

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

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MAY 28 2003

Oil Conservation Division

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

**APPLICATION OF THE FRUITLAND COALBED
METHANE STUDY COMMITTEE TO AMEND
RULES 4 AND 7 OF 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 CONCOMMITANT EXPANSION
OF THE BASIN-FRUITLAND COAL (GAS) POOL,
RIO ARRIBA, SAN JUAN, MCKINLEY, AND
SANDOVAL COUNTIES, NEW MEXICO.**

**Case No. 12,888
De Novo**

**RESPONSE OF BP AMERICA PRODUCTION CO. AND BURLINGTON
RESOURCES OIL AND GAS COMPANY LP TO THE MOTION OF SAN JUAN
COAL COMPANY TO INCORPORATE RECORD OR TO BIFURCATE**

In Response to the Motion of San Juan Coal Company ("San Juan") to Incorporate Record or to Bifurcate, BP America Production Co. and Burlington Resources Oil & Gas Company LP ("Respondents") state:

1. In Case 12888, the Commission is asked to consider recommendations of the Division-appointed Fruitland Coalbed Methane Study Committee to Amend Rules 4 and 7 of the Special Pool Rules and Regulations for the Basin-Fruitland Coal Gas Pool. The recommended changes, if approved, would authorize infill development through out the pool.

2. The Commission hearing in this case has been pending for many months. The Commission has set aside only three and one-half days to hear the issues related to the recommendations of the Study Committee.

3. San Juan is in a long-running dispute with the owners of coalbed methane leases concerning the development of these resources. The dispute has involved hearings before the Oil Conservation Division and Commission, the Secretary of Energy, Minerals and Natural Resources, and is now on appeal to the District Court of Santa Fe County (“the Richardson case”).

4. The Richardson case involves an application of Richardson Operating Company for infill drilling in an area within the Basin-Fruitland Coal Gas Pool where San Juan owns coal leases. While San Juan admits that **“The issues surrounding the coal/CBM conflict in the mine area are quite distinct from the issues of concern to the other participants here”** it nonetheless seeks to incorporate into this case the “transcripts, exhibits and filings both before the commission and Secretary” and call witnesses to build upon their prior testimony and to testify about gob vent boreholes and horizontal drilling in the mine area.

5. To open the hearing to additional testimony from San Juan on issues that are “quite distinct” from the issues concerning amendment of the rules governing the development of the coalbed methane reserves in areas where no mining will ever occur will unnecessarily burden the hearing and could further delay final Commission action on the recommendations of the Division Study Committee.

6. These concerns about further delays caused Respondents to file a Motion In Limine to exclude San Juan’s testimony in this case on the grounds that San Juan has already had a full opportunity to present its arguments in its dispute with these coalbed methane operators. San Juan has not responded to this Motion In Limine. Instead, it

proposes to load the record with evidence on the “quite distinct issues” of their coal/CBM dispute.

7. The Commission’s rules recognize that hearings are conducted without rigid formality (Rule 1210.A) and that it may limit testimony that it determines wastes time and causes undue delay. N.M. Rule of Evid. 11-403.

8. Respondents submit that to now load this record with large volumes of evidence from prior cases on the “quite distinct” issues in the coal/CBM dispute and to receive testimony on gob gas and horizontal drilling in the area of the coal mines wastes time, causes undue delay and should not be allowed.

9. In the alternative, San Juan seeks to bifurcate this case so the conflict between coal development and coalbed methane is heard separately from the other evidence in this proceeding.

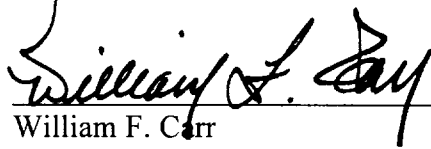
10. If San Juan’s motion to bifurcate this proceeding is granted, it would enable the Commission to separately and independently determine procedural and substantive issues in the coal/CBM dispute without the resulting waste of time and undue delays that will result from injecting these “quite distinct” issues into the hearing on the rule changes recommended by the Division Study Committee.

Conclusion.

BP America Production Company and Burlington Resources Oil & Gas Company LP renew their Motion In Limine in this case and request the Commission enter an order (1) excluding from this case the testimony, evidence and argument of San Juan Coal Company or, in the alternative, (2) bifurcating the hearing so that the conflict between coal development and coalbed methane development can be heard separately

from the evidence on the Division Study Committee's recommended revisions to the Special Pool Rules and Regulations for the Basin-Fruitland Coal Gas Pool.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to the Motion of San Juan Coal Company to Incorporate Record or to Bifurcate was served upon the following counsel of record via facsimile and first class mail this 28th day of May 2003.

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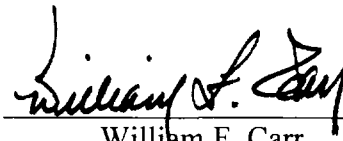
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