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January 14, 1985

(HAND-DELIVERED)

Mr. Michael E. Stogner
Hearing Examiner
Oil Conservation Division
Post Office Box 2088
Santa Fe, New Mexico 87501

Re: In the Matter of the Application of Chama Petroleum Company for Two Unorthodox Gas Well Locations, Lea County, New Mexico
Case No. 8446

and

In the Matter of the Application of Chama Petroleum Company to Limit the Lea-Pennsylvanian Gas Pool Rules, Lea County, New Mexico
Case No. 8447

Dear Mr. Stogner:

Enclosed please find BTA Oil Producers Memorandum in Opposition to Chama Petroleum Company's Application as well as our proposed Order with reference to the above named cases.

Very truly yours,

Karen Aubrey

KA:mh
Enclosures
cc: William F. Carr, Esq., (w/enc.)
Mr. Marvin Zoller, (w/enc.)

STATE OF NEW MEXICO
DEPARTMENT OF ENERGY AND MINERALS
OIL CONSERVATION DIVISION

IN THE MATTER OF THE APPLICATION
OF CHAMA PETROLEUM COMPANY FOR TWO
UNORTHODOX GAS WELL LOCATIONS,
LEA COUNTY, NEW MEXICO. CASE 8446

IN THE MATTER OF THE APPLICATION
OF CHAMA PETROLEUM COMPANY TO
LIMIT THE LEA-PENNSYLVANIAN GAS
POOL RULES, LEA COUNTY, NEW MEXICO. CASE 8447

BTA OIL PRODUCERS, INC.,
PROPOSED ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:00 A.M. on January 3, 1985, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this ____ day of _____, 1985, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) That in Case 8446, the applicant, Chama Petroleum Company seeks approval of two unorthodox gas well locations, one well to be located 660 feet FSL & FEL of Section 23, and the other to be located 1650 feet FNL and 1980 feet FWL of Section 25, both in T20S, R34E, NMPM, Pennsylvanian and Devonian formations. Applicant asks that the S/2 of Section 23 and the W/2 of Section 25, respectively, to be dedicated to said wells.

(3) That in Case 8447, the applicant, Chama Petroleum Company seeks approval to limit the pool rules for the Lea-Pennsylvanian Gas Pool in T20S, R34E, to the existing pool boundaries only.

(4) That BTA Oil Producers, Inc., an operator and working interest owner in the Lea-Pennsylvanian Gas Pool, has appeared and opposed both cases.

(5) That the Lea-Pennsylvanian Gas Pool was established by the Division by Order R-2101, entered November 1, 1961.

(6) That since the establishment of the Lea-Pennsylvanian Gas Pool, some 20 wells have been drilled in the pool spaced on 160-acre spacing and proration units.

(7) That the Division has extended the limits of the Pool some ten different times in the last twenty years and that said pool now includes approximately 3,840 acres within its boundaries.

(8) That in support of its applications in these cases, Chama Petroleum Company presented evidence that it had made unspecified commitments to re-enter and recomplete the two subject wells based upon 320 acres rather than the required 160 acre units.

(9) That the applicant offered no engineering, economic, or geological evidence or testimony to support its application.

(10) That no evidence was presented at the hearing to support Chama's contention that one well will efficiently and economically drain 320 acres in the area within one mile of the current boundary of the Lea-Pennsylvanian Gas Pool.

(11) That BTA Oil Producers, Inc., presented geologic evidence that retaining the Lea-Pennsylvanian Gas Pool wells on 160-acre spacing within one mile of the pool limits was necessary in order to efficiently and economically recover the gas in the pool without causing underground waste.

(12) That BTA Oil Producers, Inc., presented evidence that its correlative rights would be violated by changing the spacing requirements for the NE/4 of Section 25.

(13) That, BTA Oil Producers, Inc., presented uncontradicted evidence, in the event of gas prorationing, Chama Petroleum Company would gain an unfair acreage advantage over the operators in the Lea-Pennsylvanian Pool.

(14) That approval of the applications of Chama Petroleum Company would result in waste and violation of correlative rights and therefore should be denied.

IT IS THEREFORE ORDERED:

(1) That the applications of Chama Petroleum Company in Case 8446 and 8447 are hereby DENIED.

(2) That jurisdication of these cases 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

RICHARD L. STAMETS

STATE OF NEW MEXICO
DEPARTMENT OF ENERGY AND MINERALS
OIL CONSERVATION DIVISION

IN THE MATTER OF THE APPLICATION
OF CHAMA PETROLEUM COMPANY
FOR TWO UNORTHODOX GAS WELL
LOCATIONS, LEA COUNTY, NEW MEXICO CASE 8446

IN THE MATTER OF THE APPLICATION
OF CHAMA PETROLEUM COMPANY TO
LIMIT THE LEA-PENNSYLVANIAN GAS
POOL RULES, LEA COUNTY, NEW MEXICO. CASE 8447

MEMORANDUM OF BTA OIL PRODUCERS IN OPPOSITION TO CHAMA PETROLEUM COMPANY'S APPLICATION

On behalf of BTA Oil Producers, Inc., this Memorandum is submitted in support of an Order denying the applications of Chama Petroleum Company in Division Case 8446 and Case 8447.

I. INTRODUCTION

The above cases were consolidated for hearing and were heard by Division Examiner, Michael E. Stogner, on January 3, 1985. The cases involve a request by Chama Petroleum Company to drastically alter the well spacing that has been established over the last twenty years in the Lea-Pennsylvanian Gas Pool by limiting the 160-acre spacing

to the current pool limits and then approving two gas well locations that are unorthodox for 320-acre spacing but standard for 160-acre spacing.

II. FACTUAL BACKGROUND

At the hearing, Chama Petroleum Company, presented a conclusion that they needed to limit the 160-acre spacing in the Lea-Pennsylvanian Pool because Chama Petroleum Company had failed to consider the possibility that the Chama acreage in the immediate area would be subject to Lea-Pennsylvanian Gas Pool spacing of 160-acres rather than the state-wide spacing of 320 acres. As a result of that failure, Chama had made some unspecified arrangement to drill wells spaced upon 320-acres rather than the required 160-acre patterns.

Chama Petroleum Company failed to provide any evidence that:

(1) The Chama acreage was in a separate reservoir from that of the Lea Pennsylvanian Pool; or

(2) The Chama wells would drain more than 160 acres; or

(3) The Chama wells were uneconomic if spaced on 160 acres; or

(4) Approval of the Chama applications would NOT violate correlative rights of BTA Oil Producers.

BTA Oil Producers, Inc., provided uncontested and substantial evidence that:

(1) The Lea Pennsylvania Pool and the Chama acreage was geologically continuous;

(2) The Chama acreage was in the same common source of supply with the BTA acreage both within and adjacent to the current Lea Pennsylvanian Pool;

(3) For some twenty years, the Lea Pennsylvanian Pool has been developed on 160 acres spacing;

(4) BTA Oil Producers had expended in excess of $2.4 Million Dollars in reliance upon the well spacing being 160 acres;

(5) That the quality of the Pennsylvanian sands varied greatly between wells located 160 acres apart and that wells on 160 acre spacing were required in order to effectively and efficiently develop and produce the gas in the Lea Pennsylvanian Pool and the acreage adjacent to the current pool boundary;

(6) That a limitation of the Lea Pennsylvanian 160-acre spacing rules to the boundary of the pool thereby eliminating the one-mile rule, would violate BTA Oil Producers' correlative rights;

(7) That limiting the Lea-Pennsylvanian Pool rules to the pool boundaries would reduce BTA's interest in the well to be drilled in the NE/4 of Section 25 from 50% to 25% thereby violating the correlative rights of BTA Oil Producers;

(8) That to alter the spacing in the Lea-Pennsylvanian reservoir to accomodate Chama would result in waste of gas;

(9) That approval of the Chama requested unorthodox gas well locations is not required if the spacing pattern is not altered.

A R G U M E N T S

A. APPLICANT'S BURDEN OF PROOF:

Orders of the New Mexico Oil Conservation Division must be based and supported by substantial evidence. Fasten v. Oil Conservation Commission, 87 N.M. 292 (1975). Rutter & Wilbanks Corp. v. Oil COnservation Commission, 87 N.M. 286 (1975).

In deciding if a case is supported by substantial evidence, the Division must make a judgment that the applicant has proved the essential elements or facts of its application to a certain degree or standard. The degree or burden of proof varies depending upon the type of case being decided.

Generally, the highest burden of proof found is in deciding criminal cases where the District Attorney has the burden of proving the essential facts "beyond a reasonable doubt". That means that the judge or jury must find in a criminal case that they are persuaded that the truth of the

fact is not merely more probable than not, but highly probable. This is sometimes referred to as proving a case "by clear and convincing evidence".

In deciding most civil cases the burden of proof on the plaintiff is to prove a fact by a "preponderance of the evidence." That burden of proof is the one applied to administrative cases, such as decisions by the Oil Conservation Division. Thus, in a contested Division case, when each party has presented its respective experts, the Examiner must decide if the applicant has established each of the essential facts of a case by "a preponderance of the evidence" meaning "substantial evidence." If a fact is supported by substantial evidence, that means the scale of justice is tipped to 51% for the existence of that fact rather than its non-existence. See McCormick on Evidence 2nd Ed. pages 783-833.

B. WASTE AND CORRELATIVE RIGHTS

An applicant before the Division must sustain his burden of proof by more than 51% of the weight of the evidence that each of the essential facts necessary for that type of case have been established and that waste will be prevented and correlative rights protected.

The New Mexico Oil Conservation Commission, and the Division have two fundamental powers and duties -- the prevention of waste and the protection of correlative

rights. Of these the paramount duty is the prevention of waste, but in doing so the Commission must protect correlative rights. Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2D 809 (1962); El Paso Natural Gas Company v. Oil Conservation Commission, 76 N.M. 268, 414 P.2d 496 (1966); Sec. 70-2-11, NMSA (1978). In order to protect correlative rights the Commission must, of course, first determine what those rights are. Continential Oil Company v. Oil Conservation Commission, supra. This requires substantial knowledge of the underlying formation, its producing characteristics, and economics of its development.

The Commission has broad authority to establish spacing and proration units, and if supported by substantial evidence, orders establishing such units will not be disturbed. Rutter & Wilbanks v. Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582 (1975). Sec. 70-2-12 (10), NMSA (1978) gives the Commission power to fix the spacing of wells and the establishment of proration units is authorized in Sec. 70-2-17 NMSA (1978). This latter section authorized the Commission to "establish a proration unit for each pool, such being the area that can be efficiently and economically drained and developed by one well." (Emphasis supplied).

C. ELEMENTS OF PROOF:

In the referenced cases, Chama Petroleum Company, as applicant, must prove by a preponderance of the evidence the following essential facts:

1. That the Chama wells will drain more than 160 acres;

2. That the Chama wells are uneconomic if spaced on 160 acres;

3. That the approval of 320-acre spacing and proration units along with unorthodox well locations for the two Chama wells will not violate the correlative rights of BTA Oil Producers;

4. That the spacing of the Chama wells on 320-acres will not cause underground waste;

5. That the reservoir characteristics in the Lea-Pennsylvanian reservoir, underlying the Chama acreage, are significantly different from the rest of the Lea Pennsylvanian reservoir to allow a change in that spacing pattern, or in the alternative, to prove that the Chama protion of the reservoir constitutes a separate and distinct source of supply.

The Division should ask: Did Chama offer any geological evidence? Did Chama offer any engineering evidence? Did Chama offer any economic evidence? The answer in each case is no. The only conclusion is that the

applicant has failed to meet its Burden of Proof. The applications must be denied.

D. SPACING CASES:

Chama Petroleum Company, as applicant, has based its entire case on both applications upon the single and only fact that their surface ownership arrangement now requires them to drill wells on 320 acres rather than the established 160 acre well spacing pattern. The Division has no alternative but to deny both applications of Chama Petroleum Company because well spacing and locations cannot be a function of surface acreage alone. Application of Peppers Ref. Co. 272 P2d. 416 (1954) (Okla).

The interval between wells and the acreage allocation to each well must reflect the structural and fluid characteristics of the Lea-Pennsylvanian reservoir. Approval of the Chama application ignores this fundamental proposition. Approval of the Chama applications would result in waste. Williams and Meyers Oil and Gas Law Manual of Terms, Section 265, defines "underground waste" as including the "locating, spacing, drilling, equipping, or producing of any well or wells in a manner to reduce or tend to reduce the total quantity of oil or gas ultimately recoverable from any pool."

The only proof in this case is that granting the Chama applications will result in violating the correlative rights of BTA Oil Producers, Inc. For example, by

approving the application, BTA will be compelled to reduce its interest in the well to be drilled in the NE/4 of Section 25 from 50% to 25% without any proof that a change in the spacing pattern for that portion of the Lea Pennsylvanian Pool is justified by substantial evidence.

Chama seeks to obtain all of the advantages of 160-acre spacing by locating its wells as if they were spaced on 160 acres but also wants to violate the correlative rights of other by allowing 320-acre dedication where it suits Chama's ownership.

Approval of this application results in nothing more than a return to the Rule of Capture for this area of the pool; a direct contravention of this state's conservation laws.

Chama Petroleum Company argued in its closing comments at the hearing that there currently existed defactor 320-acre spacing in the Lea-Pennsylvanian Pool. That argument is simply not true. A quick reference to BTA Exhibit 1 shows that Section 11 has had four Morrow gas wells; that Section 13 has had four Morrow gas wells; and that Section 12 and 14 have each had three Morrow gas wells.

Chama attempted to explain at the hearing how they counted only one gas well per 320-acres by first ignoring any Morrow gas well that no longer produced and by showing that the gas wells did not produce from the same stringers in the Morrow formation.

Chama's argument on this point is so transparently false that it requires no further comment.

Chama also argued that it had made some unspecified arrangement to re-enter wells and to dedicate 320 acres to them, and that the Division ought to allow that. Chama provided no evidence of the economic impact upon it if that application was not granted. Conversely, BTA Oil Producers showed that it had already expended some $2.4 million dollars in reliance upon the current 160 acre spacing and was about to expend another 1.2 Million more for its third well.

It is also interesting to note that Chama is not planning to drill new wells at locations that would provide for the most effective and efficient draining of 320-acre spacing units. Chama wants to re-enter oil wells drilled at locations allowed under 160 acre spacing but to then obtain unorthodox 320-gas well locations.

CONCLUSION

Chama's applications are simply a blatant attempt to obtain a greater interest in the well BTA is to drill in the NE/4 of Section 25 without even attempting to camoflauge that attempt with geology and engineering justifications.

A review of the record shows that Chama Petroleum Company failed to sustain its burden of proof in this case

with testamony, data, evidence, or anything else that would give the Division substantial evidence upon which to grant these applications. Accordingly, the Division has no alternative but to deny the applications in both cases.

Respectfully submitted,

Karen Aubrey

BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION
Santa Fe, New Mexico
May 13, 1964

REGULAR HEARING

IN THE MATTER OF: The hearing called by the Oil Conservation Commission on its own motion to consider the amendment of certain rules. In the abcve-styled cause, the Commission proposes to consider the amendment of Rule 104 to define a wildcat oil well and a wildcat gas well, and to permit the dedication of 160 acres to a wildcat gas well drilled in Lea, Chaves, Eddy and Roosevelt Counties unless said well is projected to the Pennsylvanian formation or deeper, in which case 320 acres could be dedicated. It is also proposed to define the completion date of a gas well and to require certain tests to be conducted on wildcat gas wells anywhere in the State following their completion and to provide that the acreage dedicated to the well be reduced to 40 acres if such tests do not establish that the well is indeed a gas well. It is also proposed to consider amending Rule 401 to provide that unconnected gas wells be tested to determine their potential. It is further proposed to consider amending Rule 301 to require gas-oil ratio tests to be taken no sooner than 20 days nor later than 30 days following the completion or recompletion of a well and to be reported to the Commission within 10 days following completion of the test.

See attached sheets for proposed rule changes.

Case No. 3044

BEFORE: Governor Jack Campbell
Mr. A. L. Porter
Mr. E. S. (Johnny) Walker

TRANSCRIPT OF HEARING

to have 320 acres dedicated to it.

Now, there are numerous pools, which we will get to in a minute, which have been defined by the Commission and do not have 320-acre spacing rules. In all probability the wells that are drilled there are now on 160 acres; the future wells that will be drilled in there would be on 320 acres. I therefore think it would be advisable if this rule is adopted to call another case at the earliest possible time to establish 320-acre spacing for the existing pools which are Pennsylvanian or greater age.

MR. PORTER: Mr. Nutter, at this point, is this right? Most of the pools you are talking about will probably be one and two well pools?

A Many of them small well pools. We might, right now, turn to a couple of these exhibits.

Q (By Mr. Durrett) Which exhibits are you referring to now, Mr. Nutter?

A I have been handed the Commission Exhibits 2 and 3. Exhibit 2 and 3 is entitled Southeast New Mexico Gas Pools with more than 160-acre Spacing. Exhibit 3 is entitled 160-Acre Gas Pools, Southeast New Mexico. Exhibit 3 has 70 pools listed there. Of these 70, 46 are Pennsylvanian or deeper; so, as I mentioned, I would envision the proper procedure would be at the earliest possible time, call a hearing and permit the operators to show cause why each of these 46 pools, of Pennsylvanian or greater age

should not go on 320-acre spacing. I know, for a fact, that in several cases the operator wouldn't care to show cause why this should not occur.

Q Well, to proceed the other way, if we docketed a case for 320-acre spacing, would you be against that?

A No, not particularly.

MR. PORTER: Mr. Nutter, in order to clarify this, what you are recommending there, as I understand it, if the statewide rule is adopted, it would not at present, apply to those existing Pennsylvanian pools that are 160 acres?

A I would like for it to, but I don't think that the call of this hearing is broad enough to cover those particular pools.

Q So, the purpose of the second hearing would be to go to 320 on the existing pools so that they would be covered by the statewide rules?

A This is correct. Actually Exhibit 3 contains this list of the 70 pools. There are some pools here that have actually been depleted and no longer producing. There are pools that have been defined by the Commission that are here, they have never produced yet. As you mentioned a moment ago, many of these are small pools that have one or two wells in them and no markets.

MR. PORTER: Many of them no connection whatever?

A Many of them no connection whatever. On the list of 70 pools, as far as I know, there's only one pool of Pennsylvanian