

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*

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

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

March 18, 1994

HAND DELIVERED

MAR 18 1994

Mr. Michael E. Stogner
Chief Hearing Examiner
Oil Conservation Division
310 Old Santa Fe Trail, Room 219
P. O. Box 2088
Santa Fe, New Mexico 87501

10957

Re: Application of Consolidated Oil & Gas, Inc.
for Compulsory Pooling, San Juan and Rio Arriba
Counties, New Mexico
Carnes 32-6-11 Well
NMOCD Case 9895
Order R-9179

Dear Mr. Stogner:

On behalf of Consolidated Oil & Gas, Inc., please find enclosed our application to amend a previously issued compulsory pooling order which we request be set for hearing on the next available Examiner's docket now scheduled for April 14, 1994.

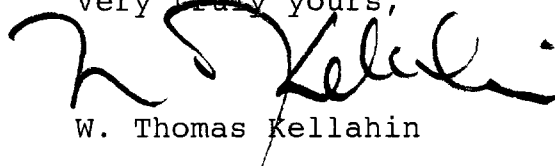
Also enclosed is our proposed notice for this case to be included on the Division's docket.

By copy of this letter, including the application, to all affected parties, we are notifying them by certified mail-return receipt requested, that they have the right to appear at the hearing, to make a statement to the Division, to present evidence and cross-examine witnesses either in support of or in opposition to the application.

Oil Conservation Division
March 18, 1994
Page 2.

Pursuant to the Division's Memorandum 2-90, all interested parties are hereby informed that if they appear in this case, then they are requested to file a Pre-Hearing Statement with the Division not later than 4:00 PM on Friday, April 8, 1994, with a copy delivered to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "W. Thomas Kellahin", written over the typed name.

W. Thomas Kellahin

Enclosure

cc: Mr. Philip G. Wood
Consolidated Oil & Gas, Inc.
(Denver)

BY CERTIFIED MAIL-RETURN RECEIPT REQUESTED

All parties listed in Paragraph 8 of the Application

PROPOSED NOTICE

MAR 18 1994

10957

Case _____: Application of Consolidated Oil & Gas, Inc. to amend Division Order R-9179, San Juan and Rio Arriba Counties, New Mexico. Applicant seeks to amend Division Order R-9179 which designated Richmond Petroleum Inc. as operator and compulsory pooled the S/2 of irregular Section 11, T32N, R6W, NMPM for the drilling of the Carnes "11" Well No. 1 at an unorthodox location within Unit L of said section in the Basin Fruitland Coal Gas Pool and forming a standard 320-acre gas spacing and proration unit. These amendments are to include the substitution of the applicant as operator, to provide a supplemental election to participate, to add additional parties, to revise the various reporting dates in this order and to otherwise reissue and renew the subject order including the recovery of both actual and future costs of drilling and completing the said well including a charge for the risk involved.

Said unit is located approximately 1/2 mile south of the intersection of the San Juan and Rio Arriba Counties lines with the Colorado-New Mexico border.

00 d PC320252WZ 2P-01 NOW P0-11-000

JAMES J. RUBOW
1645 Court Place #324
Denver, Colorado 80202
303-572-3351

Mr. Michael E. Stogner
Chief Hearing Examiner
Oil Conservation Division
310 Old Santa Fe Trail, Room 219
P.O. Box 2088
Santa Fe, NM 87501

April 11, 1994

RE: NMOCD Cases 10956 & 10957
Miller 32-6-11 #1 Well & Carnes 32-6-11 Well
San Juan and Rio Arriba Counties,
New Mexico

Dear Mr. Stogner:

Reference is made to my FAX and letter to you dated April 8, 1994, wherein I requested an extension of time for the above headed cases.

On Friday afternoon, April 8, 1994, after my FAX to you, I received a telephone call from the Colorado Oil and Gas Commission concerning a case being held before them. This case had been on the Docket for hearing on April 18, 1994, however because there were no protests received, they plan to hold an administrative hearing on April 14, at 2:15 P.M. to consider the matter.

Due to this obvious scheduling conflict, I ask that you consider this, in addition to the reasons previously given, when deciding whether or not to grant a later date for the hearings before you.

Thank you for your consideration of this letter.

Sincerely,



James J. Rubow

CC: Philip G. Wood
W. Thomas Kellahin
Edmund T. Anderson IV

TO: Michael Stogna FROM: Jim Rubow DATE: 4/11/95
FAX #: 505-827-5241 FAX #: 303-572-3624 PHONE #: 303-572-3351
PAGES INCLUDING THIS PAGE: 1

JAMES J. RUBOW
1645 Court Place #324
Denver, Colorado 80202
303-572-3351

April 8, 1994

Mr. Michael E. Stogner
Chief Hearing Examiner
Oil Conservation Division
310 Old Santa Fe Trail, Room 219
P.O. Box 2088
Santa Fe, NM 87501

Re: Application of Consolidated Oil & Gas, Inc.
for Compulsory Pooling
NMOCD Cases 10956 & 10957
Miller 32-6-11 #1 Well & Carnes 32-6-11 Well
San Juan and Rio Arriba Counties, New Mexico

Dear Mr. Stogner:

Request is hereby made for a continuation of the above headed hearings until at least April 28, 1994. It is currently on the docket for April 14, 1994.

I did not receive a notice of this hearing until April 4, 1994 and due to confusion was not clear as to when this matter was actually scheduled until April 6, 1994.

There appear to be numerous legal issues associated with this matter in addition to the normal Oil and Gas Commission issues of waste, correlative rights, etc. At least one lawsuit has already been filed relative to this case by Edmund T. Anderson, IV. The facts of Mr. Anderson's case are almost identical to my own.

I am contemplating the filing of a lawsuit in the State of Colorado relative to this case.

The short notice period has not allowed me sufficient time to consider the situation fully and prepare an adequate response. By granting me an extension, at least until the April 28th date, you will be assured of fairness to all parties.

I have verbally notified Tom Kellahin, attorney for the applicant as well as Philip Wood, landman for applicant of my request for a continuance.

TO: Michael E. Stogner OCD FAX #: 505-827-5741	FROM: Jim Rubow FAX #: 303 572 3624 PHONE #: 303 572 3351	DATE: 4/8/94 PAGES INCLUDING THIS PAGE: TOPS 14850
--	--	--

Thank you for your consideration of my request.

Sincerely,

James J. Rubow

CC: Phillip G. Wood
W. Thomas Kellahin
Edmund T. Anderson IV



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



BRUCE KING
GOVERNOR

ANITA LOCKWOOD
CABINET SECRETARY

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87504
(505) 827-5800

April 13, 1994

Edmund T. Anderson, IV
Oil and Gas Properties
P. O. Box 8575
Midland, Texas 79708-1575

James J. Rubow
1645 Court Place - No. 324
Denver, Colorado 80202

Kellahin & Kellahin
Attn: W. Thomas Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504

Re: Applications of Consolidated Oil & Gas, Inc. for Compulsory Pooling and to Amend
Three Certain Existing Division Orders (Nos. R-9033, R-9178, and R-9179).
Case Nos. 10955, 10956, and 10957.

Dear Messrs. Anderson, Rubow and Kellahin:

Reference is made to Mr. James Rubow's correspondence dated April 8, 1994 and to Mr. Edmund Anderson's correspondence also dated April 8, 1994 requesting the above-referenced cases, currently docketed for April 14, 1994, to be continued to the April 28, 1994 hearing.

After considering said letters and upon several telephone conversations with each of you, the request to continue these three cases to the second hearing in April is hereby denied. These cases will be called at the April 14th hearing and the process to deliberate these matters will commence at that time.

Messrs. Anderson, Rubow and Kellahin

April 13, 1994

Page 2

Should in still be necessary for the defendants in these matters to still seek a continuance, it can be requested verbally at that time.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Snegner", with a long horizontal flourish extending to the right.

Michael E. Snegner
Chief Hearing Officer/Engineer

cc: Oil Conservation Division - Aztec
Case File 10955
Case File 10956
Case File 10957
William J. LeMay - OCD Director, Santa Fe
Jim Morrow - Chief Engineer, OCD, Artesia
Rand Carroll - General Counsel, OCD, Santa Fe

EDMUND T. ANDERSON, IV
OIL AND GAS PROPERTIES
P.O. BOX 8575
MIDLAND, TEXAS 79708-8575

TELE: (915) 686-8838

May 23, 1994

David R. Catanach
Oil Conservation Division
310 Old Santa Fe Trail
Santa Fe, NM 87504

Re: NMOCD Cases 10955 and 10957,
Application of Consolidated Oil &
Gas, Inc., San Juan County, New
Mexico

Dear Mr. Catanach,

I was reviewing Consolidated's Memorandum of Legal Authority, etc., and noticed for the first time that Consolidated is contending that a Release of Lease moots my contention that I do not have the right to drill.

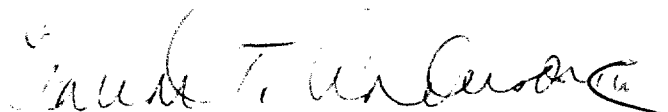
Please be advised that I have not seen or been provided with the original of this Release, nor does it moot the question I have raised, nor does it release the lease. Further, I do not recall it being introduced at the hearing, and I object to its use now.

The release is from the wrong parties; neither Richmond nor Consolidated signed the Release, yet they are the parties of record ownership. The point is far from moot; it is not yet resolved.

My memory may be faulty, but I do not recall the Release being introduced at the hearing, nor of it existing at the time of the hearing, nor of leave to attach it to the record. I object to its use now, especially in view of the fact that it is from the wrong party. The contention that its existence renders my title problems moot is, in two words, flat wrong.

I request that all references to the Release and its consequences be stricken from the record.

Sincerely,

A handwritten signature in dark ink, appearing to read "Edmund T. Anderson, IV". The signature is fluid and cursive, with a large initial "E" and a long, sweeping underline.

Edmund T. Anderson, IV



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



BRUCE KING
GOVERNOR

ANITA LOCKWOOD
CABINET SECRETARY

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87504
(505) 827-5800

April 13, 1994

Edmund T. Anderson, IV
Oil and Gas Properties
P. O. Box 8575
Midland, Texas 79708-1575

James J. Rubow
1645 Court Place - No. 324
Denver, Colorado 80202

Kellahin & Kellahin
Attn: W. Thomas Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504

Re: Applications of Consolidated Oil & Gas, Inc. for Compulsory Pooling and to Amend
Three Certain Existing Division Orders (Nos. R-9033, R-9178, and R-9179).
Case Nos. 10955, 10956, and 10957.

Dear Messrs. Anderson, Rubow and Kellahin:

Reference is made to Mr. James Rubow's correspondence dated April 8, 1994 and to Mr. Edmund Anderson's correspondence also dated April 8, 1994 requesting the above-referenced cases, currently docketed for April 14, 1994, to be continued to the April 28, 1994 hearing.

After considering said letters and upon several telephone conversations with each of you, the request to continue these three cases to the second hearing in April is hereby denied. These cases will be called at the April 14th hearing and the process to deliberate these matters will commence at that time.

Messrs. Anderson, Rubow and Kellahin

April 13, 1994

Page 2

Should it still be necessary for the defendants in these matters to still seek a continuance, it can be requested verbally at that time.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Stogner", with a long horizontal flourish extending to the right.

Michael E. Stogner
Chief Hearing Officer/Engineer

cc: Oil Conservation Division - Aztec
Case File 10955
Case File 10956
Case File 10957
William J. LeMay - OCD Director, Santa Fe
Jim Morrow - Chief Engineer, OCD, Artesia
Rand Carroll - General Counsel, OCD, Santa Fe

**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:

APR 7 1994

APPLICATION OF CONSOLIDATED OIL & GAS INC.
TO AMEND DIVISION ORDER NO. R-9033, *CASE 10955*
SAN JUAN COUNTY, NEW MEXICO

APPLICATION OF CONSOLIDATED OIL & GAS INC.
TO AMEND DIVISION ORDER NO. R-9178, *CASE 10956*
SAN JUAN AND RIO ARriba COUNTIES, NEW MEXICO

APPLICATION OF CONSOLIDATED OIL & GAS INC. *CASE 10957*
TO AMEND DIVISION ORDER NO. R-9179,
SAN JUAN AND RIO ARriba COUNTIES, NEW MEXICO

CONSOLIDATED PRE-HEARING STATEMENT

This pre-hearing statement is submitted by Consolidated Oil & Gas,
Inc. as required by the Oil Conservation Division.

APPEARANCES OF PARTIES

APPLICANT

Consolidated Oil & Gas Inc.
410 17th Street, Suite 2300
Denver, Colorado 80202
attn: Mr. Philip Wood
(303) 893-1225

ATTORNEY

W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, NM 87504
(505) 982-4285

STATEMENT OF THE CASES

APPLICANT

CONSOLIDATED OIL & GAS, INC., in accordance with Section 70-2-17(c) (1978) seeks orders from the Division amending previous compulsory pooling orders:

(1) Case 10955: Order R-9033, issued November 3, 1989, designated Richmond Petroleum Inc as operator and which pooled all mineral interests in the Basin Fruitland Coal Gas Pool underlying the E/2 equivalent of Section 9, T32N, R6W, NMPM, San Juan County, New Mexico, forming a 279.40-acre gas spacing and proration unit dedicated to the Federal 32-6-9 Well No. 1 which was drilled by Richmond Petroleum Inc. at an unorthodox location within Unit A of said Section 9;

(2) Case 10956: Order R-9178, issued May 23, 1990, which designated Richmond Petroleum Inc. as operator and which pooled all mineral interests in the Basin Fruitland Coal Gas Pool underlying the N/2 of irregular Section 11, T32N, R6W, NMPM, San Juan and Rio Arriba Counties, New Mexico, forming a nonstandard 232.80-acre gas spacing and proration unit dedicated to the Miller "11" Well No. 1 which was drilled by Richmond Petroleum Inc. at an unorthodox location within Unit E of said Section 11.

(3) Case 10957: Order R-9179, issued May 23, 1990, which pooled all mineral interests in the Basin Fruitland Coal Gas Pool underlying the S/2 of irregular Section 11, T32N, R6W, NMPM, San Juan and Rio Arriba Counties, New Mexico, forming a standard 320-acre gas spacing and proration unit dedicated to the Carnes "11" Well No. 1 which was drilled by Richmond Petroleum Inc. at an unorthodox location within Unit L of said Section 11.

Consolidated Oil & Gas, Inc., ("Consolidated") is the successor in interest to Richmond Petroleum Inc. ("Richmond") and now has a working interest ownership in each of these wellbores and in the oil and gas minerals underlying each of these spacing units.

Order R-9033 provided among other things that (a) the Federal 32-6-9 Well No. 1 should be commenced on or before January 1, 1990, unless extended by the Division Director; and (b) it should be completed within 120 days after commencing drilling. The Division entered various extensions and on May 13, 1990, Richmond commenced the well and drilled to total depth on May 16, 1990, cased the wellbore and then suspended operations. The well is awaiting perforation and fracture completion and installation of pipeline facilities.

Order R-9895 provided among other things that (a) the Carnes 32-6-11 Well No. 1 should be commenced on or before August 1, 1990, unless extended by the Division Director; and (b) it should be completed within 120 days after commencing drilling. On June 5, 1990, Richmond commenced the well and drilled to total depth on June 9, 1990, cased the wellbore and then suspended operations. The well is awaiting perforation and fracture completion and installation of pipeline facilities.

Order R-9178 provided among other things that (a) the Miller "11" Well No. 1 should be commenced on or before August 1, 1990, unless extended by the Division Director; and (b) it should be completed within 120 days after commencing drilling. On June 23, 1990, Richmond commenced the well and drilled to total depth on June 26, 1990, cased the wellbore and then suspended operations until December, 1990 when the well was perforated. The well is awaiting fracture completion and installation of pipeline facilities.

On January 24, 1994, Consolidated acquired the interests of Richmond in these wellbores and spacing units and has assumed operations therein.

Certain parties originally pooled by Richmond are being pooled again by Consolidated. In addition, during the period between issuing the orders and Consolidated's acquisition of these units and wells, some oil & gas leases have expired. Consolidated seeks amendments of the pooling orders to pool these interest owners who are now "unleased" and have refused to lease their interests.

Consolidated has proposed these wells to all parties but, as of the date of this statement, Consolidated has not been able to obtain a voluntary agreement from all those parties. Pursuant to Section 70-2-17(c) NMSA (1978) and in order to obtain its just and equitable share of potential production underlying this spacing unit, Consolidated needs an order of the Division pooling the mineral interests involved in order to protect correlative rights and prevent waste.

Accordingly, Consolidated seeks the following amendments:

(a) that Ordering paragraph (1) be amended to designate Consolidated as operator;

(b) that a new deadline be established for the completion of the Carnes and Federal wells which shall be not less than 120 days after the date of this order;

(c) that all parties previously pooled or to be now pooled shall be afforded an election to participate in the appropriate well by paying their proportionate share of actual and future costs;

(d) that any non-consenting party shall be subject to a 156% penalty;

(e) that the overhead rates shall be amended to provide for a \$3,500 per month drilling/completing rate and a \$350 per month producing rate; and

(f) for such other relief as is necessary to re-issue or otherwise affirm the validity of the subject pooling order.

PROPOSED EVIDENCE

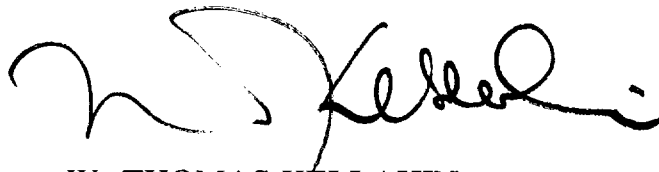
APPLICANT

WITNESSES	EST. TIME	EST. EXHIBITS
Philip G. Wood (landman)	1 hr.	15 exhibits
Alan Harrison (petroleum engineer)	1 hr.	8 exhibits

PROCEDURAL MATTERS

None applicable at this time.

RESPECTFULLY SUBMITTED:

A handwritten signature in black ink, appearing to read 'W. Thomas Kellahin', with a stylized flourish at the end.

W. THOMAS KELLAHIN
KELLAHIN & KELLAHIN
P. O. Box 2265
Santa Fe, New Mexico 87501
(505) 982-4285

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

IN THE MATTER OF THE APPLICATION
OF CONSOLIDATED OIL & GAS, INC.
TO AMEND DIVISION ORDERS R-9033
and R-9179

RESPONSE OF EDMUND T. ANDERSON, IV

Edmund T. Anderson, IV, individually and as Trustee for the Mary Anderson Boll Family Trust, hereafter "Anderson", enters the following response to the application of Consolidated Oil & Gas, Inc., hereafter, "Consolidated."

1. Statement of Facts

Anderson, in a somewhat different legal capacity, was the owner of an undivided 1/4 mineral interest in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 9, T-32-N, R-6-W, and SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 11, T-32-N, R-6-W, N.M.P.M., all in San Juan County, New Mexico, prior to July 19, 1988.

Anderson leased said undivided 1/4 mineral interest to T. H. McElvain, Jr., hereafter "McElvain" on July 19, 1988. Said lease provided for a two year term and a two year limitation on shut-in gas royalties.

McElvain pooled said mineral interests with other mineral and leasehold owners and participated in the drilling of two wells: Carnes 32-6-11 #1, 1800' FSL and 230' FWL of NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 11, hereafter "Carnes #1," and the Federal 32-6-9 #1, 510' FNL and 210' FEL of NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 9, hereafter "Federal #1."

Said wells were apparently drilled and operated by Richmond Petroleum Inc., hereafter "Richmond." Anderson believes Richmond did not complete either well.

On November 14, 1990, McElvain sent Anderson a check for shut-in gas royalties for the Federal #1. On November 20, 1990, Anderson wrote McElvain requesting a drilling report to substantiate McElvain's right to hold said lease by payment of shut-in gas royalties, since the primary term had expired. On April 22, 1991, McElvain finally responded. When Anderson did receive a drilling report, no completion report was supplied, and Anderson believed that the Federal #1 had not been completed. Anderson destroyed the shut-in gas royalty check.

Richmond tried to pay shut-in gas royalties on May 11, 1992, but Anderson returned the check to Richmond. Richmond attempted to pay shut-in gas royalties on April 23, 1993; Anderson returned the check. The relationship between McElvain and Richmond is unclear. Richmond may have tendered shut-in gas royalties as operator.

Anderson has checked the records of San Juan County, New Mexico. There is no assignment from McElvain to Richmond or any other party of the July 18, 1988 lease. Of record, McElvain still owns the lease.

Consolidated Oil & Gas, Inc., hereafter "Consolidated," contacted Anderson sometime in January or February of 1994, and informed Anderson that Consolidated had acquired Richmond's interest and intended to complete said wells. Consolidated offered to lease Anderson's interest, but strongly objected to Anderson's suggestion that he might join in the completion.

On March 1, 1994, Consolidated wrote Anderson, offering to lease, or let Anderson participate in the completion if, and only if, Anderson would pay Consolidated the money Richmond spent in the drilling, proportionately reduced to Anderson's interest. Otherwise, Consolidated indicated it would force pool Anderson, and in fact has filed to do so.

2. Anderson should not be a party to the hearing.

The word "jurisdiction" is a term of large and comprehensive import. It includes jurisdiction over the subject matter, over the parties, and power or authority to decide the particular matters presented. Elwess v. Elwess, 73 N.M. 400, Supreme Court of New Mexico (1964). A lack of jurisdiction means an entire lack of power to hear or determine the case and the absence of authority over the subject matter or the parties. Grace v. Oil Conservation Commission of New Mexico, 87 N.M. 205, Supreme Court of New Mexico, January 31, 1975.

For the Commission to issue an order affecting Anderson, it must have jurisdiction over him. It does not, and cannot decide the issue of validity of the lease in Anderson's favor, which decision would grant jurisdiction.

Section 70-2-17 NMSA, the force pooling statute, applies to "owners" of various defined interests. "Owner" is defined by Section 70-2-33 E, as follows:

"E. 'owner' means the person who has the right to drill into and to produce from any pool and to appropriate the production either for himself or for himself and another;"

At this point, the right of Anderson to drill into and to produce from any pool is in doubt and unclear. Anderson contends that the said lease has expired; lessee, by continuing to tender shut-in gas royalties, evidences its opinion that the lease is in force and effect. Therefore, Anderson is not an "owner" within the meaning of the statute, and the Commission has no jurisdiction over him at this hearing. Further, the Commission has no jurisdiction over the legal issue of whether Anderson's lease is valid, because legal issues are reserved to the courts, and the power to decide the validity of oil and gas leases is not one of the powers given the Commission or Division by Section 70-2-12 NMSA.

Until the validity of Anderson's lease is decided by the courts, the Commission cannot treat Anderson as a party to this hearing, nor issue any order affecting him.

3. The Commission has no jurisdiction over the central issue that divides Anderson and Consolidated.

The crux of the conflict between Anderson and Consolidated is Consolidated's right to collect from Anderson money spent by Richmond. This is a question of law over which the Commission has no authority, and therefore is powerless to decide.

Questions of law are reserved to the courts. The Supreme Court of New Mexico has ruled:

"...if the protection of correlative rights were completely separate from the prevention of waste, then there might be no need in having the commission as a party; but if such were true, it is very probable that the commission would be performing a judicial function, i.e., determining property rights, and grave constitutional problems would arise. For the same reason, it must follow that, just as the commission cannot perform a judicial function..." [emphasis added] Continental Oil Company v. Oil Conservation Commission, 373 p.2d 809, Supreme Court of New Mexico, May 16, 1962, rehearing denied.

The Commission has no authority to determine property rights, and any delegation to the Commission by the legislature would be unconstitutional.

This legal issue has apparently not been before the courts in New Mexico, but it is well settled in Texas and Oklahoma that Consolidated has no right to make such a demand. Wilcox Oil Company v. Corporation Commission, 393 P.2d 242, Supreme Court of Oklahoma, June 9, 1964. Steeple Oil & Gas Corporation, et al v. J. D. Amend, 392 SW2d 744, CCA Amarillo, reversed on other grounds 394 SW2d 789. Hunt v. HNG Oil Company, 791 SW2d 191, CCA Corpus Christi. Broadway v. Stone, 15 SW2d 230, Commission of Appeals, Section A. Eubank v. Twin Mountain Oil Corp., 406 SW2d 789, CCA Eastland, n.r.e. Wood Oil Company v. Corporation Commission, 239 P.2d 1023, Supreme Court of Oklahoma, October 24, 1950.

The above cited cases treat this issue as a legal one, and while it is true that New Mexico is not bound by what has been decided in Texas and Oklahoma, not only would it be grave error for the Commission to entertain the issue, but it would be even more serious for the Commission to rule in Consolidated's favor in the face of such great weight of authority.

4. Should the Commission rule on the legal issue of Consolidated's right to recover Richmond's costs from Anderson, it should rule in Anderson's favor.

a. The costs were not incurred by Richmond alone, but rather by Richmond and its working interest partners. Whatever rights Consolidated acquired from Richmond did not include any rights to costs incurred by parties other than Richmond. Consolidated is seeking to unjustly enrich itself.

b. The costs are unreasonable, as was pointed out in the hearing.

c. Richmond did not pay the costs associated with the lease dated July 19, 1988. McElvain paid those costs, and McElvain continues to hold record title to said lease. To the extent Richmond sold said lease to Consolidated, Consolidated bought bad title, and Consolidated should suffer the consequences; that is, it should not be rewarded for paying value for nothing.

d. Case No. 10801, Order R-9996 does not control this issue, and is not applicable. Although it is unclear from the Order, apparently Markham only owned a working interest in the Fruitland Sand. Markham had no options or rights during the drilling of the Osborne No. 1. Markham could not participate in the drilling of said well. Anderson did have the right, and elected to lease. Anderson's costs were covered, and such costs were forfeited when the lease expired. Anderson's costs have already been paid.

e. For all time it has been generally recognized that when a mineral owner leases, he gives up all right of control over the drilling and production, and is excused of all costs in connection with drilling, completion, production and operation, except for those costs specifically spelled out in the lease, such as taxes. To award the costs Consolidated asks would result in the following preposterous results:

(1) Lessee drills a well and runs out of money. He intentionally lets some of the leases expire, proposes a completion, force pools the mineral owners and recoups the costs of drilling to pay for the completion.

(2) Lessee takes a lease on a plugged and abandoned well, force pools the remaining mineral owners and makes them pay for the dry hole.

(3) Lessee takes a lease and attempts a completion in a zone which has a 40 acre proration unit. The well is dry. Lessee proposes a completion in a zone requiring 640 acres and force pools the mineral owners and leasehold owners. Lessee collects the cost of his dry hole and makes enough money to pay for the completion.

This is truly a dangerous precedent.

f. Consolidated did not pay Richmond 100% of the money Richmond spent as operator for drilling said wells. Consolidated has refused to tell Anderson how much it actually paid Richmond for the Carnes #1 and the Federal #1. Again, Consolidated is trying to enrich itself unjustly.

Consolidated is attempting to overturn well settled law and decades of well understood relationships between mineral owners and lessees. When a lessee takes a lease, he incurs all the costs and risk; the lessee cannot turn to the mineral owner for remuneration. Such a rule would have a chilling effect on the oil and gas industry. Mineral owners would be afraid to lease, fearful that they would have to repay the lessee for costs the lessee incurred. How absurd.

The Commission should not decide this issue; it is a legal one and belongs in the courts. Anderson has filed suit against Consolidated for a determination of Consolidated's legal position. It should be decided there.

Finally, whatever the Commission does, it should exclude Anderson from its decision. It has no jurisdiction over him because Anderson is not an "owner" in terms of the statutes.



STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION



BRUCE KING
GOVERNOR

ANITA LOCKWOOD
CABINET SECRETARY

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87504
(505) 827-5800

June 16, 1994

KELLAHIN AND KELLAHIN
Attorneys at Law
P. O. Drawer 2265
Santa Fe, New Mexico 87504

RE: CASE NO. 10957
ORDER NO. R-9179-A

Dear Sir:

Enclosed herewith are two copies of the above-referenced Division order recently entered in the subject case.

Sincerely,

A handwritten signature in cursive script that reads "Sally E. Martinez".
Sally E. Martinez
Administrative Secretary

cc: BLM - Farmington
OCD - Aztec
Ed Anderson
Taxation & Revenue



STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION



BRUCE KING
GOVERNOR

ANITA LOCKWOOD
CABINET SECRETARY

June 30, 1994

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87504
(505) 827-5800

Mr. Thomas Kellahin
Kellahin & Kellahin
Attorneys at Law
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

Dear Mr. Kellahin:

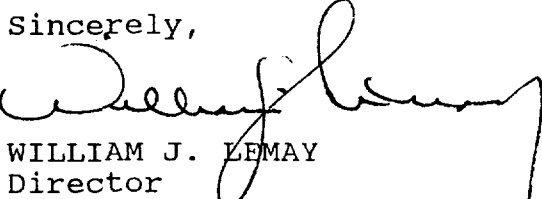
Based upon the reasons stated in your letter of June 28, 1994, and in accordance with the provisions of Division Orders Nos. R-9033-A, R-9178-A, and R-9179-A, Consolidated Oil & Gas, Inc. is hereby granted an extension of time until October 1, 1994, in which to begin the wells on the units pooled by said orders as follows:

Federal 32-6-9 Well No. 1-A
Section 9, T32N, R6W
Order No. R-9033-A

Miller 32-6-11 Well No. 1-E
Section 11, T32N, R6W
Order No. R-9178-A

Carnes 32-6-11 Well No. 1-L
Section 11, T32N, R6W
Order No. R-9179-A

Sincerely,


WILLIAM J. LEMAY
Director

fd/

cc: Cases Nos. 10955, 10956, and 10957
OCD - Aztec

Consolidated Oil & Gas, Inc.

July 7, 1994

FAX #505-827-5741

Mr. David R. Catanach
State of New Mexico
Oil Conservation Division
P.O. Box 2088
Santa Fe, New Mexico 87504

Re: OCD Order No.'s R-9033-A,
R-9178-A and R-9179-A
San Juan & Rio Arriba Counties, New Mexico

Dear Mr. Catanach:

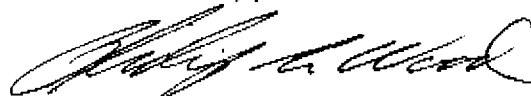
Enclosed are copies of the Certified letters, including itemized schedules of estimated completion costs that were sent to Mr. Rubow and Mr. Anderson for the Federal 32-6-9 #1, Carnes 32-6-11 #1 and Miller 32-6-11 #1 wells. Please call me with any questions or comments that you may have.

Further, with regards to Mr. Rubow's letter of July 6, 1994, the office of T.H. McElvain has advised me that the release of Mr. Rubow's minerals is recorded as follows:

<u>COUNTY</u>	<u>SAN JUAN</u>	<u>RIO ARRIBA</u>
Recording Date	5-23-94	6-29-94
Book	1183	145
Page	245	638

I am certain that Mr. Kellahin can provide you with a copy next week.

Sincerely,



Philip G. Wood
Land Manager

PGW:lm
enclosures

Consolidated Oil & Gas, Inc.

July 7, 1994

CERTIFIED MAIL

James Rubow
1645 Court Place, Suite 324
Denver, CO 80202

Case File-10957

Re: Miller 32-6-11 #1 Well
N/2 Section 11, T32N, R6W
Carnes 32-6-11 #1 Well
S/2 Section 11, T32N, R6W
San Juan County, New Mexico

Dear Mr. Rubow:

Pursuant to State of New Mexico Oil Conservation Division Orders R-9033-A and R-9178-A, you are hereby provided with Consolidated's itemized schedule of estimated completion costs for the Miller 32-6-11 #1 and Carnes 32-6-11 #1 wells.

Each AFE has an industry standard 10% contingency factored into its total, which move the amounts slightly above the estimates set forth in the orders, but should still fall well within the range of "reasonable well costs."

At this time, Consolidated requests your election to either 1) participate by paying your pro-rata share of reasonable well costs, or 2) become subject to the risk penalties outlined in the Orders. Should you elect to participate in either one or both wells, please provide Consolidated with a cashiers check for your pro-rata share as follows:

<u>Miller 32-6-9 #1</u>	<u>Carnes 32-6-11 #1</u>
\$203,990.00	\$205,338.40
* 0.00257732	* 0.050000
Your share: \$525.75	Your share: \$10,266.92

Your share in both wells: \$10,792.67

Your election to participate and subsequent payment of funds is due within thirty (30) days from receipt of this letter.

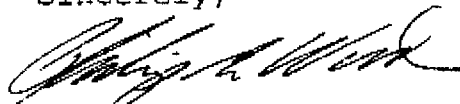
Consolidated Oil & Gas, Inc.

Mr. James Rubow
July 7, 1994
Page Two

Consolidated Oil & Gas, Inc. is approximately midway through the construction of its Colorado based gas gathering/water disposal system that will ultimately branch southward and tie into the Carnes and Miller wells. Water will be piped to a central facility in La Plata County and disposed of through our agreement with RMI Environmental Services. The gas line will be connected to El Paso's Ignacio Blanco System.

We anticipate initial gathering and disposal rates of \$0.80 - \$1.00 per barrel of water and \$0.18 - \$0.25 per MCF. Additional information regarding rates and time schedules is forthcoming. Our plan is to be fully operational by October 1, 1994.

Sincerely,



Philip G. Wood
Land Manager

PGW:ab
enclosure

cc: State of New Mexico
Oil Conservation Division
Attn: Mr. David R. Catanach
P.O. Box 2088
Santa Fe, NM 87504

CONSOLIDATED OIL & GAS, INC.
410 17TH STREET, SUITE 2300
DENVER, CO 80202

AUTHORIZATION FOR EXPENDITURE

Lease Carnes 32-6-11 #1 AFE No. 0694006
County San Juan Field Basin Fruitland Coal
Date Work to Start 8-29-94 State New Mexico
Time to Complete 5 Days Work to Be Done By 9-2-94

Nature of Proposed Work: The well will be fracture stimulated, equipped with facilities and hooked up for gas sales.

It is estimated that the following labor, material, etc., will be required:

Quantity	Description	Estimated Cost
	Frac Stimulation	\$70,000.00
	Workover Rig	\$6,000.00
	Testing	\$2,500.00
	Equipment (Tbg, Rods, Valves)	\$9,500.00
	Facilities (P.U., Sep., Tanks, Mtr.)	\$34,000.00
	Flowline Installation	\$16,000.00
	Site Reclamation, Road Work, Graveling	\$15,000.00
	Misc. (Roustabout, Rentals, etc.)	\$3,000.00
	Contingencies @10%	\$15,000.00
	Supervision	\$2,500.00

TOTAL \$173,500.00

Recommended by Alan C. Harrison, District Operations Manager Date: July 1, 1994
Name and Title

Approved by James Rubow Date: 7/1/94

COMPANY NAME: James Rubow

Approved by _____ Date: _____
Name and Title

Company W. I. .050000 Net Cost: \$8,675.00

CONSOLIDATED OIL & GAS, INC.
410 17TH STREET, SUITE 2300
DENVER, CO 80202

AUTHORIZATION FOR EXPENDITURE

Lease Miller 32-6-11 #1 AFE No. 0694004
County San Juan Field Basin Fruitland Coal
Date Work to Start 8-22-94 Time to Complete 5 Days State New Mexico
Work to Be Done By 8-26-94

Nature of Proposed Work: The well will be fracture stimulated, equipped with facilities and hooked up for gas sales.

It is estimated that the following labor, material, etc., will be required:

Quantity	Description	Estimated Cost
	Frac Stimulation	\$70,000.00
	Workover Rig	\$6,000.00
	Testing	\$2,500.00
	Equipment (Tbg, Rods, Valves)	\$9,500.00
	Facilities (P.U., Sep., Tanks, Mtr.)	\$34,000.00
	Flowline Installation	\$16,000.00
	Site Reclamation, Road Work, Graveling	\$15,000.00
	Misc. (Roustabout, Rentals, etc.)	\$3,000.00
	Contingencies @10%	\$15,000.00
	Supervision	\$2,500.00

TOTAL \$173,500.00

Recommended by Alan C. Harrison, District Operations Manager Date: July 1, 1994
Name and Title

Approved by J. A. Wacker Date: 7/1/94

COMPANY NAME: James Rubow

Approved by _____ Date: _____
Name and Title

Company W. I. .00257732 Net Cost: \$447.17

Consolidated Oil & Gas, Inc.

July 7, 1994

CERTIFIED MAIL

Mr. Edmund T. Anderson, IV, Individually, and as
Trustee of the Mary Anderson Boll Family Trust
P.O. Box 8575
Midland, Texas 79708-1575

Case File - 10957

Re: Federal 32-6-9 #1 Well
E/2 Section 9, T32N, R6W
Carnes 32-6-11 #1 Well
S/2 Section 11, T32N, R6W
San Juan County, New Mexico

Dear Mr. Anderson:

Pursuant to State of New Mexico Oil Conservation Division Orders R-9033-A and R-9179-A, you are hereby provided with Consolidated's itemized schedule of estimated completion costs for the Federal 32-6-9 #1 and Carnes 32-6-11 #1 wells.

Each AFE has an industry standard 10% contingency factored into its total, which move the amounts slightly above the estimates set forth in the orders, but should still fall well within the range of "reasonable well costs."

At this time, Consolidated requests your election to either 1) participate by paying your pro-rata share of reasonable well costs, or 2) become subject to the risk penalties outlined in the Orders. Should you elect to participate in either one or both wells, please provide Consolidated with a cashiers check for your pro-rata share as follows:

<u>Federal 32-6-9 #1</u>	<u>Carnes 32-6-11 #1</u>
\$285,232.80	\$205,338.40
* 0.03579098%	* 0.03125%
Your share: \$10,208.76	Your share: \$6,416.82
Your share in both wells: \$16,625.58	

Your election to participate and subsequent payment of funds is due within thirty (30) days from receipt of this letter.

CONSOLIDATED OIL & GAS, INC.
410 17TH STREET, SUITE 2300
DENVER, CO 80202

AUTHORIZATION FOR EXPENDITURE

Lease Federal 32-6-9 #1 AFE No. 0694005
County San Juan Field Basin Fruitland Coal
Date Work to Start 8-22-94 State New Mexico
Time to Complete 12 Days Work to Be Done By 9-1-94

Nature of Proposed Work: The well will be completed using the cavitation method, equipped with facilities, a flowline laid, and hooked up for sales.

It is estimated that the following labor, material, etc., will be required:

Quantity	Description	Estimated Cost
	Cavitation Completion Unit (Rig, Compressor, BOPs, etc.) (10 days @\$7,500/day)	\$75,000.00
	Equipment (Tbg, Rods, Valves)	\$8,500.00
	Facilities (P.U., Sep., Tanks, Mtr.)	\$34,000.00
	Flowline Installation	\$45,000.00
	Testing	\$2,500.00
	Site Reclamation, Road Work, Graveling	\$15,000.00
	Misc. (Roustabout, Rentals, etc.)	\$5,000.00
	Contingencies @10%	\$18,500.00
	Supervision	\$6,000.00

TOTAL

\$209,500.00

Recommended by Alan C. Harrison, District Operations Manager Date: July 1, 1994
Name and Title

Approved by J. A. Wrecker Date: 7/1/94

COMPANY NAME: Edmund T. Anderson, IV, Individually, and as Trustee of the Mary Anderson Boll Family Trust

Approved by _____ Date: _____
Name and Title

Company W. I. 03579098 Net Cost: \$7,498.21

CONSOLIDATED OIL & GAS, INC.
410 17TH STREET, SUITE 2300
DENVER, CO 80202

AUTHORIZATION FOR EXPENDITURE

Lease Carnes 32-6-11 #1 AFE No. 0694006
County San Juan Field Basin Fruitland Coal
Date Work to Start 8-22-94 State New Mexico
Time to Complete 5 Days Work to Be Done By 9-2-94

Nature of Proposed Work: The well will be fracture stimulated, equipped with facilities and hooked up for gas sales.

It is estimated that the following labor, material, etc., will be required:

Quantity	Description	Estimated Cost
	Frac Stimulation	\$70,000.00
	Workover Rig	\$6,000.00
	Testing	\$2,500.00
	Equipment (Tbg, Rods, Valves)	\$9,500.00
	Facilities (P.U., Sep., Tanks, Mtr.)	\$34,000.00
	Flowline Installation	\$16,000.00
	Site Reclamation, Road Work, Graveling	\$15,000.00
	Misc. (Roustabout, Rentals, etc.)	\$3,000.00
	Contingencies @10%	\$15,000.00
	Supervision	\$2,500.00

TOTAL \$173,500.00

Recommended by Alan C. Harrison, District Operations Manager Date: July 1, 1994
Name and Title

Approved by J A Waackler Date: 7/1/94

COMPANY NAME: Edmund T. Anderson, IV, Individually, and as Trustee of the Mary Anderson Boli Family Trust

Approved by _____ Date: _____
Name and Title

Company W. I. .03125 Net Cost: \$5,421.88