

**KELLAHIN AND KELLAHIN**

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

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

W. THOMAS KELLAHIN\*

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

JASON KELLAHIN (RETIRED 1991)

January 24, 2000

**HAND DELIVERED**

Ms. Lori Wrottenbery, Director  
Oil Conservation Division  
2040 South Pacheco  
Santa Fe, New Mexico 87505

**Re: FIRST AMENDED APPLICATION  
NMOCD Case 12277:**

**Application of Burlington Resources Oil & Gas  
Company for Compulsory Pooling, San Juan  
County, New Mexico  
Section 16, T31N, R11W, NMPM  
E/2: Brookhaven Com B Well No. 3B**

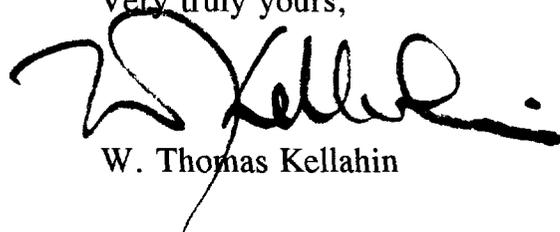
00 JAN 24 PM 3:33

OIL CONSERVATION DIV.

Dear Ms. Wrottenbery:

On behalf of Burlington Resources Oil & Gas Company, please find enclosed our referenced First Amended Application which was the subject of an Examiner's hearing held on January 20, 2000 and continued to February 3, 2000.

Very truly yours,



W. Thomas Kellahin

cc: Division:

Attn: Rand Carroll, Esq.  
Mark Ashley, Examiner

J. Scott Hall, Esq.

Burlington Resources Oil & Gas Company

Attn: Shannon Nichols

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

**IN THE MATTER OF THE APPLICATION  
OF BURLINGTON RESOURCES OIL & GAS  
COMPANY FOR COMPULSORY POOLING,  
SAN JUAN COUNTY, NEW MEXICO.**

**CASE NO. 12277**

**FIRST AMENDED APPLICATION**

Comes now BURLINGTON RESOURCES OIL & GAS COMPANY, by its attorneys, Kellahin & Kellahin, and in accordance with Section 70-2-17.C NMSA (1978), or in the alternative in accordance with Section 70-2-17.E NMSA (1978). applies to the New Mexico Oil Conservation Division for an order pooling all owners of mineral interests in the Mesaverde formation within the E/2 of Section 16, T31N, R11W, NMPM, San Juan County, New Mexico, for a 320-acre gas spacing unit consisting of the E/2 of this section for gas production from the Blanco-Mesaverde Gas Pool to be dedicated to the proposed Brookhaven Com B Well No. 3B to be located in the NE/4SE/4 of this section. Applicant seeks to be designated as the operator of this well.

In support of its application, Burlington Resources Oil & Gas Company ("Burlington") states:

**BACKGROUND**

1. Burlington is a 50.927120 % working interest owner in the Mesaverde formation in the E/2 of Section 16, T31N, R11W, NMPM, San Juan County, New Mexico and is the proposed operator for the Brookhaven Com B Well No 3B to be located within the NE/4SE/4 of this section and to be drilled as a gas well in the Blanco Mesaverde Gas Pool.

2. This proposed spacing unit was included within acreage subject to a November 27, 1951 farmout/operating agreements between Brookhaven Oil Company and San Juan Production Company (collectively the "GLA-46 Agreement") which set forth a drilling obligation for 18 Mesaverde wells to be drilled within the contract area and which entitled San Juan Production Company to earn 50 % of Brookhaven Oil Company's interest in the contract area.

3. This drilling obligation has been satisfied and San Juan Production Company has earned 50% of the Brookhaven Oil Company's interest in the contract area.

4. Since all earning provisions of GLA-46 Agreement were satisfied, thereafter and only by agreement made on an individual well basis, did the parties decide to make any future well subject to the cost limitations and carrying provisions of the GLA-46 Agreement.

5. Burlington is the successor to San Juan Production Company and Energy Resources Corporation "Energen" (formerly Total Minatome) and others are successors to Brookhaven Oil Company, (the "GLA-46 Group")

6. On December 14, 1998, Burlington proposed to the other working interest owners in this spacing unit the drilling of this well as a Mesaverde well at an estimated well cost of \$386,488.00 to be governed by the parties signing a new joint operating agreement instead of adopting the cost limitations and carrying provisions of the GLA-46 Agreement.

7. In September, 1998, Burlington was advised that Total Minatome sold its interest to Energen Resources Corporation "Energen" (successor in name to Taurus Exploration USA, Inc.)

8. On September 15, 1998, Burlington made its second request to the other working interest owners in this spacing unit again proposing the drilling of this well as a Mesaverde completion at an estimated well costs of \$386,488.00 to be governed by the parties signing a new joint operating agreement instead of being subject to the cost limitations and carrying provisions of the GLA-46 Agreement.

9. The GAL-46 Group admits that Burlington's AFE estimate of \$386,488.00 for this well represents a fair and reasonable estimate of the current cost of such wells.

10. In response, by letter dated October 11, 1999, Energen attempted to adopt and to participate under the terms of the GLA-46 agreements because certain of its provisions are very favorable to Energen and include (a) the right for Energen to be a "carried interest" so that Energen keeps 50% of its production and Burlington (San Juan) recovers 100% of Energen's (Brookhaven) share of costs only out of 50% of Energen's share of production and without any penalty; and (b) limits Energen's share of well costs to not more than 50% of a total well cost not to exceed \$45,000.00.

11. On October 13, 1999, Burlington advised Energen that the GLA-46 Agreement did not apply to this new well proposal and they could either (a) elect to participate by signing a new joint operating agreement or (b) farmout out their interests to Burlington.

## **GLA-46 GROUP'S POSITION**

12. The GLA-46 Group contends it can adopt and participate in the Brookhaven Wells under the terms of the GLA-46 Agreement which are very favorable to GLA-46 Group and, if adopted, include the right for the GLA-46 Group to be a "carried interest" so that:

- (a) Burlington pays for the total cost of the well, including casing;
- (b) then from 25 % of the production, Burlington recoups 50 % of the costs of the well (excluding casing) which cannot exceed \$45,000.00; and
- (c) the GLA-46 Group keeps its share of 25 % of the production until payout of the well costs and then keeps its share of 50 % of the production.

## **BURLINGTON'S POSITION**

13. Burlington contends that the 1951 GLA-46 Agreement:

- (a) imposed an obligation on Burlington to drill 18 single completion Mesaverde wells which entitled it to earn 50 % of the GLA-46 Group's interest in the contract area;
- (b) Burlington has completed that drilling obligation and has earned a 50 % interest in the contract area and has no obligation to the GLA-46 Group, including Energen, to drill any more Mesaverde wells;
- (c) the drilling of more wells on the acreage has been and can be accomplished only upon consent of the parties as to costs and payment provisions;
- (d) Beginning on November 20, 1953, the parties started amending the GLA-46 Agreements to either increase the amount of drilling costs for wells or to alter the carrying provision;

(e) As a result, after the drilling of the obligatory 18 Mesa Verde wells, the GLA-46 Agreement has been adopted at least 26 times to deal with the drilling of additional wells and address the issue of the costs recoverable from the carried parties necessitated by increasing well costs;

(f) Because those maximum recoupments do not adequately cover present drilling costs, the GLA-46 Agreement has been adopted and applied to certain wells to provide for the recoupment of **actual** drilling costs or for participation by the non-operating working interest owners in the drilling and completing of the wells;

(d) despite Burlington's efforts, we have been unable to reach an agreement with the GLA-46 Group as to the costs and allocations for new Mesaverde or Chacra wells; and

(e) the absence of agreement on cost and allocation permits Burlington to properly invoke compulsory pooling procedures.

**CLAIM FOR RELIEF PURSUANT  
TO  
SECTION 70-2-17.C NMSA (1978)**

14. Despite Burlington's good faith efforts to reach a voluntary agreement concerning well costs and payment of well costs, the GLA-46 Group has refused to (i) pay their proportionate share of those fair and current well costs and (ii) demands that Burlington carry their interests by adopting the provisions of GLA-46 Agreement.

15. The GLA-46 Group has attempted to elect to participate in the subject well under the terms of the November 27, 1951 GLA-46 Agreements and contends that their share of current well costs is (i) limited to their proportionate share of \$90,000 and not \$427,630.00; and (ii) that Burlington can recover their share only out of 25 % of their share of production as set forth in the GLA-46 Agreements.

16. Therefore, pursuant to Section 70-2-17.C NMSA (1978), the owners indicated on Exhibit "A" have not agreed to pool their interest for purposes of paying for the drilling and completion this well as proposed by Burlington.

17. As set forth in Division Order R-10877 and Order R-10878, the Division has already decide this issue in favor of issuing a compulsory order which pooled the GLA-46 Group's interest for the drilling of other wells because:

(a) if the Division does not pool the interests of the GLA-46 Group, and subsequent litigation determines that the GLA-46 Group's interpretation of the GLA-46 Agreement is incorrect, Burlington will be forced to consolidate the interests once again, either by a new agreement or by compulsory pooling. The well will have been drilled by that time, and the GLA-46 Group, in deciding whether or not to voluntarily participate in the well will have knowledge as to its success giving them an unfair advantage over Burlington; or

(b) if Burlington's interpretation of the GLA-46 Agreement is subsequently determined to be incorrect, the GLA-46 Group will have been voluntarily committed under the terms of the GLA-46 Agreement and will simply be dropped from the compulsory pooling order.

20. Finally, the Division found that:

"(19) It is the Division's position that the interpretation of the GLA-46 Agreement should be deferred to the courts.

(20) Burlington's compulsory pooling case against Total is appropriate, and in order to consolidate all of the interest within the proposed spacing unit, the interest of Total should be pooled by this order."

18. Burlington contends that this Brookhaven Well are not subject to the cost limitations or carrying provisions of the GLA-46 Agreement and therefore has filed this compulsory pooling case.

19. Pursuant to Section 70-2-17.C NMSA (1978) and in order to obtain its just and equitable share of production from this well and spacing unit, Burlington needs an order of the Division pooling the described spacing unit and described mineral interests involved.

**CLAIM FOR RELIEF PURSUANT  
TO  
SECTION 70-2-17.E NMSA (1978)**

20. In the alternative, Burlington claims that should the Division determine that the GLA-46 Agreement cost limitations and carrying provisions apply to this well such that (i) Burlington's recovery of the GLA-46 Group's share of the current estimated well costs of \$386,488.00 is limited to a total Mesa Verde Well cost ceiling of \$90,000 (excluding casing to be paid for by Burlington) and (ii) is to be recovered by Burlington out of 25 % of the GLA-46 Group's interest in production, then, and in that event, the provisions of Section 70-2-17.E NMSA (1978) apply and Division must modify the GLA-46 Agreement to the extent necessary to prevent waste in accordance with this statutory provision of the New Mexico Oil & Gas Act.

21. This well is necessary in order to recover Mesaverde reserves which will not otherwise be recovered.

22. In the event the Division determines that GLA-46 Agreement applies and then fails to modify the GLA-46 Agreement then waste will occur because it is uneconomic for Burlington to drill this well under the economic limitations imposed by the GLA-46 Agreements and the reserves which could have been produced by this well will be left unrecovered in the reservoirs.

23. Pursuant to Section 70-2-17.E NMSA (1978) and in order to obtain its just and equitable share of production from this well and spacing unit, Burlington needs an order of the Division pooling the described spacing unit and described mineral interests involved.

24. In accordance with the Division's notice requirements, a copy of this amended application has been sent to the parties shown on Exhibit "A".

WHEREFORE, Burlington, as applicant, requests that the Division enter its order pooling the mineral interests described in this spacing unit for the drilling, completing and operating this well at a standard gas well location and upon terms and conditions which include:

- (1) Burlington Resources Oil & Gas Company be named operator;
- (2) provisions for applicant and all working interest owners to participate in the costs of drilling, completing, equipping and operating for this well;

- (3) in the event a working interest owner fails to elect to participate in each well, then provision be made to recover out of production the costs of the drilling, completing, equipping and operating for the well including a risk factor penalty of 200 %;
- (4) provision for overhead rates of \$4500 per month drilling and \$450 per month operating and a provision providing for an adjustment method of the overhead rates as provided by COPAS;
- (5) for such other and further relief as may be proper.

RESPECTFULLY SUBMITTED:

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

W. THOMAS KELLAHIN  
KELLAHIN & KELLAHIN  
P. O. Box 2265  
Santa Fe, New Mexico 87504

BROOKHAVEN COM B #3B NEW DRILL  
WORKING INTEREST OWNERS

<u>NAME</u>	<u>WORKING INTEREST</u>
Energen Resources MAQ, Inc. Attn: Rich Corcoran 2198 Bloomfield Highway Farmington, NM 87401	24.752346%
Westport Oil & Gas Company Attn: Kent Davis 410 Seventeenth Street, Ste 2300 Denver, CO 80202-4436	11.120620%
DACRESA GROUP:	
Marcia Berger	.939251%
WWR Enterprises Inc.	.939251%
Carolyn Nielsen Sedberry	1.878502%
Herbert R. Briggs	.939561%
William C. Briggs	.939561%
F. A. & H. B. Cronican Trust	1.052180%
Cyrene L. Inman	1.857198%
C. Fred Luthy, Jr.	1.857198%
C/o Bank of America Attn: Ed Di Re P.O. Box 25546 Fort Worth, TX 76113-2546	
Cheryl L. Potenziani P.O. Box 36600, Station D Albuquerque, NM 87176	.926702%
Roger B. Nielsen 1200 Danbury Dr. Mansfield, TX 76063	1.878502%

