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October 8, 1996

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Oil Conservation Division

Michael E. Stogner
Chief Hearing Examiner
Oil Conservation Division
New Mexico Department of Energy, Minerals
and Natural Resources
2040 South Pacheco Street
Santa Fe, New Mexico 87505

Re: *Case 11613: Application of Burlington Resources Oil & Gas Company for
Compulsory Pooling, Lea County, New Mexico*

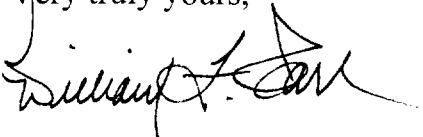
*Case 11622: Application of Penwell Energy, Inc. For Compulsory Pooling,
Lea County, New Mexico*

Dear Mr. Stogner:

Pursuant to your request I am enclosing by copy and on disc a proposed Order for Penwell Energy, Inc. in the above-captioned cases.

If you need anything further from Penwell Energy, Inc., to assist with you consideration of these applications, please advise.

Very truly yours,



WILLIAM F. CARR
WFC:mlh

cc: Mark Wheeler (w/enc.)
W. Thomas Kellahin, Esq. (w/enc.)

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

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OCT 8 1996

Oil Conservation Division

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:**

CASE NO. 11613

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

CASE NO. 11622

**APPLICATION OF PENWELL ENERGY, INC.
FOR COMPULSORY POOLING, LEA COUNTY,
NEW MEXICO.**

ORDER NO. R-_____

**PENWELL ENERGY, INC.'S
PROPOSED ORDER OF THE DIVISION**

BY THE DIVISION:

This cause came on for hearing at 8:15 a. m. on October 3, 1996 at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this ___ day of October, 1996, the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS:

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

Order Nos. 11613 and 11622

Order No. R-

Page 2

(2) Division Case Nos. 11613 and 11622 were consolidated at the time of the hearing for the purpose of testimony because the approval of one case will correspondingly require the denial of the other and in order to provide a comprehensive decision in these cases, one order should be entered for both cases.

(3) On August 26, 1996, the applicant in Case 11613, Burlington Resources Oil and Gas Company, formerly Meridian Oil Inc. ("Burlington"), filed its application seeking an order pooling all mineral interests from the surface to the base of the Bone Spring formation underlying the NW/4 SE/4 of Section 24, Township 22 South, Range 32 East, NMPM, Lea County, New Mexico, forming a standard 40-acre oil spacing and proration unit for any and all formations and/or pools developed on 40-acre spacing within said vertical extent, which presently includes but is not necessarily limited to the Undesignated West Red Tank Delaware Pool and the Red Tank-Bone Springs Pool. Said unit is to be dedicated to its proposed Checkmate "24" Federal Well No. 1 to be drilled at a standard oil well location within said unit.

(4) On September 10, 1996, the applicant in companion Case No. 11622, Penwell Energy, Inc. ("Penwell"), filed a competing pooling application against Burlington in which Penwell seeks to be designated operator of this well.

(5) The working interest owners in the NW/4 SE/4 of Section 24, Township 22 South, Range 32 East, NMPM, Lea County is as follows:

| | |
|-----------------------------|---------|
| Penwell Energy, Inc. et al. | 81.575% |
| Burlington Resources | |
| Oil & Gas Company | 13.401% |
| A. J. Lossee | 5.033% |

(6) Although Burlington owned only 13.401% of the working interest in the subject acreage and had not contacted the owners of the remaining 85.499 % of the working interest, in February, 1995 it filed an application for permit to drill with the Bureau of Land Management.

(7) Burlington proposed a well in the NW/4 SE/4 of said Section 24 in February 1995 to the then owners of the working interest in this tract but has been unable to obtain the

Order Nos. 11613 and 11622

Order No. R-

Page 3

voluntary participation of any other owner of working interest in their proposed development of this acreage.

(8) In early September 1996, Penwell Energy Inc. commenced negotiations with the owners of the working interest in the NW/4 SE/4 of said Section 24 for the acquisition of working interest in this spacing or proration unit. Since that date, Penwell has contacted all working interest owners in this spacing or proration unit and has been able to acquire or otherwise reach agreement with all other working interest owners in this tract except Burlington.

(9) Penwell owns or represents 86.599 % of the working interest in the NW/4 SE/4 of said Section 24 whereas Burlington owns 13.401%.

(10) Both operators have drilled and operate Bone Spring wells in southeast New Mexico and Penwell has Staked seven locations for Bone Spring wells in said Section 24.

(11) Both operators propose to commence the subject well at the earliest possible date and Penwell is preparing a drilling order title opinion for this well.

(12) Although Penwell's AFE and proposed overhead rates for supervision are lower than Burlington's, these differences are not significant and either party will be able to drill and operate the proposed well in an economical and efficient manner.

(13) Both parties agree that a risk penalty of 200% should be assessed against any working interest owner who does not voluntarily participate in the well.

(14) The Division finds that since 85.499% of the working interest in the NW/4 SW/4 of said Section 24 have voluntarily joined in the Penwell proposal for development of this tract and that since these owners will pay 85.499 % of the cost of the development of this acreage and bear 85.499 % of the risk associated therewith, the application of Penwell Energy, Inc. should be **granted**.

(15) Since Burlington has had a reasonable opportunity to reach voluntary agreement for the development of the NW/4 SW/4 of Section 24 and has been unable to obtain the voluntary participation of any other working interest owner in their proposed well

and since the owners of 85.499 % of the working interest in this tract have agreed to another operator for the proposed well, the application of Burlington should be **denied**.

(16) Any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to Penwell, as the operator, in lieu of paying his share of reasonable well costs out of production.

(17) Any non-consenting working interest owner who does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 200% thereof as a reasonable charge for the risk involved in the drilling of the well.

(18) Any non-consenting working interest owner should be afforded the opportunity to object to the actual well costs but actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(19) Following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(20) \$4,200.00 per month while drilling and \$440.00 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(21) All proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

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

Order Nos. 11613 and 11622

Order No. R-

Page 5

(23) The operator of the well and unit shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the force pooling provisions of the order.

IT IS THEREFORE ORDERED THAT

(1) The application of Penwell Energy, Inc. In Case No. 11622 for an order pooling all mineral interests from the surface to the base of the Bone Springs formation underlying the NW/4 SE/4 of Section 24, Township 22 South, Range 32 East, NMPM, Lea County, New Mexico, forming a standard 40-acre oil spacing and proration unit for any and all formations and/or pools developed on 40-acre oil spacing within said vertical extent which presently include but is not necessarily limited to the Red Tank-Bone Springs Pool and the West Red Tank Delaware Pool is hereby **approved**.

PROVIDED HOWEVER THAT, Penwell as the operator of said unit shall commence the drilling of said well on or before the 31st day of December, 1996, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Bone Springs formation.

PROVIDED FURTHER THAT, in the event Penwell as the said operator does not commence the drilling of said well on or before the 31st day of December, 1996, Ordering Paragraph No. (1) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division Director for good cause shown.

PROVIDED FURTHER THAT, should said well not be drilled to completion, or abandonment, within 120-days after commencement thereof, said operator shall appear before the Division Director and show cause why Ordering Paragraph No. (1) of this order should not be rescinded.

(2) The application of Burlington Resources Oil & Gas Company in Case 11613 is hereby **denied**.

(3) After the effective date of this order and within 90-days prior to commencing said well, Penwell shall furnish the Division and to each of the known working interest owner in the subject unit an itemized schedule of estimated well costs.

(4) Within thirty (30) days from the date the schedule of estimated well costs is furnished to him, any said non-consenting working interest owner shall have the right to pay his share of estimated well costs to Penwell in lieu of paying his share of reasonable well costs out of production, and any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(5) The operator shall furnish the Division and each known working interest owner an itemized schedule of actual well costs within 90-days following completion of the well; if no objection to the actual well costs is received by the Division and the Division has not objected within 45-days following receipt of said schedule, the actual well costs shall be the reasonable well costs; provided however, if there is objection to actual well costs within said 45-day period the Division will determine reasonable well costs after public notice and hearing.

(6) Within 60-days following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated well costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(7) The operator is hereby authorized to withhold the following costs and charges from production:

(A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within thirty (30) days from the date the schedule of estimated well costs is furnished.

(B) As a charge for the risk involved in the drilling of the well, 200% of the pro-rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs is furnished to him.

(8) The operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(9) \$4,200.00 per month while drilling and \$440.00 per month while producing are

hereby fixed as reasonable charges for supervision (combined fixed rates); the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(10) 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 the terms of this order.

(11) Any well costs or charges which are to be paid out of production shall be withheld only from the working interest's share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(12) All proceeds from production from the subject well which are not disbursed for any reason shall immediately be placed in escrow in Lea 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 said escrow agent within 30-days from the date of first deposit with said escrow agent.

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

(14) The operator of the well and unit shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the force pooling provisions of the order.

(15) Jurisdiction is hereby 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.

Order Nos. 11613 and 11622

Order No. R-

Page 8

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

WILLIAM J. LeMAY
Director

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