STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION FOR THE PURPOSE OF CONSIDERING:

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

DE NOVO
CASE NO. 11613

APPLICATION OF PENWELL ENERGY, INC. FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

DE NOVO
CASE NO. 11622

Order No. R-10709-B

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m. on January 16, 1997, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 10th day of April, 1997, the Commission, a quorum being present, having considered the record and being fully advised in the premises,

FINDS THAT:

(a) Due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(a) Division Case Nos. 11613 and 11622 were consolidated at the time of the hearing for the purpose of testimony because the approval of one case will correspondingly require the denial of the other and in order to provide a comprehensive decision in these cases, one order should be entered for both cases.

(3) On August 26, 1996, the applicant in Case 11613, Burlington Resources Oil & Gas Company, formerly Meridian Oil Inc., henceforth to be referred to as "Burlington", filed its application seeking an order pooling all mineral interests from the surface to the base of the Bone Spring formation underlying the NW/4 SE/4 (Unit J) of Section 24, Township 22 South, Range 32 East, NMPM, Lea County, New Mexico, to form a standard 40-acre oil spacing and proration unit for any and all formations and/or pools

developed on 40-acre spacing within said vertical extent, which presently includes but is not necessarily limited to the Undesignated West Red Tank-Delaware Pool and the Undesignated Red Tank-Bone Spring Pool. Said unit is to be dedicated to Burlington's proposed Checkmate "24" Federal Well No. 1 (**API No. 30-025-32945**) to be drilled at a standard oil well location 1980 feet from the South and East lines of said Section 24.

(4) On September 10, 1996, the applicant in companion Case No. 11622, Penwell Energy, Inc. ("Penwell"), filed a competing pooling application in which Penwell seeks to be designated operator of the aforementioned 40-acre unit and its proposed Checkers "24" Federal Well No. 1 to be drilled at a standard oil well location 1980 feet from the South and East lines (Unit J) of said Section 24.

(5) On October 3, 1996, a hearing was held in Santa Fe and on November 26, 1996, Division Order No. R-10709 was issued granting Burlington operations. Upon the application of Penwell these cases were heard De Novo on January 16, 1997.

(6) Evidence presented at the hearing indicates that from January 1995 through August 12, 1996, working interest ownership within the NW/4 SE/4 of said Section 24 was as follows:

F. Prince, IV, a/k/a Frederick H. Prince, IV of Washington, DC	50.251%
C. W. Trainer et ux Jackie Trainer of Scottsdale, Arizona	31.324%
Burlington of Midland, Texas	13.401%
Ann Ransome Losee of Albuquerque, New Mexico	2.512%
Elizabeth Losee of Albuquerque, New Mexico	2.521%.

(7) In their efforts to obtain a voluntary agreement, Burlington provided testimony which indicates that:

(a) on February 16, 1995, Burlington filed an Application for Permit to Drill ("APD") which was approved by the U. S. Bureau of Land Management on May 4, 1995 and at this time remains in full force and effect;

(b) on April 21, 1995, Burlington formally proposed to the other working interest owners the voluntary formation of a 40-acre oil spacing unit consisting of the NW/4 SE/4 (Unit J) of said Section 24 to be dedicated to the subject well to be drilled and operated by Burlington;

(c) on May 4, 1995, C. W. Trainer ("Trainer") rejected Burlington's proposal and counter proposed that he operate this well which Burlington agreed to by signing Trainer's authority for expenditure ("AFE");

(d) from April, 1995 to August 14, 1996, Burlington had numerous discussions with Trainer concerning the subject well and repeatedly requested Trainer to commence the well;

(e) during these discussions in 1996, Trainer stated that he would sell his interest to Burlington for $4,000.00 per acre;

(f) on August 14, 1996, Burlington having determined that Trainer probably had no intentions of commencing this well, again proposed the subject well with Burlington as operator to these same interest owners and requested their voluntary joinder in this well within 30 days of their receipt of the proposal;

(g) as of August 23, 1996, Burlington had been advised by Trainer that he would not voluntarily agree to Burlington's proposal;

(h) on August 26, 1996, Burlington filed its pooling case and requested that this matter be set for a hearing before the Division on the next available Examiner's docket then scheduled for September 19, 1996; and,

(i) on August 30, 1996 Trainer signed a certified mail-return receipt card showing acceptance of Burlington's pooling application, however, because of a conflict with the New Mexico Oil Conservation Commission's hearing schedule, the Division postponed its September 19, 1996 docket until September 26, 1996.

(j) by letter to Burlington dated September 10, 1996, Penwell proposed to drill the same well with Penwell as operator, indicating that it had an agreement in principle to purchase the Trainer and Prince interests.

(8) Evidence and testimony presented by Penwell in support of its request indicates that:

(a) on September 4, 1996, Trainer and F. Prince, IV, a/k/a Frederick H. Prince, IV ("Prince") entered into a verbal agreement with Penwell to sell their interests to Penwell for $100.00 per acre plus an overriding royalty, provided Penwell could obtain the right to operate the well originally proposed by Burlington.

(b) in late September, 1996 Penwell was assigned Trainer and Prince's interest which included the option to withdraw from purchasing Trainer and Prince's interest if Penwell was not successful in obtaining the right to operate the well;

(c) on September 10, 1996, as stated previously in Finding Paragraph No. (4), above, Penwell filed with the Division a competing pooling case against Burlington seeking to operate this well and requested its case be set for hearing on the October 3, 1996 docket;

(d) also on September 10, 1996, the same date as filing its pooling application, Penwell sent its written proposal to Burlington;

(e) on September 12, 1996, legal counsel for Penwell, formally advised Burlington that Penwell had filed a compulsory pooling application and provided a copy of said application; and,

(f) as of the date of the October 3, 1996 hearing, Penwell had obtained the voluntary agreement of Trainer, Prince, Ann Ransome Losee, and Elizabeth Losee and had assigned part of its interest to CoEnergy Central of Detroit, Michigan such that the parties would pay for the costs of the well as follows:

Burlington	13.40100%
Penwell Energy, Inc.	12.23625%
CoEnergy Central	69.33875%
Ann Ransome Losee	2.52100%
Elizabeth Losee	2.52100%.

(9) Testimony was presented by Jerry Losee whose daughters, through Mr. Losee would participate in the drilling of the well if Penwell was awarded operations. Based upon Mr. Losee's past experience with Burlington in this area he testified that he did not want to be a working interest owner if Burlington was awarded operations and would farmout their (his daughters) interest to Penwell on the same basis as the Trainer trade terms.

(10) For more than 15 months, Burlington has sought to get a well drilled on the subject acreage by agreeing to let the majority interest operate only to be frustrated by stalling and inaction by both Trainer and Prince. Only when confronted with a force pooling action by Burlington did Trainer and Prince seek out a third party, Penwell, to take over their working interest position.

(11) It would not serve to protect correlative rights and prevent waste to allow Trainer and Prince to overcome their nonperformance as operator of a proration unit by conveying their interest to a third party (Penwell) who could then start over by presenting its credentials as a competent operator with the majority of interest committed to them.

(12) Burlington having: **(i)** first proposed a well within the subject 40 acres **(ii)** an approved APD for its proposed well **(iii)** afforded an opportunity to Trainer for more than 15 months for Trainer to drill its well and Trainer failing to do so and, **(iv)** a proposal that is fair and reasonable and provides for an equitable solution for the exploration of this 40-acre oil spacing and proration unit with the parties owning the majority having already been provided the opportunity to drill but having failed to drill, should be named the operator of the proposed standard 40-acre oil spacing and proration unit comprising the NW/4 SE/4 (Unit J) of said Section 24 in which its Checkmate "24" Federal Well No. 1 is to be dedicated. In order to avoid the drilling of unnecessary wells, to protect correlative rights, to avoid waste, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the production in any pool completion resulting from this order, the application of Burlington in Division Case 11613 should be approved by pooling all mineral interests, whatever they may be, within said unit. Correspondingly, the application of Penwell in Case 11622 should therefore be denied.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) Burlington's proposed fixed overhead and administrative costs for its Checkmate "24" Federal Well No. 1 are S5,000.00 per month while drilling and $500.00 per month while producing. In the examiner hearing Penwell proposed fixed rates of $4,178.00 per month while drilling and $400.00 while producing for its Checkers "24" Federal Well No. 1. Burlington cited the "*1995 - Fixed Rate Overhead Survey*", published by Ernst & Young, LLP of Houston, Texas as the source for its amounts. Burlington further testified that its proposed rates reflect those that are currently being charged by both Burlington as operator and by others on Delaware and Bone Spring producing oil wells within the immediate area.

FINDING: Such overhead and administrative charges are deemed to be fair and reasonable.

(18) $5,000.00 per month while drilling and $500.00 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.

(19) 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.

(20) 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 June 30, 1997, the order pooling said unit should become null and void and of no effect whatsoever.

(21) 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.

(22) The operator of the well and 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 Penwell Energy, Inc. in Division Case 11622 for an order pooling all mineral interests from the surface to the base of the Bone Spring formation underlying the NW/4 SE/4 (Unit J) of Section 24, Township 22 South, Range 32 East, NMPM, Lea County, New Mexico, to form a standard 40-acre oil spacing and proration unit for any and all formations and/or pools developed on 40-acre spacing within said vertical extent, which presently includes but is not necessarily limited to the Undesignated West Red Tank-Delaware Pool and the Undesignated Red Tank-Bone Spring Pool, said unit to be dedicated to its proposed Checkers "24" Federal Well No. 1 to be drilled at a standard oil well location 1980 feet from the South and East lines (Unit J) of said Section 24, is hereby denied.

(2) The application of Burlington Resources Oil & Gas Company ("Burlington") in Case No. 11613 for an order pooling all mineral interests from the surface to the base of the Bone Spring formation underlying the NW/4 SE/4 of said Section 24 to form a standard 40-acre oil spacing and proration unit for any and all formations and/or pools developed on 40-acre oil spacing within said vertical extent which presently includes but is not necessarily limited to the Undesignated West Red Tank Delaware Pool and the Undesignated Red Tank-Bone Spring Pool is hereby **approved.**

PROVIDED HOWEVER THAT, Burlington as the operator of said unit commence the drilling of its Checkmate "24" Federal Well No. 1 (**API No. 30-025-32945**), to be drilled at a standard oil well location 1980 feet from the South and East lines of said Section 24, on or before the thirtieth day of June 1997, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Bone Spring formation.

PROVIDED FURTHER THAT, in the event Burlington as the said operator does not commence the drilling of said well on or before the thirtieth day of June, 1997, Decretory Paragraph No. (2) 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. (2) of this order should not be rescinded.

(3) After the effective date of this order and within 60 days prior to commencing said well, Burlington shall furnish the Division and to each known working interest owner 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) $5,000.00 per month while drilling and $500.00 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 Lea 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 COMMISSION

JAMI BAILEY, Member

WILLIAM W. WEISS, Member

WILLIAM J. LEMAY, Chairman

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