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

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

RESPONSE OF
E.G.L. RESOURCES, INC. AND ROBERT LANDRETH
TO DEVON'S [THIRD] MOTION FOR STAY

E.G.L. Resources, Inc., ("EGL"), and Robert Landreth, ("Landreth"), for their response to Devon Energy Production Company's [Third] Motion For Stay, state:

SUMMARY

This is Devon's third attempt to obtain a stay of a Division compulsory pooling order. The motion should be denied for the reasons that (1) it is untimely; (2) does not meet the requirements of Rule 1220.B; (3) presents no new grounds for the motion; and (4) has been made moot.

BACKGROUND

On May 13, 2002, the Division entered Order No. R-11962 pooling Devon's interests and designating EGL Resources, Inc. as operator of the Rio Blanco "4" Federal Well No. 1 located on the N/2 of Section 4, T-23-S, R-34-E.

On May 21, 2003, EGL sent its estimated well costs to Devon and in a telephone conversation that same day Devon's landman expressly encouraged EGL "to proceed

[with the well] as soon as possible." (See Response of EGL Resources, Inc. and Robert Landreth To Devon's Motion For Stay filed on May 29, 2003.)

In a motion filed by it on May 27, 2003, Devon applied for a stay of Order No. R-11962.

On the morning of May 28, 2003, EGL moved a workover rig onto the location and proceeded with operations.

On May 28th, later in the day, Devon filed another motion styled "[Request] for an Emergency Order Staying EGL Resources, Inc. From Commencing Operations". This second motion also sought to stay Order No. R-11962 and to prevent EGL "from commencing operations before entry of a De Novo Order by the Commission". [1]

On May 30, 2003, the Division entered Order No. R-11962-A denying both of the Devon motions. The Division's Order noted both that (1) the consolidated cases were pending before the Commission for a hearing *de novo* and (2) Devon neither alleged nor established the existence of the circumstances under Rule 1220.B that are necessary prerequisites to the issuance of a stay order.

On approximately July 2, 2003, the Division received "Devon Energy Production Company, L. P.'s Motion To Stay Division Order-11962"[2] The motion asks the Division "reconsider" Devon's earlier request for stay

On the week of July 7, 2003, EGL commenced drilling operations on the Section 4 location with a deep drilling rig.

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[1] EGL filed an Application for Hearing De Novo on May 15th. Devon filed its Application for Hearing De Novo on May 27th.

[2] Devon Energy Production Company, L. P.'s Motion To Stay Division Order –11962 And Its Response To EGL Resources, Inc. and Robert Landreth's Motion To Stay (sic)

POINTS

1. The Motion Is Untimely.

It is noted that Devon expressly states it is seeking "reconsideration" of its earlier motions for stay and the order that issued as a result. Properly, under Rule 1220.A of the Division's rules, Devon had until June 29, 2003 to perfect a de novo appeal to the Commission of the Division's May 30, 2003 Order denying Devon's two motions for stay. Devon's third motion was filed on July 2nd and is consequently untimely. It should be further noted that the motion was filed after the Division had been divested of jurisdiction by virtue of Devon's May 27, 2003 Application for Hearing De Novo.

2. Devon Fails To Meet The Requirements of Rule 1220.B

Devon seeks a stay of a Division compulsory pooling order for the reason that the order is the subject of a de novo appeal to the Commission and that EGL/Landreth will have an "unfair advantage" over Devon in these proceedings. (*Devon's [Third] Motion To Stay*, pg. 14.) Devon offers no other grounds for the issuance of a stay.

Rule 1220(B) of the Rules and Regulations of the Oil Conservation Division, 19 NMAC 15.N.1220(B), permit 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*...".

Devon fails to establish, or even allege, that (1) waste is threatened, (2) correlative rights are in jeopardy, (3) public health or the environment are at risk, or (4) that "*gross negative consequences*" will accrue to any party from the Division's compulsory pooling order. Devon does not assert that it will suffer harm if the order is not granted. It does not have a lease expiration situation and it is threatened with no other loss.

Devon's only argument is that drilling should wait until the Commission can hear the de novo applications. Such "generalized concerns" are insufficient grounds for the issuance of a stay order. (Order No. R-11663; *Application of McElvain Oil and Gas Properties, Inc. for Compulsory Pooling, Rio Arriba County, New Mexico*; Case No. 12705.)

3. Devon Presents No New Grounds For Its Third Motion

We have scoured Devon's [Third] Motion To Stay. We have found no allegations or assertions setting forth new grounds for granting the motion, only repetitions of the same old material, just like in *Groundhog Day*.

4. Devon's Motion Is Moot

Devon's third attempt to prevent EGL from operating the Rio Blanco "4" Federal Well No. 1 has been rendered moot by (1) the completion of workover operations, and (2) the commencement of drilling operations. Moreover, Devon's third motion is an impermissible collateral attack on the operation of a Division order that is the subject of a pending *de novo* appeal before the Commission.

CONCLUSION

Devon has a proper remedy to challenge the operation of Order No. R-11962 in the pursuit of its De Novo appeal to the Commission in a hearing on the merits. Otherwise Devon's third motion for stay is wholly unjustified and should be denied.

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

Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 11 day of July 2003, as follows:

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

Carol Leach, Esq.
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 98504

David Brooks, Esq.
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 98504

David Catanach, Esq.
New Mexico Oil Conservation Commission
1220 South St. Francis Drive
Santa Fe, New Mexico 98504

J. Scott Hall