

**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:**

**NOMENCLATURE
CASE NO. 12888**

**APPLICATION OF THE FRUITLAND COALBED METHANE STUDY
COMMITTEE TO AMEND RULES 4 AND 7 OF THE SPECIAL RULES AND
REGULATIONS FOR THE BASIN-FRUITLAND COAL (GAS) POOL AND FOR
THE TERMINATION OF THE CEDAR HILL-FRUITLAND BASAL COAL
POOL AND THE CONCOMITANT EXPANSION OF THE BASIN-FRUITLAND
COAL (GAS) POOL, RIO ARRIBA, SAN JUAN, MCKINLEY, AND SANDOVAL
COUNTIES, NEW MEXICO.**

ORDER NO. R-8768-E

ORDER ON PENDING MOTIONS

BY THE CHAIR OF THE OIL CONSERVATION COMMISSION:

THIS MATTER, having come before the Chair of the New Mexico Oil Conservation Commission (hereinafter referred to as "the Commission") on (1) motion of San Juan Coal Company (hereinafter referred to as "San Juan") to incorporate the record of Case No. 12734 or to bifurcate, and (2) motion of BP America Production Company (hereinafter referred to as "BP") and Burlington Resources Oil & Gas Company LP (hereinafter referred to as "Burlington") for an order *in limine* to exclude testimony and argument of San Juan, and the Chair, being fully advised in the premises, now on this 30th day of May, 2003,

FINDS:

1. San Juan has filed a motion to incorporate the record in Case No. 12734 (including the transcripts, exhibits and filings before the Commission and the Secretary of the Energy, Minerals & Natural Resources Department). San Juan's motion requests, apparently in the alternative, that if the record of Case No. 12734 is not incorporated as requested, that the hearing in this matter be bifurcated so that the dispute between San Juan and Dugan Production Corporation (hereinafter referred to as "Dugan") concerning the propriety of concurrent coal mining and coal bed methane development is addressed separately.

2. As grounds for its motion, San Juan states that incorporating the record of Case No. 12734 will streamline the hearing herein and thereby promote administrative efficiency and economy. San Juan argues that incorporating the record in Case No. 12734 will reduce significantly the time, witnesses and exhibits needed to present its contentions, and that Dugan may also be able to simplify its presentation as well. San Juan argues that the issues surrounding the coal/coalbed methane conflict are distinct from the issues of concern to other parties, and points out that its application for hearing *de novo* was limited to eight sections at the westernmost edge of the San Juan Basin and was not addressed to the basin as a whole.

3. BP, Burlington and Dugan oppose the motion. In a written response, BP and Burlington observe that San Juan's application for hearing *de novo* results from a long-running dispute concerning San Juan's coal mining operations, and should have no bearing on this dispute, which BP and Burlington characterize as exclusively devoted to Basin-wide rules. BP and Burlington complain that airing a dispute between two operators during the hearing of this matter will unnecessarily burden the hearing, cause further delay and lead to potential confusion of the issues. Dugan, during the Pre-Hearing Conference on May 28, 2003, also complained that bifurcation would result in an unfair delay in addressing the pool rules in the eight sections and effectively restrict its right to take advantage of any rule changes until Case No. 12734 is resolved.

4. San Juan's Prehearing Statement (filed May 22, 2003) states that if its Motion to Incorporate the Record is granted, it will present two witnesses, and the testimony of those witnesses will be limited so that testimony in the record is not duplicated. During the Pre-hearing Conference of May 29, 2003, San Juan pledged to call only one witness if the Motion to Incorporate the Record is granted, and that witness would testify for thirty minutes. It is thus apparent that taking administrative notice of the record in Case No. 12734 will significantly simplify the hearing in this matter and greatly condense the evidence required to address the dispute between San Juan and Dugan.

5. As the record in Case No. 12734 demonstrates, the issues surrounding coal mining and simultaneous development of coalbed methane are unique, and are limited to the westernmost edge of the San Juan Basin where San Juan holds leases to mine coal. Separating these issues from a consideration of pool rules on a basin-wide basis would reduce the potential for confusion, and further administrative efficiency and expedience.

6. The record in Case No. 12734 demonstrates that the proceedings therein have been protracted, and an appeal filed by San Juan to the Secretary of the Energy, Minerals and Natural Resources Department pursuant to NMSA 1978, § 70-2-26 has not been resolved. Given this experience, there is certainly the potential for a request for secretarial review related to the coal mining/coalbed methane dispute in this matter, with attendant delay and potential prejudice to the majority of operators not within the area encompassed by San Juan's coal leases.

7. Nothing in the rules and regulations of the Oil Conservation Division address bifurcation of matters. However, under the Rules of Civil Procedure, separate hearings may be ordered in furtherance of convenience or to avoid prejudice or when separate

hearings will be conducive to expedition and economy. See NMRA 2003, Rule 1-042(B).

8. It is appropriate to bifurcate the issues raised by San Juan in its application for hearing *de novo* and hear the dispute between San Juan and Dugan separately; bifurcating these cases will simplify the proceedings, avoid potential prejudice, and eliminate the possibility of prejudice to operators if they are drawn into the coal mining/coalbed methane dispute. These issues should be heard as Case No. 13100, which should now be styled "Application of the Fruitland Coalbed Methane Study Committee to amend Rules 4 and 7 of the Special Rules and Regulations for the Basin-Fruitland Coal (Gas) Pool in Sections 17 and 18, Township 30 North, Range 14 West, and the S/2 of Section 13, the S/2 of Section 14, and Sections 23, 24, 25, 26 and 35, Township 30 North, Range 15 West, N.M.P.M., San Juan County, New Mexico."

9. San Juan's request to incorporate the record in Case No. 12734 should also be granted; the material in Case No. 12734 is certainly relevant, and taking administrative notice of the record in that case will streamline the hearing, promote administrative efficiency and economy, and reduce significantly the time, witnesses and exhibits needed to address the application for hearing *de novo*.

10. So that a full record is present to support the application in Case No. 13100, the record in this matter (Case No. 12888) should also become a part of the record in Case No. 13100.

11. As it appears that sufficient time is available during the hearing of this matter (scheduled to begin June 3, 2003), Case No. 13100 should be heard immediately following the conclusion of Case No. 12888.

12. As a result of the foregoing, the Motion in Limine to Exclude the Testimony, Evidence and Argument of San Juan Coal Company filed by BP and Burlington should be denied as moot.

IT IS THEREFORE ORDERED, AS FOLLOWS:

1. The issues raised by San Juan in its application for hearing *de novo* shall be bifurcated from this matter and heard separately from the remaining issues in this matter, and shall henceforth be designated as Case No. 13100.

2. Administrative notice is taken in Case No. 13100 of the record in Case No. 12734 (including the transcripts, exhibits and filings before the Commission and the Secretary).

3. Administrative notice is taken of the record of Case No. 12888 (this matter) in Case No. 13100.

4. The Motion in Limine to Exclude the Testimony, Evidence and Argument of San Juan Coal Company of BP and Burlington is denied as moot.

5. Case No. 13100 shall be heard immediately following the conclusion of Case No. 12888, during the special hearing beginning June 3, 2003.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

Lori Wrotenbery
LORI WROTENBERY, CHAIR