

11996 Renovo

Feb. 1999

Correspondance



STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

IN THE MATTER OF:

APPLICATION OF PENDRAGON ENERGY  
PARTNERS, INC., PENDRAGON RESOURCES, L.P.,  
And J.K. EDWARDS ASSOCIATES, INC TO CONFIRM  
PRODUCTION FROM THE APPROPRIATE COMMON  
SOURCE OF SUPPLY, SAN JUAN COUNTY, NEW MEXICO

*attached to M to Compel  
filed 6/11  
copying letter*

CASE NO. 11996  
ORDER NO. R-11133

OIL CONSERVATION DIV.  
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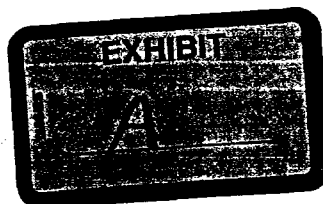
SUBPOENA DUCES TECUM

TO: Schlumberger Technology Corporation  
c/o C.T. Corporations Systems  
123 E. Marcy Street  
Santa Fe, New Mexico 87501

Pursuant to Section 70-2-8, NMSA (1978), and Rule 1211 of the New Mexico Oil Conservation Division's Rules of Procedure, you are hereby ORDERED to appear at 9:00 a.m., on Monday, March 15, 1999, at the offices of the Oil Conservation Division, 2040 South Pacheco, Santa Fe, New Mexico 87505 and to produce the documents and items specified in attached Exhibit A and to make available to Pendragon Energy Partners, Inc. and its attorney, J. Scott Hall, Esq., for copying, all of said documents.

This subpoena is issued on behalf of Pendragon Energy Partners, Inc. through its attorneys Miller, Stratvert & Torgerson, P.A., Post Office Box 1986, Santa Fe, New Mexico 87504. (505) 989-9614

Dated this \_\_\_\_ day of February, 1999.



NEW MEXICO OIL CONSERVATION DIVISION

By: \_\_\_\_\_

*Lori Wrotenbery*  
Lori Wrotenbery, Director

## Exhibit A

This Subpoena Duces Tecum seeks the production and inspection of all documents and other materials in the possession of Schlumberger Technology Corporation, f/k/a and as successor to Brazos Resources Development Corporation, f/k/a and as successor to S.A. Holditch and Associates, Inc. and its agent, Bradley Robinson, P.E., relating to the following:

1. All the underlying facts, data and other materials used by you in connection with testimony given by Bradley Robinson and exhibits introduced through Bradley Robinson on July 28-30, 1998 in New Mexico Oil Conservation Division Case No. 11996 (Application of Pendragon Energy Partners, Inc., et al., To Confirm Production From Appropriate Common Source of Supply, San Juan County, New Mexico.)
2. All notes, computations, print-outs, log analyses and other similar materials relating in any way to your evaluation of the Pictured Cliffs formation wells or Fruitland Coal formation wells in the area of the subject Application, or otherwise relating to Bradley Robinson's testimony in the proceeding referenced in Paragraph 1, above.
3. All underlying data, assumptions and other materials actually utilized, or considered but not utilized, in connection with the Frac-Pro hydraulic fracturing computer simulations performed by S.A. Holditch and Associates in this case.
4. All underlying data, assumptions and other materials actually utilized, or considered but not utilized, in connection with the Pro-Mat production data analysis or reservoir volumetric analysis performed by S.A. Holditch and Associates on the Pictured Cliffs formation and/or the Fruitland Coal formation in connection with this case.

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

IN THE MATTER OF:

APPLICATION OF PENDRAGON ENERGY  
PARTNERS, INC., PENDRAGON RESOURCES, L.P.,  
And J.K. EDWARDS ASSOCIATES, INC TO CONFIRM  
PRODUCTION FROM THE APPROPRIATE COMMON  
SOURCE OF SUPPLY, SAN JUAN COUNTY, NEW MEXICO

CASE NO. 11996

SUBPOENA DUCES TECUM

TO: Whiting Petroleum Corporation  
c/o Michael J. Condon, Esq.  
Gallegos Law Firm, P.C.  
460 St. Michael's Drive, Suite 300  
Santa Fe, New Mexico 87501

Pursuant to Section 70-2-8, NMSA (1978), and Rule 1211 of the New Mexico Oil Conservation Division's Rules of Procedure, you are hereby ORDERED to appear at 9:00 a.m., on Thursday, March 17, 1999, at the offices of the Oil Conservation Division, 2040 South Pacheco, Santa Fe, New Mexico 87505 and to produce the documents and items specified in attached Exhibit A and to make available to Pendragon Energy Partners, Inc. and its attorney, J. Scott Hall, Esq., for copying, all of said documents.

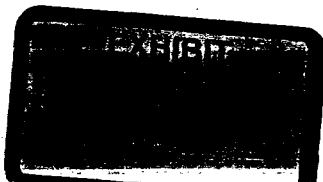
This subpoena is issued on behalf of Pendragon Energy Partners, Inc. through its attorneys Miller, Stratvert & Torgerson, P.A., Post Office Box 1986, Santa Fe, New Mexico 87504. (505) 989-9614

Dated this 25<sup>TH</sup> day of February, 1999.

NEW MEXICO OIL CONSERVATION DIVISION

By: 

Lori Wrotenbery, Director



RETURN OF SERVICE

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the \_\_\_\_\_ day of February, 1998, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the Subpoena Duces Tecum.

\_\_\_\_\_  
Person making service

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of February, 1998.

\_\_\_\_\_  
Judge, notary, or other officer  
authorized to administer oaths

My Commission Expires:

\_\_\_\_\_

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

IN THE MATTER OF:

APPLICATION OF PENDRAGON ENERGY  
PARTNERS, INC., PENDRAGON RESOURCES, L.P.,  
And J.K. EDWARDS ASSOCIATES, INC TO CONFIRM  
PRODUCTION FROM THE APPROPRIATE COMMON  
SOURCE OF SUPPLY, SAN JUAN COUNTY, NEW MEXICO

CASE NO. 11996

SUBPOENA DUCES TECUM

TO Maralex Resources, Inc.  
c/o Michael J. Condon, Esq.  
Gallegos Law Firm, P.C.  
460 St. Michael's Drive, Suite 300  
Santa Fe, New Mexico 87501

Pursuant to Section 70-2-8, NMSA (1978), and Rule 1211 of the New Mexico Oil Conservation Division's Rules of Procedure, you are hereby ORDERED to appear at 9:00 a.m., on Wednesday, March 17, 1999, at the offices of the Oil Conservation Division, 2040 South Pacheco, Santa Fe, New Mexico 87505 and to produce the documents and items specified in attached Exhibit A and to make available to Pendragon Energy Partners, Inc. and its attorney, J. Scott Hall, Esq., for copying, all of said documents.

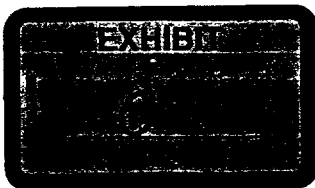
This subpoena is issued on behalf of Pendragon Energy Partners, Inc. through its attorneys Miller, Stratvert & Torgerson, P.A., Post Office Box 1986, Santa Fe, New Mexico 87504. (505) 989-9614

Dated this 25<sup>th</sup> day of February, 1999.

NEW MEXICO OIL CONSERVATION DIVISION

By: 

Lori Wrotenbery, Director





## EXHIBIT 'A'

1. Any supplemental documents or materials responsive to the subpoena dated February 4, 1998 and June 9, 1998 not previously produced.
2. All pressure data from the subject subject Gallegos Fruitland Coal wells from June 1998 to the present, including any data recorded, but not reported, along with any data collected on week-ends and holidays.
3. All gas, oil, and water production data from the subject Gallegos Fruitland Coal wells from the completion of the well through the present not previously provided.
4. All analyses of water and gas produced from the subject Chaco Pictured Cliffs wells and the subject Gallegos Fruitland Coal wells, including any BTU analyses, not previously provided.
5. All documents relating to all water produced and disposed of from the subject Gallegos Fruitland Coal wells, including proration reports, gauged tank volumes, disposal volumes, water disposal records, water hauling invoices, reports, reporting forms C-115's, C-133's, C-134's, etc.

RETURN OF SERVICE

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the \_\_\_\_\_ day of February, 1998, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the Subpoena Duces Tecum.

\_\_\_\_\_  
Person making service

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of February, 1998.

\_\_\_\_\_  
Judge, notary, or other officer  
authorized to administer oaths

My Commission Expires:

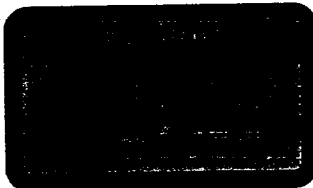
\_\_\_\_\_

23. If the OCC is to hear this de novo appeal, it should set this matter for hearing in August or September, 1999, establish a schedule for mutual production of documents between the parties, an exchange of witness lists, setting a timetable for discovery in the form of depositions of the parties' representatives and experts who will testify at any OCC hearing, and require that the parties provide the OCC with a Pre-Hearing Report which sets out, to the extent possible, stipulated facts which the parties can identify following discovery.

III. THE SUBPOENAS SERVED BY PENDRAGON SHOULD BE QUASHED

24. Pendragon has served a subpoena in this matter on Schumberger in order to secure documents from Holditch, Whiting's expert witness in the administrative proceeding. Holditch is not a party, and has its offices in College Station, Texas. The subpoena seeks all documents in the possession of Holditch related to this dispute, including documents that would constitute work product.

25. The service of the subpoena on Holditch is invalid under Rule 1-045B(3), NMRA 1999. The subpoena was issued by the OCD from Santa Fe, New Mexico, and served on CT Corporation. The OCD's subpoena power is set by Statute (§ 70-2-8) and rule, and is no greater than the power authorized by Rule 1-045 NMRA 1999. The subpoena power of an administrative agency is limited. A court or administrative agency can require a subpoenaed party to appear within a geographic area within one hundred (100) miles of where the person resides, is employed or transact business. Rule 1-045. College Station, Texas, where the Holditch documents are maintained, is more than one hundred (100) miles from Santa Fe.



26. Rule 1-026B(5) NMRA 1999 sets limits on discovery from expert witnesses without an order from the Court. Pendragon has not sought permission from the OCD or the OCC for the expanded discovery it seeks from Holditch. Unless the parties agree otherwise, any discovery from experts should be limited to that provided under Rule 1-026B(5) NMRA 1999, which authorizes a party to serve interrogatories seeking disclosure of the subject matter of testimony, the opinions, and a summary of the grounds for each opinion. In no event is Pendragon entitled to discovery of the Holditch work product.

27. To the extent Pendragon seeks raw data, that raw data is prepared and maintained by Whiting. Any raw data in the possession of Holditch is duplicative of raw data which has or will be produced by Whiting in the context of this proceeding. To the extent that Pendragon's request for production is not limited to raw data, but includes a request for interpretations, analysis and other materials comprising the work product of Holditch, Whiting objects to the request. The policy of the OCD and OCC requires the turnover of raw data, but not interpretations thereof made or prepared by the parties subpoenaed. See Commission ruling dated February 15, 1991 in Case No. 10211 (application of Santa Fe Energy Operating Partners, L.P. for compulsory pooling). The subpoena served on Schlumberger should be quashed.

28. Pendragon has also served subpoenas on Whiting and Maralex.  
On the grounds previously stated, any discovery in this proceeding should be stayed in order to allow the parties to litigate all pending issues in the district court proceeding. If the OCC intends to hear this matter, any discovery should be stayed pending a Pre-Hearing Conference at which time a schedule for any further administrative

proceedings, including discovery, may be established and the parties' rights and obligations regarding discovery identified and clarified.

29. There is presently no hearing on the de novo appeal scheduled before the OCC. A preliminary conference is scheduled for March 30, 1999. If the OCC grants the Motion for Stay of Proceedings, production of documents pursuant to the subpoenas is unnecessary. If the OCC denies such motion, Whiting requests that it have sufficient time after a discovery schedule is agreed upon to produce documents reflecting raw data.

WHEREFORE, Whiting respectfully requests that the OCC stay all proceedings in this matter and defer to the district court of Santa Fe County for resolution of all issues between the parties. Alternatively, if the OCC determines that it will hear this matter on the de novo appeal, it should quash the subpoena issued and improperly served on Holditch, and quash the subpoenas issued and served on Whiting and Maralex until such time as the Pre-Hearing Conference is held and a orderly discovery and hearing schedule is established.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By

  
J.E. GALLEGOS

MICHAEL J. CONDON

460 St. Michael's Drive, Bldg. 300  
Santa Fe, New Mexico 87505  
(505) 983-6686

Attorneys for Whiting Petroleum Corp.  
and Maralex Resources, Inc.

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

OIL CONSERVATION DIV.  
99 MAR 12 AM 11:58

IN THE MATTER OF:

APPLICATION OF PENDRAGON ENERGY  
PARTNERS, INC., PENDRAGON RESOURCES, L.P.,  
And EDWARDS ENERGY CORPORATION TO CONFIRM  
PRODUCTION FROM THE APPROPRIATE COMMON  
SOURCE OF SUPPLY, SAN JUAN COUNTY, NEW MEXICO

CASE NO. 11096  
ORDER NO. R-11135

RESPONSE TO  
MOTION FOR STAY OF PROCEEDINGS  
AND TO QUASH SUBPOENAS DUCES TECUM

Pendragon Energy Partners, Inc., Pendragon Resources, L.P., and Edwards Energy Corporation<sup>1</sup>, (together, "Pendragon"), for their response to the Whiting/Maralex Motion For Stay and Motion to Quash, state:

Whiting and Maralex seek to revisit earlier orders of the Division and the District Court which both determined that this agency's exercise of jurisdiction over this case is proper. Having previously lost on this same point not once, but three times now, it is surprising that Whiting and Maralex would make this dead-horse argument once again. Not only is this true of the unnecessary jurisdictional motion, but of the motion to quash as well. Rather than contravene the earlier rulings of the Division and the District Court, the Commission should reject the Whiting/Maralex delaying motion and allow this proceeding to go forward with dispatch.

<sup>1</sup> Successor to J.K. Edwards and Associates, Inc.

EXHIBIT

time to prepare. Nothing prevents Whiting and Maralex from obtaining their own documents subpoenas other than their own inaction.

### THE MOTION TO QUASH SUBPOENAS

At the outset, we note that Whiting and Maralex appeared to be operating under the misapprehension that the subpoena duces tecum served on the Schlumberger/Holditch witness sought more than the expert's underlying facts, data or materials. The subpoena does not seek interpretations, analysis or other materials constituting the expert's work product, and accordingly, we do not seek any materials that the Division and Commission traditionally do not require to be produced of experts. ✓

We conferred with counsel in an effort to reconcile this particular discovery dispute and, subject to counsel's further discussion with the expert witness, it is believed that this particular objection has been resolved. It is understood, however, that this agreement between counsel is subject to Whiting's larger objection to the conduct of discovery pending a ruling on the Motion for Stay of Proceedings. Should this situation change, the Commission will be advised.

With respect to the remaining subpoenas, Whiting and Maralex make no substantive, technical or procedural objection. Their motion for an order quashing those subpoenas is based wholly on their larger request for the Commission to stay this administrative proceeding. Accordingly, the points and authorities set forth in the first section of this Response are applicable and no further comment is necessary.

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

IN THE MATTER OF:

APPLICATION OF PENDRAGON ENERGY  
PARTNERS, INC., PENDRAGON RESOURCES, L.P.,  
And EDWARDS ENERGY CORPORATION TO CONFIRM  
PRODUCTION FROM THE APPROPRIATE COMMON  
SOURCE OF SUPPLY, SAN JUAN COUNTY, NEW MEXICO

CASE NO. 11996  
ORDER NO. R-11133  
De Nola

PENDRAGON'S MEMORANDUM BRIEF  
ON DISCOVERY ISSUES

Pendragon Energy Partners, Inc., Pendragon Resources, L.P. and Edwards Energy Corporation<sup>1</sup>, (together, "Pendragon"), through counsel, submit this Memorandum Brief pursuant to certain issues raised at the March 30, 1999 pre-hearing conference convened before the Commission's counsel. At the conference, a number of items were discussed and agreement was reached on the following:

1. In view of the planned requirement for pre-filed testimony for experts,<sup>2</sup> counsel agreed to confer on a form of a pre-hearing scheduling order to include, among other things, deadlines for the conduct of discovery, the filing of objections to the pre-filed testimony and rulings thereon;
2. The parties will identify witnesses and supply exhibit lists by a date certain.

<sup>1</sup> F/k/a J.K. Edwards Associates, Inc.

<sup>2</sup> The possibility of pre-filed testimony for fact witnesses was expressly precluded at the prehearing conference. Consequently, the ramifications of such a concept were not discussed.

**EXHIBIT**



3. The objections to the presently pending discovery are resolved and Whiting Petroleum Corporation's Motion to Quash Subpoenas is withdrawn.

4. In connection with item 3, above, it was agreed that the expert's "underlying data" and other materials sought under the Division's March 8, 1999 subpoena on Schlumberger/Brazos/S.A. Holditch would be provided by the expert. Pendragon affirmed that it did not seek interpretations, work-product or other similar information under the subpoena. It was agreed that the subpoenaed materials would be produced by the end of April.

5. With respect to all other experts, the parties similarly agreed to exchange their experts' "underlying data" by a date certain in advance of the hearing.

6. The parties agreed to supplement their prior production of "field data", such as production and pressure data, a certain number of days in advance of the hearing.

7. Counsel will confer and attempt to narrow the issues by filing a Stipulation in advance of the hearing.

8. A four to five-day hearing would be scheduled in late June or early July;

The issue of extra-statutory discovery was also raised, but on discussion, the practical problems precipitated by such a process and the limits of the agency's authority to provide for the same created some concern. Accordingly, it was agreed the matter would be briefed.

It is Pendragon's position that the present practices and procedures for discovery under NMSA 1978, Section 70-2-8 (1995) and Rule 1221 are both efficient and adequate. Moreover, the expansion of existing discovery procedures without more explicit statutory

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PLS. REPLY TO SANTA FE

May 18, 1999

J. E. Gallegos, Esq.  
Gallegos Law Firm, P. C.  
460 St. Michaels Dr., #300  
Santa Fe, New Mexico 87505-7602

Re: NMOCD Case No. 11996; Application of Pendragon Energy, Inc., and J. K. Edwards Associates, Inc.; San Juan County, New Mexico

Dear Gene:

Enclosed are copies of the February 17, 1999 Subpoena *duces tecum* which the Division issued to Schlumberger/Holditch, along with copies of the subpoenas *duces tecum* issued to Whiting and Maralex on February 25<sup>th</sup>. I appreciate that you have been busy with other matters, but I am anxious to get going on this case. Please let me know when these parties will produce the materials pursuant to the Division's subpoenas.

Very Truly Yours,

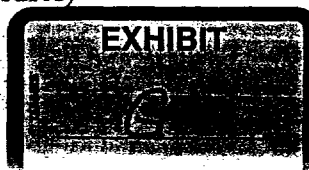
J. Scott Hall

JSH/ao

Enclosures: Schlumberger/Holditch, Whiting and Maralex subpoenas

Cc: Marilyn Herbert, Esq. (without enclosures)

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May 18, 1999

J. E. Gallegos, Esq.  
Gallegos Law Firm, P. C.  
460 St. Michaels Dr., #300  
Santa Fe, New Mexico 87505-7602

Re: NMOCD Case No. 11996; Application of Pendragon Energy, Inc., and J. K. Edwards Associates, Inc.

Dear Gene:

I recently received a copy of Bradley Robinson's April 26, 1999 transmittal letter regarding the production of raw data and information pursuant to the Division's subpoena *duces tecum*. I am reluctant to respond to Mr. Robinson directly. However, he should be advised to produce the underlying data and materials in compliance with the terms of the Division's subpoena. The subpoena is not limited to data and information that was used to develop testimony in connection with the hearing before the OCD, as Mr. Robinson's letter suggests.

Very Truly Yours,

  
J. Scott Hall

JSH/ao  
6304/20253/Gallegosltr.doc

900 Southwest Parkway East  
College Station, Texas 77840  
Phone: (409) 764-1122  
Fax: (409) 764-8157

April 26, 1999

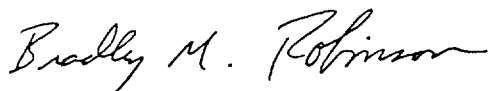
Mr. J. E. Gallegos  
Gallegos Law Firm, P.C.  
460 St. Michael's Drive  
Building 300  
Santa Fe, NM 87505

Dear Gene,

Enclosed is the raw data and information that was used to develop the opinion testimony of Mr. Walter Ayers and myself for the New Mexico OCD hearing. We understand that the transmittal of these data to you in this manner fully satisfies our obligations in connection with the Subpoena Duces Tecum we received from Miller, Stratvert & Togerson, PA dated February 22, 1999. By copy of this letter to Mr. Scott Hall of Miller, Stratvert & Togerson, PA, we ask that he confirm the accuracy of this understanding in a letter to my attention at the above address.

If you have any questions regarding these data, please call Walt or myself.

Sincerely,



Bradley M. Robinson, P.E.  
Technology Manager – Stimulation

cc: J. Scott Hall, Miller, Stratvert & Togerson, PA

\* \* \*