ENDORSED

JUL 0 6 1998

FIRST JUDICIAL DISTRICT COURT
SANTA FE, RIO ARRIBA & LOS ALAMOS COUNTIES
P. O. Box 2268
Santa Fe, New Mexico 87504-2268
JoAna Vigil Quintana
Court Administrator/District Court Clerk

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

WHITING PETROLEUM CORPORTION, a corporation, and MARALEX RESOURCES, INC., a corporation,

Plaintiffs,

vs.

No. D-0101-CV-98-01295

PENDRAGON ENERGY PARTNERS, INC., a corporation, and J.K. EDWARDS ASSOCIATES, INC., a corporation,

Defendants.

ORDER REGARDING MOTION TO DISMISS FOR LACK OF JURISDICTION

THIS MATTER having come before the court on June 29, 1998 on Defendants' Motion to Dismiss For Lack of Subject Matter Jurisdiction Or, In the Alternative, For Failure to State A Claim Upon Which Relief Can Be Granted, the parties having appeared by counsel and the Court having reviewed the pleadings and having heard argument of counsel for the parties, concludes as follows:

1. This Court has jurisdiction over the subject matter of this case and the claims alleged by Plaintiffs, and the Defendants' motion to dismiss for lack of subject matter jurisdiction is denied in part and granted in part.

2. Defendants have requested that the Court refer this matter to the New Mexico Oil Conservation Division under the doctrine of primary jurisdiction. This Court has determined to defer to the jurisdiction of the New Mexico oil Conservation Division in view of the greater expertise of the New Mexico Oil Conservation Division in this particular field and to promote more uniform decision making.

3. Those issues raised by the lawsuit which relate to the parties' relative rights in the land and are subject to meaningful relief through the New Mexico Oil Conservation Division should be recognized as within the jurisdiction of the New Mexico Oil Conservation Division. What the Court retains are those claims, regardless of how they are denominated that are not susceptible of relief through the New Mexico Conservation Division.

IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss For Lack Of Subject Matter Jurisdiction Or, In The Alternative, For Failure To State A Claim Upon Which Relief Can Be Granted be and hereby is denied in part and granted in part and as a matter of comity, the Court defers to the New Mexico Oil Conservation Division as above stated.

The Honorable Art Encinias
District Judge 7/6/98

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

WHITING PETROLEUM CORPORATION,
a corporation, and MARALEX
RESOURCES, INC., a corporation,

Plaintiffs,

vs. No. D-0101-CV-980129S

PENDRAGON ENERGY PARTNERS, INC.,
a corporation, and J.K. EDWARDS
ASSOCIATES, INC., a corporation,

Defendants.

DEFENDANTS' MOTION TO DISMISS FOR IMPROPER VENUE AND REQUEST FOR EXPEDITED DECISION PURSUANT TO LR 1-306.I

Pursuant to NMRA 1-012(B)(3), Defendants move the Court for entry of an Order dismissing this case. The basis for this Motion is that venue is improper in Santa Fe County. The real property which is the subject matter of this lawsuit is located in San Juan County, New Mexico. Neither Plaintiffs nor Defendants reside in Santa Fe County. The causes of action alleged in the Complaint all arose in San Juan County, New Mexico. Both Defendants have as their statutory agent for service of process CT Corporation System, which is a Delaware corporation with its principal place of business in New York City, New York. CT Corporation System therefore "resides" in Delaware and New York, but not in Santa Fe County, New Mexico. Consequently, venue is improper in Santa Fe County.

The grounds for this Motion are more fully set forth in the accompanying Memorandum Brief and the Affidavits of Alan B. Nicol and Kenneth Uva filed herewith. For the reasons set forth above and in the accompanying Memorandum Brief, Defendants request that this Court enter its Order

dismissing this lawsuit.

Pursuant to LR 1-306(A), Defendants' attorneys are not required to attempt to confer in good faith with opposing counsel with respect to the relief sought by this Motion since a Motion to Dismiss is deemed to be opposed.

BASIS OF REQUEST FOR EXPEDITED DECISION

The substance of the Defendants' Motion to Dismiss For Improper Venue and their Motion To Dismiss for Lack of Subject Matter Jurisdiction place at issue the authority of the Court to issue a preliminary injunction in the first instance. Accordingly, these motions should be considered before any hearing on a preliminary injunction request. As we have today been advised that Plaintiffs have obtained a June 29, 1998 setting for their Application for Preliminary Injunction, and in view of the fact that a hearing on this same subject matter has been scheduled by the New Mexico Oil Conservation Division for July 9, 1998, it is appropriate for the Court to first consider the motions to dismiss on an expedited basis pursuant to LR 1-306.I.

MILLER, STRATVERT & TORGERSON, P.A.

By J. Scott Hall

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MILLER, STRATVERT & TORGERSON, P.A.

By J. Scott Hall for

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Attorneys for Defendants
P.O. Box 25687
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(505) 842-1950

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to the following counsel of record this 25th day of June, 1998:

J.E. Gallegos
Michael J. Condon
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Santa Fe, New Mexico 87505
Attorneys for Plaintiffs

J. Scott Hall

J. SCOTT HALL, ESQ.

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FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

WHITING PETROLEUM CORPORATION,
a corporation, and MARALEX
RESOURCES, INC., a corporation,

Plaintiffs,

vs. No. D-0101-CV-9801295

PENDRAGON ENERGY PARTNERS, INC.,
a corporation, and J.K. EDWARDS
ASSOCIATES, INC., a corporation,

Defendants.

DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION OR, IN THE ALTERNATIVE, FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AND REQUEST FOR EXPEDITED DECISION PURSUANT TO LR 1-306.I

Pursuant to NMRA 1-012(B)(1) and (B)(6), Defendants move the Court for entry of an Order dismissing this case. The grounds for this Motion are the following:

1. This Court lacks subject matter jurisdiction over this dispute.. The identical factual issues underlying this lawsuit are, and have been, before the New Mexico Oil Conservation Division, ("NMOCD") which is the appropriate administrative agency to render a decision in the first instance and which has scheduled a hearing on the merits for July 9, 1998. In fact, Plaintiffs and Defendants agreed to work informally with the NMOCD, and began doing so over a year and a half ago to enable the NMOCD to determine whether a problem exists, and, if so, what could be done to bring the subject wells into regulatory compliance. In reliance upon this agreement to work with the NMOCD,

Defendants expended time and money with respect to fact investigations, meetings among the parties with the NMOCD, etc. Eventually, Plaintiffs in this lawsuit filed an Application with the NMOCD to have the factual issues presented by this lawsuit formally resolved by the NMOCD. Plaintiffs then filed an Amended Application, again seeking resolution of the very fact issues underlying this lawsuit. The Amended Application was scheduled to be heard on its merits by the NMOCD on June 11, 1998. At a meeting on March 27, 1998, among representatives of Plaintiffs, Defendants, the NMOCD, and others, a petroleum engineer for Plaintiff Whiting Petroleum Corporation announced that Whiting was hard pressed to show any harm to the wells identified in this case, based upon the extensive fact investigation which had taken place up to that point. Immediately thereafter, Plaintiffs attempted to withdraw their pending applications before the NMOCD; retained the Gallegos Law Firm; and this lawsuit was filed. Defendants in this lawsuit then filed their Application to have these issues resolved by the NMOCD, and that Application is scheduled for hearing on the merits by the NMOCD on July 9, 1998.

It is the NMOCD, the forum initially selected by Plaintiffs, which is vested by statute with the right to make the initial fact determinations concerning the issues raised by this lawsuit. If either Plaintiffs or Defendants in this lawsuit are aggrieved by the decision of the Oil Conservation Division, Plaintiffs or Defendants have a right to appeal to a district court. But the right to make the initial factual determinations, which in this case require a great deal of technical expertise, is vested by statute in the Oil Conservation Division, which has been and still is working on them.

2. Alternatively, Plaintiffs' Complaint fails to state a claim upon which relief can be granted because it fails to allege that the procedures statutorily committed to the Oil Conservation Division have been fulfilled or completed prior to presentation of the issues to this Court.

3. The grounds for this Motion are more fully set forth in the accompanying Memorandum Brief and the Affidavit of Al Nichol. Pursuant to LR 1-306(A), Defendants' attorneys are not required to attempt to confer in good faith with opposing counsel with respect to the relief sought by this Motion since a Motion to Dismiss is deemed to be opposed.

For the reasons set forth above and in the accompanying Memorandum Brief, Defendants request that this Court enter its Order dismissing this lawsuit.

BASIS OF REQUEST FOR EXPEDITED DECISION

The substance of the Defendants' Motion to Dismiss For Improper Venue and their Motion To Dismiss for Lack of Subject Matter Jurisdiction place at issue the authority of the Court to issue a preliminary injunction in the first instance. Accordingly, these motions should be considered before any hearing on a preliminary injunction request. As we have today been advised that Plaintiffs have obtained a June 29, 1998 setting for their Application for Preliminary Injunction, and in view of the fact that a hearing on this same subject matter has been scheduled by the New Mexico Oil Conservation Division for July 9, 1998, it is appropriate for the Court to first consider the motions to dismiss on an expedited basis pursuant to LR 1-306.I.

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FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

WHITING PETROLEUM CORPORATION,
a corporation, and MARALEX
RESOURCES, INC., a corporation,

Plaintiffs,

vs. No. D-0101-CV-9801295

PENDRAGON ENERGY PARTNERS, INC.,
a corporation, and J.K. EDWARDS
ASSOCIATES, INC., a corporation,

Defendants.

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION OR, IN THE ALTERNATIVE, FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

The New Mexico Oil Conservation Division ["NMOCD"], along with the parties to this lawsuit and others, have been working for well over a year to attempt to resolve the fact issues raised by Plaintiffs' claims. In general terms, the issues are whether there was any commingling of gas between what the NMOCD has defined as separate pools, and, if there is such commingling, the cause of such commingling and, what should be done to bring the subject wells back into regulatory compliance. In fact, the NMOCD has scheduled a hearing on the substance of these claims for July 9, 1998.

At a meeting with NMOCD officials on March 27, 1998, a petroleum engineer employed by Plaintiff Whiting Petroleum Corporation ["Whiting"] acknowledged that, despite considerable testing and fact gathering by the parties, others, and the NMOCD, Whiting could not show any harm to its

wells. At that point, Plaintiffs suddenly and unexpectedly withdrew from both the informal and formal proceedings before the NMOCD, retained the Gallegos Law Firm (they had been represented by another attorney in all of the dealings with the NMOCD), and filed this lawsuit in Santa Fe County. However, these matters are still pending before the NMOCD.

This dispute centers on the NMOCD's order defining the Basin-Fruitland Coal Gas Pool and the Special Pool Rules governing operation and development in the pool. A copy of the NMOCD Order establishing the Basin-Fruitland Coal Gas Pool Order R-8768 is attached here as Exhibit A. A copy of the NMOCD order establishing the WAW Fruitland-Pictured Cliffs gas pool, Order R-8769, as amended, is attached as Exhibit B. The factual background of this lawsuit is described in the Affidavit of Alan B. Nicol attached hereto as Exhibit C, and the Affidavit of Alan Emmendorfer attached hereto as Exhibit D.

Plaintiffs' Complaint should be dismissed because exclusive jurisdiction over the fact finding necessitated by Plaintiffs' claims is reserved to the NMOCD in the first instance by statute. In fact, it was Plaintiffs who invoked the formal procedures of the NMOCD to resolve these issues, and then only attempted to circumvent them when all of the evidence showed that Plaintiffs would be unsuccessful before the NMOCD. Alternatively, the Complaint fails to state a claim upon which relief can be granted because the nature of the claims asserted on their face show that jurisdiction is vested in the NMOCD, and the Complaint fails to allege any fact showing why Plaintiffs can now circumvent the jurisdiction of the NMOCD, after Plaintiffs originally invoked that jurisdiction.

I. This Court Does Not Have Subject Matter Jurisdiction To Adjudicate The Claims Asserted In This Lawsuit.

In 1935, the New Mexico legislature created the Oil Conservation Division with jurisdiction and authority over "all matters relating to the conservation of oil and gas . . . in the state." Section 70-2-6A NMSA 1978 (1935). The NMOCD has "jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of the [Oil and Gas] Act or any law of this state relating in the conservation of oil or gas . . ." Id. The Oil and Gas Act entrusts the NMOCD with two major duties: the prevention of waste and the protection of correlative rights. Section 70-2-11 NMSA 1978 (1935); see also Continental Oil Co. v. Oil Conservation Comm'n, 70 N.M. 310, 323, 373 P.2d 809, 817 (1962). This power broadly encompasses prevention of underground waste, defined as the "prevention of inefficient, excessive or improper, use or dissipation of reservoir energy" and "the locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of . . . natural gas ultimately recovered from any pool. . ." Section 70-2-3A NMSA 1978 (1935). The NMOCD's power further extends to protect the correlative rights between owners without waste. Section 70-2-33H, NMSA 1978 (1935); see also Continental Oil, 70 N.M. 310 at 323-24, 373 P.2d at 814-15. The goal is to avoid the waste of an irreplaceable natural resource. El Paso Natural Gas Co. v. Oil Conservation Comm'n, 76 N.M. 268, 414 P.2d 496 (1966).

To that end, the NMOCD may make and enforce rules, regulations, and orders and do "whatever is necessary to carry out the purpose of [the Oil and Gas] Act, whether or not indicated or specified in any section hereof." Section 70-2-11A, NMSA 1978 (1935). The New Mexico legislature additionally enumerated specific powers for the Oil Conservation Division, including: a) to prevent natural gas from escaping from strata in which it is found into other strata; b) to require wells to be

drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties; c) to fix the spacing of wells; d) to determine whether a particular well or pool is a gas well or gas pool, and from time to time classify and reclassify wells and pools accordingly; and e) to determine the limits of any pool producing natural gas and from time to time redetermine the limits. Section 70-2-12(B)(2), (B)(7), (B)(10), (B)(11) and (B)(12), NMSA 1978 (1935).

On October 17, 1988, the NMOCD established a **new** gas pool in all or part of San Juan, Rio Arriba, McKinley, and Sandoval Counties, New Mexico, for production from the Fruitland coal seam. See Exhibits A and B. The NMOCD's decision was not made lightly. In 1986, the NMOCD formed a committee consisting of representatives from the oil and gas industry, the New Mexico Oil Conservation Division, the Colorado Oil and Gas Conservation Commission, the Bureau of Land Management, and the Southern Ute Indian Tribe for the purpose of studying and making recommendations to the Division as to the most orderly and efficient methods of developing coal seam gas within the Fruitland formation. Id. The Committee studied geology, considered the best way to produce the gas originating from the coal seams within the area, and whether the gas emanating from the coal seams represented a **separate** common source of supply. Id. Lengthy hearings were held by the Division and arguments were made for different rules to govern the formation and development of the pool. Id.

After due consideration of the evidence, the Division not only established a separate pool, but enacted Special Rules for its development. Id. Moreover, the division director required each that each operator of a new well drilled in the Basin-Fruitland coal formation or the Pictured Cliffs sandstone formation submit special information to the Division in order to demonstrate to "the satisfaction of the Division that said well will be or is currently producing in the appropriate common source of supply." Id. at p. 589, Rules 2 and 3. If the NMOCD approves a Division C-104 form for a well in the Basin-

Fruitland coal gas pool (which is submitted at the time the well is drilled), that serves as "confirmation that a well is producing exclusively from the Basin-Fruitland Coal Gas Pool." In the event there is justification to do so, the NMOCD Director has the authority to approve commingling within the wellbore after application to the NMOCD. Id. at 591, Rule 12. The NMOCD also retained jurisdiction for entry of further orders as the NMOCD may deem necessary. Id. at 591, ¶ 9. In fact, the NMOCD has revisited the pool rules and definitions since they were enacted and issued further orders. See Exhibits A and B.

In January 1998, two years after Plaintiffs' first presented evidence and raised issues with the NMOCD, Plaintiffs' filed a formal application (and later filed an amended application) with the NMOCD to adjudicate this matter. See Exhibits E and F. Plaintiffs recognized and invoked the exclusive authority of the NMOCD over this matter and acknowledged the NMOCD's order defining the Basin-Fruitland Coal Gas Pool, Order No. R-8768, as amended, provides for continuing jurisdiction over this subject matter.

The substance of plaintiffs' claims in the NMOCD proceeding is identical to the claims in this case: that the Basin-Fruitland Coal Gas Pool, defined by the NMOCD as a separate and distinct gas pool has become communicated with the WAW Fruitland-Pictured Cliffs Pool.

Significantly, the issues precipitated by the Plaintiffs' Amended Application in NMOCD Case No. 11921 remain pending before the Oil Conservation Division in NMOCD Case No. 11996; **Application of Pendragon Energy Partners, Inc. and J.K. Edwards Associates, Inc. To Confirm Production From The Appropriate Common Source Of Supply, San Juan County, New Mexico**. (See **Application**, Exhibit G, attached.) Defendants' application to the NMOCD is pending and set for hearing on July 9, 1998.

This case should be dismissed in recognition of the NMOCD's exclusive regulatory jurisdiction

over drilling, operations, production and the conservation of oil and gas in this state. This suit should also be dismissed because it is nothing more than a collateral attack on the pool rules governing the Basin-Fruitland Coal gas pool (and the WAW Fruitland-Pictured Cliffs gas pool) for which the NMOCD has also expressly retained jurisdiction. See § 70-2-12, NMSA 1978 (1935), and Order No. R-8768, decretal paragraph 9.

Given Plaintiffs' invocation of the NMOCD proceedings, the extensive discovery and sharing of information, Plaintiffs' admissions to the NMOCD, and Defendants reliance on the NMOCD proceedings, it is inherently unfair and prejudicial to allow Plaintiffs to prosecute this suit. At this late date, Plaintiffs should be estopped from proceeding in this court. Equitable estoppel precludes a party from asserting a right when another party has relied to his or her detriment upon acts or conduct of the first party and when asserting that right would prejudice the party who acted thereon in reliance. Continental Potash, Inc. v. Freeport-McMoran, Inc., 115 N.M. 690, 858 P.2d 66, cert. denied, 510 U.S. 1116 (1993).

In the alternative, this Court should defer jurisdiction to the NMOCD, the acknowledged technical expert in this field under the doctrine of primary jurisdiction. The common law doctrine of primary jurisdiction provides courts with flexible discretion to refer matters to a specialized administrative agency. See Schwartzman, Inc. v. Atchison, Topeka & Santa Fe Railway Co., 857 F. Supp. 838 (D.N.M. 1994); see also State ex rel. Norvell v. Arizona Public Service Co., 85 N.M. 165, 510 P.2d 98 (1973). Primary jurisdiction is a doctrine of comity between the courts and administrative agencies. Gonzalez v. Whitaker, 97 N.M. 710, 643 P.2d 274 (Ct. App. 1982). Primary jurisdiction applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended

pending referral of such issues to the administrative body for its views. Norvell, 85 N.M. at 170, 510 P.2d at 103. The doctrine is invoked to facilitate coordination between the judicial and administrative arms of the government. Id.

There is no fixed formula governing the court's exercise of its discretion to invoke the doctrine of primary jurisdiction. Bradford School Bus Transit, Inc. v. Chicago Transit Authority, 537 F.2d 943, 949 (7th Cir. 1976), cert. denied, 429 U.S. 1066 (1977). "In every case, the question is whether the reasons for the existence of the doctrine are present and whether the purposes it serves will be aided by its application in the **particular** litigation" In re "Agent Orange" Product Liability Litigation, 475 F. Supp. 928, 931, (E.D.N.Y. 1979), quoting, United States v. Western Pacific Railroad Co., 352 U.S. 59, 64 (1956)(emphasis added).

Application of the doctrine considers whether the questions presented are factual questions within the particular expertise of the agency. Far East Conference v. United States, 342 U.S. 570 (1952). There is no question of the technical expertise of the NMOCD, especially in light of its careful, lengthy and on-going administration of the Fruitland Coal Gas Pool which is summarized in the 1988 Order establishing the pool. Judicial review affords NMOCD decisions special weight and credence in light of the NMOCD's technical competence and specialized knowledge. See Grace v. Oil Conservation Comm'n, 87 N.M. 205, 531 P.2d 939 (1975). In light of the technical expertise possessed by its members and the elaborate proceedings involved, an Oil Conservation Commission approval of a request for statutory unitization is entitled to full faith and credit and preclusive effect. Amoco Production Co. v. Heimann, 904 F.2d 1405 (10th Cir. 1990), cert. denied., 498 U.S. 942 (1990).

In this case, "[t]he advisability of invoking primary jurisdiction is **greatest** where the issue is already before the agency." Mississippi Power & Light Co. v. United Gas Pipe Line Co., 532 F.2d

412, 420 (5th Cir. 1976), cert. denied, 492 U.S. 1094 (1977). Whether the NMOCD can grant all requested relief is not the only concern, "What bears continual emphasis is that the Court neither passes off final decision on to another tribunal nor escapes from its ultimate duty to decide. For after the exercise of primary jurisdiction determination by the agency concerned, the case comes back in a suitable way for the Court, as a Court, to act." Usery v. Tamiami Trail Tours, Inc., 531 F.2d 224, 241 (5th Cir. 1976). In this way, the possibility of conflicting orders of a court and an administrative agency can be avoided. Texas and Pacific Ry. Co. v. Abilene Cotton Oil Co., 204 U.S. 426 (1907).

The Tenth Circuit, in deferring to the Oklahoma oil and gas regulatory agency because of an issue over forced pooling order (like the establishment of the pool and the special pool rules here) noted that the general rule is "that the [Oklahoma] Commission has jurisdiction to interpret, clarify, amend and supplement its own orders and to resolve any challenges to 'the public issue of conservation of oil and gas,'" GHK Exploration Co. v. Tenneco Oil Co., 847 F.2d 650, 652 (10th Cir. 1988). Contrary to Plaintiffs' recent assertions, this controversy does not involve a private right of action, but is instead a rather thinly veiled attack on the rules governing the development of oil and gas in the San Juan basin. In examining a similar question of whether the production from a particular well came from a different reservoir than the reservoir allegedly committed to the well, the Federal District Court for the Southern District of Texas, deferred on the basis of primary jurisdiction to the Texas Railroad Commission. Sun Oil Co. v. Martin, 218 F. Supp. 618 (S.D. Tex. 1963), aff'd, 330 F.2d 5 (5th Cir. 1964.[1]

Although Plaintiffs can cite cases where a court did not defer on the basis of primary

[1] If primary jurisdiction had been raised earlier in the proceeding, the Seventh Circuit stated that a claim involving whether a second well was too close to another well, was more properly deferred to the state oil and gas administrative agency. Kendra Oil & Gas, Inc. v. Homco, Ltd., 879 F.2d 240, 242 (7th Cir. 1989).

jurisdiction, the doctrine involves inquiry into the facts of the particular case before the Court. In this case, given the vast resources expended and the reliance already placed on the NMOCD, the agency with the technical expertise and specialized knowledge if the issues at stake here, there should be no question that this case should be deferred.

II. Alternatively, Plaintiffs' Complaint Should Be Dismissed For Failure To State A Claim Upon Which Relief Can Be Granted.

Plaintiffs' complaint seeks injunctive relief for violations of New Mexico Oil and Gas Act, Sections 70-2-1 through 70-2-38, NMSA 1978 (1935). Plaintiffs' ask for a shut-in of the Defendants wells, the same drastic relief that Plaintiffs sought in their NMOCD application invoking the authority of the NMOCD to prevent the escape of natural gas from one strata into another and to require wells to be operated to prevent injury to neighboring leases. See Exhibits E and F; § 70-2-12(B)(2), (B7) NMSA 1978 (1935). If anything, it is the Whiting/Maralex district court action that is premature and should be deferred, if not dismissed outright. Indeed, it is the substance of the Whiting and Maralex litigation in district court that they seek to enjoin violations of the Oil and Gas Act. In such cases, §§ 70-2-28 and 70-2-29 NMSA 1978 (1935) provide that it is the Division that is the proper party to bring suit. Private parties may only bring an action to enjoin violations of the Oil and Gas Act on satisfaction of the express condition precedent that they first notify the Division in writing of the violation and requests the Division to sue. Even in that case, §70-2-29 provides that the Division is to be substituted for the private party. What is significant here is that counsel for Whiting and Maralex know this:

Although allegations of water out-of-zone rather than a gas out-of –zone were involved, proceedings in a recent NMOCD case are strikingly familiar. In **Case No. 11792, Application of**

Doyle Hartman To Give Full Force And Effect To Commission Order R-6447, a non-operating working interest owner filed an application with the Division the same day it filed suit in district court on the same subject matter. Simultaneously, the applicant sent its written request under § 70-2-29 to have the Division sue to prevent further violations of the Oil and Gas Act. (See April 28, 1998 correspondence from counsel, Exhibit H, attached.) Of course, Whiting and Maralex have failed to satisfy this statutory prerequisite in this case.

I. CONCLUSION.

For the foregoing reasons, Plaintiffs' Complaint should be dismissed and/or in the alternative stayed pending consideration by the Oil Conservation Division.

MILLER, STRATVERT & TORGERSON, P.A.

By J. Scott Hall

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counsel of record this
5 day of June 1998:

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Santa Fe, New Mexico 87505
Attorneys for Plaintiffs

J. Scott Hall

J. SCOTT HALL, ESQ.

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(CEDAR HILL-FRUITLAND BASAL COAL GAS (VERTICAL LIMITS EXTENSIONS) POOL - Cont'd.)

further defined and described as having vertical limits consistent within the vertical extension of the Cedar Hill-Fruitland Basal Coal Pool.

(3) Rule 1 of said Division Order No. R-7588, as amended is hereby suspended and shall be replaced with the following:

RULE 1. (A) Each well completed or recompleted in the Cedar Hill-Fruitland Basal Coal Pool shall be spaced, drilled, operated and prorated in accordance with the Special Rules and Regulations hereinafter set forth.

RULE 1. (B) A Cedar Hill-Fruitland Basal Coal Pool well will be defined as one which meets a preponderance of the generally characterized coalbed methane criteria as derived from:

(a) Wireline log data;
(b) Drilling time;
(c) Drill cutting;
(d) Mud logs;
(e) Completion data;
(f) Gas analysis;
(g) Water analysis;
(h) Reservoir performance;
(i) Any other evidence that indicates the production is predominantly coal methane.

No one characteristic of lithology, performance or sampling will either qualify or disqualify a well from being classified as a coal gas well. Absent any finding to the contrary, any well completed in accordance with these rules that has met a preponderance of the criteria for determining a coal well is therefrom presumed to be completed in and producing from the Cedar Hill-Fruitland Basal Coal Pool. The District Supervisor may, at his discretion, require that an operator document said determination of the appropriate pool or require an order under the provisions of General Rule 303(c) authorizing the commingling of pools in the event a coal well fails to meet the criteria for a coal well as set forth in this rule.

IT IS FURTHER ORDERED THAT:

(4) Any well drilling to or completed in a coal member of the Fruitland formation within this vertical extension of the Cedar Hill-Fruitland Basal Coal Pool on or before November 1, 1988 that will not comply with the well location requirements of Rule 4 is hereby granted an exception to the requirements of said rule. The operator of any such well shall notify the Aztec District Office of the Division, in writing, of the name and location of any such well on or before January 1, 1989.

(5) Applicant's request to authorize downhole commingling of Fruitland Sandstone Gas and Fruitland Coal Gas at the District Office level of the Division is hereby denied.

(6) This case shall be reopened at an examiner hearing in October, 1990, at which time the operators in the subject pool may appear and show cause why the vertical extension of the Cedar Hill-Fruitland Basal Coal Pool should not be rescinded and Division Order No. R-7588, as amended, should not be reinstituted as they existed prior to the issuance of this order.

(7) Jurisdiction of this cause 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.

BASIN-FRUITLAND COAL GAS POOL
San Juan, Rio Arriba, McKinley and Sandoval Counties, New Mexico

Order No. 8768, Creating and Adopting Temporary Operating Rules the Basin-Fruitland Coal Pool, San Juan, Rio Arriba, McKinley a Sandoval Counties, New Mexico, November 1, 1988, as Amended Order No. R-8768-A, July 16, 1991.

In the Matter of the Hearing called by the Oil Conservation Division (OCD) on its own Motion for Pool Creation and Special Pool Rules, San Juan, Rio Arriba, McKinley and Sandoval Counties, New Mexico.

CASE NO. 942
Order No. R-876

ORDER OF THE DIVISION

BY THE DIVISION: This Cause came on for hearing at 8:3 a.m. on July 6, 1988, at Farmington, New Mexico, befor Examiner David R. Catanach.

NOW, on this 17th day of October, 1988, the Division Directo having considered the testimony, the record, and th recommendations of the Examiner, and being fully advised i the premises,

FINDS THAT:

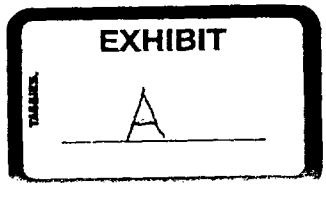
(1) Due public notice having been given as required by law the Division has jurisdiction of this cause and the subject matte thereof.

(2) Division Case Nos. 9420 and 9421 were consolidated a the time of the hearing for the purpose of testimony.

(3) The Oil Conservation Division, hereinafter referred to as the "Division", on the recommendations of the Fruitland Coalbed Methane Committee, hereinafter referred to as the "Committee", seeks the creation of a new pool for the production of gas from coal seams within the Fruitland formation underlying the following described area in San Juan, Rio Arriba, McKinley, and Sandoval Counties, New Mexico:

Township 19 North, Ranges 1 West through 6 West;
Township 20 North, Ranges 1 West through 8 West;
Township 21 North, Ranges 1 West through 9 West;
Township 22 North, Ranges 1 West through 11 West;
Township 23 North, Ranges 1 West through 14 West;
Township 24 North, Ranges 1 East through 16 West;
Township 25 North, Ranges 1 East through 16 West;
Township 26 North, Ranges 1 East through 16 West;
Township 27 North, Ranges 1 West through 16 West;
Township 28 North, Ranges 1 West through 16 West;
Township 29 North, Ranges 1 West through 15 West;
Township 30 North, Ranges 1 West through 15 West;
Township 31 North, Ranges 1 West through 15 West;
Township 32 North, Ranges 1 West through 13 West;

(4) The Division further seeks, also upon the recommendations of the Committee, the promulgation of special pool rules, regulations, and operating procedures for said pool including, but not limited to, provisions for 320-acre spacing and proration units, designated well locations, well density, horizontal wellbore and deviated drilling procedures, venting and flaring rules, downhole commingling, and gas well testing requirements.



BASIN-FRUITLAND COAL GAS POOL - Cont'd.)

(5) In companion Case No. 9421, the Division seeks to ontract the vertical limits of twenty-six existing Fruitland nd/or Fruitland-Pictured Cliffs Gas Pools to include only the ictured Cliffs sandstone and/or Fruitland sandstone intervals.

(6) The Committee, which included representatives of the oil nd gas industry, New Mexico Oil Conservation Division, olorado Oil and Gas Conservation Commission, Bureau of and Management, and Southern Ute Indian Tribe, was riginally formed in 1986 for the purpose of studying and naking recommendations to the Division as to the most orderly nd efficient methods of developing coal seam gas within the ruitland formation.

(7) Geologic evidence presented by the Committee indicates hat the Fruitland formation, which is found within the eographic area described above, is composed of alternating ayers of shales, sandstones, and coal seams.

(8) The evidence at this time further indicates that the coal eams within the Fruitland formation are potentially productive f natural gas in substantial quantities.

(9) The gas originating from the coal seams within the ruitland formation is composed predominantly of methane and arbon dioxide and varies significantly from the composition of he gas currently being produced from the sandstone intervals, nd as such, represents a separate common source of supply.

(10) A new pool for gas production from coal seams within the ruitland formation should be created and designated the Basin-ruitland Coal Gas Pool with vertical limits comprising all coal eams within the equivalent of the stratigraphic interval from a epth of approximately 2450 feet to 2880 feet as shown on the amma Ray/Bulk Density log from Amoco Production ompany's Schneider Gas Com "B" Well No. 1 located 1110 feet rom the South line and 1185 feet from the West line of Section 8, Township 32 North, Range 10 West, NMPM, San Juan ounty, New Mexico.

(11) The proposed horizontal pool boundary, which represents ne geographic area encompassed by the Fruitland formation, ontains within it, an area previously defined as the Cedar Hill-ruitland Basal Coal Gas Pool (created by Division Order No. R-588 effective February 1, 1984); said area currently comprises ections 3 through 6 of Township 31 North, Range 10 West, and ections 19 through 22 and 27 through 34 of Township 32 orth, Range 10 West, NMPM, San Juan County, New Mexico.

(12) The proposed horizontal boundary of the Basin-Fruitland oal Gas Pool should be amended to exclude that acreage urrently defined as the Cedar Hill-Fruitland Coal Gas Pool escribed in Finding No. (11) above.

(13) The Committee has recommended the promulgation of ecial rules and regulations for the Basin-Fruitland Coal Gas ool including a provision for 320-acre spacing and proration nits, and in support thereof presented pressure interference ata obtained from producing and pressure observation wells cated within the Cedar Hill-Fruitland Coal Gas Pool, which dicates definite pressure communication between wells located 180 feet apart (radius of drainage of a 320-acre proration unit = 106 feet).

(14) Further testimony and evidence indicates that due to the nique producing characteristics of coal seams (i.e. initial clining production rates), engineering methods such as decline rve analysis and volumetric calculations traditionally used to id in the determination of proper well spacing, cannot be ilized.

(15) The Committee further recommended the adoption of a ovision in the proposed pool rules allowing for the drilling of a cond well on a standard 320-acre proration unit in order to ve an operator flexibility when addressing regional geological ends.

(16) Dugan Production Corporation, Merrion Oil and Gas Corporation, Hixon Development Company, Robert L. Bayless, and Jerome P. McHugh and Associates, hereinafter referred to as the "Dugan Group", appeared at the hearing and presented geologic and engineering evidence and testimony in support of a proposal which includes the following:

1. Establishment of an area within the Southern portion of the Basin-Fruitland Coal Gas Pool to be developed on 160-acre spacing and proration units.

2. Creation of a demarcation line and buffer zone separating the 320-acre spacing portion of the pool and the proposed 160-acre spacing portion of the pool.

(17) The Dugan Group owns oil and gas leasehold operating rights in the Fruitland formation in various areas of the San Juan Basin, and currently operates numerous wells producing from coal seams and sandstone intervals within the Fruitland formation.

(18) The Dugan Group has defined the location of the proposed demarcation line and 160-acre spacing area by utilizing a preponderance of geologic factors such as coal rank, depth of burial, thermal maturation, thickness of coal, and amount of gas in place.

(19) In support of the proposed 160-acre spacing area for the subject pool, the Dugan Group presented production data obtained from four producing wells, the Nassau Well Nos. 5, 6, 7 and 8 located in Section 36, Township 27 North, Range 12 West, NMPM, San Juan County, New Mexico, which indicates that the production rate from said Nassau Well No. 5 was unaffected by initiation of 160-acre offset production in said Nassau Well Nos. 6, 7, and 8.

(20) The evidence presented by the Dugan Group further indicates however, that the Nassau Well Nos. 5, 6, 7, and 8 are producing from commingled coal seam and sandstone intervals within the Fruitland formation, and as such, do not conclusively demonstrate 160-acre non-interference exclusively within the coal seams.

(21) Insufficient evidence exists at the current time to justify the creation of a 160-acre spacing area and demarcation line within the Basin-Fruitland Coal Gas Pool.

(22) The best technical evidence available at this time indicates that 320-acre well spacing is the optimum spacing for the entire Basin-Fruitland Coal Gas Pool.

(23) In order to prevent the economic loss caused by the drilling of unnecessary wells, avoid the augmentation of risk arising from the drilling of an excessive number of wells, prevent reduced recovery which might result from the drilling of too few wells, and to otherwise protect correlative rights, special rules and regulations providing for 320-acre spacing units should be promulgated for the Basin-Fruitland Coal Gas Pool.

(24) The special rules and regulations should also provide for restrictive well locations in order to assure orderly development of the subject pool and protect correlative rights.

(25) Due to the relatively large area encompassed by the Basin-Fruitland Coal Gas Pool, and the relatively small amount of reservoir data currently available, the special rules and regulations should be promulgated for a temporary period of two years in order to allow the operators in the subject pool the opportunity to gather additional reservoir data relative to the determination of permanent spacing rules for the subject pool and/or specific areas within the pool.

(26) The evidence and testimony presented at the hearing is insufficient to approve at the present time, the proposed provision allowing for the drilling of a second well on a standard 320-acre proration unit.

(BASIN-FRUITLAND COAL GAS POOL - Cont'd.)

(27) The Committee further recommended the adoption of a provision in the Special Rules and Regulations allowing the venting or flaring of gas from a Basin-Fruitland Coal Gas well during initial testing in an amount not to exceed a cumulative volume of 50 MMCF or a period not to exceed 30 days.

(28) The evidence presented does not justify the establishment of a specific permissible volume of gas to be vented or flared from Basin-Fruitland Coal Gas Wells at this time, however, the supervisor of the Aztec district office of the Division should have the authority to allow such venting or flaring of gas from a well upon a demonstration such flaring or venting is justified and upon written application from the operator.

(29) Evidence and testimony presented at the hearing indicates that the gas well testing requirements as contained in Division Order No. R-333-I may cause damage to a Basin Fruitland Coal Gas Well, and that special testing procedures should be established.

(30) The special rules and regulations promulgated herein should include operating procedures for determination and classification of Basin-Fruitland Coal Gas Wells, horizontal wellbore and deviated drilling procedures, and procedures and guidelines for downhole commingling.

(31) This case should be reopened at an examiner hearing in October, 1990, at which time the operators in the subject pool should be prepared to appear and present evidence and testimony relative to the determination of permanent rules and regulations for the Basin-Fruitland Coal Gas Pool.

IT IS THEREFORE ORDERED THAT:

(1) Effective November 1, 1988, a new pool in all or parts of San Juan, Rio Arriba, McKinley and Sandoval Counties, New Mexico, classified as a gas pool for production from Fruitland coal seams, is hereby created and designated the Basin-Fruitland Coal Gas Pool, with vertical limits comprising all coal seams within the equivalent of the stratigraphic interval from a depth of approximately 2450 feet to 2880 feet as shown on the Gamma Ray/Bulk Density log from Amoco Production Company's Schneider Gas Com "B" Well No. 1 located 1110 feet from the South line and 1185 feet from the West line of Section 28, Township 32 North, Range 10 West, NMPM, San Juan County, New Mexico.

(2) The horizontal limits of the Basin-Fruitland Coal Gas Pool shall comprise the following described area in all or portions of San Juan, Rio Arriba, McKinley and Sandoval Counties, New Mexico, with the exception of Section 3 through 6 of Township 31 North, Range 10 West, and Section 19 through 22, and 27 through 34 of Township 32 North, Range 10 West, San Juan County, New Mexico, which said acreage currently comprises the Cedar Hill-Fruitland Basal Coal Gas Pool:

Township 19 North, Ranges 1 West through 6 West;
Township 20 North, Ranges 1 West through 8 West;
Township 21 North, Ranges 1 West through 9 West;
Township 22 North, Ranges 1 West through 11 West;
Township 23 North, Ranges 1 West through 14 West;
Township 24 North, Ranges 1 East through 16 West;
Township 25 North, Ranges 1 East through 16 West;
Township 26 North, Ranges 1 East through 16 West;
Township 27 North, Ranges 1 West through 16 West;
Township 28 North, Ranges 1 West through 16 West;
Township 29 North, Ranges 1 West through 15 West;
Township 30 North, Ranges 1 West through 15 West;
Township 31 North, Ranges 1 West through 15 West;
Township 32 North, Ranges 1 West through 13 West;

(3) Temporary Special Rules and Regulations for the Basin-Fruitland Coal Gas Pool are hereby promulgated as follows:

SPECIAL RULES AND REGULATIONS
FOR THE
BASIN-FRUITLAND COAL GAS POOL

RULE 1. Each well completed or recompleted in the Bas Fruitland Coal Gas Pool shall be spaced, drilled, operated, a produced in accordance with the Special Rules and Regulatic hereinafter set forth.

RULE 2. A gas well within the Basin-Fruitland Coal G Pool shall be defined by the Division Director as a well that producing from the Fruitland coal seams as demonstrated b preponderance of data which could include the following:

a. Electric Log Data
b. Drilling Time
c. Drill Cuttings of Log Cores
d. Mud Logs
e. Completion Data
f. Gas Analysis
g. Water Analysis
h. Reservoir Performance
i. Other evidence which may be utilized in making su determination.

RULE 3. (As Amended by Order No. R-8768-A, July 16, 1991) Division Director may require the operator of a proposed or exis Basin-Fruitland Coal Gas well, Fruitland Sandstone well, or Pict Cliffs Sandstone well, to submit certain data as described in Rule above, which would not otherwise be required by Division Rules Regulations, in order to demonstrate to the satisfaction of the Division said well will be or is currently producing from the appropriate comr source of supply. The confirmation that a well is producing exclusiv from the Basin-Fruitland Coal Gas Pool shall consist of approva Division Form C-104, provided however that such approval shall be Division purposes only, and shall not preclude any other governme jurisdictional agency from making its own determination of produc origination utilizing its own criteria.

RULE 4. (As Amended by Order No. R-8768-A, July 16, 1991) E well completed or recompleted in the Basin-Fruitland Coal Gas Pool s be located on a standard unit containing 320 acres, more or less, compris any two contiguous quarter sections of a single governmental secti being a legal subdivision of the United States Public Lands Survey.

Individual operators may apply to the Division for an exception to requirements of Rule No. (4) to allow the drilling of a second well standard 320-acre units or on approved non-standard units in specifica defined areas of the pool provided that:

(a) Any such application shall be set for hearing before a Divisi Examiner;

(b) Actual notice of such application shall be given to operators Basin-Fruitland Coal Gas Pool wells, working interest owners of undril leases, and unleased mineral owners within the boundaries of the area which the infill provision is requested, and to all operators of Bas Fruitland Coal Gas Pool wells within one mile of such area, provic however any operator in the pool or other interested party may appear participate in such hearing.

Such notice shall be sent certified or registered mail or by overni express with certificate of delivery and shall be given at least 20 days pr to the date of the hearing.

RULE 5. (As Amended by Order No. R-8768-A, July 16, 1991) T Supervisor of the Aztec district office of the Division shall have t authority to approve a non-standard gas proration unit within the Basi Fruitland Coal Gas Pool without notice and hearing when the unorthod size or shape is necessitated by a variation in the legal subdivision of t United States Public Lands Survey and/or consists of an entire gover mental section and the non-standard unit in not less than 70% nor mo than 130% of a standard gas proration unit. Such approval shall consist acceptance of Division Form C-102 showing the proposed non-standa unit and the acreage contained therein.

(BASIN-FRUITLAND COAL GAS POOL - Cont'd.)

RULE 6. (As Amended by Order No. R-8768-A, July 16, 1991) The Division Director may grant an exception to the requirements of Rule (4) when the unorthodox size or shape of the gas proration unit is necessitated by a variation in the legal subdivision of the United States Public Lands Survey and the non-standard gas proration unit is less than 70% or more than 130% of a standard gas proration unit, or where the following facts exist and the following provisions are complied with:

(a) the non-standard unit consists of quarter-quarter sections or lots that are contiguous by a common bordering side.

(b) The non-standard unit lies wholly within a governmental half section, except as provided in paragraph (c) following.

(c) The non-standard unit conforms to a previously approved Blanco-Mesaverde or Basin-Dakota Gas Pool non-standard unit as evidenced by applicant's reference to the Division's order number creating said unit.

(d) The applicant presents written consent in the form of waivers from all offset operators or owners of undrilled tracts and from all operators owning interests in the half section in which the non-standard unit is situated and which acreage is not included in said non-standard unit.

(e) In lieu of paragraph (d) of this rule, the applicant may furnish proof of the fact that all of the aforesaid parties were notified by certified or registered mail or overnight express mail with certificate of delivery of his intent to form such non-standard unit. The Division Director may approve the application if no such party has entered an objection to the formation of such non-standard unit within 30 days after the Division Director has received the application.

(f) The Division Director, at his discretion, may set any application under Rule (6) for public hearing.

RULE 7. The first well drilled or recompleted on every standard or non-standard unit in the Basin-Fruitland Coal Gas Pool shall be located in the NE/4 or SW/4 of a single governmental section and shall be located no closer than 790 feet to any outer boundary of the proration unit nor closer than 130 feet to any quarter section line nor closer than 10 feet to any quarter-quarter section line or subdivision inner boundary.

RULE 8. The Division Director may grant an exception to the requirements of Rule (7) without hearing when an application has been filed for an unorthodox location necessitated by topographical conditions, the recompletion of a well previously drilled to a deeper horizon,provided said well was drilled at an orthodox or approved unorthodox location for such original horizon, or the drilling of an intentionally deviated horizontal wellbore. All operators or owners of undrilled tracts offsetting the proposed location shall be notified of the application by registered or certified mail, and the applicant shall state that such notice has been furnished. The Director may approve the application upon receipt of written waivers from all parties described above or if no objections to the unorthodox location has been entered within 20 days after the Director has received the application.

RULE 9(A). The Division Director shall have the authority to administratively approve an intentionally deviated well in the Basin-Fruitland Coal Gas Pool for the purpose of penetrating the coalbed seams by means of a wellbore drilled horizontally, provided the following conditions are complied with:

(1) the surface location of the proposed well is a standard location or the applicant has obtained approval of an unorthodox surface location as provided for in Rule (8) above.

(2) The bore hole shall not enter or exit the coalbed seams outside of a drilling window which is in accordance with the setback requirements of Rule (7), provided however, that the 10 foot setback distance requirement from the quarter-quarter section line or subdivision inner boundary shall not apply to horizontally drilled wells.

(B) To obtain administrative approval to drill an intentionally deviated horizontal wellbore, the applicant shall file such application with the Santa Fe and Aztec offices of the Division and shall further provide a copy of such application to all operators or owners of undrilled tracts offsetting the proposed gas proration unit for said well by registered or certified mail, and the application shall state that such notice has been furnished. The application shall further include the following information:

(1) A copy of Division Form C-102 identifying the proposed proration unit to be dedicated to the well.

(2) Schematic drawings of the proposed well which fully describe the casing, tubing, perforated or open hole interval, kick-off point, and proposed trajectory of the drainhole section.

The Director may approve the application upon receipt of written waivers from all parties described above or if no objection to the intentionally deviated horizontal wellbore has been entered within 20 days after the Director has received the application. If any objection to the proposed intentionally deviated horizontal well is received within the prescribed time limit as described above, the Director shall, at the applicant's request, set said application for public hearing.

(C) During or upon completion of drilling operations the operator shall further be required to conduct a directional survey on the vertical and lateral portions of the wellbore and shall submit a copy of said survey to the Santa Fe and Aztec Offices of the Division.

(D) The Division Director, at his discretion, may set any application for intentionally deviated horizontal wellbores for public hearing.

RULE 10. Notwithstanding the provisions of Division Rule No. 404, the Supervisor of the Aztec district office of the Division shall have the authority to approve the venting or flaring of gas from a Basin-Fruitland Coal Gas Well upon a determination that said venting or flaring is necessary during completion operations, to obtain necessary well test information, or to maintain the producibility of said well. Application to flare or vent gas shall be made in writing to the Aztec district office of the Division.

RULE 11. Testing requirements for a Basin-Fruitland Coal Gas well hereinafter set forth may be used in lieu of the testing requirements contained in Division Order No. R-333-I. The test shall consist of a minimum twenty-four hour shut-in period, and a three hour production test. The Division Director shall have the authority to modify the testing requirements contained herein upon a showing of need for such modification. The following information from this initial production test must be reported:

1. The surface shut-in tubing and/or casing pressure and date these pressures were recorded.

2. The length of the shut-in period.

3. The final flowing casing and flowing tubing pressures and the duration and date of the flow period.

4. The individual fluid flow rate of gas, water, and oil which must be determined by the use of a separator and measurement facilities approved by the Supervisor of the Aztec district office of the Division; and

(BASIN-FRUITLAND COAL GAS POOL - Cont'd.)

5. The method of production, e.g. flowing, pumping, etc. and disposition of gas.

RULE 12. The Division Director shall have the authority to approve the commingling within the wellbore of gas produced from coal seams and sandstone intervals within the Fruitland and/or Pictured Cliffs formations where a finding has been made that a well is not producing entirely from either coal seams or sandstone intervals as determined by the Division. All such applications shall be submitted to the Santa Fe office of the Division and shall contain all the necessary information as described in General Rule 303 (C) of the Division Rules and Regulations, and shall meet the prerequisites described in 303 (C) (1) (b). In addition, the Division Director may require the submittal of additional well data as may be required to process such application.

RULE 13. The Division Director may approve the commingling within the wellbore of gas produced from coal seams and sandstone intervals within the Fruitland and/or Pictured Cliffs formations where a well does not meet the prerequisites as described in General Rule 303 (C) (1) (b) provided that such commingling had been accomplished prior to July 1, 1988, and provided further that the application is filed as described in Rule (12).

IT IS FURTHER ORDERED THAT:

(4) The locations of all wells presently drilling to, completed in, commingled in, or having an approved APD for the Basin-Fruitland Coal Gas Pool are hereby approved; the operator of any well having an unorthodox location shall notify the Aztec district office of the Division in writing of the name and location of the well within 30 days from the date of this order.

(5) Pursuant to Paragraph A. of Section 70-2-18, N.M.S.A. 1978, Comp., contained in Laws of 1969, Chapter 271, existing gas wells in the Basin-Fruitland Coal Gas Pool shall have dedicated thereto 320 acres in accordance with the foregoing pool rules; or pursuant to Paragraph C. of said Section 70-2-18, existing wells may have non-standard spacing and proration units established by the Division and dedicated thereto.

(6) In accordance with (5) above, the operator shall file a new Form C-102 dedicating 320 acres to the well or shall obtain a non-standard unit approved by the Division. The operator shall also file a new C-104 with the Aztec district office of the Division.

(7) Failure to comply with Paragraphs (5) and (6) above within 60 days of the date of this order shall subject the well to a shut-in order until such requirements have been met.

(8) This case shall be reopened at an examiner hearing in October, 1990 at which time the operators in the subject pool may appear and present evidence and testimony relative to the determination of permanent rules and regulations for the Basin-Fruitland Coal Gas Pool.

(9) Jurisdiction of this cause 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.

VADA-DEVONIAN POOL
Lea County, New Mexico

Order No. R-8770, Adopting Temporary Operating Rules for the Vada-Devonian Pool, Lea County, New Mexico, October 26, 1988.

Order No. R-8770-A, May 30, 1990, rescinds the temporary operating rules adopted in Order No. R-8770, October 26, 1988.

Application of Union Pacific Resources Company for Pool Extension and Special Pool Rules, Lea County, New Mexico.

CASE NO. 9439
Order No. R-8770

ORDER OF THE DIVISION

BY THE DIVISION: This cause came on for hearing at 8:15 a.m. on August 17, 1988, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 26th day of October, 1988, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) Division Case Nos. 9439 and 9440 were consolidated at the time of the hearing for the purpose of testimony.

(3) By Order No. R-8667 dated June 10, 1988, the Division created and defined the Vada-Devonian Pool with horizontal limits consisting of the SW/4 of Section 26, Township 10 South, Range 33 East, NMPM, Lea County, New Mexico.

(4) The applicant, Union Pacific Resources Company, seeks to extend the horizontal limits of the Vada-Devonian Pool to include the NW/4 of Section 35, Township 10 South, Range 33 East, NMPM, Lea County, New Mexico, and further seeks the promulation of temporary special rules and regulations for said pool, including a provision for 80-acre spacing and proration units, designated well locations, and a poolwide exception to Division Rule No. 111 allowing for directional drilling or well deviations of more than five degrees in any 500-foot interval.

(5) The applicant is the owner and operator of the discovery well for said pool, the State "26" Well No. 1 located 330 feet from the South line and 2310 feet from the West line of said Section 26.

(6) The applicant is also the owner and operator of the State "26" Well No. 2 located 1910 feet from the South line and 1980 feet from the East line (Unit J) of said Section 26, which was spudded on April 21, 1988, was drilled to a depth of 12,953 feet and is currently being sidetracked to an unorthodox subsurface location within a 150-foot radius of a point 1910 feet from the South line and 2580 feet from the East line (Unit J) of said Section 26, (being the subject of companion Case No. 9440).

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

CASE NO. 9421
ORDER NO. R-8769-A

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION ON ITS OWN MOTION FOR AN ORDER CONTRACTING THE VERTICAL LIMITS AND REDESIGNATING CERTAIN POOLS IN SAN JUAN AND RIO ARRIBA COUNTIES, NEW MEXICO.

NUNC PRO TUNC ORDER

BY THE DIVISION:

It appearing to the Division that Order No. R-8769 dated October 17, 1988, does not correctly state the intended order of the Division,

IT IS THEREFORE ORDERED THAT:

(1) Decretory Paragraph (j) on page 3 of said Order No. R-8769 be and the same is hereby amended to read as follows:

"(j) The vertical limits of the South Gallegos Fruitland-Pictured Cliffs Pool in San Juan County, New Mexico, are hereby contracted to include only the Pictured Cliffs formation and the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the South Gallegos Fruitland Sand-Pictured Cliffs Pool."

(2) Decretory Paragraph (l) on page 3 of said Order No. R-8769 be and the same is hereby amended to read as follows:

"(l) The vertical limits of the Harper Hill Fruitland-Pictured Cliffs Pool in San Juan County, New Mexico, are hereby contracted to include only the Pictured Cliffs formation and the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Harper Hill Fruitland Sand-Pictured Cliffs Pool."

EXHIBIT
B

(3) Decretory Paragraph (r) on page 4 of said Order No. R-9769 be and the same is hereby amended to read as follows:

"(r) The vertical limits of the South Los Pinos Fruitland-Pictured Cliffs Pool in San Juan County, New Mexico, are hereby contracted to include only the Pictured Cliffs formation and the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the South Los Pinos Fruitland Sand-Pictured Cliffs Pool."

(4) Decretory Paragraph (t) on page 4 of said Order No. R-8769 be and the same is hereby amended to read as follows:

"(t) The vertical limits of the Ojo Fruitland-Pictured Cliffs Pool in San Juan County, New Mexico, are hereby contracted to include only the Pictured Cliffs formation and the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Ojo Fruitland Sand-Pictured Cliffs Pool."

(5) Decretory Paragraph (y) on page 5 of said Order No. R-8769 be and the same is hereby amended to read as follows:

"(y) The vertical limits of the Twin Mounds Fruitland- Pictured Cliffs Pool in San Juan County, New Mexico, are hereby contracted to include only the Pictured Cliffs formation and the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Twin Mounds Fruitland Sand-Pictured Cliffs Pool."

(6) Decretory Paragraph (z) on page 5 of said Order No. R-8769 be and the same is hereby amended to read as follows:

"(z) The vertical limits of the WAW Fruitland-Pictured Cliffs Pool in San Juan County, New Mexico, are hereby contracted to include only the Pictured Cliffs formation and the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the WAW Fruitland Sand-Pictured Cliffs Pool."

(7) The corrections set forth in this order be entered nunc pro tunc as of October 17, 1988.

(8) DONE at Santa Fe, New Mexico, on this 11th day of April, 1989.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

WILLIAM J. LEMAY
Director

S E A L

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:

CASE NO. 9421
Order No. R-8769

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION ON ITS OWN MOTION FOR AN ORDER CONTRACTING THE VERTICAL LIMITS AND REDESIGNATING CERTAIN POOLS IN SAN JUAN AND RIO ARRIBA COUNTIES, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:30 a.m. on July 6, 1988, at Farmington, New Mexico, before Examiner David R. Catanach.

NOW, on this 17th day of October, 1988, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) Division Case Nos. 9421 and 9420 were consolidated at the time of the hearing for the purpose of testimony.

(3) By Order No. R-8768, entered in companion Case No. 9420, the Division has created and defined the Basin-Fruitland Coal Gas Pool with vertical limits comprising all coal seams within the equivalent of the stratigraphic interval from a depth of approximately 2450 feet to 2880 feet as shown on the Gamma Ray/Bulk Density Log from Amoco Production Company's Schneider Gas Com "B" Well No. 1 located 1110 feet from the South line and 1185 feet from the West line of Section 28, Township 32 North, Range 10 West, NMPM, San Juan County, New Mexico.

(4) The proposed contraction of the vertical limits of the Mt. Nebo-Fruitland Pool in San Juan County, New Mexico, should be dismissed inasmuch as Division Order No. R-7588-B approved said contraction.

(5) There is need for the contraction of the vertical limits and the redesignation of the Aztec-Fruitland Pool, the North Aztec-Fruitland Pool, the Blanco-Fruitland Pool, the Conner-Fruitland Pool, the Crouch Mesa-Fruitland Pool, the Farmer-Fruitland Pool, the Flora Vista-Fruitland Pool, the Gallegos-Fruitland Pool, the South Gallegos Fruitland-Pictured Cliffs Pool, the Glades-Fruitland Pool, the Harper Hill Fruitland-Pictured Cliffs Pool, the Jasis Canyon-Fruitland Pool, the Kutz-Fruitland Pool, the West Kutz-Fruitland Pool, the North Los Pinos-Fruitland Pool, the South Los Pinos Fruitland-Pictured Cliffs Pool, the Ojo Fruitland-Pictured Cliffs Pool, the Pinon-Fruitland Pool, the North Pinon-Fruitland Pool, the Pump Mesa-Fruitland Pool, the Sedro Canyon-Fruitland Pool, the Twin Mounds Fruitland-Pictured Cliffs Pool, and the WAW Fruitland-Pictured Cliffs Pool, all in San Juan County, New Mexico, and the Cottonwood-Fruitland Pool and the La Jara-Fruitland Pool, both in Rio Arriba County, New Mexico, to include only the sandstone intervals.

IT IS THEREFORE ORDERED THAT:

(a) The vertical limits of the Aztec-Fruitland Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Aztec-Fruitland Sand Pool.

(b) The vertical limits of the North Aztec-Fruitland Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the North Aztec-Fruitland Sand Pool.

(c) The vertical limits of the Blanco-Fruitland Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Blanco-Fruitland Sand Pool.

(d) The vertical limits of the Conner-Fruitland Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Conner-Fruitland Sand Pool.

(e) The vertical limits of the Cottonwood-Fruitland Pool in Rio Arriba County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Cottonwood-Fruitland Sand Pool.

(f) The vertical limits of the Crouch Mesa-Fruitland Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Crouch Mesa-Fruitland Sand Pool.

(g) The vertical limits of the Farmer-Fruitland Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Farmer-Fruitland Sand Pool.

(h) The vertical limits of the Flora Vista-Fruitland Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Flora Vista-Fruitland Sand Pool.

(i) The vertical limits of the Gallegos-Fruitland Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Gallegos-Fruitland Sand Pool.

(j) The vertical limits of the South Gallegos Fruitland-Pictured Cliffs Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the South Gallegos Fruitland Sand-Pictured Cliffs Pool.

(k) The vertical limits of the Glades-Fruitland Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Glades-Fruitland Sand Pool.

(l) The vertical limits of the Harper Hill Fruitland-Pictured Cliffs Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Harper Hill Fruitland Sand-Pictured Cliffs Pool.

(m) The vertical limits of the Jasis Canyon-Fruitland Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Jasis Canyon-Fruitland Sand Pool.

(n) The vertical limits of the Kutz-Fruitland Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Kutz-Fruitland Sand Pool.

(o) The vertical limits of the West Kutz-Fruitland Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the West Kutz-Fruitland Sand Pool.

(p) The vertical limits of the La Jara-Fruitland Pool in Rio Arriba County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the La Jara-Fruitland Sand Pool.

(q) The vertical limits of the North Los Pinos-Fruitland Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the North Los Pinos-Fruitland Sand Pool.

(r) The vertical limits of the South Los Pinos Fruitland-Pictured Cliffs Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the South Los Pinos Fruitland Sand-Pictured Cliffs Pool.

(s) The proposed contraction of the vertical limits of the Mt. Nebo-Fruitland Pool in San Juan County, New Mexico, is hereby dismissed.

(t) The vertical limits of the Ojo Fruitland-Pictured Cliffs Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Ojo Fruitland Sand-Pictured Cliffs Pool.

(u) The vertical limits of the Pinon-Fruitland Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Pinon-Fruitland Sand Pool.

(v) The vertical limits of the North Pinon-Fruitland Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the North Pinon-Fruitland Sand Pool.

(w) The vertical limits of the Pump Mesa-Fruitland Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Pump Mesa-Fruitland Sand Pool.

(x) The vertical limits of the Sedro Canyon-Fruitland Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Sedro Canyon-Fruitland Sand Pool.

(y) The vertical limits of the Twin Mounds Fruitland-Pictured Cliffs Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the Twin Mounds Fruitland Sand-Pictured Cliffs Pool.

(z) The vertical limits of the WAW Fruitland-Pictured Cliffs Pool in San Juan County, New Mexico, are hereby contracted to include only the sandstone interval of the Fruitland formation and said pool is hereby redesignated as the WAW Fruitland Sand-Pictured Cliffs Pool.

IT IS FURTHER ORDERED THAT:

(1) The effective date of this order and all contractions of vertical limits and redesignations included herein shall be November 1, 1988.

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

WHITING PETROLEUM CORPORATION, a corporation, and MARALEX RESOURCES, INC., a corporation

Plaintiffs,

vs. No. D-0101-CV-980129S

PENDRAGON ENERGY PARTNERS, INC., a corporation, and J. K. EDWARDS ASSOCIATES, INC., a corporation

Defendants.

AFFIDAVIT

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

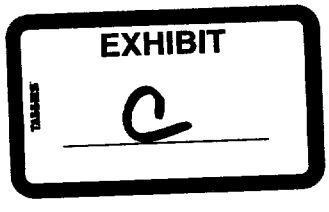
ALAN B. NICOL, being first duly sworn, states:

1. I am the President of Pendragon Energy Partners, Inc. (hereinafter "Pendragon"). Pendragon is incorporated in Colorado, and its principal place of business is in Denver, Colorado. I have personal knowledge of the facts as set forth in this Affidavit.

2. Pendragon is registered with the New Mexico State Corporation Commission and is authorized by the State to do business in New Mexico.

3. Defendant J. K. Edwards Associates, Inc. (hereinafter "Edwards") is incorporated in Colorado, and its principal place of business is in Denver, Colorado.

4. Pendragon does not dispute the allegation contained in the Complaint that Plaintiff Whiting Petroleum Corporation (hereinafter "Whiting") is a Delaware corporation with its principal place of business in Denver, Colorado. Pendragon also



does not dispute the allegation of the Complaint that Plaintiff Maralex Resources, Inc. (hereinafter "Maralex") is a Colorado corporation with its principal place of business in Ignacio, Colorado.

5. All of the wells and real property identified in the Complaint filed herein are located in San Juan County, New Mexico.

6. The claims asserted by the Plaintiffs in this lawsuit all arose in San Juan County, New Mexico.

7. The Plaintiffs allege, incorrectly, that Pendragon Energy Partners, Inc. owns the oil and gas leasehold working interests in the lands that are the subject of their lawsuit. (See Complaint, Para. 3). In fact, those working interests are owned by a separate entity, Pendragon Resources, L.P., a Delaware limited partnership.

8. None of the Plaintiffs and none of the Defendants in this lawsuit reside in Santa Fe County, N.M. The real property which is involved in this lawsuit is in San Juan County, N. M., and the causes of action alleged by Plaintiffs all arose in San Juan County. Both Defendants have a statutory agent for service of process, which is CT Corporation System. I understand that it has a small office in Santa Fe, but I also understand that CT Corporation System is not a New Mexico corporation and that its principal place of business is not in New Mexico, but is in New York City, New York. Consequently, absolutely nothing about the claims in this lawsuit or the parties to this lawsuit is in any way related to Santa Fe County.

9. The New Mexico Oil Conservation Division (hereinafter "OCD") has been extensively involved in the very issues presented by this lawsuit.

10. On March 27, 1998, representatives of Plaintiffs, Defendants, and others met with OCD personnel in Aztec, New Mexico. At this meeting, the results of extensive

studies and investigations concerning the very issues described in the Complaint were discussed. Bruce Williams, a petroleum engineer employed by Whiting, told everyone at the meeting that at that time Whiting was hard pressed to show any detrimental effect or harm to its wells (those identified in the Complaint herein), based upon the performance of their wells.

11. For the prior year and a half, as a result of an agreement among Whiting, Maralex, Pendragon, Edwards, and others, the OCD was extensively involved in both informally and formally trying to resolve the factual issues which are now identified in the Complaint in this lawsuit. In reliance upon the agreement among the parties, both Pendragon and Edwards took many actions which they were not legally obligated to take, which necessitated the expenditure of both time and money. A great deal of information was voluntarily provided to the OCD, and there were numerous meetings among the parties and the OCD. The purpose of these procedures was to enable the OCD, the agency with extensive technical expertise with respect to the questions raised by the Complaint, to lend its assistance in determining whether there really was any problem with respect to commingling of gas from the different formations identified in the Complaint and, to facilitate resolution if the data showed that there were such commingling.

12. Whiting and Maralex attempted to abruptly end this process almost immediately after Whiting's petroleum engineer acknowledged that the evidence did not show any interference or harm to Whiting's wells identified in the Complaint. Whiting and Maralex had filed an initial application with the OCD requesting that these issues be resolved by the OCD, and then had filed an amended application with the OCD asking that the OCD resolve these issues. Once Whiting acknowledged that the well

performance evidence did not support the position it's taking in this lawsuit, Whiting and Maralex immediately tried to withdraw their application from the OCD, retained the Gallegos Law Firm (they had been represented by a different attorney up to this point), and filed a lawsuit in Santa Fe. It now appears that the purpose of Whiting and Maralex in its recent procedural moves is to avoid having the OCD, the agency with technical expertise and extensive background concerning the issues raised in the Complaint, make the factual determinations that the parties have been working with the OCD for over a year and a half to resolve. Instead, Plaintiffs now want a jury which has none of the technical expertise or extensive background of the OCD to make determinations which Whiting and Maralex hope will be contrary to the technical evidence developed during the past year and a half.

13. Had Pendragon known that Whiting and Maralex would unilaterally and suddenly try to stop the process before the OCD when the evidence proved to be unfavorable to their position, and would suddenly march to court and try to remove the question from the OCD, Pendragon would not have expended its time and resources in the long process that has been ongoing before the OCD.

ALAN B. NICOL

SUBSCRIBED AND SWORN BEFORE me this 19th day of June, 1998, by Alan B. Nicol.

NOTARY PUBLIC

PEGGY S. SUTHERLAND NOTARY PUBLIC STATE OF COLORADO

My Commission Expires:

8/21/2000

:\AFFIDAVIT.618DOC

STATE OF NEW MEXICO)
) ss.
COUNTY OF SAN JUAN)

AFFIDAVIT OF ALAN P. EMMENDORFER

Alan P. Emmendorfer being first duly sworn states:

1. I am the age of majority and am otherwise competent to testify to the matters set forth herein. I also have personal knowledge of facts set forth in this Affidavit.
2. I am the geologist for Coleman Oil & Gas, Inc. with headquarters in Farmington, New Mexico. Coleman owns interest in numerous oil and gas wells in the San Juan Basin of New Mexico. Among the wells owned by Coleman are the Stacey No. 1 located in the SE ¼ Section 6, T26N-R12W and the Leslie No. 1 located in the NE ¼ of Section 7, T26N-R12W NMPM in San Juan County. While Coleman owns the majority interest in these, they are operated by Thompson Engineering & Production Corporation.
3. The wells referenced above are located on separate Navajo Allotted leases and are completed in and produce from the WAW Fruitland Sand-Pictured Cliffs Gas Pool. These wells were included among the wells that were the subject of the Application filed by Whiting Petroleum Corporation and Maralex Resources before the New Mexico Oil Conservation Division in

EXHIBIT
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Case No. 11921, where Whiting and Maralex contended that a number of Pictured Cliffs wells were interfering with wells completed in and producing from the Fruitland Coal Formation. Coleman disagreed with and disputed those allegations.

4. I participated in a number of public meetings with the New Mexico Oil Conservation Division and Division staff at the Division's district office in Aztec. The purpose of these meetings was to try and determine if in fact the Pictured Cliffs wells were interfering with the Fruitland Coal gas wells. And if so, if some sort of agreement could be reached among the affected parties and avoid an official hearing. These meetings were attended by representatives from Whiting, Maralex, Pendragon Energy Partners, Coleman Oil & Gas, Thompson Engineering, Merrion Oil & Gas, and the Bureau of Land Management for the Bureau of Indian Affairs. At the meeting on March 27, 1998, Bruce Williams, a petroleum engineer representing Whiting Petroleum Corporation, made a statement to the effect that he was unable to demonstrate or quantify any detrimental effects to the coal wells based on the wells' production performance. Mr. Williams repeated this statement or words to the same affect more than once at the meeting.

FURTHER AFFIANT SAYETH NOT.

Alan P. Emmendorfer

STATE OF New Mexico)
) ss.
County of San Juan)

Subscribed and sworn to before me on this 22nd day of June, 1998, by Alan P. Emmendorfer

Notary Public

My commission expires:

July 31, 2001

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

RECEIVED
JAN 12 1998
WHITING PET. CORP.
PRODUCTION DEPT.

APPLICATION OF WHITING PETROLEUM CORPORATION AND MARALEX RESOURCES, INC. FOR AN ORDER SHUTTING-IN CERTAIN WELLS, SAN JUAN COUNTY, NEW MEXICO.

Case No.

APPLICATION

Whiting Petroleum Corporation ("Whiting") and Maralex Resources, Inc. ("Maralex") hereby apply for an order requiring certain wells located in San Juan County, New Mexico to be shut-in, and in support thereof, state:

1. Whiting operates the following wells:

Well Name	Well Unit
(1) Gallegos Fed. 26-12-6 No. 2	W½ §6-26N-12W
(2) Gallegos Fed. 26-12-7 No. 1	W½ §7-26N-12W
(3) Gallegos Fed. 26-13-1 No. 1	E½ §1-26N-13W
(4) Gallegos Fed. 26-13-1 No. 2	W½ §1-26N-13W
(5) Gallegos Fed. 26-13-12 No. 1	N½ §12-26N-13W

The above wells were drilled before the end of 1992, and are completed in and producing from the Basin-Fruitland Coal Gas Pool, as defined in Division Order No. R-8768, as amended. Spacing for each well is 320 acres. Maralex is an interest owner in the wells.

2. Thompson Engineering & Production Corp. ("Thompson") operates the following wells:

Well Name	Well Unit
Stacey No. 1	SE¼ §6-26N-12W
Leslie No. 1	NE¼ §7-26N-12W[1]

[1]This well is at an orthodox location for a Fruitland Coal well, and thus Whiting and Maralex do not seek to have it shut-in. However, applicants believe that it is producing from the Basin-Fruitland Coal Gas Pool, should be recognized as such, and its well spacing unit adjusted accordingly.

EXHIBIT
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Pendragon Energy Partners, Inc. ("Pendragon") operates the following wells:

Well Name	Well Unit
Chaco No. 1	NW¼ §18-26N-12W
Chaco No. 2R	SW¼ §7-26N-12W
Chaco No. 4	NW¼ §7-26N-12W
Chaco No. 5	SE¼ §1-26N-13W
Chaco Ltd. No. 1J	SW¼ §1-26N-13W
Chaco Ltd. No. 2J	NE¼ §1-26N-13W

The Edwards and Pendragon wells are designated as being completed in the WAW Fruitland Sand-Pictured Cliffs Pool, as defined in Division Order No. R-8769, as amended. Spacing for wells completed in the WAW Fruitland Sand-Pictured Cliffs Pool is 160 acres.

3. Ownership in the Basin-Fruitland Coal Pool, in the above sections, differs from ownership in the WAW Fruitland Sand-Pictured Cliffs Pool. Moreover, because of the difference in well spacing, 4 wells may be drilled per section in the WAW Fruitland-Pictured Cliffs Pool, as opposed to 2 wells per section in the Basin-Fruitland Coal Gas Pool.

4. As of 1995-96, each of the above-described Thompson and Pendragon wells was shut-in, was a marginal producer, or had not been drilled. In 1995 and 1996, Thompson and Pendragon drilled or "restimulated" their wells, resulting in the following:

(a) Production from their wells increased, in some cases substantially;

(b) Production from the offsetting Whiting wells has declined or decreased;

(c) The BTU content of the gas decreased so that it is

similar or identical to the BTU content of the Whiting wells;

(d) Water production increased substantially; and

(e) The limited available pressure data shows that pressures increased to levels similar to those found in the Basin-Fruitland Coal Gas Pool in this area.

5. Based on the foregoing, the Thompson and Pendragon wells are communicated with and are producing from the Basin-Fruitland Coal Gas Pool. As a result, the Thompson and Pendragon wells are draining reserves owned by Whiting and its interest owners, and are impairing their correlative rights.

6. In addition, (a) the Stacey Well No. 1, Chaco Well No. 1, Chaco Well No. 4, and Chaco Well No. 5 are at unapproved unorthodox gas well locations in the Basin-Fruitland Coal Gas Pool, (b) all of the Thompson and Pendragon wells, except the Leslie Well No. 1, do not have Division approval for simultaneous dedication in the Basin-Fruitland Coal Gas Pool as required by Division Rule 104.D.(3), or Division Memoranda dated July 27, 1988 and August 3, 1990, and (c) none of the Thompson and Pendragon wells have 320 acres dedicated to them.

7. The Division has the authority and the duty to:

(a) Prevent natural gas from escaping from strata in which it is found into other strata;

(b) require wells to be drilled, operated, and produced in such manner as to prevent injury to neighboring leases or properties; and

(c) to fix the spacing of wells.

NMSA §70-2-12.B.(2), (7), (10) (1995 Repl. Pamp.). Moreover, the Division has the authority to require an operator to submit data to

demonstrate that a well is producing from the appropriate common source of supply. **Order No. R-8768, Special Rules 2, 3.** Therefore, the relief requested herein is proper.

WHEREFORE, Whiting and Maralex request that, after notice and hearing, the Division enter its order:

A. Determining that the Thompson and Pendragon wells, described above, are producing from the Basin-Fruitland Coal Gas Pool;

B. Determining that the Stacey Well No. 1, Chaco Well No. 1, Chaco Well No. 4, Chaco Well No. 5 are at unapproved unorthodox gas well locations in the Basin-Fruitland Coal Gas Pool, and that all wells except the Leslie Well No. 1 do not have approval for simultaneous dedication in the Basin-Fruitland Coal Gas Pool;

C. Ordering the Thompson Stacey Well No. 1 and all of the Pendragon wells to be permanently shut-in; and

D. Granting such further relief as the Division deems proper.

Respectfully submitted,

James Bruce
P.O. Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for Whiting Petroleum Corporation and Maralex Resources, Inc.

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATION OF WHITING PETROLEUM CORPORATION AND MARALEX RESOURCES, INC. FOR AN ORDER SHUTTING-IN, LIMITING PRODUCTION FROM, OR APPROVING DOWNHOLE COMMINGLING IN, CERTAIN WELLS, SAN JUAN COUNTY, NEW MEXICO. Case No. 11,921

AMENDED APPLICATION

Whiting Petroleum Corporation ("Whiting") and Maralex Resources, Inc. ("Maralex") hereby apply for an order requiring that certain wells located in San Juan County, New Mexico be shut-in or have their producing rates limited, or in the alternative approving downhole commingling of production and fixing allocation percentages. In support of their application, Whiting and Maralex state:

1. Whiting operates the following wells:

Well Name	Well Unit
Gallegos Fed. 26-12-6 No. 2	W½ §6-26N-12W
Gallegos Fed. 26-12-7 No. 1	W½ §7-26N-12W
Gallegos Fed. 26-13-1 No. 1	E½ §1-26N-13W
Gallegos Fed. 26-13-1 No. 2	W½ §1-26N-13W
Gallegos Fed. 26-13-12 No. 1	N½ §12-26N-13W

The above wells were drilled before the end of 1992, and are completed in and producing from the Basin-Fruitland Coal Gas Pool, as defined in Division Order No. R-8768, as amended. Spacing for each well is 320 acres. Maralex is an interest owner in the Whiting-operated wells.

2. Thompson Engineering & Production Corp. ("Thompson") operates the following wells:

Well Name	Well Unit
Stacey No. 1	SE¼ §6-26N-12W

EXHIBIT F

Leslie No. 1	NE¼ §7-26N-12W[1]

Pendragon Energy Partners, Inc. ("Pendragon") operates the following wells:

Well Name	Well Unit
Chaco No. 1	NW¼ §18-26N-12W
Chaco No. 2R	SW¼ §7-26N-12W
Chaco No. 4	NW¼ §7-26N-12W
Chaco No. 5	SE¼ §1-26N-13W
Chaco Ltd. No. 1J	SW¼ §1-26N-13W
Chaco Ltd. No. 2J	NE¼ §1-26N-13W

The Thompson and Pendragon wells are designated as being completed in the WAW Fruitland Sand-Pictured Cliffs Pool, as defined in Division Order No. R-8769, as amended. Spacing for wells completed in the WAW Fruitland Sand-Pictured Cliffs Pool is 160 acres.

3. Ownership in the Basin-Fruitland Coal Gas Pool, in the sections in which the Whiting wells are located, differs from ownership in the WAW Fruitland Sand-Pictured Cliffs Pool. Moreover, because of the difference in well spacing, 4 wells may be drilled per section in the WAW Fruitland-Pictured Cliffs Pool, as opposed to 2 wells per section in the Basin-Fruitland Coal Gas Pool.

4. As of 1995-96, each of the above-described Thompson and Pendragon wells was shut-in, was a marginal producer, or had not been drilled. In 1995 and 1996, Thompson and Pendragon drilled or "restimulated" their wells, resulting in the following:

---

[1]This well is at an orthodox location for a Fruitland Coal well, and thus Whiting and Maralex do not seek to have it shut-in, etc. However, applicants believe that the well is producing from the Basin-Fruitland Coal Gas Pool, should be recognized as such, and its spacing and proration unit adjusted accordingly.

(a) Production from the Thompson and Pendragon wells increased, in some cases substantially;

(b) Production from the Whiting-operated wells offsetting the Thompson and Pendragon wells has declined or decreased;

(c) The BTU content of the gas produced from the Thompson and Pendragon wells has decreased so that it is similar or identical to the BTU content of the Whiting wells;

(d) Water production from the Thompson and Pendragon wells has increased substantially; and

(e) The available pressure data shows that pressures in the Thompson and Pendragon wells has increased to levels similar to those found in wells completed in the Basin-Fruitland Coal Gas Pool in this area.

5. Based on the foregoing, the Thompson and Pendragon wells are communicated with and are producing from the Basin-Fruitland Coal Gas Pool. As a result, the Thompson and Pendragon wells are draining reserves owned by Whiting and the other interest owners in its wells, and are impairing their correlative rights.

6. In addition, (a) the Stacey Well No. 1, Chaco Well No. 1, Chaco Well No. 4, and Chaco Well No. 5 are at unapproved unorthodox gas well locations in the Basin-Fruitland Coal Gas Pool, (b) all of the Thompson and Pendragon wells, except the Leslie Well No. 1, do not have Division approval for simultaneous dedication in the Basin-Fruitland Coal Gas Pool as required by Division Rule 104.D.(3) or Division Memoranda dated July 27, 1988 and August 3, 1990, and (c) none of the Thompson and Pendragon wells have 320

acres dedicated to them.

7. The Division has the authority and the duty to:

(a) Prevent natural gas from escaping from strata in which it is found into other strata;

(b) require wells to be drilled, operated, and produced in such manner as to prevent injury to neighboring leases or properties; and

(c) to fix the spacing of wells.

NMSA 1978 §70-2-12.B.(2), (7), (10) (1995 Repl. Pamp.). Moreover, the Division has the authority to require an operator to submit data to demonstrate that a well is producing from the appropriate common source of supply, and to order the downhole commingling of Fruitland Coal and Pictured Cliffs production. **Order No. R-8768, Special Rules 2, 3, 12**. Therefore, the relief requested herein is proper.

WHEREFORE, Whiting and Maralex request that, after notice and hearing, the Division enter its order:

A. Determining that the Thompson and Pendragon wells, described above, are producing from the Basin-Fruitland Coal Gas Pool;

B. Determining that the Stacey Well No. 1, Chaco Well No. 1, Chaco Well No. 4, and Chaco Well No. 5 are at unapproved unorthodox gas well locations in the Basin-Fruitland Coal Gas Pool, and that all wells except the Leslie Well No. 1 do not have approval for simultaneous dedication in the Basin-Fruitland Coal Gas Pool;

C. Ordering the Thompson Stacey Well No. 1, and all of the Pendragon wells, to be permanently shut-in or have their production restricted, or in the alternative approve downhole commingling of Fruitland Coal and Pictured Cliffs/Fruitland Sand production from the Thompson and Pendragon wells and allocating production from each pool; and

D. Granting such further relief as the Division deems proper.

Respectfully submitted,

James Bruce
P.O. Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for Whiting Petroleum Corporation and Maralex Resources, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Amended Application was mailed this 10th day of February, 1998 to J. Scott Hall, Miller, Stratvert & Torgerson, P.A., P.O. Box 1986, Santa Fe, New Mexico 87504.

James Bruce

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

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

CASE NO. 11996

APPLICATION

Pendragon Energy Partners, Inc. ("Pendragon") and J.K. Edwards Associates, Inc. ("J. K. Edwards") through their counsel, hereby make application to the New Mexico Oil Conservation Division pursuant to Rule 3 of the Special Rules and Regulations for the Basin-Fruitland Coal Gas Pool, Order No. R-8768-A and 19 NMAC 15.N.303.A for an order confirming that certain wells completed within the vertical limits of the WAW Fruitland-Pictured Cliffs Pool and the Basin-Fruitland Coal Gas Pool, respectively, are producing from the appropriate common source of supply. In support of their application, Pendragon and J.K. Edwards state:

1. Pendragon operates the following wells completed in and producing from the WAW Fruitland-Pictured Cliffs Pool in San Juan County, New Mexico:

Well Name	Location
Chaco No. 1	NW 1/4, Section 18, T26N, R12W, N.M.P.M.
Chaco No. 2R	SW 1/4, Section 7, T26N, R12W, N.M.P.M.
Chaco No. 4	NW 1/4, Ssection 7, T26N, R12W, N.M.P.M.
Chaco No. 5	SE 1/4, Section 1, T26N, R13W, N.M.P.M.
Chaco Ltd. No. 1J	SW 1/4 Section 1, T26N, R13W, N.M.P.M.
Chaco Ltd. No. 2J	NE 1/4, Section 1, T26N, R13W, N.M.P.M.

In addition to being the designated Operator of the referenced wells, Pendragon, along

EXHIBIT 6

with J.K. Edwards, owns working interests in the acreage dedicated to the subject wells.

2. Whiting Petroleum Corporation ("Whiting") is the Operator of the following wells completed within the Basin-Fruitland Coal Gas Pool:

Well Name	Location
Gallegos Federal 26-12-6 No. 2	W 1/2, Section 6, T12N, R12W, N.M.P.M.
Gallegos Federal 26-12-7 No. 1	W 1/2, Section 7, T26N, R12W, N.M.P.M.
Gallegos Federal 26-13-1 No. 1	E 1/2, Section 1, T26N, R13 W. N.M.P.M.
Gallegos Federal 26-13-1, No. 2	W 1/2, Section 1, T26N, R13W, N.M.P.M.
Gallegos Federal 26-13-12 No. 1	N 1/2 Section 12, T26N, R13W, N.M.P.M.

In addition to being the designated Operator of the referenced coal gas wells, Whiting, along with Maralex Resources, Inc., (Maralex) owns working interests in the acreage dedicated to the coal gas wells.

3. By Order No. R-8768 and R-8768-A, the Division created a new pool in all or parts of San Juan, Rio Arriba, McKinley and Sandoval Counties, New Mexico classified as a gas pool for production from the Fruitland Coal seams and designated the pool as the Basin-Fruitland Coal Gas Pool. The wells and the lands that are the subject of this application are located within the horizontal limits of the Basin-Fruitland Coal Gas Pool as defined by Order No. R-8768 and R-8768-A. The Order also established the vertical limits of the pool by reference to the stratigraphic depth interval.

4. By Order No. R-8769 entered by the New Mexico Oil Conservation Division on October 17, 1988 in Case No. 9421 and as subsequently amended by Order No. R-8760-A, *nunc pro tunc*, the Division defined the vertical limits of the WAW Fruitland-Pictured Cliffs Pool as

follows:

> The vertical limits of the WAW Fruitland-Pictured Cliffs Pool in San Juan County, New Mexico are hereby contracted to include only the Pictured Cliffs formation and the sandstone interval of the Fruitland formation in said pool is hereby redesignated as the WAW Fruitland Sand-Pictured Cliffs pool.

All of the Pendragon operated wells referenced above are completed in and producing from the WAW Fruitland-Pictured Cliffs Pool.

5. Whiting and Maralex by their application, as amended, in Case No. 11921 have alleged generally, without any basis in fact, that as a result of drilling or the fracture stimulation, the Pendragon wells have become communicated with and are producing from the Basin-Fruitland Coal Gas pool. Whiting and Maralex further contend, also without any basis in fact, that the Pendragon wells "are draining reserves owned by Whiting and the other interest owners in its wells, and are impairing their correlative rights." Pendragon and Edwards deny that the drilling or the fracture stimulation of their Pictured Cliffs wells resulted in the communication of the two pools or that they are producing from the Basin-Fruitland Coal Gas Pool through their Pictured Cliffs completions. Pendragon and Edwards generally deny all other claims and allegations set forth in the Whiting/Maralex application, as amended.

6. Rule 3 of the Special Rules and Regulations for the Basin-Coal Gas pool provide that the Division Director can require the Operator of a Basin Fruitland Coal Gas well, a Fruitland Sandstone well or a Pictured Cliffs Sandstone well to demonstrate to the satisfaction of the Division that the well is producing from the appropriate common source of supply.

7. Rule 19, NMAC 15.N.203.A of the Division's rules and regulations requires the segregation of production from separate sources of supply. The rule provides:

> Each pool shall be produced as a single common source of supply and wells therein shall be completed, cased, maintained and operated so as to prevent communication, within the well bore, within any other specific pool or horizon and the production therefrom shall at all times be actually segregated, and the commingling or confusion of such production, before marketing, with the production from any other pool or pools is strictly prohibited."

See also, Special Rules 2 and 12, Special Rules and Regulations for the Basin-Fruitland Coal Gas pool.

8. Under Section 70-2-6(A) of the New Mexico Oil and Gas Act (N.M. Stat. Ann. 1978, § 70-2-1, *et seq.*) the Division has primary jurisdiction and authority over all matters relating to the conservation of oil and gas and oil or gas operations in this state. In addition, the Division has specific statutory authority to prevent the escape of natural gas from one strata into other strata. N.M. Stat. Ann 1978, § 70-2-12(B)(2).

The granting of this application is in the interests of the conservation of oil and gas resources and the prevention of waste.

WHEREFORE, Applicants request that this matter be set for hearing before the next scheduled hearing of the Oil Conservation Division and that after notice and hearing as required by law, the Division enter its order requiring the respective operators of the Fruitland Coal Gas wells and the Fruitland Pictured Cliffs sandstone wells to demonstrate are producing from the appropriate common sources of supply and providing such other and further relief as the Division deems appropriate. Applicants also request that this matter be made a part of and consolidated with Case No. 11921 presently pending before the Division.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By J. Scott Hall

J. Scott Hall
P.O. Box 1986
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(505) 989-9614
Attorneys for Pendragon Energy Partners, Inc. and
J.K. Edwards Associates, Inc.

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A Professional Corporation

460 St. Michael's Drive
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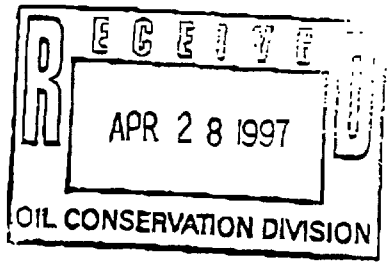
Telefax No. 505-986-0741

MICHAEL J. CONDON

April 28, 1997
(Our File No. 97-1.75)



HAND-DELIVERED
William J. LeMay, Director
New Mexico Oil Conservation Division
2040 South Pacheco
Santa Fe, NM 87505

Re: Hartman v. Oxy, USA Inc., Santa Fe County Cause No. SF 97-992(c)

Dear Mr. LeMay:

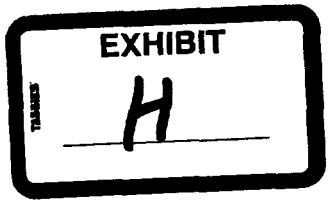
We represent Doyle Hartman, Oil Operator in the above-referenced lawsuit. A copy of the Complaint is enclosed. The lawsuit is related to the Application we filed this date with the New Mexico Oil Conservation Division in Case No. 6897 regarding the unlawful operation of the Myers Langlie-Mattix waterflood unit by Oxy USA Inc. The grounds supporting our Application and the claims for relief are outlined in the respective pleadings. Please accept this letter as notice pursuant to NMSA 1978 § 70-2-29 (1995 Repl.) advising the New Mexico Oil Conservation Division of the claims and inviting the Division to join the action as a party plaintiff in order to sue Oxy to prevent any further violation. We will look forward to hearing from you at your earliest convenience.

Very truly yours,

GALLEGOS LAW FIRM, P.C.

By Michael J. Condon
MICHAEL J. CONDON

MJC:sa
fxc: Doyle Hartman
Greg Curry
Thomas Kellahin
William F. Carr



FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

WHITING PETROLEUM CORPORATION, a corporation, and MARALEX RESOURCES, INC., a corporation,

Plaintiffs,

vs. No. D-0101-CV-980129S

PENDRAGON ENERGY PARTNERS, INC., a corporation, and J.K. EDWARDS ASSOCIATES, INC., a corporation,

Defendants.

MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS FOR IMPROPER VENUE

All the claims asserted in Plaintiffs' Complaint involve gas wells located in San Juan County. The Aztec District Office of the New Mexico Oil Conservation Division ["NMOCD"], pursuant to agreements among the parties to this lawsuit and others, has been working for well over a year to attempt to resolve the fact and legal issues raised by Plaintiffs' claims. In general terms, the issues are whether there was and is any commingling of gas between what the NMOCD has defined as separate formations or pools, and, if there is such commingling, the cause of such commingling and what should be done about it.[1]

Venue in Santa Fe County is improper because the location of the real property involved in this lawsuit, as well as where all of the causes of action arise, is San Juan County, New Mexico. None of the parties to this lawsuit reside in Santa Fe County. Neither Defendant has a statutory agent who resides in Santa Fe County. There is no basis for venue in Santa Fe County. Under these

[1] The factual background of this lawsuit is described in the Affidavits of Alan B. Nicol and Alan P. Emmendorfer submitted herewith. The Affidavit of Kenneth Uva is also submitted herewith to show that CT Corporation Systems is a foreign corporation that does not "reside" in Santa Fe County.

circumstances, this Court must dismiss this lawsuit without prejudice. Team Bank v. Meridian Oil, Inc., 118 N.M. 147, 151-152, 879 P.2d 779 (1994).

A. VENUE IS PROPER ONLY IN SAN JUAN COUNTY, WHERE THE REAL PROPERTY INVOLVED IN THIS LAWSUIT IS LOCATED:

(1) "Lands or any interest in lands are the object of [this] suit in whole or in part" and this suit involves a claim "for trespass on land":

All of the real property involved in this lawsuit is located in San Juan County. [Complaint, ¶ 14, Nicol Aff.] Plaintiffs' Complaint, which describes various interests in oil and gas leases for wells located in San Juan County, involves an interest in land or real estate in San Juan County. In their Complaint, Plaintiffs make claims for trespass (the "First Claim for Relief" claims Defendants "have wrongfully entered and invaded Plaintiffs' real property interests"), conversion of real property interests (the "Second Claim for Relief" alleges Defendants "wrongfully exercised dominion and control over and taken possession of Plaintiffs' Fruitland formation gas reserves"), and a determination of real property ownership (in the "Fourth Claim for Relief," Plaintiffs request a determination that Defendants be required to pay Plaintiffs royalty for gas based on "a contract implied in equity", and in the "Fifth Claim for Relief," Plaintiffs request an accounting for gas produced from Defendants' wells). [Complaint, ¶¶ 28, 29, 33, 34, 45, 46, 48, 49 and 50].

In New Mexico, an ownership interest in mineral rights is an interest in real property. Team Bank, 118 N.M. at 148-149; Heath v. Gray, et al., 58 N.M. 665, 274 P.2d 620 (1954). Where a plaintiff files a lawsuit claiming ownership of a royalty interest in a gas well, the object of the suit is for an interest in real property. Team Bank at 149 (citing Fullerton, 72 N.M. at 205).

Plaintiffs seek injunctive relief prohibiting Defendants from using the wells at issue and from producing natural gas from those wells. [Complaint, ¶ 31 and Prayer for Relief(A)]. This request for

injunctive relief, if granted, would perpetually restrain Defendants from asserting title and interest in the gas accessible by these wells, so "an interest in land is necessarily involved in this suit." Jemez Land Co. v. Garcia, 15 N.M. 316, 322, 107 P. 683 (1910), overruled on other grounds, Kalosha v. Novick, 84 N.M. 502, 504, 505 P.2d 844 (1973).

This lawsuit is plainly one in which "lands or any interest in lands are the object of [this] suit in whole or in part" and, additionally, this suit involves a claim "for trespass on land" located in San Juan County.

(2) Pursuant to New Mexico's venue statute, this suit had to be filed in San Juan County:

Section 38-3-1 NMSA (1978) provides, in pertinent part:

> "All civil actions commenced in the District Court shall be brought and shall be commenced in counties as follows and not otherwise:
>
> D.(1) When lands or any interest in lands are the object of any suit in whole or in part, such suit shall be brought in the county where the land or any portion thereof is situate....
>
> E. Suits for trespass on land shall be brought as provided in Subsection A of this section or in the county where the land or any portion thereof is situate." [Underlining added]

Plainly, under Subsection D, this suit had to be filed in San Juan County. Under Subsection E, this suit had to be filed in San Juan County unless Subsection A of §38-3-1 NMSA (1978) provides an exception. Subsection A of §38-3-1 NMSA (1978) provides, in pertinent part:

> "first, except as hereinafter provided in Subsection F of this section, relating to foreign corporations, all transitory actions shall be brought in the county where either the plaintiff or defendant, or some one of them, in case there be more than one of either, resides; or second, in the county where the contract sued on was made or is to be performed, or where the cause of action originated or indebtedness sued on was incurred; or third, in any county in which the defendant or either of them may be found in the judicial district where the defendant resides."

Subsection A is not applicable to this case. Both the Plaintiffs and Defendants are foreign corporations that do not reside in Santa Fe County [Complaint ¶¶1-4; Nicol Aff.]. No contract is sued on in this case. The causes of action alleged by Plaintiffs originated in San Juan County, not Santa Fe County. Finally, neither of the Defendants resides in Santa Fe County. Consequently, Subsection A of Section 38-3-1 NMSA (1978) does not affect the requirement of Subsection E that "suits for trespass on land shall be brought ... in the county where the land or any portion thereof is situate." [Underlining added]

The word "shall," when used in a statute, is mandatory. Gandy v. Walmart Stores, Inc., 117 N.M. 441, 872 P.2d 859 (1974); Montano v. Los Alamos County, 122 N.M. 454, 926 P.2d 307 (Ct. App. 1996). Thus, Plaintiffs were and are required to file this lawsuit in San Juan County pursuant to both Subsection D and Subsection E of Section 38-3-1 NMSA (1978).

B. PLAINTIFFS' POSITION CONCERNING VENUE IS INCORRECT BOTH AS A MATTER OF FACT AND AS A MATTER OF LAW:

Plaintiffs assert, however, that "venue is proper in Santa Fe County pursuant to NMSA (1978), §38-3-1(F) because the Defendants' statutory agent for service of process resides in Santa Fe County, New Mexico." [Complaint, ¶5]

Section 38-3-1(F) provides, in pertinent part:

> "Suits may be brought against transient persons or non-residents in any county of the state, except that suits against foreign corporations admitted to do business in which designate and maintain a statutory agent in the state upon whom service of process may be had shall only be brought in the county where the plaintiff, or any one of them in case there is more than one, resides or in the county where the contract suit was made or is to be performed or where the cause of action originated or indebtedness suit was incurred or in the county where the statutory agent designated by the foreign corporation resides." [Underlining added]

Plaintiffs apparently intend to argue that the provision concerning "where the statutory agent designated by the foreign corporation resides" permits suit to be filed in Santa Fe County. If this is

Plaintiffs' position, it is both legally and factually incorrect. First, because Subsections D and E are specific in that they apply only to claims involving interests in land and claims for trespass, while Subsection F is general, applicable to any type of claim in any lawsuit, the more specific statutory provisions must be given effect. Second, if the venue statute can be considered ambiguous because one subsection provides that a suit "shall" be brought in one county only, while another subsection could be read to provide that the same suit "may" or "shall" be brought in another county, the court must construe it in accordance with the intention of the legislature. That is plainly to have lawsuits involving interests in real property and claims for trespass to real property brought where the land is situated, not where a statutory agent allegedly resides, and the New Mexico Supreme Court has so held with respect to the very question presented. Third, even if Subsections D and E of the venue statute did not exist, venue would not be proper in Santa Fe County on the ground that Defendants' statutory agent "resides" in Santa Fe County, because, both as a matter of fact and as a matter of law, Defendants' statutory agent does not reside in Santa Fe County .

(1) Because Subsections D and E are specific, while Subsection F is general, Subsections D and E must be given effect:

Subsection F is a general provision, concerning any claim or cause of action in any lawsuit, while Subsections D and E, concerning suits involving lands or any interest in lands and suits for trespass on land, are specific and mandatory (both use the word "shall").

When one statutory provision is specific and another is general, the specific statute controls. State v. Mechem, 58 N.M. 495, 273 P.2d 361 (1954). The more specific statute must be given effect. Lopez v. Barreras, 77 N.M. 52, 419 P.2d 251 (1966); Cromer v. J.W. Jones Construction Co., 79 N.M. 179, 441 P.2d 219 (Ct. App. 1968). Consequently, pursuant to Subsections D and E, venue is proper only in San Juan County.

(2) If the statute could be considered ambiguous, the Court must give effect to legislative intent, which is plainly that lawsuits affecting real property be brought in the county where the land is situate:

If the statute can be considered ambiguous and therefore subject to construction, the court must construe it in a manner intended to ascertain and give effect to the intention of the legislature. Baca v. de Baca, 73 N.M. 387, 388 P.2d 392 (1964). Our venue statute, and case law construing it, shows that the legislature plainly intended that lawsuits affecting real property or interests in real property, or involving claims for trespass to real property, must be brought in the county where the land is situate. E.g., §38-3-1(D) and (E) NMSA (1978); Jemez Land Company, supra; Heath v. Gray, supra.

The New Mexico Supreme Court has considered this very question with respect to foreign corporations, such as Defendants, and their statutory agents in the context of New Mexico's venue statute. The Supreme Court held that Section 38-3-1(F) comes into play only if no other mandatory venue provision of Section 38-3-1 is applicable:

> "In causes of action against foreign corporations in which no other mandatory rule applies, the proper venue rule is NMSA 1978 §38-3-1(F)." [Underlining added.]

Team Bank, 118 N.M. at 147-149.

Thus, because the mandatory provisions of Subsections D and E of Section 38-3-1 are applicable to this case, the only proper venue of this action is in San Juan County.

(3) Defendants' statutory agents do not reside in Santa Fe County, both as a matter of fact and as a matter of law, so the clause of Subsection F concerning statutory agents is not applicable in any event:

Even if Subsection D and E of §38-3-1 did not exist, the provision of Subsection F referring to "the county where the statutory agent designated by such foreign corporation resides" does not permit suit in Santa Fe County in this case. The statutory agent for both Defendants, CT Corporation System,

does not reside in Santa Fe County. [Complaint, ¶¶3 and 4; Nicol Aff.] As described in the Affidavit of Kenneth Uva, filed herewith, CT Corporation System is a Delaware corporation with its principal place of business in New York City, New York. That CT Corporation System has agents (i.e., clerical employees) located in Santa Fe County does not mean that CT Corporation Systems itself resides in Santa Fe County. None of its directors reside in Santa Fe County, and none of its decision making authority resides in Santa Fe County. Santa Fe County is not the residence of CT Corporation System. In Wray v. Superior Court, 82 Ariz. 79, 83-84, 308 P.2d 701 (1957), the Supreme Court of Arizona considered plaintiff's contention that a "corporation is a resident of any county in which it has an agent ..." 821 P.2d at 724. The Supreme Court of Arizona simply stated:

> "We fail to perceive how we can say that under that statute a corporation is a resident of any county in which it has an agent."

Id.

Additionally, as a matter of law in New Mexico, a foreign corporation, such as CT Corporation System, is a nonresident and has no legal residence anywhere within the state for purposes of the venue statute. Aetna Finance Co. v. Gutierrez, 96 N.M. 538, 540-541, 632 P.2d 1176 (1981). In Aetna Finance, Aetna was a Delaware corporation licensed to do business in New Mexico. Id. at 540. Aetna sought to replevy property located in Santa Fe County based on a contract that was negotiated in Aetna's Santa Fe office. Aetna filed suit in Bernalillo County claiming that its Bernalillo office was its "principal place of business in this state" and, therefore, its established residence for purposes of venue. Id. The New Mexico Supreme Court found that venue was improper in Bernalillo County because the statute placed foreign corporations in the "class of persons defined as 'transient persons' and 'nonresidents'" who by definition have no legal residence within the state. Id. The Supreme Court noted: "As a general rule, a corporation is considered a resident only of its state of incorporation, and

cannot be a resident of any other state." 96 N.M. at 540. The Supreme Court concluded:

> We hold that, under the plain and unambiguous language of §38-3-1, foreign corporations are considered nonresidents of this state for the purpose of venue.

96 N.M. at 541.

Like the plaintiff in Aetna Finance, CT Corporation System, Defendants' statutory agent, is a foreign corporation that, by definition, cannot reside within the State of New Mexico. It does have an office in Santa Fe, staffed only by employees with clerical or ministerial functions. CT Corporation System does not reside in Santa Fe County -- it only has ministerial employees located there. CT Corporation System resides where it is incorporated -- Delaware. Thus, both as a matter of fact and as a matter of law, Defendants' statutory agent does not reside in Santa Fe County and Subsection F of the venue statute is of no assistance to Plaintiffs.

CONCLUSION

For the foregoing reasons, Plaintiffs' Complaint must be dismissed.

MILLER, STRATVERT & TORGERSON, P.A.

By J. Scott Hall

J. SCOTT HALL
P. O. Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

MILLER, STRATVERT & TORGERSON, P.A.

By J. Scott Hall for

ALAN KONRAD
MARTE D. LIGHTSTONE
Attorneys for Defendants
P.O. Box 25687
Albuquerque, New Mexico 87125
(505) 842-1950

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to the following counsel of record this 25 day of June 1998:

J.E. Gallegos
Michael J. Condon
460 St. Michael's Drive, Building 300
Santa Fe, New Mexico 87505
Attorneys for Plaintiffs

J. Scott Hall

J. SCOTT HALL, ESQ.

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FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

WHITING PETROLEUM CORPORATION, a corporation, and MARALEX RESOURCES, INC., a corporation

Plaintiffs,

vs. No. D-0101-CV-980129S

PENDRAGON ENERGY PARTNERS, INC., a corporation, and J. K. EDWARDS ASSOCIATES, INC., a corporation

Defendants.

AFFIDAVIT

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

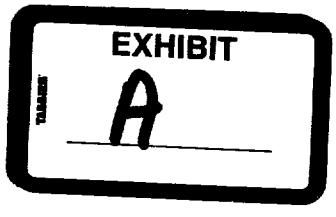
ALAN B. NICOL, being first duly sworn, states:

1. I am the President of Pendragon Energy Partners, Inc. (hereinafter "Pendragon"). Pendragon is incorporated in Colorado, and its principal place of business is in Denver, Colorado. I have personal knowledge of the facts as set forth in this Affidavit.

2. Pendragon is registered with the New Mexico State Corporation Commission and is authorized by the State to do business in New Mexico.

3. Defendant J. K. Edwards Associates, Inc. (hereinafter "Edwards") is incorporated in Colorado, and its principal place of business is in Denver, Colorado.

4. Pendragon does not dispute the allegation contained in the Complaint that Plaintiff Whiting Petroleum Corporation (hereinafter "Whiting") is a Delaware corporation with its principal place of business in Denver, Colorado. Pendragon also



does not dispute the allegation of the Complaint that Plaintiff Maralex Resources, Inc. (hereinafter "Maralex") is a Colorado corporation with its principal place of business in Ignacio, Colorado.

5. All of the wells and real property identified in the Complaint filed herein are located in San Juan County, New Mexico.

6. The claims asserted by the Plaintiffs in this lawsuit all arose in San Juan County, New Mexico.

7. The Plaintiffs allege, incorrectly, that Pendragon Energy Partners, Inc. owns the oil and gas leasehold working interests in the lands that are the subject of their lawsuit. (See Complaint, Para. 3). In fact, those working interests are owned by a separate entity, Pendragon Resources, L.P., a Delaware limited partnership.

8. None of the Plaintiffs and none of the Defendants in this lawsuit reside in Santa Fe County, N.M. The real property which is involved in this lawsuit is in San Juan County, N. M., and the causes of action alleged by Plaintiffs all arose in San Juan County. Both Defendants have a statutory agent for service of process, which is CT Corporation System. I understand that it has a small office in Santa Fe, but I also understand that CT Corporation System is not a New Mexico corporation and that its principal place of business is not in New Mexico, but is in New York City, New York. Consequently, absolutely nothing about the claims in this lawsuit or the parties to this lawsuit is in any way related to Santa Fe County.

9. The New Mexico Oil Conservation Division (hereinafter "OCD") has been extensively involved in the very issues presented by this lawsuit.

10. On March 27, 1998, representatives of Plaintiffs, Defendants, and others met with OCD personnel in Aztec, New Mexico. At this meeting, the results of extensive

studies and investigations concerning the very issues described in the Complaint were discussed. Bruce Williams, a petroleum engineer employed by Whiting, told everyone at the meeting that at that time Whiting was hard pressed to show any detrimental effect or harm to its wells (those identified in the Complaint herein), based upon the performance of their wells.

11. For the prior year and a half, as a result of an agreement among Whiting, Maralex, Pendragon, Edwards, and others, the OCD was extensively involved in both informally and formally trying to resolve the factual issues which are now identified in the Complaint in this lawsuit. In reliance upon the agreement among the parties, both Pendragon and Edwards took many actions which they were not legally obligated to take, which necessitated the expenditure of both time and money. A great deal of information was voluntarily provided to the OCD, and there were numerous meetings among the parties and the OCD. The purpose of these procedures was to enable the OCD, the agency with extensive technical expertise with respect to the questions raised by the Complaint, to lend its assistance in determining whether there really was any problem with respect to commingling of gas from the different formations identified in the Complaint and, to facilitate resolution if the data showed that there were such commingling.

12. Whiting and Maralex attempted to abruptly end this process almost immediately after Whiting's petroleum engineer acknowledged that the evidence did not show any interference or harm to Whiting's wells identified in the Complaint. Whiting and Maralex had filed an initial application with the OCD requesting that these issues be resolved by the OCD, and then had filed an amended application with the OCD asking that the OCD resolve these issues. Once Whiting acknowledged that the well

performance evidence did not support the position it's taking in this lawsuit. Whiting and Maralex immediately tried to withdraw their application from the OCD, retained the Gallegos Law Firm (they had been represented by a different attorney up to this point), and filed a lawsuit in Santa Fe. It now appears that the purpose of Whiting and Maralex in its recent procedural moves is to avoid having the OCD, the agency with technical expertise and extensive background concerning the issues raised in the Complaint, make the factual determinations that the parties have been working with the OCD for over a year and a half to resolve. Instead, Plaintiffs now want a jury which has none of the technical expertise or extensive background of the OCD to make determinations which Whiting and Maralex hope will be contrary to the technical evidence developed during the past year and a half.

13. Had Pendragon known that Whiting and Maralex would unilaterally and suddenly try to stop the process before the OCD when the evidence proved to be unfavorable to their position, and would suddenly march to court and try to remove the question from the OCD, Pendragon would not have expended its time and resources in the long process that has been ongoing before the OCD.

ALAN B. NICOL

SUBSCRIBED AND SWORN BEFORE me this 19th day of June, 1998, by Alan B. Nicol.

NOTARY PUBLIC

My Commission Expires:

8/21/2000

PEGGY S. SUTHERLAND NOTARY PUBLIC STATE OF COLORADO

\AFFIDAVIT.618DOC

STATE OF NEW MEXICO)
) ss.
COUNTY OF SAN JUAN)

AFFIDAVIT OF ALAN P. EMMENDORFER

Alan P. Emmendorfer being first duly sworn states:

1. I am the age of majority and am otherwise competent to testify to the matters set forth herein. I also have personal knowledge of facts set forth in this Affidavit.
2. I am the geologist for Coleman Oil & Gas, Inc. with headquarters in Farmington, New Mexico. Coleman owns interest in numerous oil and gas wells in the San Juan Basin of New Mexico. Among the wells owned by Coleman are the Stacey No. 1 located in the SE ¼ Section 6, T26N-R12W and the Leslie No. 1 located in the NE ¼ of Section 7, T26N-R12W NMPM in San Juan County. While Coleman owns the majority interest in these, they are operated by Thompson Engineering & Production Corporation.
3. The wells referenced above are located on separate Navajo Allotted leases and are completed in and produce from the WAW Fruitland Sand-Pictured Cliffs Gas Pool. These wells were included among the wells that were the subject of the Application filed by Whiting Petroleum Corporation and Maralex Resources before the New Mexico Oil Conservation Division in

EXHIBIT
B

Case No. 11921, where Whiting and Maralex contended that a number of Pictured Cliffs wells were interfering with wells completed in and producing from the Fruitland Coal Formation. Coleman disagreed with and disputed those allegations.

4. I participated in a number of public meetings with the New Mexico Oil Conservation Division and Division staff at the Division's district office in Aztec. The purpose of these meetings was to try and determine if in fact the Pictured Cliffs wells were interfering with the Fruitland Coal gas wells. And if so, if some sort of agreement could be reached among the affected parties and avoid an official hearing. These meetings were attended by representatives from Whiting, Maralex, Pendragon Energy Partners, Coleman Oil & Gas, Thompson Engineering, Merrion Oil & Gas, and the Bureau of Land Management for the Bureau of Indian Affairs. At the meeting on March 27, 1998, Bruce Williams, a petroleum engineer representing Whiting Petroleum Corporation, made a statement to the effect that he was unable to demonstrate or quantify any detrimental effects to the coal wells based on the wells' production performance. Mr. Williams repeated this statement or words to the same affect more than once at the meeting.

FURTHER AFFIANT SAYETH NOT.

Alan P. Emmendorfer

STATE OF New Mexico)
) ss.
County of San Juan)

Subscribed and sworn to before me on this 22nd day of June, 1998, by Alan P. Emmendorfer

Notary Public

My commission expires:

July 31, 2001

AFFIDAVIT

STATE OF NEW YORK)
) ss.
COUNTY OF)

KENNETH J. UVA, being first duly sworn, states:

1. I am a Vice-President of CT Corporation System and am competent to make this Affidavit.

2. CT Corporation System serves as the agent for service of process for foreign corporations in all fifty states of the United States. In connection with this activity, CT Corporation System maintains at least one office in each of the fifty states.

3. CT Corporation System is incorporated in Delaware, and its principal place of business is in New York City, New York.

4. No CT Corporation System agent or employee with decision making authority is located in New Mexico. Neither the Board of Directors nor any member thereof is located in New Mexico. The only employees of CT Corporation System in New Mexico are employees with clerical and ministerial functions related to receiving service of process on CT Corporation System and the execution of documents in connection therewith.

Kenneth J. Uva
KENNETH J. UVA

SUBSCRIBED AND SWORN to before me this 11th day of June, 1998, by Kenneth J. Uva.

Theresa Alfieri
NOTARY PUBLIC

My Commission Expires:

6304\13384\uva.afd

THERESA ALFIERI
NOTARY PUBLIC, STATE OF NEW YORK
NO. 4703698
QUALIFIED IN KINGS COUNTY
COMMISSION EXPIRES DEC. 31, 1999

EXHIBIT
C

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

WHITING PETROLEUM CORPORATION, a corporation, and MARALEX RESOURCES, INC., a corporation,

Plaintiffs,

vs. No. D-0101-CV-9801295

PENDRAGON ENERGY PARTNERS, INC., a corporation, and J.K. EDWARDS ASSOCIATES, INC., a corporation,

Defendants.

DEFENDANTS' MEMORANDUM IN RESPONSE TO PLAINTIFFS' APPLICATION FOR A PRELIMINARY INJUNCTION AND REQUEST FOR EXPEDITED DECISION PURSUANT TO LR 1-306.I

Plaintiffs' "Application for a Preliminary Injunction" is remarkable for what it does not contain. Plaintiffs generally claim that there is "commingling" or mixing of gas from two gas pools located in San Juan County, New Mexico, and that the alleged commingling was caused by Defendants' operations on gas wells which penetrate the lower of the two pools or formations, one of which is on top of the other (the Fruitland formation, from which Plaintiffs are entitled to produce gas, and the lower Pictured Cliffs formation, from which Defendants and others are entitled to produce gas).[1] Plaintiffs fail to inform this Court of many important facts concerning the issues raised by their Complaint.

[1] Plaintiffs' Complaint also contains the allegation that Defendants wellbores are perforated into the formation from which Plaintiffs, but not Defendants, are entitled to produce gas. However, there is no evidentiary support for this speculation, and Defendants had wireline tests performed at the beginning of June which unequivocally show that there are no perforations through Defendants' wellbores into the formations from which Plaintiffs, but not Defendants, are entitled to produce gas.

First, Plaintiffs state in their Application for Preliminary Injunction that in January, 1998, Plaintiffs filed an Application with the New Mexico Oil Conservation Division ["NMOCD"] initiating an administrative action concerning the matters raised in the Complaint in this lawsuit, and that the last meeting between the parties and the NMOCD was in March, 1998. [Application, pp. 4-5]; In fact, the parties to this lawsuit and others with interests in the same gas pools began discussions about whether there could be commingling of gas from the two pools back in January, 1996.[2] The parties to this lawsuit, other interested parties, and involved NMOCD personnel met at the NMOCD Aztec District Office on March 27, 1998. Significantly, Bruce Williams, a petroleum engineer employed by Plaintiff Whiting Petroleum Corporation ["Whiting"] acknowledged to everyone at the meeting that Whiting could not show any detrimental effect or harm to its wells (those identified in the Complaint in this case).

The March 27, 1998, meeting was the culmination of a year and a half of extensive studies and investigations made by the parties to this lawsuit and others pursuant to an agreement that the parties would present these matters to the NMOCD for resolution. Both Defendants Pendragon Energy Partners, Inc. ["Pendragon"] and J.K. Edwards Associates, Inc. ["Edwards"] expended considerable time and money, which they were not legally obligated to expend, to participate in this process in reliance upon the agreement among the parties that the problem would be worked out with and by the NMOCD. The parties included the Plaintiffs.

The NMOCD is the agency with extensive technical expertise with respect to the fact issues raised by the Complaint concerning whether there is any commingling of gas, etc. Not only were the "informal" procedures involving the NMOCD conducted as described above for a lengthy period of

[2]The factual background of this lawsuit is described in the Affidavits of Alan B. Nicol and Alan Emmendorfer, Exhibits A and B filed herewith.

time, but in January, 1998, a formal Application was filed by the Plaintiffs in this lawsuit for formal resolution by the NMOCD of the very issues now raised by Plaintiffs in this lawsuit. Plaintiffs then filed an Amended Application with the NMOCD asking for resolution of the same issues, but tacitly acknowledging in their Amended Application that their own operations on their own wells may have caused commingling if any commingling existed.

Immediately following the March 27, 1998, meeting in the NMOCD Aztec District Office, at which Whiting's petroleum engineer acknowledged that there was no real evidence of harm to Plaintiffs' wells, Plaintiffs attempted to withdraw their Applications pending before the NMOCD and filed this lawsuit in Santa Fe County. Significantly, in their district court suit, the Plaintiffs changed their position by eliminating the allegations they had made before the NMOCD that the Stacey No. 1 Pictured Cliffs well in Section 7 and the Leslie No. 1 Pictured Cliffs well in Section 6 were interfering with the Plaintiffs' Fruitland coal gas wells in those sections.

Equally significant is the fact that the issues precipitated by the Plaintiffs' Amended Application in NMOCD Case No. 11921 remain pending before the Oil Conservation Division. On June 23, 1998 the NMOCD hearing examiner denied the Motion Of Whiting Petroleum Corporation and Maralex Resources, Inc To Dismiss Application For Lack of Jurisdiction in NMOCD Case No. 11996; **(Application of Pendragon Energy Partners, Inc. and J.K. Edwards Associates, Inc. To Confirm Production From The Appropriate Common Source Of Supply, San Juan County, New Mexico.)** (See **Application**, Exhibit C, attached.) Following oral arguments on the Plaintiffs' motion in that forum, the hearing examiner ruled the NMOCD would retain jurisdiction over these issues and that it was inappropriate for the Plaintiffs to attempt to disavow their earlier invocation of NMOCD jurisdiction. Plaintiffs are asking this Court for a preliminary injunction only because they know that the technically expert agency which has

studied this matter for a year and a half will find against them.[3]

Not only do Plaintiffs not inform this Court that this lawsuit was filed only because it became apparent that Plaintiffs would lose in the proceedings before the agency with technical expertise on these very matters, but Plaintiffs do not fairly inform the Court that, if there is in fact a problem with commingling of gas in the two pools, Plaintiffs' own operations on Plaintiffs' wells could have caused it.

Indeed, they fail to disclose to the Court that in their hurry-up effort to drill and complete their wells in order to beat the expiration of certain federal tax credits applicable to gas produced from coal, the Plaintiffs engaged in an aggressive, high-pressure fracture stimulation program of their own. As a result, it is likely the Plaintiffs allowed their fractures to escape out of the coal formation.

Additionally, Plaintiffs do not inform the Court of the identity of the oil and gas leasehold working interest owner on the lands that are the subject of this lawsuit. Plaintiffs allege that Defendant Pendragon Energy Partners, Inc., which is a Colorado corporation with its principle place of business in Denver, is the owner. In fact, the record title working interest owner is Pendragon Resources, L.P., a Delaware Limited Partnership. Plainly, an injunction cannot be issued in this case because the owner of the working interest in the very wells involved in this case has not been joined in the lawsuit. A preliminary injunction cannot bind a non-party to the lawsuit. *Allen v. McClellan*, 77 N.M. 801, 427 P.2d 677 (1967), overruled on other grounds, *New Mexico Livestock Board v. Dose*, 94 N.M. 68, 607 P.2d 606 (1980).

Plaintiffs' Application does not even list the elements which must be proved by a Plaintiff to obtain a preliminary injunction, and, based upon the evidence in this case, it is plain that Plaintiffs

[3] As is described in Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and Brief in Support thereof, the issues of whether there is any commingling, and if so, its cause, are still before the NMOCD.

cannot satisfy those elements. To obtain a preliminary injunction, Plaintiffs must show that (1) there is a substantial likelihood that Plaintiffs will prevail on the merits; (2) that Plaintiffs will suffer irreparable injury unless the injunction is granted; (3) that threatened injury outweighs any damage the injunction might cause to the Defendants; and (4) that issuance of the injunction will not be adverse to the public interest. *Key v. Chrysler Motors Corporation*, 119 N.M. 267, 274, 889 P.2d 875, 882 (Ct.App. 1995).

Finally, even if Plaintiffs could make a showing that it could fulfill the four required elements which are conditions precedent to the issuance of any injunctive relief, in this particular case, the Application for Injunctive Relief should be denied because, based upon the allegations of the Complaint, preliminary injunctive relief issued by the Court would violate Defendants' right to a trial by jury, and, additionally, would drastically change, not preserve, the status quo.

I. PLAINTIFFS CANNOT SATISFY THE FOUR ELEMENTS REQUIRED TO OBTAIN A PRELIMINARY INJUNCTION:

A. Plaintiff will not Succeed on the Merits:

(1) Defendants' Motions to Dismiss will be Granted:

Defendants filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction and a Motion to Dismiss for Improper Venue. Because this case must be dismissed by this Court for either lack of subject matter jurisdiction or for improper venue, Plaintiffs cannot succeed on the merits in this lawsuit.

(2) The Evidence does not Support Plaintiff's Position:

As was apparent at the meeting at the NMOCD Aztec District Office on March 27, 1998, following a year and a half of investigation and testing, the evidence does not support a conclusion that there is commingling of gas between the Fruitland formation and the Pictured Cliffs formation. In that process, the parties gathered and analyzed data over an identified geographic area (larger than that identified in Plaintiffs' suit) including such matters as historic well production rates and decline curves,

produced water test analyses, gas btu content analyses, "bottom-hole" reservoir pressures and well-head surface pressures, among other things. As a result of that review, it became apparent to everyone involved that the evidence establishing no communication between formations was much more compelling and that the data simply did not support the Plaintiffs claims.

Additionally, even if there is some commingling, there are problems with Plaintiffs' case. First, Plaintiffs' operations may have caused the commingling. As they acknowledge in their own Complaint, it is possible that the Plaintiffs' own aggressive, high-volume, high-rate and high-pressure fracture treatment of their Fruitland coal wells resulted in "run-away" vertical fractures extending outside of the coal formation. Accordingly, the first element that a plaintiff must prove to obtain a preliminary injunction cannot be satisfied by Plaintiffs in this case -- a showing of likelihood of success on the merits.

If, as a further result of their own "frac jobs" coalbed methane was allowed to escape out of zone, then the Plaintiffs are in direct violation of Section 70-2-12 B(2) of the Oil and Gas Act and NMOCD Rule 19 NMAC §15.E 303.A, both of which require the segregation of production from separate zones and strictly prohibit the escape of gas out of one strata into another. (See Exhibit D.) Thus, it should be up to the NMOCD to seek an injunction, not the Plaintiffs. (See Section 70-2-28). (See Complaint, Para. 45)

B. Plaintiffs will not Suffer Irreparable Injury If the Injunction is Not Granted:

The gas that is produced by Plaintiffs' wells is immediately sold for money. Generally, injunctive relief may be issued in a case involving real property with a unique view, prehistoric ruins, trees that cannot be instantly regrown, etc. In such cases, the "uniqueness" of the property involved makes it virtually impossible to place a monetary value on what makes the property unique, and accordingly, money damages are deemed to be inadequate. This lawsuit is about nothing but money, and the fact that it is generated by what might be technically defined as an interest in real estate a quarter of a mile below the surface of the earth is of no consequence in determining whether to issue a preliminary injunction. Even though real estate is involved in a case, injunctive relief normally will not be granted if there is an adequate remedy at law, such as money damages. *Pacheco v. Martinez,* 97 N.M. 37, 636 P.2d 308 (Ct.App. 1981).

Plaintiffs argue that this case involves "a continuous trespass on minerals belonging to Plaintiffs, subject to relief by injunction." But the two cases cited by Plaintiffs, *Winrock Enterprises v. House of Fabrics,* 91 N.M. 661, 579 P.2d 787 (1978) and *Kennedy v. Bond,* 80 N.M. 734, 460 P.2d 809, 813 (1969) are of no assistance to Plaintiffs. They both involve situations in which harm to the Plaintiff would be of a continuous nature which could only be remedied by a multiplicity of lawsuits filed one after another for as long as the defendants' conduct continued. But that is not the situation here. In the proceedings Plaintiffs initiated with the NMOCD, in their Amended Application, Plaintiffs requested, as an alternative remedy from the NMOCD, that the NMOCD "approve downhole commingling of Fruitland Coal and Pictured Cliffs/Fruitland Sand Production. . .and allocating production from each pool. . .." Similarly, in the Complaint filed in this case, in the Fifth Claim for Relief, Plaintiffs ask this Court to order "an equitable allocation and division of the parties' future entitlement to shares of the combined gas stream produced from Defendants' Pictured Cliffs wells."

Thus, only one lawsuit (or, more appropriately, only one proceeding before the NMOCD)is necessary in this case.

Since there is no necessity of Plaintiffs filing a multiplicity of lawsuits to obtain an adequate remedy, and since nothing is involved in this case but money, as a matter of law, there is no irreparable injury to Plaintiffs. Where money damages are an adequate remedy, as they are here, Plaintiffs are not entitled to a preliminary injunction. *Ogden River Water Users Association v. Weber Basin Water Conservancy*, 238 F.2d 936, (10th Cir. 1956); Wright, Miller & Kane, Federal Practice and Procedure, § 2944.

C. The "Threatened Injury" to Plaintiffs does not Outweigh the Threatened Injury to Defendants if a Preliminary Injunction is Issued:

Injunctions are harsh and drastic remedies that should be issued only in extreme cases. *Hill v. Community of Damien of Molokai,* 121 N.M. 353, 911 P.2d 861 (1996). The threatened injury to a plaintiff must greatly outweigh any damage the injunction might cause the Defendant. *Key v. Chrysler Motors Corp.*, supra. Just the opposite is the case here.

Plaintiffs claim that there is commingling of gas between two formations. Plaintiffs concede that Defendants' wells appropriately produce gas from the Pictured Cliffs formation, and that Defendants are entitled to produce such gas. Plaintiffs only claim that perhaps some of the gas produced by Defendants' wells has migrated downward from the Fruitland formation to the Pictured Cliffs formation, and is being produced by Defendants' wells along with gas from the Pictured Cliffs formation. Shutting in Defendants' wells would deprive Defendants of the absolute right that they possess to produce gas from the Pictured Cliffs formation. Moreover, as the testimony will demonstrate at a hearing on a Motion for Preliminary Injunctions, shutting in a well not only involves extensive costs, but it can ultimately reduce the ability of the well to produce from the formation.

Thus, if Plaintiffs ultimately lose this case on the merits, as Defendants believe is inevitable, requiring Plaintiffs to pay the cost of re-opening Defendants' wells and paying Defendants for lost revenues, etc., which took place during the duration of the lawsuit, would not be an adequate remedy. There may be changes in the formation during the time wells are shut in which can permanently affect the ability of a well to produce after it has been shut in. Defendants would then face exactly the same type of harm -- loss of the ability to produce gas from the formation from which they are entitled to produce -- as Plaintiffs claim they suffer.

Plainly, the only feasible method of even approaching maintenance of the "status quo" would be to require both Plaintiffs and Defendants to shut in their wells, although even if that is done, because of changes to a formation which can take place as a result of geological conditions, adverse consequences could still be sustained by Defendants.

Finally, if there is no commingling, which is the only conclusion that can be reached based upon the evidence to date, a preliminary injunction ordering Defendants to shut in their wells would violate Defendants' constitutional right to their property -- gas in the Pictured Cliffs formation.

The potential injury to the Plaintiffs by continued operation of Defendants' wells clearly does not outweigh any damage that an injunction ordering Defendants to shut the wells in would cause the Defendants. Such an injunction ordering Defendants to completely shut in their wells would drastically change, not preserve, the status quo, and would cause substantially more harm to Defendants than the harm to Plaintiffs which would exist even if Defendants' wells are producing Pictured Cliffs formation gas with only a portion of the gas being produced originating in Fruitland formation.

D. Issuing the Preliminary Injunction Sought by Plaintiffs is Contrary to the Public Interests:

In *Kennedy v. Yates Petroleum Corporation,* 104 N.M. 596, 725 P.2d 572 (1986), the Supreme Court noted that one gas producer's production generated "substantial revenues for both

federal and state governments through royalty and tax payments, but also, more importantly, the oil and gas industry as a whole provides more than fifty percent of the total revenue of the State of New Mexico." The Supreme Court stated that "it may be said that oil and gas are the fuel that keeps our economy moving." 104 N.M. at 598. The Supreme Court noted that the single pipeline involved in that case "bears a real and substantial relation to the public use." Id. The entire opinion emphasizes "the paramount importance of efficient production and distribution of oil and gas, which are used by virtually the entire public." Id.

Shutting in producing gas wells is plainly contrary to the public interest of New Mexico. The operation of the wells provides employment; the production and sale of gas provides significant revenue to the State of New Mexico. Plaintiffs do not even attempt to argue in their application that issuance of the preliminary injunction will not be adverse to the public interest. It plainly will, and accordingly the preliminary injunction should not be issued.

II. EVEN IF PLAINTIFFS COULD MAKE A PRIMA FACIE SHOWING OF ENTITLEMENT TO A PRELIMINARY INJUNCTION BY SATISFYING THE FOUR ELEMENTS DESCRIBED ABOVE, THERE ARE TWO ADDITIONAL REASONS WHY A PRELIMINARY INJUNCTION SHOULD NOT BE ISSUED IN THIS CASE:

A. Because There is Substantial Evidence that there is no Commingling Between the Two Pools, and Other Fact Issues Exist in this Case, a Preliminary Injunction as Sought by Plaintiffs Would Violate Defendants' Right to a Trial by Jury:

If this case is not dismissed for lack of subject matter jurisdiction and/or improper venue, Defendants will file a demand for jury trial at the appropriate time. A party to a lawsuit has a constitutional right to have contested fact issues resolved by a jury. *Beacon Theaters v. Westover,* 359 U.S. 500 (1959). All of Plaintiffs' claims are based upon highly controverted fact issues -- whether there is any commingling between the two pools; if there is, the cause of such commingling; etc. This Court cannot resolve fact issues which Defendants have the constitutional right to have resolved by a

jury. The injunction sought by Plaintiffs would provide Plaintiffs with the very relief they want the Court to order if they win a trial on the merits. Under these circumstances, the issuance of a preliminary injunction would violate Defendants' constitutional rights, so no injunction should be issued. *Beacon Theaters v. Westover,* supra. As a corollary, preliminary injunctions are not appropriate when there are disputed issues of fact. *Apollo Technologies Corporation v. Centrosphere Industrial Corporation,* 805 F.Supp. 1157, 1191 (D.N.J. 1992); *Newman v. Holobean,* 319 F.Supp. 1389, 1390 (S.D.N.Y. 1970). Since New Mexico's requirements for the issuance of a preliminary injunction are virtually identical to the requirements for preliminary injunctions in federal courts, the New Mexico courts look to federal cases concerning the federal preliminary injunction rules to determine the requirements of New Mexico's rules. *LaBalbo v. Hymes,* 115 N.M. 314, 317-18, 850 P.2d 1017, 1020-21 (Ct.App. 1993). Because this case involves highly controverted facts, which must be resolved by a jury, a preliminary injunction should not be issued.

B. The Preliminary Injunction Requested by Plaintiffs would Drastically Change, not Maintain, the Status Quo:

The only legitimate purpose of preliminary injunction is to maintain the status quo existing at the time a lawsuit is filed so a plaintiff will not be irreparably injured by events which take place during a lawsuit. *SCFC ILC, Inc. v. Visa USA, Inc.*, 936 F.2d 1096 (10th Cir. 1991). The status quo at the time of the filing of this lawsuit consisted of Plaintiffs' wells producing gas and Defendants' wells producing gas. It is uncontroverted that the vast majority, if not all, of the gas produced by Defendants' wells is from the Pictured Cliffs formation - the formation from which Defendants are entitled to produce gas. Requiring Defendants to shut their wells in for the duration of this lawsuit will not preserve the status quo - it will drastically change it, affording Plaintiffs a substantial portion of the ultimate relief they request be granted them at the conclusion of this case. Under these circumstances, a preliminary injunction cannot be granted because it will not maintain the status quo, but will

drastically change it. *SCFC ILC, Inc. v. Visa USA, Inc.*, supra.

BASIS OF REQUEST FOR EXPEDITED DECISION

The substance of the Defendants' Motion to Dismiss For Improper Venue and their Motion To Dismiss for Lack of Subject Matter Jurisdiction place at issue the authority of the Court to issue a preliminary injunction in the first instance. Accordingly, these motions should be considered before any hearing on a preliminary injunction request. As we have today been advised that Plaintiffs have obtained a June 29, 1998 setting for their Application for Preliminary Injunction, and in view of the fact that a hearing on this same subject matter has been scheduled by the New Mexico Oil Conservation Division for July 9, 1998, it is appropriate for the Court to first consider the motions to dismiss on an expedited basis pursuant to LR 1-306.I.

CONCLUSION

Since Plaintiffs cannot satisfy a single one of the four elements which Plaintiffs must prove to show that a preliminary injunction should be issued, and, even if they could in this case, issuance of a preliminary injunction would deprive Defendants to their right to a trial by jury and would significantly change the status quo, Plaintiffs' Application for Preliminary Injunction should be denied.

MILLER, STRATVERT & TORGERSON, P.A.

By J. Scott Hall

J. SCOTT HALL
P. O. Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

MILLER, STRATVERT & TORGERSON, P.A.

By J. Scott Hall for

ALAN KONRAD
MARTE D. LIGHTSTONE
Attorneys for Defendants
P.O. Box 25687
Albuquerque, New Mexico 87125
(505) 842-1950

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to the following counsel of record this 25th day of June, 1998:

J.E. Gallegos
Michael J. Condon
460 St. Michael's Drive, Building 300
Santa Fe, New Mexico 87505
Attorneys for Plaintiffs

J. Scott Hall

J. SCOTT HALL, ESQ.

6304\19384\applinju.rsp (#6)

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

WHITING PETROLEUM CORPORATION, a corporation, and MARALEX RESOURCES, INC., a corporation

Plaintiffs,

vs. No. D-0101-CV-980129S

PENDRAGON ENERGY PARTNERS, INC., a corporation, and J. K. EDWARDS ASSOCIATES, INC., a corporation

Defendants.

AFFIDAVIT

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

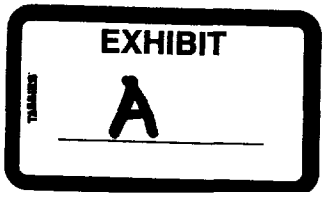
ALAN B. NICOL, being first duly sworn, states:

1. I am the President of Pendragon Energy Partners, Inc. (hereinafter "Pendragon"). Pendragon is incorporated in Colorado, and its principal place of business is in Denver, Colorado. I have personal knowledge of the facts as set forth in this Affidavit.

2. Pendragon is registered with the New Mexico State Corporation Commission and is authorized by the State to do business in New Mexico.

3. Defendant J. K. Edwards Associates, Inc. (hereinafter "Edwards") is incorporated in Colorado, and its principal place of business is in Denver, Colorado.

4. Pendragon does not dispute the allegation contained in the Complaint that Plaintiff Whiting Petroleum Corporation (hereinafter "Whiting") is a Delaware corporation with its principal place of business in Denver, Colorado. Pendragon also



does not dispute the allegation of the Complaint that Plaintiff Maralex Resources, Inc. (hereinafter "Maralex") is a Colorado corporation with its principal place of business in Ignacio, Colorado.

5. All of the wells and real property identified in the Complaint filed herein are located in San Juan County, New Mexico.

6. The claims asserted by the Plaintiffs in this lawsuit all arose in San Juan County, New Mexico.

7. The Plaintiffs allege, incorrectly, that Pendragon Energy Partners, Inc. owns the oil and gas leasehold working interests in the lands that are the subject of their lawsuit. (See Complaint, Para. 3). In fact, those working interests are owned by a separate entity, Pendragon Resources, L.P., a Delaware limited partnership.

8. None of the Plaintiffs and none of the Defendants in this lawsuit reside in Santa Fe County, N.M. The real property which is involved in this lawsuit is in San Juan County, N. M., and the causes of action alleged by Plaintiffs all arose in San Juan County. Both Defendants have a statutory agent for service of process, which is CT Corporation System. I understand that it has a small office in Santa Fe, but I also understand that CT Corporation System is not a New Mexico corporation and that its principal place of business is not in New Mexico, but is in New York City, New York. Consequently, absolutely nothing about the claims in this lawsuit or the parties to this lawsuit is in any way related to Santa Fe County.

9. The New Mexico Oil Conservation Division (hereinafter "OCD") has been extensively involved in the very issues presented by this lawsuit.

10. On March 27, 1998, representatives of Plaintiffs, Defendants, and others met with OCD personnel in Aztec, New Mexico. At this meeting, the results of extensive

studies and investigations concerning the very issues described in the Complaint were discussed. Bruce Williams, a petroleum engineer employed by Whiting, told everyone at the meeting that at that time Whiting was hard pressed to show any detrimental effect or harm to its wells (those identified in the Complaint herein), based upon the performance of their wells.

11. For the prior year and a half, as a result of an agreement among Whiting, Maralex, Pendragon, Edwards, and others, the OCD was extensively involved in both informally and formally trying to resolve the factual issues which are now identified in the Complaint in this lawsuit. In reliance upon the agreement among the parties, both Pendragon and Edwards took many actions which they were not legally obligated to take, which necessitated the expenditure of both time and money. A great deal of information was voluntarily provided to the OCD, and there were numerous meetings among the parties and the OCD. The purpose of these procedures was to enable the OCD, the agency with extensive technical expertise with respect to the questions raised by the Complaint, to lend its assistance in determining whether there really was any problem with respect to commingling of gas from the different formations identified in the Complaint and, to facilitate resolution if the data showed that there were such commingling.

12. Whiting and Maralex attempted to abruptly end this process almost immediately after Whiting's petroleum engineer acknowledged that the evidence did not show any interference or harm to Whiting's wells identified in the Complaint. Whiting and Maralex had filed an initial application with the OCD requesting that these issues be resolved by the OCD, and then had filed an amended application with the OCD asking that the OCD resolve these issues. Once Whiting acknowledged that the well

performance evidence did not support the position it's taking in this lawsuit. Whiting and Maralex immediately tried to withdraw their application from the OCD. retained the Gallegos Law Firm (they had been represented by a different attorney up to this point), and filed a lawsuit in Santa Fe. It now appears that the purpose of Whiting and Maralex in its recent procedural moves is to avoid having the OCD, the agency with technical expertise and extensive background concerning the issues raised in the Complaint, make the factual determinations that the parties have been working with the OCD for over a year and a half to resolve. Instead, Plaintiffs now want a jury which has none of the technical expertise or extensive background of the OCD to make determinations which Whiting and Maralex hope will be contrary to the technical evidence developed during the past year and a half.

13. Had Pendragon known that Whiting and Maralex would unilaterally and suddenly try to stop the process before the OCD when the evidence proved to be unfavorable to their position, and would suddenly march to court and try to remove the question from the OCD, Pendragon would not have expended its time and resources in the long process that has been ongoing before the OCD.

ALAN B. NICOL

SUBSCRIBED AND SWORN BEFORE me this 19th day of June, 1998, by Alan B. Nicol.

NOTARY PUBLIC

PEGGY S. SUTHERLAND NOTARY PUBLIC STATE OF COLORADO

My Commission Expires:

8/21/2000

:\AFFIDAVIT.618DOC

STATE OF NEW MEXICO)
) ss.
COUNTY OF SAN JUAN)

AFFIDAVIT OF ALAN P. EMMENDORFER

Alan P. Emmendorfer being first duly sworn states:

1. I am the age of majority and am otherwise competent to testify to the matters set forth herein. I also have personal knowledge of facts set forth in this Affidavit.
2. I am the geologist for Coleman Oil & Gas, Inc. with headquarters in Farmington, New Mexico. Coleman owns interest in numerous oil and gas wells in the San Juan Basin of New Mexico. Among the wells owned by Coleman are the Stacey No. 1 located in the SE ¼ Section 6, T26N-R12W and the Leslie No. 1 located in the NE ¼ of Section 7, T26N-R12W NMPM in San Juan County. While Coleman owns the majority interest in these, they are operated by Thompson Engineering & Production Corporation.
3. The wells referenced above are located on separate Navajo Allotted leases and are completed in and produce from the WAW Fruitland Sand-Pictured Cliffs Gas Pool. These wells were included among the wells that were the subject of the Application filed by Whiting Petroleum Corporation and Maralex Resources before the New Mexico Oil Conservation Division in

EXHIBIT
B

Case No. 11921, where Whiting and Maralex contended that a number of Pictured Cliffs wells were interfering with wells completed in and producing from the Fruitland Coal Formation. Coleman disagreed with and disputed those allegations.

4. I participated in a number of public meetings with the New Mexico Oil Conservation Division and Division staff at the Division's district office in Aztec. The purpose of these meetings was to try and determine if in fact the Pictured Cliffs wells were interfering with the Fruitland Coal gas wells. And if so, if some sort of agreement could be reached among the affected parties and avoid an official hearing. These meetings were attended by representatives from Whiting, Maralex, Pendragon Energy Partners, Coleman Oil & Gas, Thompson Engineering, Merrion Oil & Gas, and the Bureau of Land Management for the Bureau of Indian Affairs. At the meeting on March 27, 1998, Bruce Williams, a petroleum engineer representing Whiting Petroleum Corporation, made a statement to the effect that he was unable to demonstrate or quantify any detrimental effects to the coal wells based on the wells' production performance. Mr. Williams repeated this statement or words to the same affect more than once at the meeting.

FURTHER AFFIANT SAYETH NOT.

Alan P. Emmendorfer

STATE OF New Mexico)
) ss.
County of San Juan)

Subscribed and sworn to before me on this 22nd day of June, 1998, by Alan P. Emmendorfer

Notary Public

My commission expires:

July 31, 2001

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

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

CASE NO. 11996

APPLICATION

Pendragon Energy Partners, Inc. ("Pendragon") and J.K. Edwards Associates, Inc. ("J. K. Edwards") through their counsel, hereby make application to the New Mexico Oil Conservation Division pursuant to Rule 3 of the Special Rules and Regulations for the Basin-Fruitland Coal Gas Pool, Order No. R-8768-A and 19 NMAC 15.N.303.A for an order confirming that certain wells completed within the vertical limits of the WAW Fruitland-Pictured Cliffs Pool and the Basin-Fruitland Coal Gas Pool, respectively, are producing from the appropriate common source of supply. In support of their application, Pendragon and J.K. Edwards state:

1. Pendragon operates the following wells completed in and producing from the WAW Fruitland-Pictured Cliffs Pool in San Juan County, New Mexico:

Well Name	Location
Chaco No. 1	NW 1/4, Section 18, T26N, R12W, N.M.P.M.
Chaco No. 2R	SW 1/4, Section 7, T26N, R12W, N.M.P.M.
Chaco No. 4	NW 1/4, Ssection 7, T26N, R12W, N.M.P.M.
Chaco No. 5	SE 1/4, Section 1, T26N, R13W, N.M.P.M.
Chaco Ltd. No. 1J	SW 1/4 Section 1, T26N, R13W, N.M.P.M.
Chaco Ltd. No. 2J	NE 1/4, Section 1, T26N, R13W, N.M.P.M.

In addition to being the designated Operator of the referenced wells, Pendragon, along

with J.K. Edwards, owns working interests in the acreage dedicated to the subject wells.

2. Whiting Petroleum Corporation ("Whiting") is the Operator of the following wells completed within the Basin-Fruitland Coal Gas Pool:

Well Name	Location
Gallegos Federal 26-12-6 No. 2	W 1/2, Section 6, T12N, R12W, N.M.P.M.
Gallegos Federal 26-12-7 No. 1	W 1/2, Section 7, T26N, R12W, N.M.P.M.
Gallegos Federal 26-13-1 No. 1	E 1/2, Section 1, T26N, R13 W, N.M.P.M.
Gallegos Federal 26-13-1, No. 2	W 1/2, Section 1, T26N, R13W, N.M.P.M.
Gallegos Federal 26-13-12 No. 1	N 1/2 Section 12, T26N, R13W, N.M.P.M.

In addition to being the designated Operator of the referenced coal gas wells, Whiting, along with Maralex Resources, Inc., (Maralex) owns working interests in the acreage dedicated to the coal gas wells.

3. By Order No. R-8768 and R-8768-A, the Division created a new pool in all or parts of San Juan, Rio Arriba, McKinley and Sandoval Counties, New Mexico classified as a gas pool for production from the Fruitland Coal seams and designated the pool as the Basin-Fruitland Coal Gas Pool. The wells and the lands that are the subject of this application are located within the horizontal limits of the Basin-Fruitland Coal Gas Pool as defined by Order No. R-8768 and R-8768-A. The Order also established the vertical limits of the pool by reference to the stratigraphic depth interval.

4. By Order No. R-8769 entered by the New Mexico Oil Conservation Division on October 17, 1988 in Case No. 9421 and as subsequently amended by Order No. R-8760-A, *nunc pro tunc*, the Division defined the vertical limits of the WAW Fruitland-Pictured Cliffs Pool as

follows:

> The vertical limits of the WAW Fruitland-Pictured Cliffs Pool in San Juan County, New Mexico are hereby contracted to include only the Pictured Cliffs formation and the sandstone interval of the Fruitland formation in said pool is hereby redesignated as the WAW Fruitland Sand-Pictured Cliffs pool.

All of the Pendragon operated wells referenced above are completed in and producing from the WAW Fruitland-Pictured Cliffs Pool.

5. Whiting and Maralex by their application, as amended, in Case No. 11921 have alleged generally, without any basis in fact, that as a result of drilling or the fracture stimulation, the Pendragon wells have become communicated with and are producing from the Basin-Fruitland Coal Gas pool. Whiting and Maralex further contend, also without any basis in fact, that the Pendragon wells "are draining reserves owned by Whiting and the other interest owners in its wells, and are impairing their correlative rights." Pendragon and Edwards deny that the drilling or the fracture stimulation of their Pictured Cliffs wells resulted in the communication of the two pools or that they are producing from the Basin-Fruitland Coal Gas Pool through their Pictured Cliffs completions. Pendragon and Edwards generally deny all other claims and allegations set forth in the Whiting/Maralex application, as amended.

6. Rule 3 of the Special Rules and Regulations for the Basin-Coal Gas pool provide that the Division Director can require the Operator of a Basin Fruitland Coal Gas well, a Fruitland Sandstone well or a Pictured Cliffs Sandstone well to demonstrate to the satisfaction of the Division that the well is producing from the appropriate common source of supply.

7. Rule 19, NMAC 15.N.203.A of the Division's rules and regulations requires the segregation of production from separate sources of supply. The rule provides:

> Each pool shall be produced as a single common source of supply and wells therein shall be completed, cased, maintained and operated so as to prevent communication, within the well bore, within any other specific pool or horizon and the production therefrom shall at all times be actually segregated, and the commingling or confusion of such production, before marketing, with the production from any other pool or pools is strictly prohibited."

See also, Special Rules 2 and 12, Special Rules and Regulations for the Basin-Fruitland Coal Gas pool.

8. Under Section 70-2-6(A) of the New Mexico Oil and Gas Act (N.M. Stat. Ann. 1978, § 70-2-1, *et seq.*) the Division has primary jurisdiction and authority over all matters relating to the conservation of oil and gas and oil or gas operations in this state. In addition, the Division has specific statutory authority to prevent the escape of natural gas from one strata into other strata. N.M. Stat. Ann. 1978, § 70-2-12(B)(2).

The granting of this application is in the interests of the conservation of oil and gas resources and the prevention of waste.

WHEREFORE, Applicants request that this matter be set for hearing before the next scheduled hearing of the Oil Conservation Division and that after notice and hearing as required by law, the Division enter its order requiring the respective operators of the Fruitland Coal Gas wells and the Fruitland Pictured Cliffs sandstone wells to demonstrate are producing from the appropriate common sources of supply and providing such other and further relief as the Division deems appropriate. Applicants also request that this matter be made a part of and consolidated with Case No. 11921 presently pending before the Division.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By _____

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Attorneys for Pendragon Energy Partners, Inc. and
J.K. Edwards Associates, Inc.

Law reviews. — For comment on Continental Oil Co. v. Oil Conservation Comm'n, 70 N.M. 310, 373 P.2d 809 (1962), see 3 Nat. Resources J. 178 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 145 to 148, 157. 58 C.J.S. Mines and Minerals §§ 229, 234.

70-2-12. Enumeration of powers.

A. Included in the power given to the oil conservation division is the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, tanks, plants, refineries and all means and modes of transportation and equipment; to hold hearings; to provide for the keeping of records and the making of reports and for the checking of the accuracy of the records and reports; to limit and prorate production of crude petroleum oil or natural gas or both as provided in the Oil and Gas Act [this article]; to require either generally or in particular areas certificates of clearance or tenders in connection with the transportation of crude petroleum oil or natural gas or any products of either or both oil and products or both natural gas and products.

B. Apart from any authority, express or implied, elsewhere given to or existing in the oil conservation division by virtue of the Oil and Gas Act or the statutes of this state, the division is authorized to make rules, regulations and orders for the purposes and with respect to the subject matter stated in this subsection:

(1) to require dry or abandoned wells to be plugged in a way to confine the crude petroleum oil, natural gas or water in the strata in which it is found and to prevent it from escaping into other strata; the division shall require a cash or surety bond in a sum not to exceed fifty thousand dollars ($50,000) conditioned for the performance of such regulations;

(2) to prevent crude petroleum oil, natural gas or water from escaping from strata in which it is found into other strata;

(3) to require reports showing locations of all oil or gas wells and for the filing of logs and drilling records or reports;

(4) to prevent the drowning by water of any stratum or part thereof capable of producing oil or gas or both oil and gas in paying quantities and to prevent the premature and irregular encroachment of water or any other kind of water encroachment which reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas or both oil and gas from any pool;

(5) to prevent fires;

(6) to prevent "blow-ups" and "caving" in the sense that the conditions indicated by such terms are generally understood in the oil and gas business;

(7) to require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties;

(8) to identify the ownership of oil or gas producing leases, properties, wells, tanks, refineries, pipelines, plants, structures and all transportation equipment and facilities;

(9) to require the operation of wells with efficient gas-oil ratios and to fix such ratios;

(10) to fix the spacing of wells;

(11) to determine whether a particular well or pool is a gas or oil well or a gas or oil pool, as the case may be, and from time to time to classify and reclassify wells and pools accordingly;

(12) to determine the limits of any pool producing crude petroleum oil or natural gas or both and from time to time redetermine the limits;

(13) to regulate the methods and devices employed for storage in this state of oil or natural gas or any product of either, including subsurface storage;

(14) to permit the injection of natural gas or of any other substance into any pool in this state for the purpose of repressuring, cycling, pressure maintenance, secondary or any other enhanced recovery operations;

(15) to regulate the disposition of water produced or used in connection with the drilling for or producing of oil or gas or both and to direct surface or subsurface disposal of the water in a manner that will afford reasonable protection against contamination of fresh water supplies designated by the state engineer;

EXHIBIT D

(16) to determine the limits of any area containing commercial potash deposits and from time to time redetermine the limits;

(17) to regulate and, where necessary, prohibit drilling or producing operations for oil or gas within any area containing commercial deposits of potash where the operations would have the effect unduly to reduce the total quantity of the commercial deposits of potash which may reasonably be recovered in commercial quantities or where the operations would interfere unduly with the orderly commercial development of the potash deposits;

(18) to spend the oil and gas reclamation fund and do all acts necessary and proper to plug dry and abandoned oil and gas wells in accordance with the provisions of the Oil and Gas Act and the Procurement Code, including disposing of salvageable equipment and material removed from oil and gas wells being plugged by the state;

(19) to make well price category determinations pursuant to the provisions of the Natural Gas Policy Act of 1978 or any successor act and, by regulation, to adopt fees for such determinations, which fees shall not exceed twenty-five dollars ($25.00) per filing. Such fees shall be credited to the account of the oil conservation division by the state treasurer and may be expended as authorized by the legislature;

(20) to regulate the construction and operation of oil treating plants and to require the posting of bonds for the reclamation of treating plant sites after cessation of operations;

(21) to regulate the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas to protect public health and the environment; and

(22) to regulate the disposition of nondomestic wastes resulting from the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil to protect public health and the environment including administering the Water Quality Act [Chapter 74, Article 6 NMSA 1978] as provided in Subsection E of Section 74-6-4 NMSA 1978.

History: 1953 Comp., § 65-3-11, enacted by Laws 1978, ch. 71, § 1; 1986, ch. 76, § 1; 1987, ch. 234, § 61; 1989, ch. 289, § 1.

Cross references. — For filing rules and regulations, see 14-4-3 NMSA 1978. For public utilities commission's lack of power to regulate sale price at wellhead, see 62-6-4 NMSA 1978.

Repeals and reenactments. — Laws 1978, ch. 71, § 1, repealed 65-3-11, 1953 Comp. (former 70-2-12 NMSA 1978), relating to enumeration of powers, and enacted a new 70-2-12 NMSA 1978.

The 1986 amendment, effective May 21, 1986, substituted "oil conservation division" for "division" in Subsection A and in the introductory paragraph of Subsection B; substituted "provided in the Oil and Gas Act" for "in this act provided" in Subsection A; substituted "the Oil and Gas Act" for "this act" in the introductory paragraph of Subsection B; substituted "cash or surety bond" for "corporate surety bond" in Subsection B(1); added Subsection B(19), and made minor stylistic changes throughout the section.

The 1987 amendment, effective July 1, 1987, in Subsection B(18), substituted "Procurement Code" for "Public Purchases Act"; added Subsection B(20); and made minor changes in language and punctuation throughout the section.

The 1989 amendment, effective June 16, 1989, added Subsections B(21) and B(22).

Procurement Code. — See 13-1-28 NMSA 1978 and notes thereto.

Natural Gas Policy Act. — The federal Natural Gas Policy Act of 1978, referred to in Paragraph B(19), appears as 15 U.S.C. § 3301 et seq.

Powers pertaining to oil well fires. — The lawmakers intended commission not only to seek fire prevention to conserve oil, but also to conserve other property and lives of persons peculiarly subject to hazard of oil well fires. Continental Oil Co. v. Brack, 381 F.2d 682 (10th Cir. 1967).

The terms "spacing unit" and "proration unit" are not synonymous and commission has power to fix spacing units without first creating proration units. Rutter & Wilbanks Corp. v. Oil Conservation Comm'n, 87 N.M. 286, 532 P.2d 582 (1975).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 145 to 163.

58 C.J.S. Mines and Minerals §§ 229 to 243.

70-2-13. Additional powers of commission or division; hearings before examiner; hearings de novo.

In addition to the powers and authority, either express or implied, granted to the oil conservation commission or division by virtue of the statutes of the state of New Mexico, the division is hereby authorized and empowered in prescribing its rules of order or procedure in connection with hearings or other proceedings before the division to provide for the appointment of one or more examiners to be members of the staff of the division to conduct hearings with respect to matters properly coming before the division and to make reports

301.I. During the productivity test, no well shall be produced at a rate exceeding top unit allowable for the pool in which it is located by more than 25 percent. [2-9-66...2-1-96]

302 SUBSURFACE PRESSURE TESTS

The operator shall make a subsurface pressure test on the discovery well of any new pool hereafter discovered, and shall report the results thereof to the Division within 30 days after the completion of such discovery well. On or before December 1 of each calendar year the Division shall designate the months in which subsurface pressure tests shall be taken in designated pools. Included in the designated list shall be listed the required shut-in pressure time and datum of tests to be taken in each pool. In the event a newly discovered pool is not included in the Division's list, the Division shall issue a supplementary Bottom Hole Pressure Schedule. Tests as designated by the Division shall only apply to flowing wells in each pool. This test shall be made by a person qualified by both training and experience to make such test, and with an approved subsurface pressure instrument which shall be calibrated against an approved dead-weight tester at intervals frequent enough to ensure its accuracy within one percent. Unless otherwise designated by the Division all wells shall remain completely shut in for at least 24 hours prior to the test. In the event a definite datum is not established by the Division the subsurface determination shall be obtained as close as possible to the mid-point of the productive sand of the reservoir. The report shall be on Form C-124 and shall state the name of the pool, the pool datum (if established), the name of the operator and lease, the well number, the wellhead elevation above sea level, the date of the test, the total time the well was shut in prior to the test, the subsurface temperature in degrees Fahrenheit at the test depth, the depth in feet at which the subsurface pressure test was made, the observed pressure in pounds per square inch gauge (corrected for calibration and temperature), the corrected pressure computed from applying to the observed pressure the appropriate correction for difference in test depth and reservoir datum plane and any other information as required by Form C-124. [1-1-50...2-1-96]

303 SEGREGATION OF PRODUCTION FROM POOLS

303.A. SEGREGATION REQUIRED

(1) Each pool shall be produced as a single common source of supply and wells therein shall be completed, cased, maintained, and operated so as to prevent communication, within the wellbore, with any other specific pool or horizon, and the production therefrom shall at all times be actually segregated, and the commingling or confusion of such production, before marketing, with the production from any other pool or pools is strictly prohibited. [1-1-50... 2-1-96]

303.B. SURFACE COMMINGLING

(1) The Division Director shall have the authority to grant an exception to Rule 303-A to permit the commingling in common facilities of the commonly owned production from two or more common sources of supply, without

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

WHITING PETROLEUM CORPORATION, a corporation, and MARALEX RESOURCES, INC., a corporation,

Plaintiffs,

vs. No. D-0101-CV-9801295

PENDRAGON ENERGY PARTNERS, INC., a corporation, and J.K. EDWARDS ASSOCIATES, INC., a corporation,

Defendants.

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR AN ORDER ENJOINING DEFENDANTS FROM PROSECUTING AN ADMINISTRATIVE PROCEEDING

BACKGROUND FACTS

Plaintiffs' Motion fails to mention that long ago, they originally invoked the jurisdiction of the New Mexico Oil Conservation Division ("NMOCD") in an attempt to resolve the fact issues now raised by them in this suit.

Whiting and Maralex first invoked the Division's jurisdiction well over two (2) years ago when it sought the agency's expertise in resolving a perceived problem of communication between the Pictured Cliffs formation in the WAW Fruitland-Pictured Cliffs Pool and the Basin-Fruitland Coal formation. Although their approach to the problem was suspect and their analytical methods flawed, Whiting and Maralex represented to the Aztec District Office of the NMOCD that drilling and fracture restimulation operations in the Pictured Cliffs formation by

Pendragon caused that formation to become communicated with the Basin-Fruitland Coal formation and that Pendragon's Pictured Cliffs completions were producing coal bed methane.

Soon thereafter, at the request of Whiting and Maralex, the NMOCD Aztec District Office convened a number of public meetings between January and April of 1998. These meetings were attended by, among others, representatives from Whiting, Maralex, Pendragon, J. K. Edwards and the BIA/BLM. At the initial meeting, the Division and the parties agreed that the scope and purpose of the meetings would be as follows:

1. To determine if the Pictured Cliffs completions were interfering with production from the Fruitland Coal.

2. To identify the affected wells.

3. To identify regulatory solutions to bring wells into compliance with NMOCD Rules and Regulations.

Contemporaneous with the first meeting before the Division, Whiting and Maralex filed their Application in NMOCD Case No. 11921. (Exhibit A, attached.) In their initial Application, Whiting and Maralex generally alleged, as before, that the drilling and fracture restimulation operations in the Pictured Cliffs formation had caused that formation to become communicated with the Basin-Fruitland Coal formation. Whiting and Maralex also claimed that Pendragon's Pictured Cliffs wells were draining reserves owned by Whiting and the other interest owners in its wells and that their correlative rights were being impaired. Whiting and Maralex specifically invoked the Division's jurisdiction under N. M. Stat. Ann. § 70-2-12. B. (2), (7) and 10, NMOCD Rule 104.D (3), and Order No. R-8768, Special Pool Rules 2 and 3, seeking regulatory relief, including the issuance of an order requiring Pendragon's Pictured Cliffs wells to be shut-in.

Subsequently, on February 10, 1998, Whiting and Maralex, at the request of the Division, filed their Amended Application seeking additional administrative relief, including down-hole commingling in accordance with Rule 12 of the Special Rules and Regulations for the Basin-Fruitland Coal Gas Pool as promulgated by the Division in Order No. R-8768-A. (Exhibit B, attached.)

In the interim, the parties continued to participate in the public meetings before the Division and Whiting and Maralex persisted in seeking regulatory redress for the claimed numerous violations by Pendragon of the New Mexico Oil and Gas Act and the Division's Regulations. The parties expended significant time, effort and cost in preparing for the Division hearing on the Whiting/Maralex Application and the matter was set to proceed to hearing on June 11, 1998.

Suddenly, at the eleventh hour, Whiting and Maralex lost faith in their case and the administrative process. On May 26, 1998 Whiting and Maralex attempted to withdraw from the administrative proceeding which they, themselves, initiated and instead began their forum-hopping adventure in avoidance of the Division's jurisdiction. That same day, Whiting and Maralex filed their District Court lawsuit. While their District Court actions seeks judicial relief under novel and unique common law theories, the underlying factual allegations are the same as those raised in their administrative applications and are based upon numerous claimed violations of the New Mexico Oil and Gas Act and the Division's Rules, Regulations and Orders. Indeed, both proceedings seek the drastic relief of an order requiring Pendragon to shut-in its Pictured Cliffs wells.

THE APPLICABILITY OF DIVISION JURISDICTION

Whiting and Maralex originally invoked the Division's jurisdiction and discretion under the New Mexico Oil and Gas Act, the Division's Rules, and Order No. R-8768-A in particular. Now, however, Whiting and Maralex improperly seek to circumvent that agency's legitimate exercise of its regulatory authority over oil and gas operations.

The Whiting and Maralex assertions, if true, involve serious violations of The Oil and Gas Act, the Division's Rules and its Orders. Among others, the claims implicate violations of the following statutes and regulations administered exclusively by the Division:

§ 70-2-12 B(2):	Segregation requirement.
§ 70-2-10:	Filing false reports; NMOCD filing forms implicated by the Whiting/Maralex allegations are Form C-101 Application For Permit To Drill, Deepen Or Plug Back; Form C-103 Sundry Notices And Reports On Wells; Form C-105 Well Completion Or Recompletion Report And Log; Form C-107 Application For Multiple Completion (Commingling).
§ 70-2-28:	Sets forth the obligation of the Division to bring suit for violations of any provision of the Oil and Gas Act or any rule, regulation or order of the Division.
§ 70-2-29:	Provides that it is the primary responsibility for the Division to bring an action for enjoining violations of the act.
§ 70-2-31:	Penalties for violations of the Oil and Gas Act.
Rule 303.A:	Segregation requirement.
Rule 104.D.3:	Simultaneous dedication.
Rule 112.A:	Unapproved multiple completions.
Rule 303.C.1.B:	Down-hole commingling.
Rule 304:	Segregation required for different common sources of supply.

§ 70-2-12.B(12):	The NMOCD has the power to "to determine limits of any pool producing.....natural gas....and from time to time redetermine the limits." (Both vertical and horizontal limits.)
§ 70-2.6 and 70-2-11:	General authority for the Division to enforce the provisions of the Oil and Gas Act (including the issuance of shut-in orders.)
Order R-8768:	Special Rules and Regulations for the Basin-Fruitland Coal Gas Pool.

Equally significant is the fact that the issues precipitated by the Plaintiffs' Amended Application in NMOCD Case No. 11921 remain pending before the Oil Conservation Division. On June 23, 1998 the NMOCD hearing examiner denied the Motion Of Whiting Petroleum Corporation and Maralex Resources, Inc To Dismiss Application For Lack of Jurisdiction in NMOCD Case No. 11996; (See **Application**, Exhibit C, attached.) Following oral arguments on the Plaintiffs' motion in that forum, the petroleum engineer hearing examiner, assisted by Division counsel, ruled the NMOCD would retain jurisdiction over these issues and that it was inappropriate for the Plaintiffs to attempt to disavow their earlier invocation of NMOCD jurisdiction.

Plaintiffs cannot now claim that Defendants "rushed" to the NMOCD when Plaintiffs originally invoked the NMOCD's jurisdiction over two years ago, engaged in proceedings in the administrative forum, exchanged extensive discovery in conjunction with the NMOCD, the parties, and others, and then, without warning to Defendants and on the eve NMOCD hearing on their application, Plaintiffs abruptly attempt to dismiss all NMOCD participation in the case and ask this Court to get involved. This is especially problematic in light of Whiting's admission that it could not show any harm to its wells. Defendants can hardly be faulted for filing their own NMOCD application, in light of the NMOCD jurisdiction over the matter, the NMOCD's technical expertise and because of the time,

energy and expense already expended before the NMOCD.

This Court should dismiss this case, as requested in Defendants' Motion to Dismiss and Memorandum in Support for Lack or Subject Matter Jurisdiction or in the Alternative, for Failure to State a Claim Upon Which Relief Can Be Granted which is incorporated by reference herein.

Plaintiffs' Motion apparently seeks injunctive relief, pursuant to Rule 1-066 NMRA (1998), restraining the Defendants from prosecuting their NMOCD application. Rule 1-066 sets forth particular requirements for the party seeking injunctive relief and requires that specific facts be shown by affidavit or by verified complaint demonstrating that immediate and irreparable injury, loss or damage will result to applicant before opposing argument is heard. In the present case, no facts or argument have been presented as to what type of immediate and irreparable injury could be caused by the Defendants prosecuting their administrative application. Given the considerable investment of resources which have already taken place before the NMOCD, there is no basis to restrain the Defendants from prosecuting their administrative case. Similarly, Plaintiffs' request for an injunction is unsupported by either facts or argument.

Plaintiffs also fail to provide security, a necessary requirement in seeking an injunction or restraining order. Besides, after filing this motion, Plaintiffs submitted a request directly to the NMOCD asking the agency to dismiss the Defendants' administrative proceeding claiming that the NMOCD does not have jurisdiction. Of course, on June 23rd, the NMOCD hearing officer rejected these very arguments, finding that because numerous violations of the New Mexico Oil and Gas Act and the NMOCD's rules, regulations and orders have been alleged, it must retain jurisdiction over the dispute.

Plaintiffs' request for injunction is really an attempt to enjoin the NMOCD without addressing

the motion to the agency. In that way, Plaintiffs seek to avoid the statutory prohibition for this Court to interfere with the activities of the NMOCD. The legislature addressed this issue as follows:

> [n]o temporary restraining order or injunction of any kind shall be granted against the . . . division . . . from enforcing any statute of this state relating to conservation of oil or gas, or any provisions of [the Oil and Gas Act], or any rule, regulation or order made thereunder, except after due notice to the director of the division, and to all other defendants, and after a hearing at which it shall be clearly shown to the court that the act done or threatened is without sanction of law, or that the provision of the [Oil and Gas Act], or the rule, regulation or order complained of, is invalid, and that, if enforced against the complaining party, will cause an irreparable injury.

§70-2-27(A), NMSA 1978 (1935). The statute also provides that no temporary injunction of any kind including a temporary restraining order shall become effective until the Plaintiffs shall execute a bond in an amount fixed by the Court. §70-2-27(B), NMSA 1978 (1935). Because the goal of Plaintiffs' motion is really to enjoin the NMOCD from acting, and it fails to meet any basic requirement of statute and the Motion to Enjoin should be denied.

Plaintiffs' citation of cases claiming that the Defendants' NMOCD proceeding is a request for declaratory judgment should be disregarded because the Plaintiffs first invoked administrative consideration of the issues and in light of the proceedings that have already taken place in the administrative forum. Again, the NMOCD hearing officer rejected such arguments on June 23rd, recognizing that the Pendragon Application in Case No. 11996 seeks the specific relief authorized under Rules 2 and 3 under the Special Rules and Regulations For The Basin-Fruitland Coal Gas Pool promulgated by NMOCD Order R-8768 (Exhibit D, attached) and pursuant to the Division's retained jurisdiction over such matters as expressly set forth at decretal paragraph 9 of the Order.

Any duplicative proceedings are the Plaintiffs' own creation. It is inherently unfair and

prejudicial to the Defendants to have spent so much time in the administrative process only to stop it on the eve of the administrative hearing and seek another forum at this late date.

Likewise Plaintiffs citation to authority involving primary jurisdiction is equally misplaced and does not support a request for injunctive relief. However, the doctrine of primary jurisdiction provides this Court with a way to defer to the NMOCD and take advantage of NMOCD's expertise and resources already spent on this issue. Primary jurisdiction is a doctrine of comity between the courts and the administrative agency. Gonzalez v. Whitaker, 97 N.M. 710, 643 P.2d 274 (Ct. App. 1982). It allows an agency to serve as a resource for this court to provide the technical expertise to help sort out the complex technical issues presented in this matter. State ex rel. Norvell v. Arizona Public Service Co., 85 N.M. 165, 510 P.2d 98 (1973). This matter involves not only the jurisdiction of the NMOCD, but its technical expertise, as is obvious by Plaintiffs' submission to the NMOCD in the first place. Primary jurisdiction is a discretionary doctrine which is dependent on the particular issues in the case and there is no fixed formula for its application. Bradford School Bus Transit, Inc. v. Chicago Transit Authority, 537 F.2d 943, 949 (7th Cir. 1976), cert. denied, 429 U.S. 1066 (1977).

Plaintiffs cite cases addressing primary jurisdiction that are factually distinct. Those cases do not involve a situation where so much time, energy and effort have been expended and proceedings have already taken place before the administrative agency. Neither do those cases involve a collateral attack on the agency's order. Finally, none of these cases remotely involve the situation where the Plaintiffs first invoked regulatory jurisdiction, prosecuted their claim up to the eve of a scheduled evidentiary hearing, and then sought judicial intervention as is the case here.

For example, Wronski v. Sun Oil Co., 279 N.W.2d 564 (Mich. Ct. App. 1979), involved a claim of over-production in violation of a lease. A proration order limiting production from the pool

had been issued by the Michigan Oil and Gas Regulatory Agency. This case did not involve a challenge to the order itself, but rather used it as a basis for the claim. This is distinct from the present case where the NMOCD has separated the two pools at issue and has specifically retained jurisdiction over their definition and issues related to alleged commingling. Furthermore, in Wronski, the plaintiffs did not originally invoke the jurisdiction of the Michigan regulatory agency. The same is true of Dorchester Gas Producing Co. v. Harlow Corp., 743 S.W.2d 243 (Tex. App. 1987)(a title dispute involving lease rights). Furthermore, Foree v. Crown Central Petroleum Corp., 431 S.W. 312 (Tex. 1968), does not directly deal with the factual situation in this case, where the Plaintiffs have originally invoked the jurisdiction of the regulatory agency to decide the very issue the Plaintiffs also placed before the Court. Finally, the same is true of Gregg v. Delhi-Taylor Oil Corp., 344 S.W.2d 411 (Tex. 1969). The authority of the administrative agency had not been invoked, nor had the administrative agency spent considerable time and effort considering the very issues that the Plaintiffs then sought to place before the Court. Finally, the administrative agency in Gregg had not enacted an order governing development and operations of the pool which specifically retained jurisdiction over the very issues at stake in the suit.

Plaintiffs' attempt to forum-hop this matter to the Court should be questioned in light of the significant amount of resources expended in the proceedings before the NMOCD, the NMOCD's continuing jurisdiction over this subject matter, and Plaintiffs' less than candid presentation of the procedural history of this case. Plaintiffs first invoked the NMOCD and its consideration of this case. The NMOCD action was pending prior to this case and should be given deference. These issues are more fully developed in the context of Defendants Motion to Dismiss and Memorandum in Support thereof for Lack of Subject Matter Jurisdiction or in the Alternative, for Failure to State a Claim Upon

Which Relief Can Be Granted.

Finally, Plaintiffs' counsel made no attempt to confer with Defendants prior to filing their motion as stated to the Court.

For the above-stated reasons, Plaintiffs Motion to Enjoin should be denied.

MILLER, STRATVERT & TORGERSON, P.A.

By T. Scott Hall

J. SCOTT HALL
P. O. Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

By T. Scott Hall for

ALAN KONRAD
MARTE D. LIGHTSTONE
Attorneys for Defendants
P.O. Box 25687
Albuquerque, New Mexico 87125
(505) 842-1950

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to the following counsel of record this 25 day of June 1998:

J.E. Gallegos
Michael J. Condon
460 St. Michael's Drive, Building 300
Santa Fe, New Mexico 87505
Attorneys for Plaintiffs

T. Scott Hall

J. SCOTT HALL, ESQ.

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BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

RECEIVED
JAN 1 1 1998
WHITING PET. CORP.
PRODUCTION DEPT.

APPLICATION OF WHITING PETROLEUM CORPORATION AND MARALEX RESOURCES, INC. FOR AN ORDER SHUTTING-IN CERTAIN WELLS, SAN JUAN COUNTY, NEW MEXICO.

Case No.

APPLICATION

Whiting Petroleum Corporation ("Whiting") and Maralex Resources, Inc. ("Maralex") hereby apply for an order requiring certain wells located in San Juan County, New Mexico to be shut-in, and in support thereof, state:

1. Whiting operates the following wells:

Well Name	Well Unit
(1) Gallegos Fed. 26-12-6 No. 2	W½ §6-26N-12W
(2) Gallegos Fed. 26-12-7 No. 1	W½ §7-26N-12W
(3) Gallegos Fed. 26-13-1 No. 1	E½ §1-26N-13W
(4) Gallegos Fed. 26-13-1 No. 2	W½ §1-26N-13W
(5) Gallegos Fed. 26-13-12 No. 1	N½ §12-26N-13W

The above wells were drilled before the end of 1992, and are completed in and producing from the Basin-Fruitland Coal Gas Pool, as defined in Division Order No. R-8768, as amended. Spacing for each well is 320 acres. Maralex is an interest owner in the wells.

2. Thompson Engineering & Production Corp. ("Thompson") operates the following wells:

Well Name	Well Unit
Stacey No. 1	SE¼ §6-26N-12W
Leslie No. 1	NE¼ §7-26N-12W[1]

[1]This well is at an orthodox location for a Fruitland Coal well, and thus Whiting and Maralex do not seek to have it shut-in. However, applicants believe that it is producing from the Basin-Fruitland Coal Gas Pool, should be recognized as such, and its well spacing unit adjusted accordingly.

EXHIBIT A

Pendragon Energy Partners, Inc. ("Pendragon") operates the following wells:

Well Name	Well Unit
Chaco No. 1	NW¼ §18-26N-12W
Chaco No. 2R	SW¼ §7-26N-12W
Chaco No. 4	NW¼ §7-26N-12W
Chaco No. 5	SE¼ §1-26N-13W
Chaco Ltd. No. 1J	SW¼ §1-26N-13W
Chaco Ltd. No. 2J	NE¼ §1-26N-13W

The Edwards and Pendragon wells are designated as being completed in the WAW Fruitland Sand-Pictured Cliffs Pool, as defined in Division Order No. R-8769, as amended. Spacing for wells completed in the WAW Fruitland Sand-Pictured Cliffs Pool is 160 acres.

3. Ownership in the Basin-Fruitland Coal Pool, in the above sections, differs from ownership in the WAW Fruitland Sand-Pictured Cliffs Pool. Moreover, because of the difference in well spacing, 4 wells may be drilled per section in the WAW Fruitland-Pictured Cliffs Pool, as opposed to 2 wells per section in the Basin-Fruitland Coal Gas Pool.

4. As of 1995-96, each of the above-described Thompson and Pendragon wells was shut-in, was a marginal producer, or had not been drilled. In 1995 and 1996, Thompson and Pendragon drilled or "restimulated" their wells, resulting in the following:

(a) Production from their wells increased, in some cases substantially;

(b) Production from the offsetting Whiting wells has declined or decreased;

(c) The BTU content of the gas decreased so that it is

similar or identical to the BTU content of the Whiting wells;

(d) Water production increased substantially; and

(e) The limited available pressure data shows that pressures increased to levels similar to those found in the Basin-Fruitland Coal Gas Pool in this area.

5. Based on the foregoing, the Thompson and Pendragon wells are communicated with and are producing from the Basin-Fruitland Coal Gas Pool. As a result, the Thompson and Pendragon wells are draining reserves owned by Whiting and its interest owners, and are impairing their correlative rights.

6. In addition, (a) the Stacey Well No. 1, Chaco Well No. 1, Chaco Well No. 4, and Chaco Well No. 5 are at unapproved unorthodox gas well locations in the Basin-Fruitland Coal Gas Pool, (b) all of the Thompson and Pendragon wells, except the Leslie Well No. 1, do not have Division approval for simultaneous dedication in the Basin-Fruitland Coal Gas Pool as required by Division Rule 104.D.(3), or Division Memoranda dated July 27, 1988 and August 3, 1990, and (c) none of the Thompson and Pendragon wells have 320 acres dedicated to them.

7. The Division has the authority and the duty to:

(a) Prevent natural gas from escaping from strata in which it is found into other strata;

(b) require wells to be drilled, operated, and produced in such manner as to prevent injury to neighboring leases or properties; and

(c) to fix the spacing of wells.

NMSA §70-2-12.B.(2), (7), (10) (1995 Repl. Pamp.). Moreover, the Division has the authority to require an operator to submit data to

demonstrate that a well is producing from the appropriate common source of supply. Order No. R-8768, Special Rules 2, 3. Therefore, the relief requested herein is proper.

WHEREFORE, Whiting and Maralex request that, after notice and hearing, the Division enter its order:

A. Determining that the Thompson and Pendragon wells, described above, are producing from the Basin-Fruitland Coal Gas Pool;

B. Determining that the Stacey Well No. 1, Chaco Well No. 1, Chaco Well No. 4, Chaco Well No. 5 are at unapproved unorthodox gas well locations in the Basin-Fruitland Coal Gas Pool, and that all wells except the Leslie Well No. 1 do not have approval for simultaneous dedication in the Basin-Fruitland Coal Gas Pool;

C. Ordering the Thompson Stacey Well No. 1 and all of the Pendragon wells to be permanently shut-in; and

D. Granting such further relief as the Division deems proper.

Respectfully submitted,

James Bruce
P.O. Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for Whiting Petroleum Corporation and Maralex Resources, Inc.

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATION OF WHITING PETROLEUM CORPORATION AND MARALEX RESOURCES, INC. FOR AN ORDER SHUTTING-IN, LIMITING PRODUCTION FROM, OR APPROVING DOWNHOLE COMMINGLING IN, CERTAIN WELLS, SAN JUAN COUNTY, NEW MEXICO. Case No. 11,921

AMENDED APPLICATION

Whiting Petroleum Corporation ("Whiting") and Maralex Resources, Inc. ("Maralex") hereby apply for an order requiring that certain wells located in San Juan County, New Mexico be shut-in or have their producing rates limited, or in the alternative approving downhole commingling of production and fixing allocation percentages. In support of their application, Whiting and Maralex state:

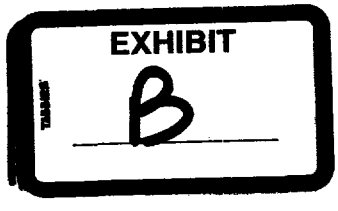
1. Whiting operates the following wells:

Well Name	Well Unit
Gallegos Fed. 26-12-6 No. 2	W½ §6-26N-12W
Gallegos Fed. 26-12-7 No. 1	W½ §7-26N-12W
Gallegos Fed. 26-13-1 No. 1	E½ §1-26N-13W
Gallegos Fed. 26-13-1 No. 2	W½ §1-26N-13W
Gallegos Fed. 26-13-12 No. 1	N½ §12-26N-13W

The above wells were drilled before the end of 1992, and are completed in and producing from the Basin-Fruitland Coal Gas Pool, as defined in Division Order No. R-8768, as amended. Spacing for each well is 320 acres. Maralex is an interest owner in the Whiting-operated wells.

2. Thompson Engineering & Production Corp. ("Thompson") operates the following wells:

Well Name	Well Unit
Stacey No. 1	SE¼ §6-26N-12W



Leslie No. 1 NE¼ §7-26N-12W[1]

Pendragon Energy Partners, Inc. ("Pendragon") operates the following wells:

Well Name	Well Unit
Chaco No. 1	NW¼ §18-26N-12W
Chaco No. 2R	SW¼ §7-26N-12W
Chaco No. 4	NW¼ §7-26N-12W
Chaco No. 5	SE¼ §1-26N-13W
Chaco Ltd. No. 1J	SW¼ §1-26N-13W
Chaco Ltd. No. 2J	NE¼ §1-26N-13W

The Thompson and Pendragon wells are designated as being completed in the WAW Fruitland Sand-Pictured Cliffs Pool, as defined in Division Order No. R-8769, as amended. Spacing for wells completed in the WAW Fruitland Sand-Pictured Cliffs Pool is 160 acres.

3. Ownership in the Basin-Fruitland Coal Gas Pool, in the sections in which the Whiting wells are located, differs from ownership in the WAW Fruitland Sand-Pictured Cliffs Pool. Moreover, because of the difference in well spacing, 4 wells may be drilled per section in the WAW Fruitland-Pictured Cliffs Pool, as opposed to 2 wells per section in the Basin-Fruitland Coal Gas Pool.

4. As of 1995-96, each of the above-described Thompson and Pendragon wells was shut-in, was a marginal producer, or had not been drilled. In 1995 and 1996, Thompson and Pendragon drilled or "restimulated" their wells, resulting in the following:

---

[1]This well is at an orthodox location for a Fruitland Coal well, and thus Whiting and Maralex do not seek to have it shut-in, etc. However, applicants believe that the well is producing from the Basin-Fruitland Coal Gas Pool, should be recognized as such, and its spacing and proration unit adjusted accordingly.

(a) Production from the Thompson and Pendragon wells increased, in some cases substantially;

(b) Production from the Whiting-operated wells offsetting the Thompson and Pendragon wells has declined or decreased;

(c) The BTU content of the gas produced from the Thompson and Pendragon wells has decreased so that it is similar or identical to the BTU content of the Whiting wells;

(d) Water production from the Thompson and Pendragon wells has increased substantially; and

(e) The available pressure data shows that pressures in the Thompson and Pendragon wells has increased to levels similar to those found in wells completed in the Basin-Fruitland Coal Gas Pool in this area.

5. Based on the foregoing, the Thompson and Pendragon wells are communicated with and are producing from the Basin-Fruitland Coal Gas Pool. As a result, the Thompson and Pendragon wells are draining reserves owned by Whiting and the other interest owners in its wells, and are impairing their correlative rights.

6. In addition, (a) the Stacey Well No. 1, Chaco Well No. 1, Chaco Well No. 4, and Chaco Well No. 5 are at unapproved unorthodox gas well locations in the Basin-Fruitland Coal Gas Pool, (b) all of the Thompson and Pendragon wells, except the Leslie Well No. 1, do not have Division approval for simultaneous dedication in the Basin-Fruitland Coal Gas Pool as required by Division Rule 104.D.(3) or Division Memoranda dated July 27, 1988 and August 3, 1990, and (c) none of the Thompson and Pendragon wells have 320

acres dedicated to them.

7. The Division has the authority and the duty to:

(a) Prevent natural gas from escaping from strata in which it is found into other strata;

(b) require wells to be drilled, operated, and produced in such manner as to prevent injury to neighboring leases or properties; and

(c) to fix the spacing of wells.

NMSA 1978 §70-2-12.B.(2), (7), (10) (1995 Repl. Pamp.). Moreover, the Division has the authority to require an operator to submit data to demonstrate that a well is producing from the appropriate common source of supply, and to order the downhole commingling of Fruitland Coal and Pictured Cliffs production. Order No. R-8768, Special Rules 2, 3, 12. Therefore, the relief requested herein is proper.

WHEREFORE, Whiting and Maralex request that, after notice and hearing, the Division enter its order:

A. Determining that the Thompson and Pendragon wells, described above, are producing from the Basin-Fruitland Coal Gas Pool;

B. Determining that the Stacey Well No. 1, Chaco Well No. 1, Chaco Well No. 4, and Chaco Well No. 5 are at unapproved unorthodox gas well locations in the Basin-Fruitland Coal Gas Pool, and that all wells except the Leslie Well No. 1 do not have approval for simultaneous dedication in the Basin-Fruitland Coal Gas Pool;

C. Ordering the Thompson Stacey Well No. 1, and all of the Pendragon wells, to be permanently shut-in or have their production restricted, or in the alternative approve downhole commingling of Fruitland Coal and Pictured Cliffs/Fruitland Sand production from the Thompson and Pendragon wells and allocating production from each pool; and

D. Granting such further relief as the Division deems proper.

Respectfully submitted,

James Bruce
P.O. Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for Whiting Petroleum Corporation and Maralex Resources, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Amended Application was mailed this 10th day of February, 1998 to J. Scott Hall, Miller, Stratvert & Torgerson, P.A., P.O. Box 1986, Santa Fe, New Mexico 87504.

James Bruce

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

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

CASE NO. 11996

APPLICATION

Pendragon Energy Partners, Inc. ("Pendragon") and J.K. Edwards Associates, Inc. ("J. K. Edwards") through their counsel, hereby make application to the New Mexico Oil Conservation Division pursuant to Rule 3 of the Special Rules and Regulations for the Basin-Fruitland Coal Gas Pool, Order No. R-8768-A and 19 NMAC 15.N.303.A for an order confirming that certain wells completed within the vertical limits of the WAW Fruitland-Pictured Cliffs Pool and the Basin-Fruitland Coal Gas Pool, respectively, are producing from the appropriate common source of supply. In support of their application, Pendragon and J.K. Edwards state:

1. Pendragon operates the following wells completed in and producing from the WAW Fruitland-Pictured Cliffs Pool in San Juan County, New Mexico:

Well Name	Location
Chaco No. 1	NW 1/4, Section 18, T26N, R12W, N.M.P.M.
Chaco No. 2R	SW 1/4, Section 7, T26N, R12W, N.M.P.M.
Chaco No. 4	NW 1/4, Ssection 7, T26N, R12W, N.M.P.M.
Chaco No. 5	SE 1/4, Section 1, T26N, R13W, N.M.P.M.
Chaco Ltd. No. 1J	SW 1/4 Section 1, T26N, R13W, N.M.P.M.
Chaco Ltd. No. 2J	NE 1/4, Section 1, T26N, R13W, N.M.P.M.

In addition to being the designated Operator of the referenced wells, Pendragon, along

EXHIBIT C

with J.K. Edwards, owns working interests in the acreage dedicated to the subject wells.

2. Whiting Petroleum Corporation ("Whiting") is the Operator of the following wells completed within the Basin-Fruitland Coal Gas Pool:

Well Name	Location
Gallegos Federal 26-12-6 No. 2	W 1/2, Section 6, T12N, R12W, N.M.P.M.
Gallegos Federal 26-12-7 No. 1	W 1/2, Section 7, T26N, R12W, N.M.P.M.
Gallegos Federal 26-13-1 No. 1	E 1/2, Section 1, T26N, R13 W, N.M.P.M.
Gallegos Federal 26-13-1, No. 2	W 1/2, Section 1, T26N, R13W, N.M.P.M.
Gallegos Federal 26-13-12 No. 1	N 1/2 Section 12, T26N, R13W, N.M.P.M.

In addition to being the designated Operator of the referenced coal gas wells, Whiting, along with Maralex Resources, Inc., (Maralex) owns working interests in the acreage dedicated to the coal gas wells.

3. By Order No. R-8768 and R-8768-A, the Division created a new pool in all or parts of San Juan, Rio Arriba, McKinley and Sandoval Counties, New Mexico classified as a gas pool for production from the Fruitland Coal seams and designated the pool as the Basin-Fruitland Coal Gas Pool. The wells and the lands that are the subject of this application are located within the horizontal limits of the Basin-Fruitland Coal Gas Pool as defined by Order No. R-8768 and R-8768-A. The Order also established the vertical limits of the pool by reference to the stratigraphic depth interval.

4. By Order No. R-8769 entered by the New Mexico Oil Conservation Division on October 17, 1988 in Case No. 9421 and as subsequently amended by Order No. R-8760-A, *nunc pro tunc*, the Division defined the vertical limits of the WAW Fruitland-Pictured Cliffs Pool as

follows:

> The vertical limits of the WAW Fruitland-Pictured Cliffs Pool in San Juan County, New Mexico are hereby contracted to include only the Pictured Cliffs formation and the sandstone interval of the Fruitland formation in said pool is hereby redesignated as the WAW Fruitland Sand-Pictured Cliffs pool.

All of the Pendragon operated wells referenced above are completed in and producing from the WAW Fruitland-Pictured Cliffs Pool.

5. Whiting and Maralex by their application, as amended, in Case No. 11921 have alleged generally, without any basis in fact, that as a result of drilling or the fracture stimulation, the Pendragon wells have become communicated with and are producing from the Basin-Fruitland Coal Gas pool. Whiting and Maralex further contend, also without any basis in fact, that the Pendragon wells "are draining reserves owned by Whiting and the other interest owners in its wells, and are impairing their correlative rights." Pendragon and Edwards deny that the drilling or the fracture stimulation of their Pictured Cliffs wells resulted in the communication of the two pools or that they are producing from the Basin-Fruitland Coal Gas Pool through their Pictured Cliffs completions. Pendragon and Edwards generally deny all other claims and allegations set forth in the Whiting/Maralex application, as amended.

6. Rule 3 of the Special Rules and Regulations for the Basin-Coal Gas pool provide that the Division Director can require the Operator of a Basin Fruitland Coal Gas well, a Fruitland Sandstone well or a Pictured Cliffs Sandstone well to demonstrate to the satisfaction of the Division that the well is producing from the appropriate common source of supply.

7. Rule 19, NMAC 15.N.203.A of the Division's rules and regulations requires the segregation of production from separate sources of supply. The rule provides:

> Each pool shall be produced as a single common source of supply and wells therein shall be completed, cased, maintained and operated so as to prevent communication, within the well bore, within any other specific pool or horizon and the production therefrom shall at all times be actually segregated, and the commingling or confusion of such production, before marketing, with the production from any other pool or pools is strictly prohibited."

See also, Special Rules 2 and 12, Special Rules and Regulations for the Basin-Fruitland Coal Gas pool.

8. Under Section 70-2-6(A) of the New Mexico Oil and Gas Act (N.M. Stat. Ann. 1978, § 70-2-1, *et seq.*) the Division has primary jurisdiction and authority over all matters relating to the conservation of oil and gas and oil or gas operations in this state. In addition, the Division has specific statutory authority to prevent the escape of natural gas from one strata into other strata. N.M. Stat. Ann. 1978, § 70-2-12(B)(2).

The granting of this application is in the interests of the conservation of oil and gas resources and the prevention of waste.

WHEREFORE, Applicants request that this matter be set for hearing before the next scheduled hearing of the Oil Conservation Division and that after notice and hearing as required by law, the Division enter its order requiring the respective operators of the Fruitland Coal Gas wells and the Fruitland Pictured Cliffs sandstone wells to demonstrate are producing from the appropriate common sources of supply and providing such other and further relief as the Division deems appropriate. Applicants also request that this matter be made a part of and consolidated with Case No. 11921 presently pending before the Division.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By _____

J. Scott Hall
P.O. Box 1986
Santa Fe, New Mexico 87501-1986
(505) 989-9614
Attorneys for Pendragon Energy Partners, Inc. and
J.K. Edwards Associates, Inc.

(CEDAR HILL-FRUITLAND BASAL COAL GAS (VERTICAL LIMITS EXTENSIONS) POOL - Cont'd.)

further defined and described as having vertical limits consistent within the vertical extension of the Cedar Hill-Fruitland Basal Coal Pool.

(3) Rule 1 of said Division Order No. R-7588, as amended is hereby suspended and shall be replaced with the following:

RULE 1. (A) Each well completed or recompleted in the Cedar Hill-Fruitland Basal Coal Pool shall be spaced, drilled, operated and prorated in accordance with the Special Rules and Regulations hereinafter set forth.

RULE 1. (B) A Cedar Hill-Fruitland Basal Coal Pool well will be defined as one which meets a preponderance of the generally characterized coalbed methane criteria as derived from:

(a) Wireline log data;
(b) Drilling time;
(c) Drill cutting;
(d) Mud logs;
(e) Completion data;
(f) Gas analysis;
(g) Water analysis;
(h) Reservoir performance;
(i) Any other evidence that indicates the production is predominantly coal methane.

No one characteristic of lithology, performance or sampling will either qualify or disqualify a well from being classified as a coal gas well. Absent any finding to the contrary, any well completed in accordance with these rules that has met a preponderance of the criteria for determining a coal well is therefrom presumed to be completed in and producing from the Cedar Hill-Fruitland Basal Coal Pool. The District Supervisor may, at his discretion, require that an operator document said determination of the appropriate pool or require an order under the provisions of General Rule 303(c) authorizing the commingling of pools in the event a coal well fails to meet the criteria for a coal well as set forth in this rule.

IT IS FURTHER ORDERED THAT:

(4) Any well drilling to or completed in a coal member of the Fruitland formation within this vertical extension of the Cedar Hill-Fruitland Basal Coal Pool on or before November 1, 1988 that will not comply with the well location requirements of Rule 4 is hereby granted an exception to the requirements of said rule. The operator of any such well shall notify the Aztec District Office of the Division, in writing, of the name and location of any such well on or before January 1, 1989.

(5) Applicant's request to authorize downhole commingling of Fruitland Sandstone Gas and Fruitland Coal Gas at the District Office level of the Division is hereby denied.

(6) This case shall be reopened at an examiner hearing in October, 1990, at which time the operators in the subject pool may appear and show cause why the vertical extension of the Cedar Hill-Fruitland Basal Coal Pool should not be rescinded and Division Order No. R-7588, as amended, should not be reinstituted as they existed prior to the issuance of this order.

(7) Jurisdiction of this cause 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.

BASIN-FRUITLAND COAL GAS POOL
San Juan, Rio Arriba, McKinley and Sandoval Counties, New Mexico

Order No. 8768, Creating and Adopting Temporary Operating Rules the Basin-Fruitland Coal Pool, San Juan, Rio Arriba, McKinley Sandoval Counties, New Mexico, November 1, 1988, as Amended Order No. R-8768-A, July 16, 1991.

In the Matter of the Hearing called by the Oil Conservation Division (OCD) on its own Motion for Pool Creation and Special Pool Rules, San Juan, Rio Arriba, McKinley and Sandoval Counties, New Mexico.

CASE NO. 94
Order No. R-87

ORDER OF THE DIVISION

BY THE DIVISION: This Cause came on for hearing at 8 a.m. on July 6, 1988, at Farmington, New Mexico, bef Examiner David R. Catanach.

NOW, on this 17th day of October, 1988, the Division Direct having considered the testimony, the record, and t recommendations of the Examiner, and being fully advised the premises,

FINDS THAT:

(1) Due public notice having been given as required by la the Division has jurisdiction of this cause and the subject matt thereof.

(2) Division Case Nos. 9420 and 9421 were consolidated a the time of the hearing for the purpose of testimony.

(3) The Oil Conservation Division, hereinafter referred to a the "Division", on the recommendations of the Fruitlan Coalbed Methane Committee, hereinafter referred to as th "Committee", seeks the creation of a new pool for the productio of gas from coal seams within the Fruitland formatio underlying the following described area in San Juan, Rio Arriba McKinley, and Sandoval Counties, New Mexico:

Township 19 North, Ranges 1 West through 6 West;
Township 20 North, Ranges 1 West through 8 West;
Township 21 North, Ranges 1 West through 9 West;
Township 22 North, Ranges 1 West through 11 West;
Township 23 North, Ranges 1 West through 14 West;
Township 24 North, Ranges 1 East through 16 West;
Township 25 North, Ranges 1 East through 16 West;
Township 26 North, Ranges 1 East through 16 West;
Township 27 North, Ranges 1 West through 16 West;
Township 28 North, Ranges 1 West through 16 West;
Township 29 North, Ranges 1 West through 15 West;
Township 30 North, Ranges 1 West through 15 West;
Township 31 North, Ranges 1 West through 15 West;
Township 32 North, Ranges 1 West through 13 West;

(4) The Division further seeks, also upon the recommendations of the Committee, the promulgation of special pool rules, regulations, and operating procedures for said pool including, but not limited to, provisions for 320-acre spacing and proration units, designated well locations, well density, horizontal wellbore and deviated drilling procedures, venting and flaring rules, downhole commingling, and gas well testing requirements.

EXHIBIT
D

BASIN-FRUITLAND COAL GAS POOL - Cont'd.)

(5) In companion Case No. 9421, the Division seeks to ntract the vertical limits of twenty-six existing Fruitland d/or Fruitland-Pictured Cliffs Gas Pools to include only the ctured Cliffs sandstone and/or Fruitland sandstone intervals.

(6) The Committee, which included representatives of the oil d gas industry, New Mexico Oil Conservation Division, orado Oil and Gas Conservation Commission, Bureau of and Management, and Southern Ute Indian Tribe, was iginally formed in 1986 for the purpose of studying and aking recommendations to the Division as to the most orderly d efficient methods of developing coal seam gas within the uitland formation.

(7) Geologic evidence presented by the Committee indicates at the Fruitland formation, which is found within the ographic area described above, is composed of alternating yers of shales, sandstones, and coal seams.

(8) The evidence at this time further indicates that the coal ams within the Fruitland formation are potentially productive natural gas in substantial quantities.

(9) The gas originating from the coal seams within the uitland formation is composed predominantly of methane and rbon dioxide and varies significantly from the composition of e gas currently being produced from the sandstone intervals, d as such, represents a separate common source of supply.

(10) A new pool for gas production from coal seams within the uitland formation should be created and designated the Basin-uitland Coal Gas Pool with vertical limits comprising all coal ams within the equivalent of the stratigraphic interval from a pth of approximately 2450 feet to 2880 feet as shown on the amma Ray/Bulk Density log from Amoco Production mpany's Schneider Gas Com "B" Well No. 1 located 1110 feet m the South line and 1185 feet from the West line of Section , Township 32 North, Range 10 West, NMPM, San Juan unty, New Mexico.

(11) The proposed horizontal pool boundary, which represents e geographic area encompassed by the Fruitland formation, ntains within it, an area previously defined as the Cedar Hill-uitland Basal Coal Gas Pool (created by Division Order No. R-83 effective February 1, 1984); said area currently comprises ctions 3 through 6 of Township 31 North, Range 10 West, and ctions 19 through 22 and 27 through 34 of Township 32 rth, Range 10 West, NMPM, San Juan County, New Mexico.

(12) The proposed horizontal boundary of the Basin-Fruitland al Gas Pool should be amended to exclude that acreage rrently defined as the Cedar Hill-Fruitland Coal Gas Pool scribed in Finding No. (11) above.

(13) The Committee has recommended the promulgation of ecial rules and regulations for the Basin-Fruitland Coal Gas ol including a provision for 320-acre spacing and proration its, and in support thereof presented pressure interference ta obtained from producing and pressure observation wells cated within the Cedar Hill-Fruitland Coal Gas Pool, which dicates definite pressure communication between wells located 80 feet apart (radius of drainage of a 320-acre proration unit = 06 feet).

(14) Further testimony and evidence indicates that due to the ique producing characteristics of coal seams (i.e. initial clining production rates), engineering methods such as decline ve analysis and volumetric calculations traditionally used to d in the determination of proper well spacing, cannot be ilized.

(15) The Committee further recommended the adoption of a ovision in the proposed pool rules allowing for the drilling of a cond well on a standard 320-acre proration unit in order to ve an operator flexibility when addressing regional geological nds.

(16) Dugan Production Corporation, Merrion Oil and Gas Corporation, Hixon Development Company, Robert L. Bayless, and Jerome P. McHugh and Associates, hereinafter referred to as the "Dugan Group", appeared at the hearing and presented geologic and engineering evidence and testimony in support of a proposal which includes the following:

1. Establishment of an area within the Southern portion of the Basin-Fruitland Coal Gas Pool to be developed on 160-acre spacing and proration units.

2. Creation of a demarcation line and buffer zone separating the 320-acre spacing portion of the pool and the proposed 160-acre spacing portion of the pool.

(17) The Dugan Group owns oil and gas leasehold operating rights in the Fruitland formation in various areas of the San Juan Basin, and currently operates numerous wells producing from coal seams and sandstone intervals within the Fruitland formation.

(18) The Dugan Group has defined the location of the proposed demarcation line and 160-acre spacing area by utilizing a preponderance of geologic factors such as coal rank, depth of burial, thermal maturation, thickness of coal, and amount of gas in place.

(19) In support of the proposed 160-acre spacing area for the subject pool, the Dugan Group presented production data obtained from four producing wells, the Nassau Well Nos. 5, 6, 7 and 8 located in Section 36, Township 27 North, Range 12 West, NMPM, San Juan County, New Mexico, which indicates that the production rate from said Nassau Well No. 5 was unaffected by initiation of 160-acre offset production in said Nassau Well Nos. 6, 7, and 8.

(20) The evidence presented by the Dugan Group further indicates however, that the Nassau Well Nos. 5, 6, 7, and 8 are producing from commingled coal seam and sandstone intervals within the Fruitland formation, and as such, do not conclusively demonstrate 160-acre non-interference exclusively within the coal seams.

(21) Insufficient evidence exists at the current time to justify the creation of a 160-acre spacing area and demarcation line within the Basin-Fruitland Coal Gas Pool.

(22) The best technical evidence available at this time indicates that 320-acre well spacing is the optimum spacing for the entire Basin-Fruitland Coal Gas Pool.

(23) In order to prevent the economic loss caused by the drilling of unnecessary wells, avoid the augmentation of risk arising from the drilling of an excessive number of wells, prevent reduced recovery which might result from the drilling of too few wells, and to otherwise protect correlative rights, special rules and regulations providing for 320-acre spacing units should be promulgated for the Basin-Fruitland Coal Gas Pool.

(24) The special rules and regulations should also provide for restrictive well locations in order to assure orderly development of the subject pool and protect correlative rights.

(25) Due to the relatively large area encompassed by the Basin-Fruitland Coal Gas Pool, and the relatively small amount of reservoir data currently available, the special rules and regulations should be promulgated for a temporary period of two years in order to allow the operators in the subject pool the opportunity to gather additional reservoir data relative to the determination of permanent spacing rules for the subject pool and/or specific areas within the pool.

(26) The evidence and testimony presented at the hearing is insufficient to approve at the present time, the proposed provision allowing for the drilling of a second well on a standard 320-acre proration unit.

(BASIN-FRUITLAND COAL GAS POOL - Cont'd.)

(27) The Committee further recommended the adoption of a provision in the Special Rules and Regulations allowing the venting or flaring of gas from a Basin-Fruitland Coal Gas well during initial testing in an amount not to exceed a cumulative volume of 50 MMCF or a period not to exceed 30 days.

(28) The evidence presented does not justify the establishment of a specific permissible volume of gas to be vented or flared from Basin-Fruitland Coal Gas Wells at this time, however, the supervisor of the Aztec district office of the Division should have the authority to allow such venting or flaring of gas from a well upon a demonstration such flaring or venting is justified and upon written application from the operator.

(29) Evidence and testimony presented at the hearing indicates that the gas well testing requirements as contained in Division Order No. R-333-I may cause damage to a Basin Fruitland Coal Gas Well, and that special testing procedures should be established.

(30) The special rules and regulations promulgated herein should include operating procedures for determination and classification of Basin-Fruitland Coal Gas Wells, horizontal wellbore and deviated drilling procedures, and procedures and guidelines for downhole commingling.

(31) This case should be reopened at an examiner hearing in October, 1990, at which time the operators in the subject pool should be prepared to appear and present evidence and testimony relative to the determination of permanent rules and regulations for the Basin-Fruitland Coal Gas Pool.

IT IS THEREFORE ORDERED THAT:

(1) Effective November 1, 1988, a new pool in all or parts of San Juan, Rio Arriba, McKinley and Sandoval Counties, New Mexico, classified as a gas pool for production from Fruitland coal seams, is hereby created and designated the Basin-Fruitland Coal Gas Pool, with vertical limits comprising all coal seams within the equivalent of the stratigraphic interval from a depth of approximately 2450 feet to 2880 feet as shown on the Gamma Ray/Bulk Density log from Amoco Production Company's Schneider Gas Com "B" Well No. 1 located 1110 feet from the South line and 1185 feet from the West line of Section 28, Township 32 North, Range 10 West, NMPM, San Juan County, New Mexico.

(2) The horizontal limits of the Basin-Fruitland Coal Gas Pool shall comprise the following described area in all or portions of San Juan, Rio Arriba, McKinley and Sandoval Counties, New Mexico, with the exception of Section 3 through 6 of Township 31 North, Range 10 West, and Section 19 through 22, and 27 through 34 of Township 32 North, Range 10 West, San Juan County, New Mexico, which said acreage currently comprises the Cedar Hill-Fruitland Basal Coal Gas Pool:

Township 19 North, Ranges 1 West through 6 West;
Township 20 North, Ranges 1 West through 8 West;
Township 21 North, Ranges 1 West through 9 West;
Township 22 North, Ranges 1 West through 11 West;
Township 23 North, Ranges 1 West through 14 West;
Township 24 North, Ranges 1 East through 16 West;
Township 25 North, Ranges 1 East through 16 West;
Township 26 North, Ranges 1 East through 16 West;
Township 27 North, Ranges 1 West through 16 West;
Township 28 North, Ranges 1 West through 16 West;
Township 29 North, Ranges 1 West through 15 West;
Township 30 North, Ranges 1 West through 15 West;
Township 31 North, Ranges 1 West through 15 West;
Township 32 North, Ranges 1 West through 13 West;

(3) Temporary Special Rules and Regulations for the Basin-Fruitland Coal Gas Pool are hereby promulgated as follows:

SPECIAL RULES AND REGULATIONS FOR THE BASIN-FRUITLAND COAL GAS POOL

RULE 1. Each well completed or recompleted in the Ba Fruitland Coal Gas Pool shall be spaced, drilled, operated, produced in accordance with the Special Rules and Regulati hereinafter set forth.

RULE 2. A gas well within the Basin-Fruitland Coal Pool shall be defined by the Division Director as a well tha producing from the Fruitland coal seams as demonstrated b preponderance of data which could include the following:

a. Electric Log Data
b. Drilling Time
c. Drill Cuttings of Log Cores
d. Mud Logs
e. Completion Data
f. Gas Analysis
g. Water Analysis
h. Reservoir Performance
i. Other evidence which may be utilized in making s determination.

RULE 3. (As Amended by Order No. R-8768-A, July 16, 1991) Division Director may require the operator of a proposed or exis Basin-Fruitland Coal Gas well, Fruitland Sandstone well, or Pict Cliffs Sandstone well, to submit certain data as described in Rul above, which would not otherwise be required by Division Rules Regulations, in order to demonstrate to the satisfaction of the Division said well will be or is currently producing from the appropriate com source of supply. The confirmation that a well is producing exclusi from the Basin-Fruitland Coal Gas Pool shall consist of approv Division Form C-104, provided however that such approval shall b Division purposes only, and shall not preclude any other governme jurisdictional agency from making its own determination of produc origination utilizing its own criteria.

RULE 4. (As Amended by Order No. R-8768-A, July 16, 1991) E well completed or recompleted in the Basin-Fruitland Coal Gas Pool s be located on a standard unit containing 320 acres, more or less, compri any two contiguous quarter sections of a single governmental sec being a legal subdivision of the United States Public Lands Survey.

Individual operators may apply to the Division for an exception to requirements of Rule No. (4) to allow the drilling of a second well standard 320-acre units or on approved non-standard units in specific defined areas of the pool provided that:

(a) Any such application shall be set for hearing before a Divis Examiner;

(b) Actual notice of such application shall be given to operator Basin-Fruitland Coal Gas Pool wells, working interest owners of undri leases, and unleased mineral owners within the boundaries of the area which the infill provision is requested, and to all operators of Ba Fruitland Coal Gas Pool wells within one mile of such area, provi however any operator in the pool or other interested party may appear participate in such hearing.

Such notice shall be sent certified or registered mail or by overni express with certificate of delivery and shall be given at least 20 days p to the date of the hearing.

RULE 5. (As Amended by Order No. R-8768-A, July 16, 1991) T Supervisor of the Aztec district office of the Division shall have authority to approve a non-standard gas proration unit within the Bas Fruitland Coal Gas Pool without notice and hearing when the unorthod size or shape is necessitated by a variation in the legal subdivision of United States Public Lands Survey and/or consists of an entire gover mental section and the non-standard unit in not less than 70% nor mo than 130% of a standard gas proration unit. Such approval shall consist acceptance of Division Form C-102 showing the proposed non-standa unit and the acreage contained therein.

(BASIN-FRUITLAND COAL GAS POOL - Cont'd.)

RULE 6. (As Amended by Order No. R-8768-A, July 16, 1991) The Division Director may grant an exception to the requirements of Rule (4) when the unorthodox size or shape of the gas proration unit is necessitated by a variation in the legal subdivision of the United States Public Lands Survey and the non-standard gas proration unit is less than 70% or more than 130% of a standard gas proration unit, or where the following facts exist and the following provisions are complied with:

(a) the non-standard unit consists of quarter-quarter sections or lots that are contiguous by a common bordering side.

(b) The non-standard unit lies wholly within a governmental half section, except as provided in paragraph (c) following.

(c) The non-standard unit conforms to a previously approved Blanco-Mesaverde or Basin-Dakota Gas Pool non-standard unit as evidenced by applicant's reference to the Division's order number creating said unit.

(d) The applicant presents written consent in the form of waivers from all offset operators or owners of undrilled tracts and from all operators owning interests in the half section in which the non-standard unit is situated and which acreage is not included in said non-standard unit.

(e) In lieu of paragraph (d) of this rule, the applicant may furnish proof of the fact that all of the aforesaid parties were notified by certified or registered mail or overnight express mail with certificate of delivery of his intent to form such non-standard unit. The Division Director may approve the application if no such party has entered an objection to the formation of such non-standard unit within 30 days after the Division Director has received the application.

(f) The Division Director, at his discretion, may set any application under Rule (6) for public hearing.

RULE 7. The first well drilled or recompleted on every standard or non-standard unit in the Basin-Fruitland Coal Gas Pool shall be located in the NE/4 or SW/4 of a single governmental section and shall be located no closer than 790 feet to any outer boundary of the proration unit nor closer than 130 feet to any quarter section line nor closer than 10 feet to any quarter-quarter section line or subdivision inner boundary.

RULE 8. The Division Director may grant an exception to the requirements of Rule (7) without hearing when an application has been filed for an unorthodox location necessitated by topographical conditions, the recompletion of a well previously drilled to a deeper horizon, provided said well was drilled at an orthodox or approved unorthodox location for such original horizon, or the drilling of an intentionally deviated horizontal wellbore. All operators or owners of undrilled tracts offsetting the proposed location shall be notified of the application by registered or certified mail, and the applicant shall state that such notice has been furnished. The Director may approve the application upon receipt of written waivers from all parties described above or if no objections to the unorthodox location has been entered within 20 days after the Director has received the application.

RULE 9(A). The Division Director shall have the authority to administratively approve an intentionally deviated well in the Basin-Fruitland Coal Gas Pool for the purpose of penetrating the coalbed seams by means of a wellbore drilled horizontally, provided the following conditions are complied with:

(1) the surface location of the proposed well is a standard location or the applicant has obtained approval of an unorthodox surface location as provided for in Rule (8) above.

(2) The bore hole shall not enter or exit the coalbed seams outside of a drilling window which is in accordance with the setback requirements of Rule (7), provided however, that the 10 foot setback distance requirement from the quarter-quarter section line or subdivision inner boundary shall not apply to horizontally drilled wells.

(B) To obtain administrative approval to drill an intentionally deviated horizontal wellbore, the applicant shall file such application with the Santa Fe and Aztec offices of the Division and shall further provide a copy of such application to all operators or owners of undrilled tracts offsetting the proposed gas proration unit for said well by registered or certified mail, and the application shall state that such notice has been furnished. The application shall further include the following information:

(1) A copy of Division Form C-102 identifying the proposed proration unit to be dedicated to the well.

(2) Schematic drawings of the proposed well which fully describe the casing, tubing, perforated or open hole interval, kick-off point, and proposed trajectory of the drainhole section.

The Director may approve the application upon receipt of written waivers from all parties described above or if no objection to the intentionally deviated horizontal wellbore has been entered within 20 days after the Director has received the application. If any objection to the proposed intentionally deviated horizontal well is received within the prescribed time limit as described above, the Director shall, at the applicant's request, set said application for public hearing.

(C) During or upon completion of drilling operations the operator shall further be required to conduct a directional survey on the vertical and lateral portions of the wellbore and shall submit a copy of said survey to the Santa Fe and Aztec Offices of the Division.

(D) The Division Director, at his discretion, may set any application for intentionally deviated horizontal wellbores for public hearing.

RULE 10. Notwithstanding the provisions of Division Rule No. 404, the Supervisor of the Aztec district office of the Division shall have the authority to approve the venting or flaring of gas from a Basin-Fruitland Coal Gas Well upon a determination that said venting or flaring is necessary during completion operations, to obtain necessary well test information, or to maintain the producibility of said well. Application to flare or vent gas shall be made in writing to the Aztec district office of the Division.

RULE 11. Testing requirements for a Basin-Fruitland Coal Gas well hereinafter set forth may be used in lieu of the testing requirements contained in Division Order No. R-333-I. The test shall consist of a minimum twenty-four hour shut-in period, and a three hour production test. The Division Director shall have the authority to modify the testing requirements contained herein upon a showing of need for such modification. The following information from this initial production test must be reported:

1. The surface shut-in tubing and/or casing pressure and date these pressures were recorded.

2. The length of the shut-in period.

3. The final flowing casing and flowing tubing pressures and the duration and date of the flow period.

4. The individual fluid flow rate of gas, water, and oil which must be determined by the use of a separator and measurement facilities approved by the Supervisor of the Aztec district office of the Division; and

(BASIN-FRUITLAND COAL GAS POOL - Cont'd.)

5. The method of production, e.g. flowing, pumping, etc. and disposition of gas.

RULE 12. The Division Director shall have the authority to approve the commingling within the wellbore of gas produced from coal seams and sandstone intervals within the Fruitland and/or Pictured Cliffs formations where a finding has been made that a well is not producing entirely from either coal seams or sandstone intervals as determined by the Division. All such applications shall be submitted to the Santa Fe office of the Division and shall contain all the necessary information as described in General Rule 303 (C) of the Division Rules and Regulations, and shall meet the prerequisites described in 303 (C) (1) (b). In addition, the Division Director may require the submittal of additional well data as may be required to process such application.

RULE 13. The Division Director may approve the commingling within the wellbore of gas produced from coal seams and sandstone intervals within the Fruitland and/or Pictured Cliffs formations where a well does not meet the prerequisites as described in General Rule 303 (C) (1) (b) provided that such commingling had been accomplished prior to July 1, 1988, and provided further that the application is filed as described in Rule (12).

IT IS FURTHER ORDERED THAT:

(4) The locations of all wells presently drilling to, completed in, commingled in, or having an approved APD for the Basin-Fruitland Coal Gas Pool are hereby approved; the operator of any well having an unorthodox location shall notify the Aztec district office of the Division in writing of the name and location of the well within 30 days from the date of this order.

(5) Pursuant to Paragraph A. of Section 70-2-18, N.M.S.A. 1978, Comp., contained in Laws of 1969, Chapter 271, existing gas wells in the Basin-Fruitland Coal Gas Pool shall have dedicated thereto 320 acres in accordance with the foregoing pool rules; or pursuant to Paragraph C. of said Section 70-2-18, existing wells may have non-standard spacing and proration units established by the Division and dedicated thereto.

(6) In accordance with (5) above, the operator shall file a new Form C-102 dedicating 320 acres to the well or shall obtain a non-standard unit approved by the Division. The operator shall also file a new C-104 with the Aztec district office of the Division.

(7) Failure to comply with Paragraphs (5) and (6) above within 60 days of the date of this order shall subject the well to a shut-in order until such requirements have been met.

(8) This case shall be reopened at an examiner hearing in October, 1990 at which time the operators in the subject pool may appear and present evidence and testimony relative to the determination of permanent rules and regulations for the Basin-Fruitland Coal Gas Pool.

(9) Jurisdiction of this cause 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.

VADA-DEVONIAN POOL
Lea County, New Mexico

Order No. R-8770, Adopting Temporary Operating Rules for the Vada Devonian Pool, Lea County, New Mexico, October 26, 1988.

Order No. R-8770-A, May 30, 1990, rescinds the temporary operating rules adopted in Order No. R-8770, October 26, 1988.

Application of Union Pacific Resources Company for Pool Extension and Special Pool Rules, Lea County, New Mexico.

CASE NO. 9439
Order No. R-8770

ORDER OF THE DIVISION

BY THE DIVISION: This cause came on for hearing at 8:15 a.m. on August 17, 1988, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 26th day of October, 1988, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) Division Case Nos. 9439 and 9440 were consolidated at the time of the hearing for the purpose of testimony.

(3) By Order No. R-8667 dated June 10, 1988, the Division created and defined the Vada-Devonian Pool with horizontal limits consisting of the SW/4 of Section 26, Township 10 South, Range 33 East, NMPM, Lea County, New Mexico.

(4) The applicant, Union Pacific Resources Company, seeks to extend the horizontal limits of the Vada-Devonian Pool to include the NW/4 of Section 35, Township 10 South, Range 33 East, NMPM, Lea County, New Mexico, and further seeks the promulation of temporary special rules and regulations for said pool, including a provision for 80-acre spacing and proration units, designated well locations, and a poolwide exception to Division Rule No. 111 allowing for directional drilling or well deviations of more than five degrees in any 500-foot interval.

(5) The applicant is the owner and operator of the discovery well for said pool, the State "26" Well No. 1 located 330 feet from the South line and 2310 feet from the West line of said Section 26.

(6) The applicant is also the owner and operator of the State "26" Well No. 2 located 1910 feet from the South line and 1980 feet from the East line (Unit J) of said Section 26, which was spudded on April 21, 1988, was drilled to a depth of 12,953 feet and is currently being sidetracked to an unorthodox subsurface location within a 150-foot radius of a point 1910 feet from the South line and 2580 feet from the East line (Unit J) of said Section 26, (being the subject of companion Case No. 9440).