

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. 11837
ORDER NO. R-10905

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

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on August 21, 1997, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 27th day of October, 1997, 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) The applicant, Burlington Resources Oil & Gas Company ("Burlington"), seeks an order pooling all mineral interests in the Wolfcamp formation underlying the N/2 of Section 23, Township 26 South, Range 30 East, NMPM, Eddy County, New Mexico, thereby forming a standard 320-acre gas spacing and proration unit for the Undesignated Ross Draw-Wolfcamp Gas Pool.

(3) Said unit is to be dedicated to its proposed El Paso "23" Federal Well No. 2, which is to be drilled in accordance with Rule 111 of the General Rules and Regulations of the New Mexico Oil Conservation Division ("Division"), revised by Division Order No. R-10388, issued by the New Mexico Oil Conservation Commission in Case 11274 on June 13, 1997, as a multilateral directional wellbore whose producing intervals will be located within its producing area and dedicated to a project area consisting of the N/2 of said Section 23.

(4) The Ross Draw-Wolfcamp Gas Pool is a "non-prorated gas pool" and is not governed by the "*General Rules for the Prorated Gas Pools of New Mexico*," as promulgated by Division Order No. R-8170, as amended. Said gas pool is therefore subject to the Division's Statewide Rule 104.C(2)(b), which provides for 320-acre gas spacing and proration units, or

drilling units, and requires that wells be located no closer than 660 feet to the nearest side boundary of the designated tract nor closer than 1650 feet to the nearest end boundary, nor closer than 330 feet to any quarter-quarter section or subdivision inner boundary thereon and General Rule 104.D(3), which restricts the number of producing wells within a single gas spacing unit within non-prorated pools to only one.

(5) At the time of the hearing Burlington presented geologic and petroleum engineering evidence and testimony which demonstrates that:

(a) the Ross Draw-Wolfcamp Gas Pool is a naturally-fractured limestone reservoir with large lateral variations in thickness and that these lateral variations cause wide variations of initial gas rates, ultimate per well gas recoveries, and drainage areas;

(b) the limestone litofacies within the Wolfcamp formation form a laterally discontinuous reservoir; and

(c) horizontal drilling perpendicular to the natural vertical fractures will serve to increase the rate, ultimate recovery, and drainage area thereby enhancing the economic viability of the pool.

(6) Burlington presented land testimony and evidence which demonstrates that:

(a) Burlington has attempted to consolidate on a voluntary basis all of the oil and gas working interests ("operating rights") within the above-described 320-acre gas spacing and proration unit;

(b) Burlington's estimated cost for the subject multilateral directional wellbore is: (i) dry hole costs \$1,614,100; (ii) completion \$250,000; and (iii) facilities \$94,000; for a total cost of \$1,987,300;

(c) As of August 15, 1997, Burlington had obtained the voluntary agreement of 13 working interest owners so that as of that date Burlington had obtained the voluntary agreement of 73.89% percent of the working interest owners;

(d) Burlington has not been able to consolidate on a voluntary basis the interests of Kerry Petroleum, Inc. (Kerry") and K P Acquisitions Corporation (KP") a subsidiary of Kerry for the drilling of this well;

(e) Kerry's working interest is burdened with a 12.5% royalty and a 6.25% overriding royalty ("ORR") which results in Kerry having a 0.338540% net revenue interest which translates into a gross 81.25% net working interest while KP's working interest is burdened with a 12.5% R, a 6.25% ORR and an additional 3% ORR which results in KP having a net revenue interest of 3.04305% which translates into a gross 78.25% net working interest;

(f) Between June 2, 1997 and July 21, 1997, Burlington had approximately four conversations with Kerry/KP in an attempt to negotiate a voluntary agreement for the commitment of the Kerry and KP interests; and,

(g) On July 21, 1997, Burlington made a final attempt to negotiate an agreement with Kerry/KP.

(7) Hardeman L. Stonestreet of Midland, Texas appeared at the hearing on behalf of Kerry and KP and presented a statement in opposition and subsequent to the hearing filed an additional written objection in which he confirms that Burlington has correctly calculated the interests of Kerry and KP in this spacing unit but still contends that:

(a) Burlington did not negotiate in good faith because Burlington's landman refused to increase their offer to him;

(b) Burlington's offer of purchase or farmin terms was unreasonable;

(c) the risk factor penalty should be only 100% (however, he failed to provide any supporting evidence); and,

(d) Burlington has failed to offer to market Kerry/KP's share of gas production.

(8) Burlington having: (i) provided Kerry/KP with an adequate period of time in which to make their own analysis and reach their own independent decision concerning whether they wanted to sell, farmout, or participate in this well; and (ii) engaged in good faith efforts to obtain voluntary agreement and despite its efforts has not been able to obtain such an agreement, the application of Burlington in the immediate case should be approved by pooling all mineral interests, whatever they may be, within said 320-acre unit.

(9) To avoid the drilling of unnecessary wells, to protect correlative rights, to prevent waste, and to afford to the owner of each interest in said 320-acre unit the opportunity to recover or receive without unnecessary expense his just and fair share of the gas production in the Undesignated Ross Draw-Wolfcamp Gas Pool, the immediate application of Burlington should be approved by pooling all mineral interests, whatever they may be within the Wolfcamp formation, underlying said 320-acre unit.

(10) Further, Burlington should be designated the operator of the subject well and unit.

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

(12) Any non-consenting 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.

(13) At the time of the hearing Burlington presented adequate geological evidence and testimony to support the assignment of the maximum allowed 200% penalty for the risk involved in the drilling of the well. Therefore, 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 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(14) Any non-consenting 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.

(15) Following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated well 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.

(16) \$5,500.00 per month while drilling and \$650.00 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.

(17) 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.

(18) Upon the failure of the operator of said pooled unit to commence drilling of the subject well to which said unit is dedicated on or before January 31, 1998, the order pooling said unit should become null and void and of no effect whatsoever.

(19) Should all the parties to this force-pooling reach voluntary agreement subsequent to entry of this order, this order should thereafter be of no further effect.

(20) The operator of the subject well and 320-acre unit should notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the force-pooling provisions of this order.

IT IS THEREFORE ORDERED THAT:

(1) The application of Burlington Resources Oil & Gas Company ("Burlington") in Case No. 11837 for an order pooling all mineral interests in the Undesignated Ross Draw-Wolfcamp Gas Pool underlying the N/2 of Section 23, Township 26 South, Range 30 East, NMPM, Eddy County, New Mexico, to form a standard 320-acre gas spacing and proration unit for said pool is hereby **approved**.

PROVIDED HOWEVER THAT, Burlington as the operator of said unit shall commence the drilling of its proposed El Paso "23" Federal Well No. 2, which is to be drilled in accordance with Rule 111 of the General Rules and Regulations of the New Mexico Oil Conservation Division ("Division"), revised by Division Order No. R-10388, issued by the New Mexico Oil Conservation Commission in Case 11274 on June 13, 1997, as a multilateral directional wellbore whose producing intervals will be located within its producing area and dedicated to a project area consisting of the N/2 of said Section 23.

PROVIDED FURTHER THAT, in the event Burlington as the said operator does not commence the drilling of said well on or before the thirty-first day of January, 1998, Decretory 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 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 Decretory Paragraph No. (1) of this order should not be rescinded.

(2) Burlington Resources Oil & Gas Company is hereby designated the operator of the subject well and 320-acre unit.

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

(4) Within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator 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 an 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 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 30 days from the date the schedule of estimated well costs is furnished to him; and
- (B) As a charge for the risk involved in the drilling of the well, 200 percent 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 within 30 days from the date the schedule 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) \$5,500.00 per month while drilling and \$650.00 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 such 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 be placed in escrow in Eddy 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.

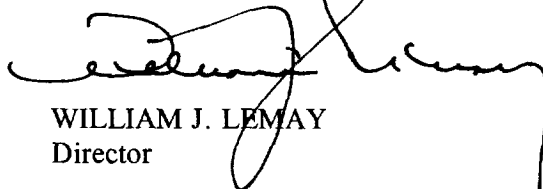
(13) Should all the parties to this force-pooling reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(14) The operator of the subject 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 this order.

(15) 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.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


WILLIAM J. LEMAY
Director

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