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. 12276
ORDER NO. R-11340

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

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on January 20, 2000 and February 3, 2000, at Santa Fe, New Mexico, before Examiner Mark W. Ashley.

NOW, on this 10th day of March, 2000, 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 its subject matter.

(2) Division Cases No. 12276 and 12277 were consolidated at the time of the hearing for the purpose of testimony.

(3) The applicant, Burlington Resources Oil & Gas Company ("Burlington"), seeks an order pooling all uncommitted mineral interests in the Mesaverde formation and the Chacra formation underlying the following acreage in Section 36, Township 27 North, Range 8 West, NMPM, San Juan County, New Mexico:

(a) the W/2 to form a standard 320-acre gas spacing and proration unit for formations and/or pools developed on 320-acre spacing within that vertical extent, including the Blanco-Mesaverde Gas Pool;

(b) the NW/4 to form a standard 160-acre gas spacing and proration unit for formations and/or pools developed on 160-acre spacing within that vertical extent, including the Otero-

Chacra Gas Pool; and

(c) the SW/4 to form a standard 160-acre gas spacing and proration unit for formations and/or pools developed on 160-acre spacing within that vertical extent, including the Otero-Chacra Gas Pool.

(4) The 320-acre gas spacing unit is to be dedicated to the proposed Brookhaven Com Well No. 8 to be located in the NW/4 and to the Brookhaven Com Well No. 8-A to be located in the SW/4 of Section 36. The 160-acre gas spacing unit consisting of the NW/4 is to be dedicated to the proposed Brookhaven Com Well No. 8. The 160-acre gas spacing unit consisting of the SW/4 is to be dedicated to the proposed Brookhaven Com Well No. 8-A. Both wells will be drilled as dual completions at standard gas well locations within the subject quarter sections.

(5) Burlington is a 63.427118% working interest owner in the Mesaverde formation in the W/2 and is a 51.324453% working interest owner in the Chacra formation in the NW/4 and a 75.529781% working interest owner in the Chacra formation in the SW/4 all in Section 36, Township 27 North, Range 8 West, NMPM, San Juan County, New Mexico; Burlington therefore has the right to drill for and develop the minerals underlying the subject units.

(6) The Blanco-Mesaverde Gas Pool is currently governed by the "Special Rules for the Blanco-Mesaverde Pool" set forth in Order No. R-10987-A, issued in Case No. 12069 and dated February 1, 1999, which provided:

(a) a standard gas proration (GPU) unit shall be 320 acres;

(b) wells drilled on a GPU shall be located not closer than 660 feet to the South and North lines nor closer than 660 feet to the East and West lines of a GPU and not closer than 10 feet to any interior quarter or quarter-quarter section line or subdivision inner boundary;

(c) the FIRST OPTIONAL INFILL WELL drilled on a GPU shall be located in the quarter section of the GPU not containing a Mesaverde well;

(d) the SECOND OPTIONAL INFILL WELL drilled on a GPU shall be located in a quarter-quarter section of the GPU

not containing a Mesaverde well and within a quarter section of the GPU not containing more than one (1) Mesaverde well;

(e) the THIRD OPTIONAL INFILL WELL drilled on a GPU shall be located in a quarter-quarter section of the GPU not containing a Mesaverde well and within a quarter section of the GPU not containing more than one (1) Mesaverde well;

(f) at the discretion of the operator, the second or third optional infill well may be drilled prior to the drilling of the first optional infill well;

(g) all exceptions for second and third infill wells on standard GPU's in the Blanco-Mesaverde Pool that have been approved by the Aztec District Office Supervisor or the Division's Santa Fe Office are hereby approved;

(h) no more than two wells may be located within either 160-acre tract of a GPU; and

(i) any deviation from the above-described well density requirements may be authorized only after hearing.

(7) The Otero-Chacra Gas Pool is currently governed by Division Rule 104.C.(3), which states that wells shall be located on a spacing unit consisting of 160 contiguous surface acres, more or less, substantially in the form of a square that is a quarter section and a legal subdivision of the U.S. Public Land surveys and shall be located no closer than 660 feet to any outer boundary of such unit and no closer than 10 feet to any quarter-quarter section or subdivision inner boundary.

(8) Burlington has made a good faith effort to consolidate, on a voluntary basis, all of the interests for the drilling of the Brookhaven Com Well No. 8 and the Brookhaven Com Well No. 8-A, but has been unable to do so.

(9) By letter agreement dated May 24, 1952, the proposed spacing units were included within acreage subject to a November 27, 1951 farmout/operating agreement between Brookhaven Oil Company and San Juan Production Company. This agreement, as subsequently amended at least 26 times is hereinafter referred to as the GLA-46 Agreement. The GLA-46 Agreement set forth a drilling obligation for 18 Mesaverde wells to be drilled within the contract area.

(10) Burlington is the successor to San Juan Production Company. Energen Resources Corporation (formerly Total Minatome) and others are successors to Brookhaven Oil Company.

(11) Energen Resources Corporation, Westport Oil and Gas Company, and Bank of America (as agent for Carolyn Nelson Sedberry, C. Fred Luthy, Jr., Cyrene Inman, The F. A. and H.B. Cronican Revocable Trust, William C. Briggs, Herbert R. Briggs, Marcia Berger and WWR Enterprises, Inc.) (hereinafter referred to as the GLA-46 Group) appeared at the hearing through counsel and opposed the applications on the basis that their interests are governed by the GLA-46 Agreement.

(12) It is the position of the GLA-46 Group that under the express provisions of Section 70-2-17 (C) of the New Mexico Oil and Gas Act of NMSA 1978, a voluntary agreement governing the drilling and development of the subject lands exists; therefore, the Division may not force pool the subject acreage.

(13) The GLA-46 Group presented evidence establishing that they consistently notified Burlington of their intention to participate in the drilling of the wells under the terms of the GLA-46 Agreement. The GLA-46 Group also testified that Burlington and its predecessors consistently and continuously regarded the GLA-46 Agreement as an active and governing agreement applicable to all depths and to all acreage, including the lands that are the subject of Burlington's applications.

(14) On July 30, 1998, Burlington proposed to all the working interest owners in the subject spacing units the drilling of the Brookhaven Com Well No. 8 as a Mesaverde/Chacra dual completion at an estimated well cost of $427,630.00 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.

(15) On August 14, 1998, Bank of America (as agent for Carolyn Nelson Sedberry, C. Fred Luthy, Jr., Cyrene Inman, The F. A. and H.B. Cronican Revocable Trust, William C. Briggs, Herbert R. Briggs, Marcia Berger and WWR Enterprises, Inc.) of the GLA-46 Group elected to participate in the proposed well under the terms of the GLA-46 Agreement.

(16) On August 24, 1998, Total Minatome elected to participate in the proposed well under the terms of the GLA-46 Agreement.

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

(18) On September 18, 1998, Burlington advised the members of the GLA-46 Group 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. Burlington also advised the GLA-46 group that these options would only be available if all the members of the GLA-46 Group elected one of the two options.

(19) On August 25, 1999, Burlington advised the GLA-46 Group that it was withdrawing its offer to drill and complete the Brookhaven Well No. 8 under the terms set forth in its September 18, 1998 letter because not all members of the GLA-46 Group elected one of the two options.

(20) On September 15, 1999, Burlington made a second formal request for all working interest owners to participate in the Brookhaven Well No. 8 by signing a new joint operating agreement for the wells.

(21) On September 15, 1999, Burlington proposed to all the working interest owners in the subject spacing units the drilling of a second well in these same spacing units (the "Brookhaven Com Well No. 8-A", identified in Burlington's proposal as the Brookhaven Com Well No. 9) as a Mesaverde/Chacra dual completion at an estimated well cost of $427,630.00 to be governed by the parties signing a new joint operating agreement instead of adopting the GLA-46 Agreement.

(22) The GLA-46 Group subsequently elected to participate in the Brookhaven Com Well No. 8 and the Brookhaven Com Well No. 8-A under the terms of the GLA-46 Agreement.

(23) Burlington's position is that:

(a) the 1951 GLA-46 Agreement imposed an obligation on Burlington's predecessor to drill 18 single completion Mesaverde wells and entitled it to earn 50% of the GLA-46 Group's interest in the contract area;

(b) Burlington's predecessor completed that drilling obligation and earned a 50% interest in the contract acreage and therefore Burlington has no obligation to the GLA-46 Group 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) after all earning provisions of GLA-46 Agreement were satisfied, it was only by agreement made on an individual well basis, that the parties decided to make any future wells subject to the cost limitations or carrying provisions of the GLA-46 Agreement;

(e) beginning on November 20, 1953, the parties started amending and adopting the GLA-46 Agreement to either increase the amount of drilling costs for wells or to alter the carrying provisions;

(f) as a result, after the drilling of the obligatory 18 Mesaverde wells, the GLA-46 Agreement has been amended and adopted at least 26 times to deal with the drilling of additional wells and address the issue of increasing well costs;

(g) because the maximum recoupments did not adequately cover present drilling costs, the GLA-46 Agreement has been amended and adopted for 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;

(h) despite its efforts, Burlington has been unable to reach an agreement with the GLA-46 Group as to the costs and allocations for new Mesaverde or Chacra wells;

(i) the absence of agreement on costs and allocations permits Burlington to properly invoke compulsory pooling procedures; and

(j) the Brookhaven wells are not subject to the cost limitations or carrying provisions of the GLA-46 Agreement.

(24) During the course of the hearing on January 20, 2000, Burlington moved to amend its pleadings to seek alternative relief under NMSA 1978, Section 70-2-17(E) of the New Mexico Oil and Gas Act, invoking the Division's authority to modify the terms of the GLA-46 Agreement. The GLA-46 Group objected to the motion because Burlington's

request was untimely, constituted surprise, resulted in prejudice and violated their rights to due process.

(25) On January 24, 2000, Burlington filed amended applications in Case No. 12276 and Case No. 12277.

(26) On February 2, 2000, the GLA-46 Group filed a motion to strike the amended applications. Both parties provided the hearing examiner with legal memoranda addressing the propriety of Burlington's motion to amend its pleadings.

(27) On February 3, 2000, counsel for the parties presented oral argument on the motion to strike. Pursuant to the oral arguments, the Division granted the GLA-46 Group's motion to strike regarding Burlington's amendment to seek alternative relief under NMSA 1978, Section 70-2-17(E) of the New Mexico Oil and Gas Act.

(28) Determining whether or not the GLA-46 Agreement applies is a matter of contract interpretation. The interpretation of the GLA-46 Agreement should be deferred to the courts.

(29) Unless a court determines there is an agreement among the parties to this proceeding, Burlington's compulsory pooling case against the GLA-46 Group is appropriate, and in order to consolidate all of the interest within the proposed spacing units, the interest of GLA-46 Group should be pooled by this order.

(30) To avoid the drilling of unnecessary wells, protect correlative rights, avoid waste, and afford to the owner of each interest in the above-described proration units 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 mineral interests, whatever they may be, within the subject proration units.

(31) Burlington should be designated the operator of the subject wells and units.

(32) After pooling, uncommitted working interest owners are referred to as "non-consenting working interest owners." Any non-consenting working interest owner should be afforded the opportunity to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production.

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

drilling of the wells.

(34) 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.

(35) Following determination of reasonable well costs, any non-consenting working interest owner who has paid its 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.

(36) Reasonable charges for supervision (combined fixed rates) should be fixed at $4,500.00 per month while drilling and $450.00 per month while producing. The operator should be authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the wells, not in excess of what are reasonable, attributable to each non-consenting working interest.

(37) All proceeds from production from the wells that 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.

(38) If the operator of the pooled units fails to commence drilling the wells to which the units are dedicated on or before June 15, 2000, or if all the parties to this forced pooling reach voluntary agreement subsequent to entry of this order, this order should become of no effect.

(39) The operator of the wells and units should notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(40) Should all the parties to this forced pooling order reach voluntary agreement or should a court determine that the GLA-46 Agreement applies subsequent to entry of this order, this order should thereafter be of no further effect.

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of Burlington Resources Oil & Gas Company, all uncommitted mineral interests in the Mesaverde formation and the Chacra formation underlying the following acreage in Section 36, Township 27 North, Range 8 West, NMPM, San Juan County, New Mexico, are hereby pooled:

(a) the W/2 to form a standard 320-acre gas spacing and proration unit for formations and/or pools developed on 320-acre spacing within that vertical extent, including the Blanco-Mesaverde Gas Pool;

(b) the NW/4 to form a standard 160-acre gas spacing and proration unit for formations and/or pools developed on 160-acre spacing within that vertical extent, including the Otero-Chacra Gas Pool; and

(c) the SW/4 to form a standard 160-acre gas spacing and proration unit for formations and/or pools developed on 160-acre spacing within that vertical extent, including the Otero-Chacra Gas Pool.

(2) The 320-acre gas spacing unit is to be dedicated to the proposed Brookhaven Com Well No. 8 to be located in the NW/4 and to the Brookhaven Com Well No. 8-A to be located in the SW/4 of Section 36. The 160-acre gas spacing unit consisting of the NW/4 is to be dedicated to the proposed Brookhaven Com Well No. 8. The 160-acre gas spacing unit consisting of the SW/4 is to be dedicated to the proposed Brookhaven Com Well No. 8-A. Both wells will be drilled as dual completions at standard gas well locations within the subject quarter sections.

(3) The operator of the units shall commence drilling the wells on or before June 15, 2000, and shall thereafter continue drilling the wells with due diligence to a depth sufficient to test the Mesaverde formation.

(4) In the event the operator does not commence drilling the wells on or before June 15, 2000, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause shown.

(5) Should the wells not be drilled to completion or abandoned within 120 days after commencement thereof, the operator shall appear before the Division Director and show cause why Ordering Paragraph (1) should not be rescinded.

(6) Burlington Resources Oil & Gas Company is hereby designated the operator of the subject wells and units.

(7) After pooling, uncommitted working interest owners are referred to as "non-

consenting working interest owners." After the effective date of this order and within 90 days prior to commencing the wells, the operator shall furnish the Division and each known non-consenting working interest owner in the units an itemized schedule of estimated well costs.

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

(9) The operator shall furnish the Division and each known non-consenting working interest owner an itemized schedule of actual well costs within 90 days following completion of the wells. 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 the schedule, the actual well costs shall be the reasonable well costs; provided, however, that 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.

(10) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated costs 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 its share of the amount that estimated well costs exceed reasonable well costs.

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

(a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner who has not paid its share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished; and

(b) as a charge for the risk involved in drilling the wells, 200 percent of the above costs.

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

(13) Reasonable charges for supervision (combined fixed rates) are hereby fixed at $4,500.00 per month while drilling and $450.00 per month while producing. The operator should be authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the wells, not in excess of what are reasonable, attributable to each non-consenting working interest.

(14) 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.

(15) 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.

(16) All proceeds from production from the wells that are not disbursed for any reason shall be placed in escrow in San Juan 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.

(17) Should all the parties to this compulsory pooling order reach voluntary agreement or should a court determine that the GLA-46 Agreement applies subsequent to entry of this order, this order shall thereafter be of no further effect.

(18) The operator of the wells and units shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(19) 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.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

LORI WROTENBERY
Director

S E A L