KELLAHIN AND KELLAHIN
ATTORNEYS AT LAW
EL PATIO BUILDING
117 NORTH GUADALUPE
POST OFFICE BOX 2265
SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*
*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

July 1, 1997

HAND DELIVERED

Mr. William J. LeMay, Chairman
Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87502

Re: ***NMOCD Case No. 11745***
Application of Burlington Resources Oil & Gas Company for 640-acre Deep Gas Spacing, San Juan Basin, New Mexico

Dear Mr. LeMay:

On behalf of Burlington Resources Oil & Gas Company, please find enclosed our request that the Commission deny the Application for Rehearing filed in this matter on June 24, 1997 by Mr. Gallegos on behalf of certain owners in Section 9, T31N, R10W, San Juan County, New Mexico.

Very truly yours,

W. Thomas Kellahin

cc: ***Lyn Hebert, Esq.***
Attorney for the Commission
Rand Carroll, Esq.
Attorney for the Division
William F. Carr, Esq.
Attorney for Amoco Production Company
Burlington Resources Oil & Gas Company
Attn: Alan Alexander
Gene Gallegos, Esq.
Attorney for Movants

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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:

CASE NO. 11745

APPLICATION OF BURLINGTON RESOURCES OIL & GAS COMPANY TO AMEND DIVISION RULES 104.B AND 104.C TO ESTABLISH 640-ACRE SPACING, INCLUDING WELL LOCATION REQUIREMENTS FOR GAS PRODUCTION BELOW THE BASE OF THE DAKOTA FORMATION IN SAN JUAN, SANDOVAL AND MCKINLEY COUNTIES, NEW MEXICO.

1997

BURLINGTON RESOURCES OIL & GAS COMPANY'S OPPOSITION TO APPLICATION FOR REHEARING

Burlington Resources Oil & Gas Company, by its attorneys, Kellahin & Kellahin, requests that the New Mexico Oil Conservation Commission **deny** the Application for Rehearing filed on June 24, 1997 by W. W. LaForce, Jr. and other individuals and entities alleged to own oil and gas minerals interests underlying Section 9, Township 31 North, Range 10 West, NMPM, San Juan County, New Mexico, hereinafter called "Movants".

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I. COMMISSION ORDER R-10815 ISSUED IN CASE 11745 INVOLVED PROSPECTIVE RULE MAKING AND NOT ADJUDICATION OF PROPERTY RIGHTS

Movants are not entitled to actual notice when the Commission decides to modify its General Rules in a rule making procedure.

In order to prevent waste of New Mexico's natural resources, the New Mexico Oil and Gas Act authorizes the Oil Conservation Commission to establish general rules on spacing and other matters in order to carry out the purposes of the Act. **Section 70-2-11 NMSA (1978).** These General Rules for "statewide application"[1] shall govern when no special pool rules exist. **See 19 NMAC 15.A-Rule 11.** Order R-10815 entered in Case 11745 on June 5, 1997 is the result of such a rule making procedure.

The Commission amended General Rule 104 in order to encourage "deep gas" well development in the San Juan Basin of New Mexico because no such development had taken place nor would take place in the future under the limitations of the prior general rule. **See Order R-10815.**

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[1] Statewide application does not mean that all these rules are the same for all portions of New Mexico. The Commission has always adopted General Rules suitable for general application in the San Juan Basin and in the Permian Basin, New Mexico's two major producing areas.

Movants are not entitled to actual notice of such rule making procedure. ***Uhden v. New Mexico Oil Conservation Commission,*** 112 NM 528, 817 P.2 721 (1991). It is logical and reasonable that they are not entitled to notice. It would be impossible to identify, locate and provide actual notice to the tens of thousands of parties owning an interest in oil and gas minerals in the entire San Juan Basin every time the Commission wanted to adopt a change in the General Rules. Such a requirement would simply preclude the Commission from ever changing any of its General Rules and thereby prevent the Commission from fulfilling its statutory mandate to provide and manage an oil and gas conservation system for the State of New Mexico.

This is not the **Uhden Case**. In that case, Commission was adjudicating an application by Amoco to change the spacing for **established and producing** coal-gas wells which were subject to the Special Rules and Regulations adopted specifically for and limited to the Cedar Hills Coal-Gas Pool.[2] In **Uhden,** as a result of that adjudication, the Commission amended the special rules and regulations specifically adopted for that proven productive reservoir. The Commission made a change spacing which affected the existing 160-acre spacing units including the spacing unit

[2] See OCD Order R-7588 and R-7588-A.

from which Mrs. Uhden was receiving royalty income from her lessee, Amoco who had failed to provide Mrs. Uhden with notice of that hearing. Mrs. Uhden's share of current income from the Amoco well on her unit was reduced by one-half when the Commission increased the size of the spacing units in this pool to 320-acre without actual notice to her. The New Mexico Supreme Court held that she must be given notice because her case was **not** rule making for the following reasons:

(1) the order was not of general application
(2) was confined to a limited area,
(3) persons affected were limited in number and were identifiable;
(4) order had immediate effect on owner of producing property.

In contrast to **Uhden**, Case 11745 involved the Commission's General Rules and the making of a prospective rule change for general application in a vast undeveloped area covering some 9,000 square miles with tens of thousands of owners and hundreds of operators for an interval involving at least twenty (20) different formations below the base of the Dakota formation in the San Juan Basin which, except for a few isolated and scattered wells, were **not** being produced and which had **not yet** been proven productive. This is identical to the City of Farmington amending its "master plan" for the size of lots it will allow for a single family home

within a portion of the City which has not yet been development. While such land-use rules "impact" future development, they do not constitute an "adjudication of property rights."

Case 11745 was heard by the Commission after appropriate notice at a public hearing where the Commission solicited comments and information to allow the Commission to determine how to encourage further development in the San Juan Basin. It did not involve a determination of ownership interest as would be the situation in compulsory pooling cases. It did not affect the share of production any party was currently receiving as can happen in certain amendments to special pool rules.

The Commission, both before and after **Uhden**, has periodically reviewed and changed its general rules without actual notice to all owners of interest including:

> (1) On January 18, 1996 the Commission revised Division General Rule 104 by approving Order R-10533 in Case 11351 to change, among other things, well location requirements.
>
> (2) On September 28, 1995, the Commission revised Division General Rule 303(C) by approving Order R-10470 in Case 11353 to change its rules governing the downhole commingling of production in wellbores where the ownership among the commingled formations is not the same.
>
> (3) In December 1, 1950, the Commission revised its Rules and Regulations including amending Rule 104 to designate 160-acre gas well spacing for San Juan, Rio Arriba and

Sandoval Counties, New Mexico, with well locations 990 feet to the outer boundary.

As with other General Rules which require periodic revision, Rule 104 needed to be revised. With few exceptions, the many "deep gas" formations from the base of the Dakota formation to the base of the Pennsylvanian formation in the San Juan Basin have not been effectively explored because operators have generally confined exploration to the "shallow" gas reservoirs from the surface to the base of the Dakota formation.

The Commission decided that there exists a substantial opportunity for operators in the San Juan Basin to commence more significant efforts to explore and produce the deep gas in the San Juan Basin, but the 160-acre spacing unit size for deep gas has discouraged efforts to develop the deep gas in the San Juan Basin because:

(a) a 160-acre unit does not provide sufficient gas-in-place to economically justify the drilling of deep gas wells which currently cost in excess of two million dollars to drill and complete;

(b) operators do not want to assume the risk of either (a) drilling a deep gas well on 160-acre spacing only to have the owners in the adjoining 160-acre drill another deep gas well which is not necessary in order to drain the area or (b) pooling the adjoining tracts into a 640-acre unit after the well is drilled only to have the adjoining owners avoid assuming any of the risk of drilling the deep gas well;

(c) it is extremely difficult to consolidate 640-acres into a voluntary spacing unit for the drilling of wildcat and development deep gas wells;

(d) compulsory pooling was available only for spacing units consistent with the well spacing adopted by the Division which was limited to 160 acres; and

(e) future deep gas wells are estimated to costs in excess of two million dollars and the estimate ultimate recovery for deep gas wells requires the dedication of 640 acres to provide sufficient gas reserves to justify the drilling of such wells.

Such a determination was made as a matter of established conservation "policy" to prevent the drilling of unnecessary wells thereby preventing waste.

II. COMMISSION RULE MAKING IS BASED UPON GENERAL CONDITIONS AND DOES NOT REQUIRE THAT ITS DECISION BE BASED UPON SUBSTANTIAL EVIDENCE

Movants are asking the Commission to apply the wrong evidentiary standard to Case 11745. Movants want the substantial evidence standard of an adjudicatory proceeding applied to this rule making proceeding where the substantial evidence standard is not required. **See Uhden,** supra.

This change to Rule 104 was a rule of general application for all formations in the San Juan Basin below the base of the Dakota formation

to establish a new standard sized spacing unit for some twenty (20) various formations below the base of the Dakota formation in the San Juan Basin without regard to the particular geologic and petroleum engineering properties of each of these formations.

III. THE NOTICES GIVEN FOR THIS RULE MAKING CASE WERE ADEQUATE

Notice provided for this hearing was extensive. The advertisement of this case was placed on the Commission's docket which is circulated to hundreds of interested parties and to any individual desiring to be placed on their mailing list. The Commission published notice of this case in a newspaper of general circulation in each county where these lands are located. In addition, Burlington notified some two-hundred oil and gas operators and owners in the San Juan Basin by utilize the Division list of operators and its own list of owners for whom they operate properties.

In addition, on May 16, 1997, Burlington, as a courtesy and without any obligation to do so, sent a copy of its hearing exhibits to one of the Movants, W. W. LaForce, Jr. That is significant because at the conclusion of the Commission hearing on March 19, 1997, the Commission announced that it was leaving the record open and the matter pending for any

additional comments. On June 5, 1997, almost three months after hearing this matter, the Commission closed the record in this case and issued its decision. Neither Mr. LaForce, nor any of the other Movants elected to send in any comments. The foregoing establishes that the Commission provided adequate notice of this case. Nothing more is required.

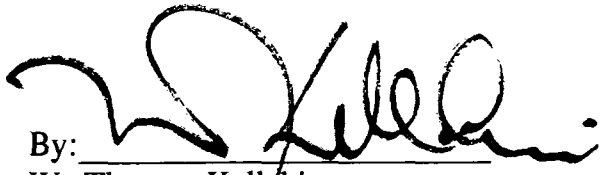
IV. THIS RULE MAKING DECISION DOES NOT VOLUNTARILY OR INVOLUNTARILY COMMIT THE MOVANT'S INTEREST TO A 640-ACRE SPACING UNIT

The Movants incorrectly presume that this change of a General Rule has voluntarily or involuntarily committed their interest to a spacing unit consisting of Section 9. General Rule 104 only affects the owners within the area in the same way as any other land-use regulation affects property owners within the area regulated. When and how these owners will share in any production from any well to be drilled in this or any other spacing unit will be decided either by voluntarily agreement or by a compulsory pooling case **but** not by Case 11745.

CONCLUSION

To grant Movant's application would be to reek havoc with the general rule making process and the entire conservation system. To grant Movant's application would establish a precedent which would preclude the Commission from amending any of its General Rules.

KELLAHIN AND KELLAHIN



By: _____
W. Thomas Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504
(505) 982-4285

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing Objection was hand delivered this 1st day of July, 1997 to the office of:

Gene Gallegos, Esq.
Gallegos Law Firm
460 St. Michael's Drive, Bldg 300
Santa Fe, New Mexico 87505

_____
W. Thomas Kellahin