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December 5, 2002

Hand Delivered


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

Re: Case No. 12888 (de novo)
Order No. R-8768-C

Dear Ms. Wrotenbery:

Enclosed are an original and four copies of San Juan Coal Company's
Application for Stay.

Very truly yours,



James Bruce

Attorney for San Juan Coal Company

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

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

**APPLICATION OF THE FRUITLAND COALBED
METHANE COMMITTEE FOR POOL ABOLISHMENT
AND EXPANSION, ETC., RIO ARRIBA, SAN JUAN,
MCKINLEY AND SANDOVAL COUNTIES, NEW MEXICO.**

**Case No. 12888
Order No. R-8768-C**

**APPLICATION OF SAN JUAN COAL COMPANY
FOR STAY OF ORDER NO. R-8768-C**

San Juan Coal Company ("San Juan") respectfully requests, pursuant to Commission Rule 1220.B, 19 NMAC 15.N. 1220.B, that the Director of the New Mexico Oil Conservation Division ("OCD") stay the effectiveness of the October 15, 2002 Order of the Division, Order No. R-8768-C, on certain lands within San Juan's coal leases pending consideration of this matter by the Oil Conservation Commission ("Commission") pursuant to San Juan's Application for hearing *de novo*.¹ Specifically, while the Commission hears and decides this matter, San Juan requests that the Director prevent Dugan Production Corporation ("Dugan") and others from pursuing any drilling, recompletion, or fracturing of wells, or related activities purportedly authorized under Order No. R-8768-C on the lands that are within San Juan's coal leases but not covered by Case No. 12734. Those lands, which are the subject of this Application for Stay, are

¹ San Juan also would prefer that the stay continue thereafter, if necessary, pending any subsequent review by the Secretary of the Energy Minerals and Natural Resources Department. However, in granting San Juan's Motion for Stay pending final decision by the Commission in Case No. 12734 (concerning Richardson Operating Company's Application to Establish Infill Well Area), the Division ruled that it was premature to address the request for stay during any period of review by the Secretary and denied that limited portion of San Juan's request for stay.

more specifically described in San Juan's Application for Hearing De Novo in this Case No. 12888 ("Remaining Coal Lease Lands"). They are the remaining lands within San Juan's coal leases that are not within the infill area proposed by Richardson Operating Company in Case No. 12734. The proposed Richardson infill area has been carved out of this Case No. 12888 and is subject to a stay entered by the Division on July 26, 2002. San Juan does not seek stay of Order No. R-8768-C in areas outside of the Remaining Coal Lease Lands. As grounds for this Application, San Juan states:

1. San Juan has filed its Application for Hearing De Novo of Order No. R-8768-C on November 14, 2002. At the time of that Application, San Juan was aware of no new gas development activity by Dugan on the Remaining Coal Lease Lands.

2. On Wednesday, November 27, 2002 and since, San Juan has learned that Dugan has recently filed at least two Sundry Notices with the Bureau of Land Management seeking to complete wells in the Fruitland coal within San Juan's Mine as infill wells. As a result, San Juan files this Application for Stay.

3. At this point in time, according to the Division's records, Dugan already has two wells per section that are completed in the Fruitland Coal or Pictured Cliffs formations. Based on testimony before the Commission, these wells are producing gas from the Fruitland Coal. Therefore, to preserve the status quo while the Commission considers San Juan's Application for Hearing De Novo, neither Dugan nor others should be allowed to drill, recomplete, or fracture wells in the Basin-Fruitland Coal Gas Pool within the area encompassed by the Remaining Coal Lease Lands.

4. Denial of a stay would prevent San Juan from obtaining meaningful review by the Commission of significant issues stemming from the conflict between Dugan's development of

coal bed methane (“CBM”) and San Juan’s coal development. That is, if Dugan is allowed to proceed with drilling, recompletion or fracturing activities within the Remaining Coal Lease Lands before the Commission decides this matter, the damage that San Juan seeks to avoid through Commission review will have already occurred. Therefore, the Director should preserve the status quo by granting the stay.

5. By Order of July 26, 2002, the Oil Conservation Division has already issued a stay similar to that San Juan seeks here, staying Order No. R-11775 (concerning Richardson Operating Company’s Application to Establish Infill Well Area) during the pendency of the Commission’s review resulting from San Juan’s application for de novo review. The Director’s granting of this Application would be consistent with the Director’s previous granting of San Juan’s Application to Stay Order No. R-11775.

6. Consistent with Commission Rule 1220B, a stay is necessary to protect public health and the environment; to “prevent gross negative consequences” to San Juan; and to prevent waste of the coal resource. Each reason is addressed in turn below. Evidence supporting these reasons was introduced by San Juan into the record of these proceedings by incorporating the record of the Richardson proceeding.

7. Under Commission Rule 1220B, the Director may grant a stay to protect public health and the environment. A stay is necessary to protect public health and the environment. The drilling, recompletion, and fracturing activities of wells that are authorized by Order No. R-8768-C on the Remaining Coal Lease Lands irrevocably and significantly increase the risk of spontaneous combustion and explosion during subsequent coal mining operations. The subbituminous coal at San Juan Mine is prone to spontaneous combustion, and explosions or mine fires that result from spontaneous combustion prompted by CBM well development and

operation could cause injuries or fatalities. To a limited degree, some of the hazards to health and safety posed by CBM development under the Order might be mitigated by bypassing blocks of coal. But the very process of bypassing coal increases significantly the risk of spontaneous combustion because the attendant long delays in mining can complicate the ventilation that is necessary to prevent spontaneous combustion. Moreover, San Juan will present evidence to the Commission, as it did before the Division by incorporating the record of the Richardson proceeding, that precluding or restricting additional drilling and fracturing activities, rather than requiring the bypass of coal, is the appropriate means to address safety concerns. Without a stay, the dangerous conditions San Juan seeks to avoid could be permanently inflicted by CBM development before the Commission, or possibly the Secretary, has the opportunity to consider it.

8. Under Commission Rule 1220B, the Director may grant a stay “to prevent gross negative consequences” to San Juan. A stay is necessary to prevent gross negative consequences to San Juan. Drilling, recompletion and fracturing of wells authorized by the Order will irrevocably damage San Juan. San Juan is currently mining a world class underground coal seam at its San Juan Mine, with an initial capital investment of \$146,000,000. Longwall production is operational now. Drilling, recompletion or fracturing of wells in the coal seam is incompatible with longwall mining of these areas because it requires San Juan to bypass the wells. Bypass of wells damages San Juan by lost coal and by down time. Bypass of a single well leaves a block of approximately 330,000 tons of unmineable coal. Also, it takes about one month of downtime to move the longwall mining equipment in order to bypass the coal surrounding a well. The number of wells fractured in the coal that must be bypassed permanently increases the damage in lost coal and production time to San Juan. The loss of coal caused by increasing the number of

wells fractured in the coal can be even greater than the product of approximately 330,000 tons times the number of wells; if more than 2 or 3 wells are located in a coal panel, it may be necessary to bypass an entire panel of coal, and panels are generally up to almost 2 miles long. Unless a stay is granted, the drilling, recompletion or fracing of wells authorized by the Order will create irreversible mining conditions that will cause great damage to San Juan over time.

9. Under Rule 1220B, the Director may grant a stay “to prevent waste.” Without a stay, there is great risk that coal resources will be wasted. The magnitude of the potential waste of coal is illustrated in part by the volume of coal that the existence of a wellbore may cause to be bypassed. One well may cause the bypass of 330,000 tons of coal, with an estimated royalty loss of \$800,000.00, assuming an 8% royalty rate; bypass of an entire panel may cause a loss of more than ten times that amount. As more CBM wells are drilled, or recompleted and fractured into the coal, the greater the potential for waste of the coal reserves that will not be mined by San Juan. This results in irreparable harm to the United States, the State of New Mexico, and the coal reserve.

10. Beyond the considerations for granting a stay identified in Rule 1220B, other factors also support the issuance of a stay: avoidance of irreparable harm to San Juan; preserving the opportunity for the Commission, and possibly the Secretary, to determine new and important issues; consideration of the public interest; and comparison of great harm to San Juan with mere delay to Dugan. These considerations are described below.

11. A stay is necessary to avoid irreparable harm to San Juan. If pursuant to the Order, Dugan fractures additional wells in the Fruitland coal, those actions will permanently burden the coal seam with additional instability and spontaneous combustion risk. The damage is irreversible. It is impossible to “unfrac” a well. Drilling and recompletion pose similar risk.

Damage from these activities is perhaps not as irreversible as fracturing because the Commission could require that new wells or recompletions be plugged, abandoned and milled out upon a favorable ruling by the Commission, but major inefficiencies would result.

12. A stay is necessary to provide meaningful opportunity for the Commission, or possibly the Secretary, to decide important new issues of public concern. If upon authority of the Order alone, Dugan takes the action that San Juan seeks to prevent, then the damage is done before the Commission has the opportunity to consider and decide these issues. To deprive the Commission and Secretary of meaningful review undercuts the authority of the Commission and the Secretary. For example, the Commission or Secretary presumably would like to decide whether it is good policy to issue a decision that causes the bypass of millions of tons of coal, where the State's share of the lost royalty that is associated with that coal is worth many multiples more than the value of the corresponding gas royalty.

13. Public interest justifies a stay. The Secretary is required by NMSA Section 70-2-26 1978 to consider the "public interest," with due regard not just for oil and gas, but also for other "mineral resources." The value of the coal to be bypassed as a result of CBM wells is vastly greater than the value of the CBM. On the federal leases alone, total coal royalties are estimated to be approximately \$250 million; half of that amount goes to the State. In addition, the State's royalty share of the two state sections in San Juan Mine is at risk. It is not appropriate to accelerate development of the far less valuable gas resource before the Commission and/or Secretary have the opportunity to decide what is in the public interest, when such acceleration threatens the viability of a much more valuable coal resource.

14. If the stay is denied, the threatened harm to San Juan far outweighs any possible harm to Dugan (or others) if the stay is granted. Most of the leases Dugan holds have been in

existence for a long time without the production and completions Dugan now seeks. Any additional delay in drilling, recompletion, or fracturing by Dugan of a few months during which the Commission can hear and decide this case is not unreasonable.

THEREFORE, San Juan Coal Company respectfully requests that the Director grant a stay of the effectiveness of the October 15, 2002 decision, Order No. R-8768-C, insofar as it relates to the lands described in San Juan's Application for Hearing De Novo pending final decision by the Commission in this matter. A proposed form of Stay Order is attached as Exhibit 1 to this Application.

Respectfully Submitted,

By: _____

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-and-

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ATTORNEYS FOR SAN JUAN COAL COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record via U.S. Mail this 57th day of December, 2002:

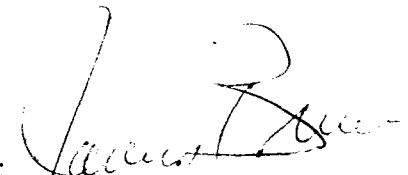
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**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

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

**APPLICATION OF THE FRUITLAND COALBED
METHANE COMMITTEE FOR POOL ABOLISHMENT
AND EXPANSION, ETC., RIO ARRIBA, SAN JUAN,
MCKINLEY AND SANDOVAL COUNTIES, NEW MEXICO.**

**Case No. 12888
Order No. R-8768-C**

ORDER ON APPLICATION FOR STAY

BY THE DIVISION DIRECTOR:

This matter has come before the Division Director of the Oil Conservation Division on the Application of San Juan Coal Company (hereinafter referred to as "San Juan") for a stay of Order No. R-8768-C (entered October 15, 2002) insofar as it relates to the lands described in San Juan's Application for Hearing De Novo in this matter, and the Division Director on this date, having reviewed the application of San Juan and the surrounding circumstances,

FINDS:

1. The application for stay is well taken and should be granted for the lands described in San Juan's Application for Hearing De Novo in this matter.
2. This matter is before the Oil Conservation Commission (hereinafter referred to as "the Commission") pursuant to the application of San Juan Coal Company (and the applications of others) for hearing *de novo* pursuant to NMSA 1978 Section 70-2-13 and Rule 1220(A), 19 NMAC 15.N.1220.A.
3. After filing for review *de novo*, San Juan Coal Company applied to the Division pursuant to Rule 1220, 19 NMAC 15.N.1220.B, for an order staying Order No. R-8768-C of the Oil Conservation Division pending review of the Commission.
4. Rule 1220.B provides that a stay pending review by the Oil Conservation Commission may be granted if unopposed or "under other circumstances [as necessary] to prevent waste, protect correlative rights, protect public health and the environment or prevent gross negative consequences to any affected party."

5. San Juan has demonstrated that pursuant to Rule 1220.B, a stay should be granted to preserve the status quo while these proceedings are concluded.

IT IS THEREFORE ORDERED THAT:

1. Order No. R-8768-C shall be and hereby is stayed insofar as it relates to lands described in San Juan's Application for Hearing De Novo pending final decision in this matter by the Oil Conservation Commission.

2. Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**

**LORI WROTENBERY
Director**

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