Brooks, David K., EMNRD

From: Thomas Kellahin [tkellahin@comcast.net]
Sent: Thursday, September 09, 2010 4:50 PM
To: Brooks, David K., EMNRD
Cc: Simcoe, Terry B
Subject: RE: Case No. 14526; Application of Burlington Resources Oil & Gas Company etc
Attachments: State Com SRC 1B 1C - Others version - Exhibit A - rev 9-9-2010.doc

Dear David,

You are correct that Sec 70-2-17 requires both the OCD and Burlington to use actual surface acres for allocation of interest for the pooled parties. It is Burlington's intent to credit the owners of Lot 3 with the 41.64 acres and their proportionate share of the 326.92 acre spacing units. That is also true for the owners in Lots 1, 2 and 4, each of which is slightly larger than a standard 40-acre tract.

Both the notice of hearing and the application correctly requested approval of a 326.92 acre spacing units for both the Mesaverde and Dakota.

Because the 326.92 acres are within the tolerance for a standard 320-acre unit, no non-standard spacing unit is required. The APD filing, including the C-102, and the OCD approval show the correct acreage of 326.92-acres for each pool.

The mistake that Mr. Simcoe and I made was contained in Exhibit "A" to the operating agreement (found at tab 5 as exhibit 5B). This tabulation contains a clerical error by using 320-acre acres for the Mesaverde formation that we failed to catch.

Because the docket, notice of hearing, application and newspaper ad all have the correct request, I hope you will allow me to submit Mr. Simcoe's affidavit and a revised Exhibit "A" Please find revised Exhibit "A" attached

I apologize for not finding this error before we presented this case to you on August 19th.

Regards, Tom

From: Brooks, David K., EMNRD [mailto:david.brooks@state.nm.us]
Sent: Wednesday, September 08, 2010 5:22 PM
To: Thomas Kellahin
Subject: Case No. 14526; Application of Burlington Resources Oil & Gas Company etc

Dear Tom

There is an issue in this case concerning which I have reached a tentative conclusion, but need to be advised if legal authority exists of which I am unaware before I make a recommendation to the Director. This problem arises from the irregular size of the unit and of the tract in which the to be pooled parties own interests.

Mr. Simcoe testified that as to one of the formations sought to be pooled, costs and revenues would be allocated based on actual acreages and as to the other formation they would be based on supposing the acreages of the unit and the separate tract to be 320 acres and 40 acres respectively. From the initial discussion of this matter at pages 7-9 of the transcript and the reference to the advertisement, I gathered that the Dakota was to be allocated on a 320-acre basis,

and the Mesaverde on an actual acreage basis. Mr. Simcoe's responses to my questions on pages 38 and 39 of the transcript suggest that it might be vice-versa.

It is not, however, my concern at this point which formation Burlington intends to treat which way. My concern is that I can see no justification for allocating revenues to the pooled parties in either formation on any basis except actual acreage. The evidence, as I read it, indicates that the pooled parties own undivided interests in 41.64 acres of a 326.92-acre spacing unit. NMSA 1978 Section 70-2-17 provides, in pertinent part: "For the purpose of determining the portions of production owned by the persons owning interests in the pooled oil or gas, or both, such production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit." That proportion is 12.737061%.

Of course, the parties who have signed an operating agreement are bound by the terms thereof, and the allocation of interests as between them is not of concern to the Division. As to the parties who have not, however, the statute seems to clearly command that their proportion of production will be their proportionate share of 12.737061% of unit production, and not of 12.5% of unit production, as to both formations. The State Land Office's policies, to which some vague reference may have been made in the testimony, would not be relevant, so far as I can see. Allocation of State royalty is not at issue, since, as I understand the evidence, the entire unit is State land, and therefore the State will get the same royalty regardless of tract allocation.

Please advise me if there is any judicial or Commission precedent that would provide a basis for reaching a different result from that suggested above.

Sincerely

David K. Brooks
Legal Examiner