

**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 PURPOSES OF CONSIDERING:**

CASE NO. 14314

**APPLICATION OF BURLINGTON RESOURCES OIL & GAS LP
FOR COMPULSORY POOLING
SAN JUAN COUNTY, NEW MEXICO**

AFFIDAVIT OF TERRY SIMCOE

**STATE OF NEW MEXICO §
 § ss.
COUNTY OF SAN JUAN §**

Before me, the undersigned authority, personally Terry Simcoe appeared and being first duly sworn stated:

A. My name and qualification as expert are as follows:

Terry Simcoe

Education: BA University of Kansas (1968)
Experience: San Juan Basin, New Mexico since 1975
Occupation: Practicing Petroleum Landman
Certification: Yes

I am over the age of majority and competent to make this Affidavit.

I am responsible for and involved in preparing the necessary documents for submittal to the New Mexico Oil Conservation Division for this case.

I am personally knowledgeable and familiar with the facts and circumstances of this case and the following factual statements.

This affidavit has been prepared in accordance with the New Mexico Oil Conservation Division Rule 1207.A (1)(b).

**Affidavit of Terry Simcoe
NMOCD Case 14314
-Page 1-**

**Before the Oil Conservation Division
Exhibit No. 2
Burlington Resources
OCD CASE 14314
Hearing: May 14, 2009**

C. My expert opinions are based on the following facts and events:

CHRONOLOGICAL SUMMARY OF SIGNIFICANT EVENTS

- (1) Burlington, an affiliate of ConocoPhillips Company, is a working interest owner and the proposed operator for the Pierce Well No. 2B well to be dedicated to the E/2 of Section 8, T30N, R9W, San Juan County, New Mexico.
- (2) Burlington has proposed to drill, complete and operate the Pierce Well No. 2B well to be located in Unit letter P of this section and if productive to downhole commingle Dakota and Mesaverde production. See Division form C-102 attached as Exhibit "A" to the application
- (3) By letter dated February 11, 2009, Burlington proposed the drilling of this well to the working interest owners.
- (4) All of the interest owners in the Mesaverde formation have agreed to participate in this well, but two owners in the Dakota formation have declined: (a) Four Star Oil & Gas Company (3.125% WI) and (b) Koch Exploration Company, LC (21.875% WI)
- (5) The subject 320-acre spacing unit is located within the Blanco-Mesaverde Gas Pool and the Basin-Dakota Gas Pool.
- (6) Burlington despite reasonable effort has been unable to obtain the voluntary agreement from certain interest owners in this spacing unit. Pursuant to Section 70-2-17.C NMSA (1978) and in order to obtain its just and equitable share of potential production underlying this spacing unit, Burlington needs an order of the Division pooling the identified and described mineral interests involved in order to protect correlative rights and prevent waste.
- (7) In accordance with the Division's notice requirements, a copy of this application has been sent to the parties whose interest is to be pooled as listed on Exhibit "B" notifying each of this case and of the applicant's request for a hearing of this matter before the Division on the next available Examiner's docket now scheduled for May 14, 2009.

RULE 1207.A (1)(b) REQUIREMENTS

In accordance with Division Rule 1207.A (1)(b) attached the following statements and exhibits in support of this case:

- (i) No opposition for the hearing is expected because representatives of Four Star and Koch has advised that compulsory pooling may be necessary.
- (ii) Map (a) outlining the spacing unit to be pooled, being the E/2 of Section 8, T30N, R9W, NMPM, San Juan County, New Mexico showing the well location.
See Exhibit "A" attached

Affidavit of Terry Simcoe

NMOCD Case 14314

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- (iii) For name and last known address of the party to be pooled with the nature and percent of their interest; I attest that a diligent search has been conducted of all public records in the county where the well is located and the party has been contacted on our behalf on several occasions. **See Exhibit "B" attached**
- (iv) These gas spacing units are located within the boundaries of the Basin-Dakota Gas Pool and the Blanco-Mesaverde Gas Pool.
- (v) These pooled units are for gas.
- (vi) Written evidence of attempts to reach voluntary agreement including letters and summaries of telephone calls are included herein. **See Exhibit "C"**
- (vii) The maximum 200% risk factor penalty was justified prior to drilling the well in accordance with Commission Order R-11992 and Division Order R-11926
- (viii) The well costs overhead rates of \$7,000/month drilling and \$700/month producing well rates, subject to COPAS adjustment should continue to apply for this case.
- (ix) Copy of the AFE in the amount of \$1,322,774 completed well costs for this well, which we conclude, is fair, reasonable and current for wells of this type in this area and a copy of the cost allocation procedures **See Exhibit "D" for the AFE and Exhibit "E" for the costs allocation.**

ATTESTATION

I, Terry Simcoe attested that this submittal was prepared by me and the information is correct and complete to the best of my knowledge and belief.

I recommend that a compulsory pooling order be entered which provides that:

- (1) Burlington Resources Oil & Gas LP be named Operator;
- (2) In the event a working interest owner fails to elect to participate, then provisions be made to recover out of production the costs of the drilling, completing, equipping and operating the gas well, including a risk factor penalty;

- (3) Provisions for overhead rates of \$7,000 per month drilling and \$700 per month operating and a provision for an adjustment method of the overhead rates as provided by COPAS; and
- (4) In the event a mineral interest or working interest owner fails to elect to participate, then provision be made to recover out of production, the costs of the drilling, completing, equipping and operating the well, including a risk factor penalty of 200%;

FURTHER AFFIANT SAYETH NOT:



Terry Simcoe

ACKNOWLEDGMENT

STATE OF NEW MEXICO §
 §
COUNTY OF SAN JUAN §

BEFORE me, the undersigned, a Notary Public in and for said County and State, on this 4th day of May 2009, personally appeared Terry Simcoe, known to me to be the identical person who subscribed the name of the maker thereof to the foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.


Notary Public

My Commission expires:

May 22, 2011

OIL CONSERVATION DIVISION
1220 South St. Francis Dr.
Santa Fe, NM 87505

AMENDED REPORT

WELL LOCATION AND ACREAGE DEDICATION PLAT

¹ API Number		² Pool Code		³ Pool Name BASIN DAKOTA/BLANCO MESAVERDE	
⁴ Property Code		⁵ Property Name PIERCE		⁶ Well Number 2 B	
⁷ OGRID No.		⁸ Operator Name BURLINGTON RESOURCES OIL & GAS COMPANY LP		⁹ Elevation 6251'	

¹⁰ Surface Location

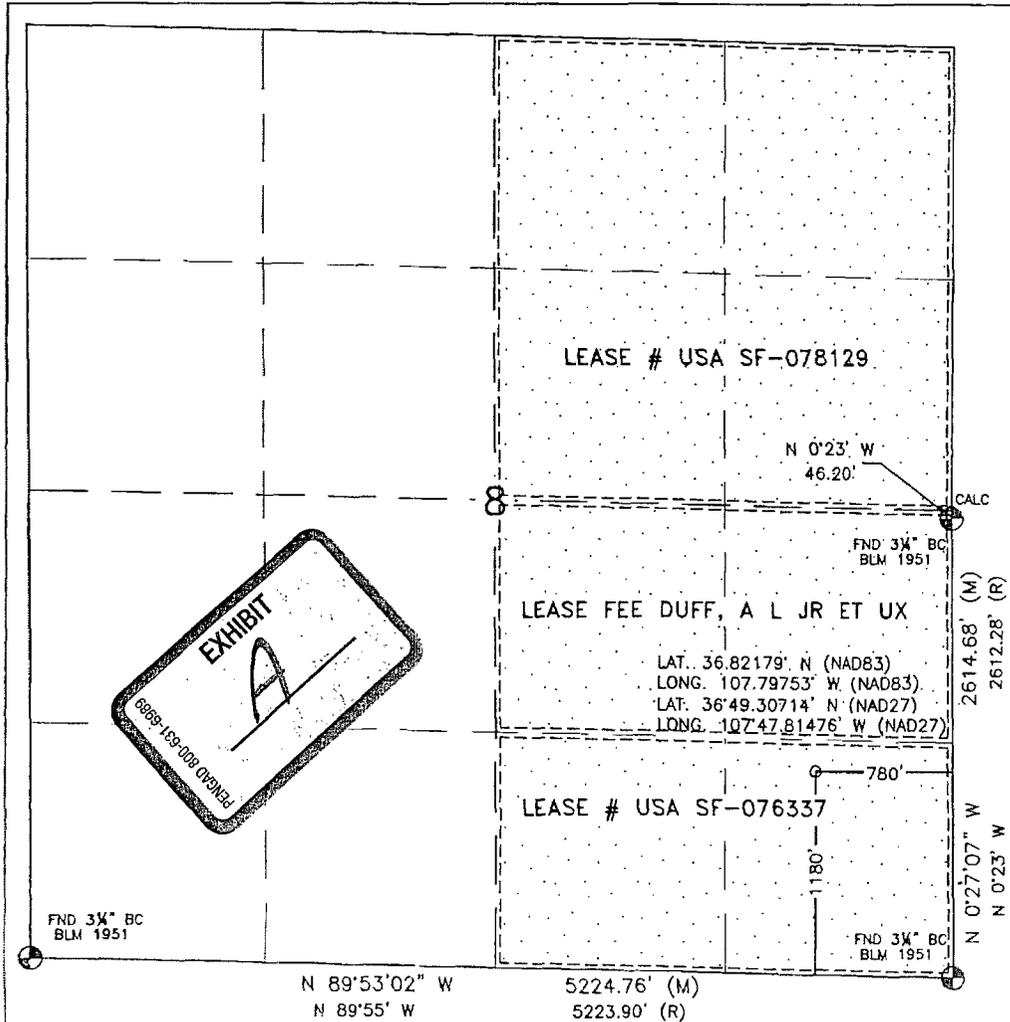
UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
P	8	30N	9W		1180'	SOUTH	780'	EAST	SAN JUAN

¹¹ Bottom Hole Location If Different From Surface

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
¹² Dedicated Acres 320.0 Acres - (E/2)		¹³ Joint or Infill		¹⁴ Consolidation Code		¹⁵ Order No.			

NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION

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¹⁷ OPERATOR CERTIFICATION

I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief, and that this organization either owns a working interest or unleased mineral interest in the land including the proposed bottom hole location or has a right to drill this well at this location pursuant to a contract with an owner or a compulsory pooling order heretofore entered by the division.

Signature _____ Date _____

Printed Name _____

¹⁸ SURVEYOR CERTIFICATION

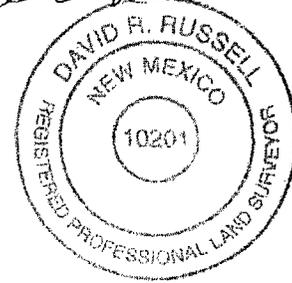
I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my belief.

AUGUST 1, 2008

Date of Survey

Signature and Seal of Professional Surveyor:

David R. Russell



DAVID RUSSELL

Certificate Number 10201

Exhibit "B"

Four Star Oil & Gas Company
Attn: Barbara Nelms
11111 South Wilcrest
Houston, TX 77099

Koch Exploration Company, LLC
Attn: Morgan Connor, Land Manager
9777 Pyramid Court
Suite 210
Englewood, CO 80112



Terry Simcoe, CPL
 Staff Landman
 San Juan Business Unit
 Suite 436
ConocoPhillips Company
 3401 E. 30th St.
 Farmington, NM 87402
 Off: 505.326.9878
 terry.simcoe@conocophillips.com

February 11, 2009

Certified Mail -<Certified Number>- *Return Receipt Requested.*

<Company Name> **BP**
 <Contact>
 <Address 1>
 <Address 2>
 <City, State Zip>

RE: 2009 New Drill Proposal – Revision
Pierce 2B
AFE #: WAN.CDR3.8286
San Juan County, New Mexico

Dear Interest Owner:

This project was initially proposed in AFE and Cost Estimates dated November 6, 2008. Revisions to the proposal are highlighted in red for your review.

Burlington Resources Oil & Gas Company LP (hereinafter Burlington), an affiliate of ConocoPhillips Company, as Operator, proposes to drill, complete and equip the above referenced directional Mesaverde and Dakota commingled well at a TVD of 7,561' for an estimated total of \$1,322,774. The details of the well are as follows:

Well Name/Dedication	Formation	Owners:	GW1%
Pierce 2B Unit Letter 'P' 1180' FSL & 780' FEL SESE, Sec. 8-T30N-R9W E/2 Dedication	Mesaverde Drillblock	Burlington Resources Oil & Gas Co LP	75.0000000%
		BP America Petroleum Company	25.0000000%
		Total	100.0000000%
	Dakota Drillblock	Burlington Resources Oil & Gas Co LP	50.0000000%
		BP America Petroleum Company	25.0000000%
		Four Star Oil & Gas Company	3.1250000%
		Koch Exploration Company LLC	21.8750000%
		Total	100.0000000%

BP was previously sent an operating agreement for this well. Burlington currently plans to drill this well before December 31, 2009, and your approval of this ballot indicates your willingness to amend the notice provisions of Article VI B of that operating agreement to allow longer time limits. We would appreciate your concurrence to the drilling, completion and development costs as detailed in the attached cost estimate. Please execute, date and return a copy of this letter ballot to the attention of **Richard Davis** at the letterhead address or fax to **505-326-9781 AND SHOWING EITHER APPROVAL OR DISAPPROVAL**. If you approve of this well proposal, then also please execute and date the attached cost estimate, and the extra copy of the execution page to the operating agreement and return them with your ballot election.

Burlington Resources is prepared, if all parties fail to approve the drilling of this well and to execute the operating agreement, to begin administrative relief (forced pooling) procedures with the New Mexico Oil & Gas Commission, and this is our last and best offer before doing so.

You must so respond by March 11, 2009. Failure to respond will include you in the administrative action before the New Mexico Oil & Gas Commission.

If there are any questions regarding this proposal please contact me at 505-326-9878.

Sincerely,

Terry Simcoe



Well Capital Cost Estimate Summary by Zone

This document contains proposed and estimated project cost information which is proprietary and confidential to ConocoPhillips.

Well Name: PIERCE 2B -

Zone Name: BLANCO MESAVERDE (PRORATED GAS)

Cost Feature Code/Name:	Drilling \$\$	Completion \$\$	P & A \$\$	Facility \$\$
A000: Casing and Tubing	\$73,215.05	\$33,033.00	\$0.00	\$0.00
B000: Wellhead, Tree and Assoc Equip.	\$8,400.00	\$8,450.00	\$0.00	\$0.00
C000: Completion Equipment & Other	\$0.80	\$6,240.00	\$0.00	\$38,443.00
D000: Location (Wellsite Related)	\$20,000.00	\$1,170.00	\$0.00	\$1,121.00
E000: Rigs & Rig Related	\$96,400.00	\$39,195.00	\$0.00	\$0.00
F000: Drilling & Completion Utilities	\$9,800.40	\$15,600.00	\$0.00	\$0.00
G000: Fluid & Chemical Services	\$8,000.00	\$4,290.00	\$0.00	\$0.00
H000: Directional drilling / MWD / LWD	\$0.40	\$0.00	\$0.00	\$0.00
J000: Cementing Mats, Svcs & Casing Access	\$17,600.40	\$0.65	\$0.00	\$0.00
K000: Formation Evaluation	\$0.80	\$9,282.00	\$0.00	\$0.00
M000: Completion & Testing	\$0.40	\$156.00	\$0.00	\$0.00
N000: Formation Stimulation Services	\$0.00	\$82,056.65	\$0.00	\$0.00
O000: Certification & Inspection	\$4,000.00	\$9.75	\$0.00	\$0.00
P000: Transportation, Supply & Disposal	\$11,200.00	\$35,692.80	\$0.00	\$280.00
Q000: Drilling Tools & Equipment Rental	\$12,400.00	\$6,747.00	\$0.00	\$0.00
R000: Bits & Mills	\$5,600.00	\$780.00	\$0.00	\$0.00
S000: Special Services	\$11,920.80	\$33,183.80	\$0.00	\$0.00
T000: Miscellaneous	\$11,600.00	\$12,526.80	\$0.00	\$9,750.00
U000: Perforating & Slickline Services	\$360.00	\$12,350.00	\$0.00	\$906.50
V000: Eng & Construction, Consulting, R&D	\$0.00	\$0.00	\$0.00	\$5,467.50
W000: General Fees	\$1,600.50	\$0.00	\$0.00	\$0.00
X000: PPCo Labor & Overhead	\$2,800.40	\$390.00	\$0.00	\$2,636.50
Y000: Totals, Contingency & Miscellaneous	\$2,000.80	\$0.00	\$0.00	\$0.00
Zone Tangibles:	\$81,615.85	\$47,723.00	\$0.00	\$38,443.00
Zone Intangibles:	\$215,284.90	\$253,430.45	\$0.00	\$20,161.50
BLANCO MESAVERDE (PRORATED GAS) Total:	\$296,900.75	\$301,153.45	\$0.00	\$58,604.50
BLANCO MESAVERDE (PRORATED GAS) Percent of Well Total:	40.00%	65.00%	0.00%	50.00%

Approved By: _____

Date: _____

Well Capital Cost Estimate Summary by Zone

This document contains proposed and estimated project cost information which is proprietary and confidential to ConocoPhillips.

Well Name: PIERCE 2B

Totals for Well:	Drilling \$\$	Completion \$\$	P & A \$\$	Facility \$\$
Well Tangibles:	\$204,039.63	\$73,420.00	\$0.00	\$76,886.00
Well Intangibles:	\$538,212.00	\$389,893.00	\$0.00	\$40,323.00
Well Total:	\$742,251.63	\$463,313.00	\$0.00	\$117,209.00

Well Total Tangibles:	\$354,345.63
Well Total Intangibles:	\$968,428.00
Well Grand Total:	\$1,322,773.63

COST ALLOCATION PROCEDURES

The entire costs, risk and expenses involved in drilling, testing, completing, equipping, reworking, deepening, plugging back and operating a well located on the Contract Area, in the event such well is completed in or proposed to be completed in two or more formations in which the working interest ownership differs, or in plugging and abandoning such well in one or more formations, shall be governed by the following provisions:

A. Definitions

- "Objective Formation" - the interval consisting of a zone, formation or horizon to be tested in a proposed operation, as stated in the AFE or notice whereby such operation was proposed.
- "Participating Interest" - the percentage of the costs and risks of conducting an operation under the applicable operating agreement that a Participating Party agrees, or is otherwise obligated, to pay and bear.
- "Participating Party" - with respect to a given formation, a Party that has approved a proposed operation or otherwise agreed, or become liable, to pay and bear a share of the costs and risks of conducting such operation under the applicable operating agreement.

References herein to multiple completion wells shall mean wells which are completed in, or proposed to be completed in, two or more formations, regardless of whether such formations are produced through separate tubing strings or commingled downhole.

B. Formula for Allocation of Drilling, Completing, and Equipping Costs

Whenever in this Agreement it is provided that costs will be borne by the Parties in accordance with this Section B, the following procedures will be used:

At the time a Party proposes the drilling of a well having two or more Objective Formations in which the working interest ownership differs, the proposing Party shall submit to the other Parties who are entitled to participate in the proposed operation an estimate of the total costs of drilling, testing, completing and equipping said well to, and including, the wellhead in all Objective Formations. In a like manner, a Party which proposes to conduct a reworking, deepening, or plugging back operation on a well involving two or more formations in which the working interest ownership differs, shall submit to the other Parties entitled to participate in the proposed operation, an estimate of the total cost of the operation. The estimated costs shall be divided into the following categories:

- Costs to be incurred from the surface to the base of the shallowest Objective Formation, including pre-drilling costs that benefit all Objective Formations, but excluding those costs set forth in subsection B (5) hereof;
- Costs to be incurred from the base of the shallowest Objective Formation to the base of the next (second) shallowest Objective Formation, excluding those set forth in subsection B (5) hereof;



- Costs to be incurred from the base of the second shallowest Objective Formation to the base of the next (third) shallowest Objective Formation, excluding those set forth in subsection B (5) hereof;
- Costs incurred from the base of the second deepest Objective Formation to total depth;
- Costs attributable to testing and completing each formation, and the cost of equipping the well with respect to equipment that is used solely in connection with one formation; and
- Costs attributable to equipping the well beyond the wellhead, with respect to equipment that serves more than one formation.

The actual costs of drilling, testing, completing, and equipping the well will be apportioned among the Objective Formations, in accordance with the categories set forth above in this

Section B, as follows:

- (1) Except as provided in Subsection B (5), pre-drilling costs that benefit all Objective Formations (including, but not limited to site surveys, site preparation, right-of-way and surface damage payments) shall be divided equally between all Objective Formations and charged to the Participating Parties therein, in accordance with their respective Participating Interest in such formations.
- (2) Except as provided in Subsection B (5), costs incurred from the surface to the base of the shallowest Objective Formation shall be divided between all Objective Formations as provided in Subsection B (6) and charged to the Participating Parties therein, in accordance with their respective Participating Interest in such formation.
- (3) Except as provided in Subsection B (5), costs incurred from the base of the shallowest Objective Formation to the base of the next shallowest (second) Objective Formation shall be divided between the second Objective Formation and all other deeper Objective Formations as provided in Subsection B (6) and charged to the Participating Parties therein in accordance with their respective Participating Interest in such formation. In a like manner, costs incurred from the base of the second Objective Formation to the base of the next shallowest (third) Objective Formation, other than those set forth in Subsection B (5), shall be divided between the third Objective Formation and all other deeper Objective Formations as provided in Subsection B (6) and charged to the Participating Parties therein, in accordance with their respective Participating Interest in such formation.
- (4) Costs incurred from the base of the second deepest Objective Formation to total depth shall be charged to the Participating Parties in the deepest formation, in accordance with their respective Participating Interest in such formation.
- (5) Costs attributable to logging, testing, perforating, treating, stimulating and abandoning a given formation shall be charged to the Participating Parties therein, in accordance with their respective Participating Interests in such formation. The cost of equipping the well, with respect to equipment that is used solely in connection with a given formation, shall be charged to the Participating Parties therein, in accordance with their respective Participating Interest in such formation.

The cost of acquiring and installing surface equipment beyond the wellhead that serves more than one formation shall be allocated equally to the formations served, except as otherwise provided in the "Taking Production in Kind" provision in the Operating Agreement. Equipping costs so allocated shall be charged to the Participating Parties in each such formation in accordance with their respective Participating Interest in such formation.

- (6) Except for those specific types of well completions identified in Subsection B (7), the cost of drilling, production casing, and tubing that serves more than one Objective Formation shall be allocated to the Participating Parties of each respective Objective Formation, pursuant to Subsections (2), (3), and (4) of this Section B, on a footage basis as follows:

n = number of Objective Formations
 I_1 = First, or shallowest Interval

I_2 = Second shallowest Interval
 I_3 = Third shallowest Interval
 $Base_x$ = Footage at the base of the x Interval

Cost allocated to I_1 :
 $(1/n * Base_1) / \text{Total Depth}$

Cost allocated to I_2 :
 $[(1/n * Base_1) + ((1/(n-1)) * (Base_2 - Base_1))] / \text{Total Depth}$

Cost allocated to I₃:

$$\left[\left(\frac{1}{n} * \text{Base}_1 \right) + \left(\frac{1}{(n-1)} * (\text{Base}_2 - \text{Base}_1) \right) + \left(\frac{1}{(n-2)} * (\text{Base}_3 - \text{Base}_2) \right) \right] / \text{Total Depth}$$

If there are more than three (3) Objective Formations, costs shall be allocated to such other formations in a like manner.

- (7) If the Objective Formations are a combination of Fruitland Coal and Pictured Cliffs or a combination of the Mesaverde and Dakota, the Parties agree that, rather than calculating a unique set of factors for each well, the cost of drilling, production casing, and tubing that serves more than one Objective Formation shall be allocated based on the average relative footage for the following formations in the San Juan Basin, as set forth in the following table:

Formation	Base of Formation	FC/PC	MV/DAK
Fruitland Coal	2700'	47%	
Pictured Cliffs	2900'	53%	
Mesa Verde	5600'		40%
Dakota	7000'		60%

C. Drilling and Completing Wells in All Objective Formations

Costs of drilling, testing, completing, and equipping wells to, and including, the wellhead which are begun with the objective of multiple completions and which are completed in all Objective Formations shall be borne by the Participating Parties in each Objective Formation in accordance with the provisions of Section B. The material and equipment in the well and on the surface shall be owned by the Parties paying the cost thereof pursuant to Section B. As to any well which was begun with the objective of multiple completions, drilling overhead shall be charged as though the well were a single well to be drilled to test the deepest formation, and borne in accordance with Section B. The working interest owners shall own all oil and gas produced from their respective formations in accordance with the applicable operating agreement for such formation.

Upon abandonment of the well, if dry in all formations, the costs of plugging and abandoning shall be borne in accordance with the provisions of Section B.

D. Completion of Well in Fewer than All Objective Formations

In the event that a well begun with the objective of multiple completions is drilled to the deepest formation and results in discovery of oil and/or gas in paying quantities in one or more Objective Formations, but is dry in one or more Objective Formations, all costs of drilling, testing, and completing the well shall be borne by the Participating Parties in each Objective Formation in accordance with Section B. Likewise, all costs of equipping the well prior to the decision to abandon the dry formation(s) shall be borne by the Participating Parties in each Objective Formation in accordance with Section B. All costs of equipping the well subsequent to the decision to abandon the dry formation(s) shall be borne by the Participating Parties in the formation(s) being completed and if there are two or more formations being completed, the equipping costs shall be apportioned between such formations in accordance with Section B. Further, the Participating Parties as to the formation(s) being completed shall pay to the Participating Parties of the formation being abandoned the value of any salvable material and equipment paid for or furnished by such abandoning Parties which is used in connection with the formation being completed. Thereafter, the Participating Parties in the completed formation(s) shall own all materials and equipment acquired

and installed in the drilling and completion of said well. The working interest owners in the completed formation(s) shall own all oil and gas produced from their respective formation in accordance with the applicable operating agreement, and shall bear all costs of operating, reworking, and plugging and abandoning the well which accrue thereafter. Notwithstanding anything to the contrary herein, the cost of abandoning the dry formation shall be borne by the working interest owners of the formation(s) being abandoned, in accordance with the applicable operating agreement. If the formation being abandoned is the deepest formation, the working interest owners in the deepest formation shall bear the cost of abandoning the entire portion of the well below the base of the second deepest formation, in accordance with the applicable operating agreement.

E. Partial Abandonment After Completion of Well in Multiple Formations

In the event that, after completion of a well in two or more formations, the working interest owners of a given formation should decide to abandon the well as to their formation, the Participating

Parties in the formation open to production ("Producible Formation") shall pay to the working interest owners of the formation to be abandoned ("Abandoning Parties"), the salvage value of any materials or equipment belonging to the Abandoning Parties that are used in connection with the Producible Formation. If there is more than one Producible Formation, such payment shall be apportioned between the Producible Formations so as to be consistent with the ownership of material and equipment as set forth in Section B. Upon making such payment, the Participating Parties as to the Producible Formation(s) shall own all of such materials and equipment. The working interest owners in the Producible Formation(s) shall own all oil and gas produced from their respective formation in accordance with the applicable operating agreement, and shall bear all cost of operating, reworking, and plugging and abandoning the well which accrue thereafter. Notwithstanding anything to the contrary herein, the cost of abandoning the formation to be abandoned shall be borne by the Abandoning Parties, in accordance with the applicable operating agreement. If the formation being abandoned is the deepest formation, the Abandoning Parties in the deepest formation shall bear the cost of abandoning the entire portion of the well below the base of the second deepest formation, in accordance with the applicable operating agreement.

F. Adding Completions and Commingling

Operations to deepen the well or recomplete the well at a shallower depth for the purpose of completing additional formations shall be proposed and approved by the Parties entitled to participate in the proposed completion attempt in accordance with the applicable operating agreement. Before any well which is completed in one or more formations may be deepened or recompleted at a shallower depth for the purpose of completing the well in an additional formation, such operation must have non-objection by all Participating Parties in each formation which is then capable of producing in paying quantities in such well. Failure of a Party owning an interest in a formation capable of producing in paying quantities to respond to a request for non-objection to a proposed deepening or recompletion within thirty (30) days after receipt of such request shall be deemed non-objection to such deepening or recompletion. Any Party owning a Participating Interest in a formation which is entitled to participate in the proposed deepening or recompletion shall have an election whether or not to participate in such deepening or recompletion operation that is separate from its non-objection to use of the wellbore. If the operation should result in an impairment of production from, or a loss of, the existing well, the provisions of Subsections H (4), (5) and (6) shall govern unless otherwise agreed.

As compensation for use of the wellbore the Participating Parties in the additional completion shall pay to said Participating Parties in each such formation then capable of producing in paying quantities ("Producing Parties") an amount calculated as set forth hereinbelow ("Wellbore Compensation"). Such Wellbore Compensation shall be equal to that portion of the Deemed Drilling Costs, depreciated as provided below, which the Participating Parties would have borne if they had originally participated in the drilling of the well under the terms of this Agreement. The Deemed Drilling Costs shall mean the applicable stated cost which corresponds to the deepest depth of the wellbore which will be used by the Participating Parties as follows: Fruitland Coal - \$130,000; Pictured Cliffs - \$130,000; and Mesa Verde - \$210,000. In the event that the additional completion is proposed in a formation other than those listed above, the Deemed Drilling Costs for such other formation shall be adjusted in the proportion that the depth and associated costs for such other formation reasonably bears to the depth and associated costs for the formations listed above. The applicable Deemed Drilling Costs shall be depreciated on a straight-line depreciation basis over a twenty (20) year period commencing as of the original completion date of the subject wellbore until the commencement date of operations for the additional completion.

If the estimated cost of commingling formations exceeds the Operators expenditure limit under the Operating Agreement, the proposing Party shall submit an authority for expenditure to the

Participating Parties in the formations proposed to be commingled. Notwithstanding anything to the contrary in the Operating Agreement, failure to respond to a proposal to commingle that does not include other operations in the well, within thirty (30) days after receipt of the proposal, shall be deemed approval of such commingling. The cost of the commingling operation shall be borne equally by all formations being commingled.

G. Allocation of Operating and Maintenance Costs

After completion of a well in two or more formations, the costs of producing operations shall be borne by the Participating Parties as to such formations as follows:

- (1) Notwithstanding anything to the contrary in the Accounting Procedure, each active completion which is not commingled downhole shall be treated as a separate well for producing well overhead. Such expense shall be borne by the Participating Parties of the respective formations as a separate cost allocable to their interest. Active completions that are commingled shall be treated as one well for the purpose of charging producing well overhead and such charge shall be allocated equally to the Participating Parties in each commingled formation.
- (2) The Participating Parties as to each formation shall bear all costs of routine producing operations including costs of labor, repairs, maintenance and replacement of equipment attributable solely to such formation. All costs of operations performed for the joint benefit of two or more formations shall be borne equally by the formations benefiting from such operations and charged to the Participating Parties in each such formation in accordance with their respective Participating Interest in such formation.

H. Allocation of Cost of Workover Operations

After completion of a well in two or more formations, a proposed workover, repair or other operation, excluding routine repair or maintenance work, shall be approved by the Parties owning a Participating Interest in all formations which are capable of producing in paying quantities, whether or not such formations are to undergo the proposed workover, repair or other operation. The costs and risk of any workover, repair or other operations on such well shall be borne by the Participating Parties in such workover, repair or other operation as follows:

- (1) The costs and risk of any workover, repair or other operation which is directly related to one formation, including but not limited to operations such as re-perforating the casing or stimulating the formation, shall be borne by the Participating Parties in the formation for which the workover, repair or other operation is performed.
- (2) All costs and risk of any workover, repair, or other operation not directly related to one formation, including but not limited to repair and correction of leaks which may result in communication between formations within the well bore shall be borne equally by the formations benefiting from such work, and charged to the owners of each such formation in accordance with their respective Participating Interests.
- (3) Any material and equipment acquired by any such expenditures provided for in Subsection H(1) and H(2) above shall be owned by the Participating Parties of the respective formations so as to be consistent with the ownership of the material and equipment as set forth in Section B.

- (4) The working interest owners of the formation undergoing the workover, repair or other operation shall not be liable to the working interest owners of the formation(s) not being worked upon for cessation of production during such operations for a period of time not exceeding a cumulative total of sixty (60) days. In the event cessation of production during such operations is for a longer period of time, the Parties participating in such workover, repair, or other operation, hereinafter referred to as Remedial Owners, shall pay to the Participating Parties as to the formation not being worked upon, hereinafter referred to as Damaged Owners, damages in such amount as shall be determined by Remedial Owners and Damaged Owners jointly for loss of production occurring for each day in excess of such sixty (60) cumulative day period until such production is restored. If the Parties are unable to reach agreement on damages within one hundred eighty (180) days after written request for damage payments, the matter shall be referred to mediation, pursuant to Section K.
- (5) If the producing capacity of the formation not undergoing the workover, repair or other operation is reduced in excess of twenty percent (20%) as a result of such workover, repair or other operation, damages will be deemed to have occurred. If damages have occurred, the Remedial Owners shall pay to the Damaged Owners, damages in such amount as shall be determined by Remedial Owners and Damaged Owners jointly for loss of producing capacity. If the Parties are unable to reach agreement on damages within one hundred eighty (180) days after written request for damage payments, the matter shall be referred to mediation, pursuant to Section K.
- (6) It is understood, however, that liability for loss or damages under Subsections H (4) and H (5) shall not accrue hereunder if: (1) such loss or damage existed prior to actual Commencement of the operations or prior to penetration by workover equipment of the damaged formation, and (2) the evidence is conclusive that the loss or damage resulted solely from the previously existing poor mechanical condition of the well. In no event shall Remedial Owners be required to pay Damaged Owners an amount greater than the cost of drilling and completing a replacement well.

I. Payments

If the amount of any payment due by working interest owners of one formation to the working interest owners of another formation(s), pursuant to Sections D, E, F, or H above, is agreed to by Parties having at least seventy-five percent (75%) Participating Interest in each of the respective formations, such agreement shall be binding on all Parties. Within thirty (30) days after agreement as to the amount of payment due, Operator shall invoice the working interest owners owing such payment. Within thirty (30) days after receipt of the invoice, each Party owing such payment shall send its payment to the Operator. The Operator will distribute the payments so received, along with any payment owed by the Operator, to the owners of the formation to whom payment is due within sixty (60) days after the invoice is issued. The Operator shall make a good faith effort to collect any such payments owed by the nonoperators. If, any non-operator fails to make a payment due hereunder, the Operator may, after making a good faith effort to collect, turn over the responsibility for collecting the payment to the Party to whom it is owed, and the Operator will have no further liability with regard to such payment.

J. Non-Consent Wells

Any payments made by owners of one formation to the owners of another formation(s) pursuant to Sections D, E, F, or H above, that would have been received by a Non-Consenting Party had it not relinquished its interest in the well, shall be credited against the total unreturned costs of the non-consent operation in determining when the interest of such Non-Consenting Party shall revert

to it as provided in the applicable Operating Agreement; and if there is a credit balance, it shall be paid to such Non-Consenting Party. Likewise, any payments made by owners of a formation to owners of another formation(s) pursuant to Sections D, E, F or H above, that would have been made by a Non-Consenting Party had it not relinquished its interest in the well shall be deemed to be part of the cost of the non-consent operation and shall be added to the sums to be recouped by the Consenting Parties as provided in the applicable Operating Agreement.

K. Dispute Resolution

If a dispute arises between the Parties under this Agreement and is not resolved by negotiation, the dispute shall be submitted to mediation before any Party resorts to litigation. In such event, promptly following one Party's written request for mediation, the Parties to the dispute shall choose a mutually acceptable mediator and share the costs of mediation services equally. The Parties to the dispute shall each have present at the mediation at least one individual who has authority to settle the dispute. The Parties shall make reasonable efforts to ensure that the mediation commences within sixty (60) days of the date of the mediation request. Notwithstanding the above, any Party may file a complaint (1) if the Parties are unable after reasonable efforts, to commence mediation within sixty (60) days of the date of the mediation request, (2) for statute of limitations reasons, or (3) to seek a preliminary injunction or other provisional judicial relief, if in its sole judgment an injunction or other provisional relief is necessary to avoid irreparable damage or to preserve the status quo. Despite such actions, the Parties shall continue to try to resolve the dispute by negotiation or mediation as necessary.