landreth has used in its response to Devon's Motion to Remand by arguing that there is no procedure or authority for the Commission to refer a case back to the Division for hearing. By implication, EGL/Landreth assert that neither the Division nor the Commission has the talent or expertise to bring order to the chaos that EGL/Landreth has caused. **See Devon's Motion to Remand for purposes of adopting Devon's plan of operation.**

EGL/Landreth is attempting to scare the Commission into thinking that there is no process to bring order to the mess EGL/Landreth has made. EGL/Landreth caused the fragmentation that they now complain about. The Commission must stop this piece-meal attack and reject EGL/Landreth's attempts to confuse. By using its statutory authority, the Commission should remand the pooling cases so that the technical evidence case is heard in one consolidated hearing with Case 13085.

All of the argument advanced by EGL/Landreth in its response to Devon's Motion to Remand, are flawed to the core because they are based upon EGL/Landreth's misunderstanding of the administrative procedure set forth in the Oil & Gas Act.

(1) A "de novo" hearing is not an "appeal":

By definition, a de novo hearing is a new presentation of the case. See New Mexico Natural Resources Law Reported, Volume 6, 1991.

In an attempt to confuse the Commission, EGL/Landreth erroneously characterize the "de novo" procedure of the Oil & Gas Act as an appeal and thereby miss-cite judicial cases that deal with appeals for District Court to the Court of Appeals. For example, EGL/Landreth contend that a party is limited to only those issues raised before the Division and if not raised there then they are waived. To the contrary, pursuant to the Oil & Gas Act, the only time issues are waived is if there are no raised in an application for re-hearing filed after a Commission order is issued. **See 1978 NMSA Section 70-2-25.B**

Although administrative review is in some respects analogous to an appeal, in the judicial process there may be basic and fundamental distinctions between the process of administrative review and that of appellate review judicially. The Oil & Gas Act specifically provides that the hearing before the Commission on an appeal

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of a Division order shall be "de novo". A statute specifically provides that the commission shall hear an appeal de novo and shall entered such order therein as it may deem just and reasonable means that the commission shall hear the matter anew, afresh, just as if nothing had theretofore transpired and as if the matter had been originally filed with it. **See 2 Am Jur 2d Administrative Law Section 546.**

Hearing "de novo" often involve evidence and issues not raised at the Division Examiner hearing. **For Example, See Sapient/Chevron, OCD Case 12605, Order R-11652-B, dated March 26, 2003; Richardson Operating Corp/San Juan Coal Company, Case 12734, Order R-11775-B dated December 19, 2002; and Basin-Fruitland Coal Gas Infill Case, OCD 12888, Order R-8768-C, dated October 15, 2002**

For EGL/ Landreth to argue that the Commission acts as an appellate court is to invite the Commission to make a fundamental procedural mistake.

Division jurisdiction:

The Division is wrong. This is not an "appeal." It is a "de novo" hearing. Even though a "de novo" application is filed, the Division, expressly retained jurisdiction of its order. We are unable to find a single Division hearing order that does not contain the following "jurisdiction is hereby retained for the entry of further orders as the Division may deem necessary." **For example is Order R-11962.**

Commission jurisdiction:

"The commission shall have concurrent jurisdiction and authority with the Division to the extent necessary for the commission to perform its duties as required by law." **See 1978 NMSA Section 70-2-11.B** and therefore has authority to require all technical issues to be considered at one time.

"In addition, the division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonable necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof." **See 1978 NMSA Section 70-2-11.A**

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Re-Opened Cases:

On July 9, 2003, Devon filed a motion with the Commission to remand and reopen Division Cases 13048 and 13049 for the purpose of amending Division Order R-11962 to include Devon's plan of operation. On July 17, 2003, Devon filed this current motion with the Commission requested that the Commission remand and reopen Division Cases 13048 and 13049 to be consolidated with Case 13085 for purposes of hearing technical evidence relevant to all 3 cases.

Despite the fact that Division retained continuing jurisdiction² of these cases for the entry of such further orders as the Division may deem necessary, by letter,³ dated July 7, 2003, David K Brooks, assistant General Counsel, "dismissed" Devon's motion on the grounds that the Division does not have jurisdiction over its orders if the order is subject of a "de novo" hearing before the Commission.⁴ Accordingly, Devon's requests that the Commission remand these cases to the Division for the purpose of the matters set forth in both of Devon's two motions.⁵

EGL/Landreth now contend that the Devon seeks unprecedented relief. In fact, the Commission has previously demonstrated that it has the expertise to set a procedure for dealing with remanding and reopening cases to consider new evidence. **See Phillips Petroleum Case 10994 (Reopened), Order R-5771-C, dated April 8, 1995.** Further the Commission has demonstrated that it has the ability to manage complex multiple technical cases. **For Example see Commission Order R-11700-D, dated June 12, 2003, compulsory pooling cases 12816, 12841, 12859 and 12860, TMBR-Sharp Drilling, Ocean Energy, David Arrington.**

It is not uncommon that Division cases are re-opened for various reasons. **For example see, NMOCD Case 12743 (Texaco, February 2, 2002); Case 12112 (Vanco, March 7, 2003); Case 12778 (Devon, May 2, 2002) Case 12957 (Nadel and Gussman, March 13, 2003); Case 13045 (Yates, May 22, 2003); Case 13081 (Arrington, July 10, 2003); Case 13086 (Devon, July 10, 2003); Case 13071 (MYCO, July 10, 2003)**

² See Ordering Paragraph (19) of Order R-11962

³ See Mr. Brook's letter, dated July 7, 2003, attached as Devon's Exhibit "A"

⁴ See 1978 NMSA Section 70-2-13. Devon disagrees with Mr. Brook's characterization that a "de novo" proceeding amounts to an "appeal" in which the Division is divested of jurisdiction.

⁵ Motions filed July 9, 2003 and July 17, 2003.

DIVISION CASES 13048 and 13049

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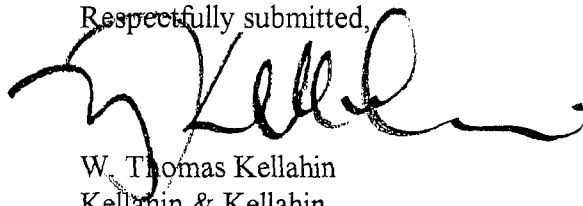
CONCLUSION

The Commission should be concerned with administrative efficiency and want to avoid fragmentation. Fairness dictates one technical hearing. It is because of EGL/Landreth's actions that this matter to fragmented.

In order to save the Commission for hearing the same technical evidence and arguments in multiple separate proceedings and hearings, the Commission should exercise its inherent authority and common sense to remand the two compulsory pooling cases back the Division for a single technical hearing about the expansion of the North Bell-Lake Devonian Gas Pool or the creation of a new Devonian gas pool that affects all three cases. To do otherwise, is to act in an arbitrary and capricious manner.

WHEREFORE, Devon requests that the Commission remand Cases 13048 and 13049 to the Division and Re-open these cases and consolidate them with Case 13085 for the purpose of hearing technical evidence relevant to all three cases.

Respectfully submitted,



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Attorney for Devon Energy Production Company, L.P.

CERTIFICATE OF SERVICE

I, W. Thomas Kellahin, certify that a true and correct copy of this pleading on July 17, 2003 was hand delivered or transmitted by facsimile as follows:

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

DIVISION CASES 13048 AND 13049

Devon's Motion to the Commission to Remand and Re-Open Cases 13048 and 13049 for the purpose of hearing technical evidence

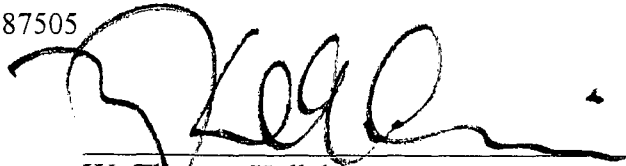
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