

**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. 13224
ORDER NO. R-12147**

**APPLICATION OF BURLINGTON RESOURCES OIL & GAS COMPANY LP
FOR COMPULSORY POOLING, RIO ARRIBA COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on February 19, 2004, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 19th day of May, 2004, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given, and the Division has jurisdiction of this case and of the subject matter.

(2) Burlington Resources Oil & Gas Company LP ("Applicant"), seeks an order pooling all uncommitted mineral interests underlying the W/2 of Section 9, Township 29 North, Range 7 West, NMPM, Rio Arriba County, New Mexico, forming a standard 320-acre gas spacing and proration unit (the "Unit") for all formations or pools spaced on 320 acres within this vertical extent, which presently include, but are not necessarily limited to, the Basin-Dakota Gas Pool.

(3) The above-described unit ("the Unit") is to be dedicated to Applicant's proposed San Juan 29-7 Well No. 80B, to be drilled at a standard gas well location 1540 feet from the North line and 1065 feet from the West line (Unit E) of Section 9, and to the proposed San Juan 29-7 Well No. 80M, to be drilled subsequently at an unorthodox gas well location 560 feet from the South line and 405 feet from the West line (Unit M) of Section 9; such unorthodox location will be subject to Division approval upon subsequent application.

(4) Two or more separately owned tracts are embraced within the Unit, and/or there are royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the Unit that are separately owned.

(5) Applicant is an owner of an oil and gas working interest within the Unit. Applicant has the right to drill and proposes to drill its San Juan 29-7 Wells No. 80B and 80M (the "proposed wells") to a common source of supply within Section 9.

(6) There are interest owners in the proposed unit that have not agreed to pool their interests.

(7) The Unit is included within the San Juan 29-7 Unit, a federal exploratory unit established by Unit Agreement No. 14-08-001-1650, dated December 7, 1953, between El Paso Natural Gas Company as original unit operator and other parties who have joined therein.

(8) The Unit is not presently included within a participating area applicable to the Dakota formation under the terms of the San Juan 29-7 Unit Agreement.

(9) All interests in the Unit are committed to the San Juan 29-7 Unit Agreement. However, some unleased mineral interests within the Unit are not committed to an operating agreement under the terms of the San Juan 29-7 Unit Agreement.

(10) The San Juan 29-7 Unit Agreement provides that:

[c]osts and expenses incurred by the [San Juan 29-7 Unit] Operator in conducting unit operations hereunder shall be paid and apportioned among and borne by the owners of working interests, all in accordance with the [San Juan 29-7 Unit Operating Agreement].

(11) The San Juan 29-7 Unit Operating Agreement provides that if a well is drilled to a formation below the base of the Mesa Verde on a drill block not included in a participating area, and such well is subsequently included in a participating area for such formation, the costs of such well shall be reallocated among the owners of working interests in proportion to their respective interests in the participating area.

(12) The pooled parties are not parties to, and accordingly are not bound by, the San Juan 29-7 Unit Operating Agreement. However, NMSA 1978 Section 70-2-17 provides for recovery from non-consenting pooled working interest owners of the amount of "actual expenditures required for such purpose [development of the Unit] not in excess of what are reasonable." The actual expenditures required for development of the Unit under the terms of the San Juan 29-7 Unit Operating Agreement if the Unit is included in a Dakota participating area will be the costs of such development to the operator after giving effect to the reallocation as provided in the Unit Operating Agreement.

(13) Accordingly, this Order should provide for recovery from the pooled parties, in proportion to their respective working interests in the Unit, of the actual costs incurred by or on behalf of Applicant for development of the Unit after giving effect to the reallocation of such costs pursuant to the San Juan 29-7 Unit Operating Agreement among the owners of working interests in any participating area in which the Unit may be subsequently included, provided such costs are reasonable. Such allocation of costs is just and reasonable and in accordance with NMSA 1978 Section 70-2-17.

(14) With respect to the allocation of revenues, Paragraph 12 of the San Juan 29-7 Unit Agreement provides that:

All unitized substances produced from each participating area established under this agreement . . . shall be deemed to be produced equally on the acreage basis from the several tracts of unitized land of the participating area established for such production and . . . each such tract of unitized land shall have allocated to it such percentage of said production as the number of acres of such tract included in said participating area bears to the total acres of unitized land in said participating area, except that allocation of production hereunder for purposes other than for settlement of the royalty, overriding royalty, or payment out of production obligations of the respective working interest owners, shall be on the basis prescribed in the unit operating agreement whether in conformity with the basis of allocation herein set forth or otherwise.

(15) A reasonable construction of the language set out in Finding Paragraph (14), to which the pooled parties in this case are contractually bound, would be that the production allocated to the Unit shall be the prorata portion of production from the participating area to which the Unit is assigned, allocated on the basis of the ratio of the acreage in the unit to the acreage in the PA [except for the purpose of computing the interest in production of working interest owners who otherwise agree.]

(16) Since there is no operating agreement allocating production to the interests of the pooled parties in a different manner, the interest of the pooled parties in production from the Unit should be determined as though the production from the Unit equaled the production attributed to the Unit under the terms of Paragraph 12 of the San Juan 29-7 Unit Agreement. Such allocation of revenues is just and reasonable and in accordance with NMSA 1978 Section 70-2-17.

(17) At the hearing, Applicant requested that the interest of the pooled parties be made subject to the Gas Balancing Agreement attached to the San Juan 29-7 Unit Operating Agreement.

(18) However, no evidence was presented to indicate that the terms of the Gas Balancing Agreement would be just and reasonable as applied to the pooled parties.

(19) The application and notice to the pooled parties did not indicate that the powers of the Division under Division Rule 414 [19.15.6.414 NMAC] (Gas Sales by Less than One Hundred Percent of the Owners in a Well) were being invoked.

(20) Furthermore, the language of Rule 414 indicates that it can be invoked only by an owner whose interest is undersold.

(21) Accordingly, the oral request of Applicant to subject the interest of the pooled parties to the Gas Balancing Agreement attached to the San Juan 29-7 Unit Operating Agreement should be denied.

(22) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Unit the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, this application should be approved by pooling all uncommitted interests, whatever they may be, in the oil and gas within the Unit.

(23) Applicant is the operator of the San Juan 29-7 Unit and should be designated the operator of the proposed wells and of the Unit.

(24) Any pooled working interest owner who does not pay its share of estimated well costs of either of the proposed wells should have withheld from production its share of reasonable well costs plus an additional 200% thereof as a reasonable charge for the risk involved in drilling such well.

(25) Reasonable charges for supervision (combined fixed rates) should be fixed at \$5,048.20 per month per well while drilling and \$589.01 per month per well while producing, provided that these rates should be adjusted annually in accordance with the provisions of the San Juan 29-7 Unit Operating Agreement.

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of Burlington Resources Oil & Gas Company LP, all uncommitted interests, whatever they may be, in the oil and gas underlying the W/2 of Section 9, Township 29 North, Range 7 West, N.M.P.M., Rio Arriba County, New Mexico, are hereby pooled, forming a standard 320-acre gas spacing and proration unit (the "Unit") for all formations or pools spaced on 320 acres within this vertical extent, which presently include but are not necessarily limited to the Basin-Dakota Gas Pool.

(2) The Unit shall be dedicated to Applicant's proposed San Juan 29-7 Well No. 80B to be drilled at a standard gas well location 1540 feet from the North line and 1065 feet from the West line (Unit E) of Section 9, and to the proposed San Juan 29-7 Well No. 80M, to be drilled subsequently at an unorthodox gas well location 560 feet from the South line and 405 feet from the West line (Unit M) of Section 9. The unorthodox location of the proposed San Juan 29-7 Unit Well No. 80M will require Division approval upon subsequent application.

(3) The operator of the Unit shall commence drilling the San Juan 29-7 Well No. 80B on or before August 31, 2004, and shall thereafter continue drilling the well with due diligence to test the Dakota formation.

(4) In the event the operator does not commence drilling the San Juan 29-7 Well No. 80B on or before August 31, 2004, Ordering Paragraph (1) shall be of no effect unless the operator obtains a time extension from the Division Director for good cause.

(5) Should the proposed San Juan 29-7 Well No. 80B not be drilled and completed within 120 days after commencement thereof, Ordering Paragraph (1) shall be of no further force and effect, and the unit created by this Order shall terminate unless the operator obtains a time extension from the Division Director for good cause.

(6) Upon final plugging and abandonment of all wells drilled pursuant to this order, the pooled unit created by this Order shall terminate, unless this order has been amended to authorize further operations; provided, however, that the abandonment of the San Juan 29-7 Well No. 80B shall not terminate the Unit if such abandonment occurs prior to commencement of the San Juan 29-7 Well No. 80M, and the operator commences drilling the San Juan 29-7 Well No. 80M within 120 days following such abandonment.

(7) Applicant is hereby designated the operator of the proposed wells and of the Unit.

(8) After pooling, uncommitted working interest owners are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Unit, including unleased mineral interests, who are not parties to an operating agreement governing the Unit.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Unit an itemized schedule of estimated costs of drilling, completing and equipping the proposed San Juan 29-7 Well No. 80B ("well costs").

(9) Prior to commencement of the proposed San Juan 29-7 Well No. 80M, the operator shall furnish the Division and each known pooled working interest owner in the Unit an itemized schedule of estimated costs of drilling, completing and equipping that well ("well costs").

(10) Within 30 days from the date the schedule of estimated well costs is furnished for either well, any pooled working interest owner shall have the right to pay its share of estimated well costs of such well to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs of such well but shall not be liable for risk charges. Pooled working interest owners who elect not to pay their share of estimated wells costs for either well as provided in this paragraph shall thereafter, as to such well, be referred to as "non-consenting working interest owners."

(11) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs of each well (as reallocated pursuant to the San Juan 29-7 Unit Operating Agreement, if such reallocation has occurred) within 90 days following the later of completion of such well or the incorporation of the Unit in a participating area for a formation in which such well is completed. If no objection to such actual well costs is received by the Division, and the Division has not objected within 45 days following receipt of the schedule, such actual well costs shall be deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(12) Within 60 days following determination of reasonable well costs for either well, any pooled working interest owner who has paid its share of estimated costs for such well in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator the amount, if any, that the estimated well costs it has paid exceed its share of reasonable well costs.

(13) The operator is hereby authorized to withhold the following costs and charges from production attributable to either well:

- (a) the proportionate share of reasonable well costs for such well attributable to each owner who is non-consenting working interest owner as to such well; and
- (b) as a charge for the risk involved in drilling the well, 200% of the above costs.

(14) The share of production and costs allocated to each pooled working interest owner shall be determined by reference to the San Juan 29-7 Unit Operating Agreement, consistent with Finding Paragraphs (15) and (16) of this order.

(15) If any pooled working interest owner is a participating party as to one of the proposed wells and a non-consenting working interest owner as to the other well, then, for the purpose of determining the share of production from which the charges provided in Ordering Paragraph (13) shall be deducted, the share of participating area production attributable to the Unit shall be prorated between such wells in proportion to the actual production from each such well.

(16) The operator shall distribute the costs and charges withheld from production allocated to either well, proportionately, to the parties who advanced the well costs for such well.

(17) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$5,048.20 per month per well while drilling and \$589.01 per month per well while producing, provided that these rates shall be adjusted annually pursuant to the terms of the San Juan 29-7 Unit Operating Agreement. The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to pooled working interest owners.

(18) Except as provided in Ordering Paragraphs (13) and (16) above, all proceeds from production from either well that are not disbursed for any reason shall be placed in escrow in Rio Arriba County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

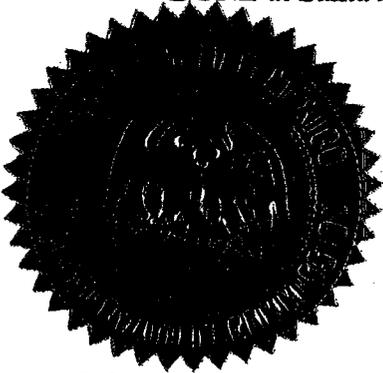
(19) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(20) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(21) The operator of the well(s) and Unit shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

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

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



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

A handwritten signature in black ink, appearing to read "Joanna Prukop". The signature is fluid and cursive, with a large loop at the end.

JOANNA PRUKOP
Cabinet Secretary/Acting Director