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\*NEW MEXICO BOARD OF LEGAL SPECIALIZATION  
RECOGNIZED SPECIALIST IN THE AREA OF  
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

December 11, 1995

**HAND DELIVERED**

**RECEIVED**  
DEC 11 1995  
Oil Conservation Division

Mrs. Jamie Bailey  
Office of the Commissioner of Public Lands  
State Land Office Building  
310 Old Santa Fe Trail  
Santa Fe, New Mexico 87501

*Re: NMOCD Cases 11297 and 11298  
Application of Exxon Corporation for Waterflood Project,  
Carbon Dioxide Project and Statutory Unitization  
Avalon-Delaware Unit, Eddy County, New Mexico*

Dear Mrs. Bailey:

On December 14, 1995, the New Mexico Oil Conservation Commission is scheduled to hearing the subject case which involves Exxon's desire to include State of New Mexico Oil & Gas Lease No. K-6527-1 (E/2E/2 of Section 25, T20S, R27E) in both its proposed waterflood project and its carbon dioxide flood project.

My client is Premier Oil & Gas Inc. who is the current lessee of this lease and who is opposed to its inclusion in the unit.

I am aware that your responsibilities as an employee of the Commissioner of Public Lands ("Land Office") have involved gathering information and making recommendations concerning whether it is in the best interests of the Land Office to include certain State of New Mexico oil & gas leases in units such as this.

While I have the greatest respect for your expertise and your professionalism, I am concerned that your responsibilities to the Land Office this particular case have created a conflict of interest which would preclude you from participating as a member of the Oil Conservation Commission.

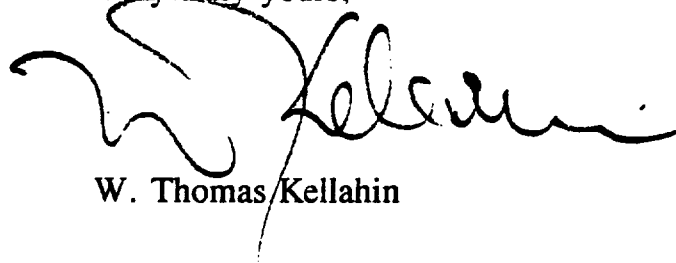
BEFORE THE  
OIL CONSERVATION COMMISSION  
Case No. 11298 DeNovo Exhibit No. A  
Submitted By:  
PREMIER OIL & GAS INC.  
Hearing Date: December 14, 1995

Mrs. Jamie Bailey  
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The Land Office has already granted preliminary approval of this unit which includes the disputed tract. Should you ultimately decide in favor of my client, then your actions would be contrary to the decision made by the Land Office.

I would appreciate knowing (a) if you have any reservations about participating in this case, and (b) if you have had any personal involvement on behalf of the Land Office with this unitization effort by Exxon. If so, can you ignore that past involvement and decide this case regardless of the affect that decision might have upon the Land Office and its prior approval to include this tract in this unit.

Very truly yours,

A handwritten signature in black ink, appearing to read "W. Thomas Kellahin". The signature is fluid and cursive, with a large initial "W" and a long, sweeping tail.

W. Thomas Kellahin

cc: Ken Jones (Premier)  
cc: William J. LeMay (Chairman-OCC)  
cc: *Jim Bruce, Esq. (Exxon)*  
cc: *William F. Carr, Esq. (Yates)*



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RAY POWELL, M.S., D.V.M.  
COMMISSIONER

State of New Mexico  
Commissioner of Public Lands

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Legal Division  
(505) 827-8713  
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December 13, 1995

VIA FACSIMILE & U.S. MAIL

W. Thomas Kellahim, Esq.  
Kellahin & Kellahin  
117 North Guadalupe  
P.O. Box 2265  
Santa Fe, NM 87504-2265

Re: *NMOCD cases 11297 and 11298, Application of Exxon Corporation for Waterflood Project, Carbon Dioxide Project and Statutory Unitization Avalon-Delaware Unit, Eddy County, New Mexico*

Dear Mr. Kellahin:

Your letter of December 11, 1995 to Jami Bailey has been referred to me for reply. In your letter you raise certain questions about Ms. Bailey's participation in a State Land Office decision to approve this particular Unit. You are concerned that her participation may have created a conflict of interest precluding her from sitting on the Oil Conservation Commission as the Commissioner of Public Lands' designee. See Sec. 70-2-4 NMSA 1978.

We share your concern that procedural due process of law be accorded parties appearing before this agency and any others on which a designee of the Commissioner sits. We are mindful of our responsibilities to the public in this regard. See *Santa Fe Exploration Co. v. Oil Conservation Comm'n*, 114 NM 103 (S.Ct. 1992).

In this instance Ms. Bailey and I are satisfied that she can participate as a member of the Commission and hear the matter with complete professionalism and impartiality. In response to the first two questions you pose in your letter, Ms. Bailey has no reservations about participating in this case. Any decision she may make as the Commissioner's designee will be based on the evidence in the record of the case. She had very little personal involvement in the Land Office process concerning this particular unitization. She attended one meeting internally and as a formality signed a letter of preliminary approval prepared by staff. The documents

BEFORE THE  
OIL CONSERVATION COMMISSION  
Case No. 11298 DeNovo Exhibit No. **B**  
Submitted By:  
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concerning the unitization in question are, of course, public records and you are free to examine them if you wish. In that event please call me at 827-5715 to arrange a time for you to inspect the documents.

Your letter is the first occasion that this particular conflict of interest question has come to my attention. As you may know, I have been general counsel here for a relatively short time, and I am continually discovering new areas requiring legal attention. This is one of them.

It seems to me that the Legislature created a statutory conflict of interest, or at least a potential one, when it provided for the Commissioner to participate as a member of the Oil Conservation Commission under Sec. 70-2-4 NMSA 1978. It seems to me that the Legislature was concerned enough for the welfare and protection of public lands that, as a secondary consequence of its action, it created this form of institutional conflict. One of the purposes of having the Commissioner of Public Lands or his designee on the Oil Conservation Commission is to look after the interests of public land trust beneficiaries. There is nothing, of course, that the Land Office can do about this legislative framework.

At the same time, however, as we stated earlier, we do recognize that parties litigating before the Oil Conservation Commission are entitled to have their constitutional rights, including procedural due process, respected. As a transactional matter, this means that the Commissioner's designee should be free from bias and prejudice. We are satisfied that such is the case with Ms. Bailey in this case. In addition, as to the future, we will try to make sure that the Commissioner's designee has not participated in the Land Office decision or transaction that is the subject of the Oil Conservation Commission hearing. The issues before the Land Office may be different from the questions before the Commission, which would mean that participating in a Land Office decision would not preclude a designee from hearing a different issue, albeit arising out of the same facts, before a different administrative body. We haven't researched this issue at this point, partly in the interest of turning around your letter request as soon as possible. We understand that you have a hearing in this matter before the Oil Conservation Commission tomorrow and we would not want to delay that by our review. In any case, we think it is the wiser choice for the Land Office to simply avoid any transactional conflict whenever it can by making sure the Commissioner's designee has not worked directly on the matter before the Commission.

W. Thomas Kellahin, Esq.  
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If there is anything further we can do for you on this matter, please give me a call.

Sincerely,



Jan Unna  
General Counsel

JU/jc

cc: Jami Bailey  
Rand Carroll, Esq.