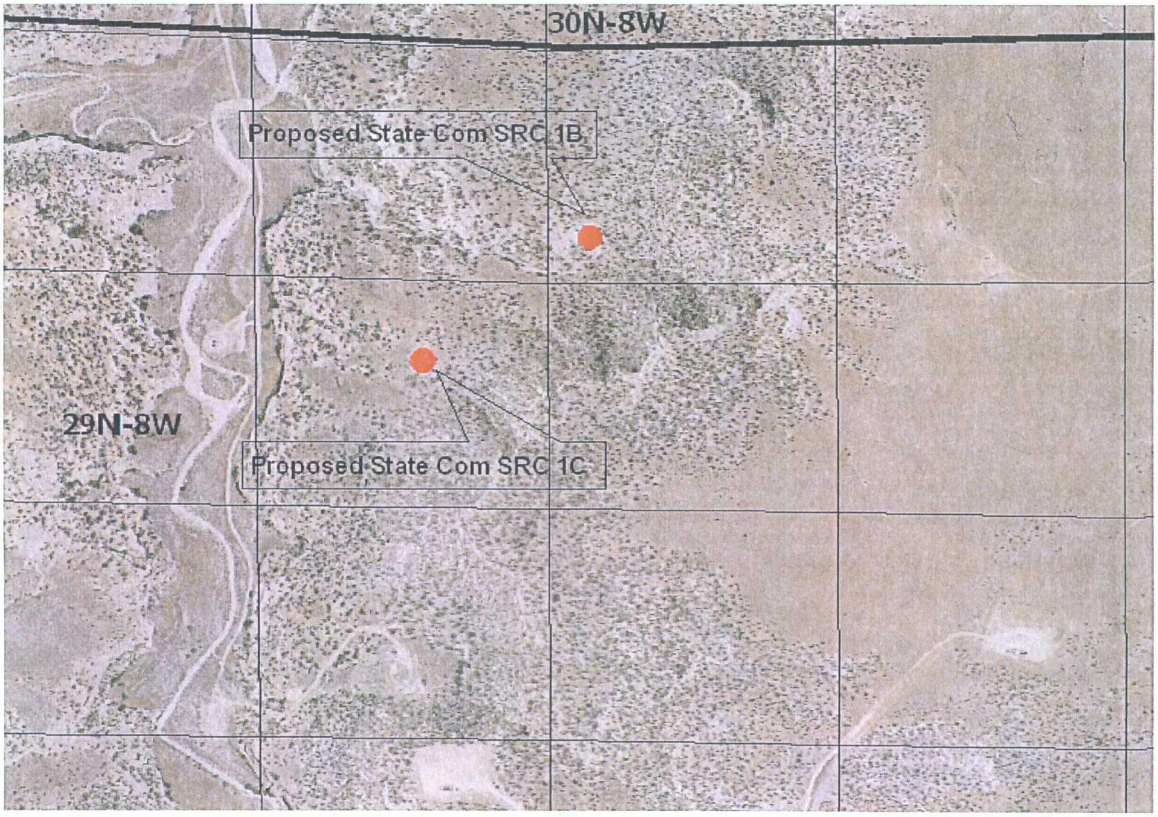
State Com SRC 1B & 1C
Mesaverde / Dakota Wells
Section 2 - Township 29 North - Range 10 West
San Juan County, New Mexico



Before the Oil Conservation Division
Burlington Resources Oil & Gas Company LP
OCD Case 14526
Hearing: August 19, 2010

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. 14526

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

BURLINGTON RESOURCES OIL & GAS COMPANY'S HEARING MEMORANDUM

Comes now Burlington Resources Oil & Gas Company LP ("Burlington") by its attorneys, Kellahin & Kellahin, and in support of its application in this case requests that the New Mexico Oil Conservation Division ("NMOCD") apply the provisions of Section 70-2-17.E NMSA (1978) and modify the 1952-Gas Operating Agreement to the extent necessary to prevent waste in accordance with this statutory provision of the New Mexico Oil & Gas Act and in support states:

. Burlington contends that the NMOCD has the authority to issue compulsory pooling orders in this case thereby modifying the original parties' plan for operation. This is necessary because the 1952-JOA is limited from the surface to the base of the Mesaverde formation and does not allow for drilling infill Mesaverde wellbores or any Dakota wellbores, and because there are no cost allocations or carrying provisions.

Section 70-2-17.E, NMSA (1997) provides:

> "Whenever it appears that the owners in any pool have agreed upon a plan for the spacing of wells, or upon a plan or method of distribution of any allowable fixed by the division for the pool, or upon any other plan for the development or operation of such pool, which plan, in the judgment of the division, has the effect of preventing waste as prohibited by this act and is fair to the royalty owners in such pool, then such plan shall be adopted by the division with respect to such pool; however, the division, upon hearing and after notice, may subsequently modify any such plan to the extent necessary to prevent waste as prohibited by this act."

These new wells are necessary in order to recover Mesaverde and Dakota Gas reserves which will not otherwise be recovered. Waste will occur in the event the Division fails to modify the 1952-JOA because of the lack of Mesaverde infill drilling provisions and the lack of cost allocations provisions that currently preclude Burlington from drilling Mesaverde infill wells and from costs allocations among the Mesaverde and Dakota Gas formations that are necessary for these wellbores. The provisions of Section 70-2-17.E apply and the Division should modify the 1952-JOA to the extent *necessary* to prevent waste in accordance with these statutory provisions of the New Mexico Oil & Gas Act.

BURLINGTON'S CITATION OF AUTHORITY

Burlington's position is supported by decisions of the New Mexico Supreme Court, the New Mexico Oil & Gas Act, by a prior decision of the Division, and by the GLA-46 Agreement.

Court cases:

In 1963, the New Mexico Supreme Court in Sims v. Mechem, 72 N.M. 186, 382 P.2d 183 (NM 1963) considered the compulsory pooling powers of the Commission and held that any agreement between owners may be modified by the Commission:

> "Unquestionably the commission is authorized to require pooling of property when such pooling has not been agreed upon by the parties (citing to what is now 70-2-17C NMSA 1978), and it is clear that the pooling of the entire west half of Section 25 had not been agreed upon. It is also clear from sub-section (e) of the same section (citing to what is now 70-2-17.E) that any agreement between owners and lease-holders may be modified by the commission. [emphasis added] But the authority of the commission to pool property or to modify existing agreements relating to production within a pool under either of these subsections must be predicted on the prevention of waste."

In 1975, the New Mexico Supreme Court, again, considered the compulsory pooling authority of the Commission and in Rutter & Wilbanks Corp. v. Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582 (NM 1975) held that not only did the Commission have compulsory pooling authority to pool separately owned tracts within a spacing or

proration unit, it had the power to pool separately owned tracts within an oversize non-standard spacing unit. In doing so, the Court approved of the Commissions decision to compulsory pool a 409-acre spacing unit and a 407-acre spacing unit each of which had a completed well and could have been dedicated to standard 320-acre spacing units for the Washington Ranch-Morrow Gas Pool. (See OCC Order Nos. R-4353 and R-4354). The point is that when necessary to prevent waste, the Division can and did modify the agreement of sharing revenues within a spacing unit, required the inclusion of additional acreage and *thereby* dilute the royalty interest of Rutter & Wilbanks over its objection.

Division Cases:

Similarly, the Division has previously modified an existing operating agreement when its terms precluded the drilling of a well which the Division considered necessary in order to prevent waste. On January 11, 1996, in Case 11434, the Division held a hearing on the application of Meridian Oil Company for a compulsory pooling order for a Mesaverde infill well against Doyle Hartman and Four Star Oil & Gas Company. In this case, both Four Star and Hartman contended the Division did not have the authority to authorize the compulsory pooling of a Mesaverde infill well because the original parties in the spacing unit had signed a 1953 operating agreement which contained a plan for the spacing of but one single Mesaverde well within a 320-acre spacing unit. On February 22, 1996, the Division entered Order R-10545 and decided that the Division, in accordance with Section 70-2-17.E NMSA (1978), had the authority and would exercise that authority to modify this 1953 operating agreement to the extent necessary to prevent waste and to issue a compulsory pooling order so that the infill well could be drilled.

A further review of NMOCD compulsory pooling orders, shows that on October 24, 1990, the NMOCD issued Order R-9332 which granted in an application by Doyle Hartman for compulsory pooling in which he was allowed to pool his undeveloped acreage in the Eumont Gas Pool into an existing gas spacing unit already operated by Chevron and containing a existing well. Hartman was further authorized to drill a second "infill well" over Chevron's objection. The point is that when necessary to prevent waste, the Division can and did modify the existing voluntary agreement of Chevron for the operations of its existing spacing unit and its well and required the inclusion of additional acreage and additional wells over the objection of Chevron.

For the information of the Examiner, there is a case where the Division discussed this issue but compulsory pooled the disputed interests without invoking Section 70-2-17.E. In Order R-11340, dated March 10, 2000, in Cases 12276 and 12277, Burlington contended that an old 1951-JOA, called the "GLA-46 Agreement" did not apply to the proposed new wellbores while the GLA-46 Group contended that the old JOA was still in effect arguing that 26 amendments over 48 years made the old JOA conform to the current Division well densities. The Division's findings decided that this was a contract dispute but then held that "(29) Unless the 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 the interest within the proposed spacing units, the interest of GLA-46 Group the interest of GLA-46 Group should be pooled by this order."

The 1952- JOA

Unlike the GLA-46 dispute, the subject 1952-JOA is limited from the surface to the base of the Mesaverde formation and does not allow for drilling infill Mesaverde wellbores or any Dakota wellbores. In this 1952-JOA, the original parties specifically agreed that their agreement would be modified to be consistent with the orders and rules of the NMOCD when they provided at page 7:

> "Section XXIV. REGULATIONS All of the provisions of this agreement are hereby expressly made subject to all applicable Federal or State laws and orders, rules and regulations of any constituted authority, and in the event this agreement or any provision hereof is found to be inconsistent with or contrary to any such law, order, rule or regulations, the latter shall be deemed to control, and this agreement shall be regarded as modified accordingly and as so modified shall continue in full force and effect."

In addition, there are no cost allocations or carrying provisions in the 1952-JOA and the 1952-JOA is limited from the surface to the base of the Mesaverde formation and does not allow for drilling infill Mesaverde wellbores or any Dakota wellbores.

CONCLUSION

Conservation laws and the rules, regulations and orders promulgated there under have the effect *of* modifying the provisions of existing leases and other contracts and agreements. Without that effect, then parties could make agreements which are contrary to or inconsistent with what the NMOCD determines are appropriate rules for development of a pool, including the cost of wells, economic waste caused by drilling too many or to few wells, well locations, well density, spacing lint sizes, production allowables, and gas-oil ratios, etc.

The statutory and administrative compulsory pooling rules and orders are a proper and necessary exercise of the police powers of the State of New Mexico. The NMOCD has jurisdiction to interpret, clarify, amend and supplement is own orders and to resolve any challenges to the public issue of conservation of oil and gas.

The NMOCD is not being asked to resolve the "private rights" of the parties created under the 1952-JOA. There is no dispute about the fact that the 1952-JOA precludes the drilling of a necessary well. The Division has the authority and the responsibility to issue a compulsory pooling order in accordance with Section 70-2-17.C or Section 70-2-17.E NMSA (1978) in these cases so that these wells can be drilled under terms and conditions that will prevent waste and protect correlative rights.

Respectfully Submitted,

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