

**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. 13224
ORDER NO. R-**

**APPLICATION OF BURLINGTON RESOURCES
OIL & GAS COMPANY LP
FOR COMPULSORY POOLING
RIO ARriba COUNTY, NEW MEXICO**

WTK-Draft 3.1.04

**BURLINGTON'S PROPOSED
ORDER OF THE DIVISION**

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on February 19, 2004, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this the ~~first day of the twelfth of never~~, the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

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

(2) The applicant, Burlington Resources Oil & Gas Company LP ("Burlington") is pooling uncommitted mineral interest owners of an interest in the mineral estate who have failed to agree to voluntarily commit their interests in the Dakota formation underlying the following described acreage in Section 19, Township 29 North, Range 7 West, NMPM, Rio Arriba County, New Mexico, and in the following manner:

the W/2 of this section to form a standard 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within this vertical extent, which presently includes but is not necessarily limited to the Basin Dakota Gas Pool.

(3) This unit is to be dedicated to the applicant's proposed San Juan 29-7 Unit wells 80B and 80M which applicant proposes to drill in Unit E and M of this section with the 80M well to be located at an unorthodox well location for the Dakota formation based upon an administrative application yet to be filed.

(4) Both wells are to be downhole commingled for production from the Dakota and Mesaverde formations based upon an administrative application yet to be filed.

(5) Burlington is the current operator of the San Juan 29-7 Unit that includes, among other acreage, the W/2 of this Section.

(6) This application was made necessary by the following facts:

- (a) the Mesaverde formation in the W/2 of this section is within the Mesaverde participating area for this Unit while the Dakota participating area has not been expanded to include this acreage;
- (b) there were three owners whose interest were derived from Adolph Soens who only committed his rights from the surface to the base of the Mesaverde formation to a oil and gas lease that was later committed to the Unit Agreement and the Unit Operating Agreement;
- (c) Adolph Soens ratified the Unit Agreement and thereby committed his Mesaverde royalty and previously unleased Dakota interests to this unit, but has never ratified the Unit Operating Agreement;
- (d) of these three owners there is only one remaining owners whose working interest is the Dakota formations for this spacing unit is not subject to the Operating Agreement:

Leslie Hardwick O'Shea

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(7) Section 70-2-17.C NMSA (1978) provides, in part that:

“Where, however, such owner or owners have not agreed to pool their interests,...the Division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste shall pool all or any part of such lands, or interest or both in the spacing unit or proration units as a unit.”

(8) Burlington submitted a sworn affidavit verifying that this person, whose interest is to be pooled, received actual notice of this hearing in accordance with Division Rule 1207 and the

Division finds that said party has been afforded a fair and reasonable opportunity to appear and participate. The Division further finds that this compulsory pooled party failed either file a pre-hearing statement or appeared at the hearing and she has waived her right to object.

(9) In support of its application, Burlington submitted the following evidence through its exhibits and the testimony of its witness that the Division finds to be substantial:

- (a) the primary zone of interest for these two wells is the Mesaverde and Dakota formations.
- (b) the Applicant has proposed these wells and their appropriate spacing unit(s) to the uncommitted owners in the spacing units as identified in Finding (6) above.
- (c) despite its good faith efforts, the applicant has been unable to obtain a written voluntarily agreement from all of this uncommitted owner voluntarily pooling her interests.
- (d) the Applicant proposes to apply the San Juan 29-7 Operating Agreement's accounting procedure that incorporate a spacing unit into the Dakota participating area when expanded thereby adjusting the equities in accordance with the Unit Agreement and Unit Operating Agreement.
- (e) (e) Applicant's witness testified in support of the approval of an Authority for Expenditure ("AFE") for a total completed well costing and estimated \$342,531.00 for the 80B well and \$369,000.00 for the 80-M and to use COPAS rates under it's San Juan 29-7 Unit Operating Agreement with overhead rates of \$5,048.20/month drilling and \$589.01/month producing subject to adjustment in accordance with the Unit Operating Agreement.
- (f) the risk penalty to be applied to the compulsory pooled parties who elect to be carried should be set at 200% of their proportionate share of actual total completed well costs.
- (g) to avoid the drilling of unnecessary wells, to protect correlative rights, to prevent waste and to afford to the owners of each interest in said units the opportunity to recover or receive without unnecessary expense his just and fair share of hydrocarbon production in any pool, the subject application should be approved by compulsory pooling of any working interest owner and/or mineral owner who owned an interest not voluntarily committed to the drilling of this well as of January 26, 2004 (date the application was filed) and any said party's successors, grantees, or assignees.

(8) Approval of the application will afford the applicant the opportunity to produce its just and equitable share of the gas in these formations/pools, will prevent the economic loss caused by the drilling of unnecessary wells, avoid the augmentation of risk arising from the drilling of an

excessive number of wells and will otherwise prevent waste and protect correlative rights.

(9) Pursuant to Section 70-2-17(C) NMSA (1978) and in order to obtain its just and equitable share of potential production underlying these spacing units, Burlington should be granted an order by the Division pooling the identified and described mineral and/or working interest owners set forth in Finding (6) above (hereinafter "compulsory pooled parties") so as to prevent waste and protect correlative rights for the drilling of this well at a standard well location upon terms and conditions which include:

- (a) Burlington be named operator of this spacing unit for the proposed wells and any subsequent operation, including subsequent wells;
- (b) provisions for all compulsory pooled parties to participate in the costs of drilling, completing, equipping and operating the proposed well and any subsequent well;
- (c) in the event a compulsory pooled party fails to timely elect to voluntarily commit its interest and participate pursuant to this order, then said compulsory pooled party's interest is hereby involuntarily committed to participation pursuant to the terms and conditions of the compulsory pooling provisions of this order and shall be deemed a non-consenting owner whose interest shall be carried so the carrying parties can recover out that compulsory pooled party's share of production, that compulsory pooled party's share of the costs of the drilling, completing, equipping and operating the initial well, including a risk factor penalty of 200%;
- (d) provisions for a compulsory pooled party to pay his share of overhead rates per month drilling and per month operating and a provision providing for an adjustment method of the overhead rates as provided by the Unit operating agreement.
- (e) provisions for a compulsory pooled party to takes their share of gas in kind and to be subject to the Gas Balancing Agreement attached is tothe Unit Operating Agreement.

(10) Approval as set forth above and in the following ordering paragraphs will avoid the drilling unnecessary wells, protect correlative rights, prevent waste and afford 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 resulting from this order.

IT IS THEREFORE ORDERED THAT:

(1) The application of Burlington Resources Oil & Gas Company LP this case is hereby **GRANTED** and Burlington Resources Oil & Gas Company LP is hereby designated operator of these corresponding spacing units.

(2) Each and every compulsory pooled party received actual notice of this hearing in accordance with Division Rule 1207 which the Division finds to have afforded each said party a

fair and reasonable opportunity to appear and participate and that none of the compulsory pooled parties appeared and they have waived their rights to object and are **hereby compulsory pooled as set forth herein.**

(3) Effective as of the date of the filing of the application in this case, the interests of uncommitted mineral interest owners of an interest in the mineral estate who have failed to agree to voluntarily commit their interests ("compulsory pooled parties") identified in Finding (6) above, including, if any, their assignees, successor and grantees, from the Datoka formation underlying the W/2 of Section 9, Township 29 North, Range 7 West, NMPM, Rio Arriba County, New Mexico, **are hereby pooled** on a unit basis.

(4) That the third optional well in these spacing units shall be the San Juan 29-7 Unit Well 80B to be located in Unit E of this section and the four optional well to be the San Juan 29-7 Unit Well 80M to be located in Unit M of this section.

(5) Burlington is authorized to concurrently submit the post order election to the compulsory pooled party for both wells.

(6) This pooling order shall remain in effect as to all horizons above the initial producing horizon until such time as the proposed wellbores have been abandoned as to all horizons.

(7) If any mineral interest owner, within 30 days of receipt of a proposal, including "AFE") for the optional second well in this spacing unit objects to either the costs or the 200% risk factor penalty being applied to the second well, then those issues shall be decided by the Division after notice and hearing.

PROVIDED HOWEVER THAT:

(8) Burlington's proposed drilling-completion program and the corresponding Authority for Expenditures ("AFE") is hereby **APPROVED**.

(9) The terms and conditions of the San Juan 29-7 Unit's Unit Operating Agreement are incorporated herein by reference and shall be binding upon all compulsory pooled parties, **subject to the following:**

PROVIDED HOWEVER THAT, the operator of said unit shall commence the drilling of said well on or before the 30th day of September, 2004, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test both the Mesaverde and Dakota formations

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the 30th day of September, 2004, Decretory Paragraph No. (3) 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.

(10) After the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division and each compulsory pooled party in the subject unit an itemized schedule of estimated well costs.

(11) Within 30 days from the date the schedule of estimated well costs is furnished to him, any compulsory pooled party 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 compulsory pooled party who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk factor penalty charges.

(12) The operator shall furnish the Division and each compulsory pooled party with an itemized schedule of actual well costs within 90 days following completion of the well; if no objection to the actual well cost 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.

(13) Within 60 days following determination of reasonable well costs, any compulsory pooled party 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.

(14) The operator is hereby authorized to withhold from the compulsory pooled party the following costs and charges from production:

- A. The pro rata share of reasonable well costs attributable to each compulsory pooled party who has not paid his share of estimated well costs within 30 days from the date of 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 compulsory pooled party who has not paid his share of estimated total completed well costs within 30 days from the date the schedule of estimated costs is furnished to him.

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

(16) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$5048.20 per month while drilling and \$589.01 per month while producing, provided that these

rates shall be adjusted annually pursuant to the Unit Operating Agreement. The operator is 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 compulsory pooled party's interest.

(17) The operator shall furnish the Division and each compulsory pooled party with an itemized schedule of actual **operating** well costs to be charged on a monthly basis in the form of a joint interest billing within 90 days following completion of the well; if no objection to the actual **operating** well cost or the joint interest billing 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.

(18) Any unleased mineral interest who is a compulsory pooled party 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.

(19) 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.

(20) All proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Rio Arriba 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.

(21) Should all the compulsory pooled parties reach voluntary agreement with the applicant subsequent to the entry of this order, this order shall thereafter be of no further effect.

(22) The operator shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the compulsory pooling provisions of this order.

(23) The operator shall record a certified copy of this order with the appropriate county clerk in this the spacing unit is located and provide proof of record to the Division.

(24) 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.

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LORI WROTENBERY
DIRECTOR