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May 13, 2003

VIA HAND DELIVERY

Lori Wrotenbery, Chairperson
Oil Conservation Commission
New Mexico Energy, Minerals and
Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87504

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MAY 13 2003

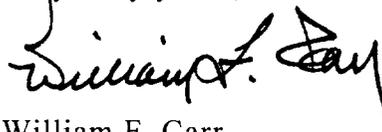
Oil Conservation Division

**Re: Case No. 12,888 (De Novo): 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 and Basal Coal Pool and the
Concomitant Expansion of the Basin-Fruitland Coal
(Gas) Pool, Rio Arriba, San Juan, McKinley, and
Sandoval Counties, New Mexico**

Dear Ms Wrotenbery:

Enclosed for filing please find BP America Production Company's and
Burlington Resources Oil & Gas Company LP's *Motion In Limine to Exclude
the Testimony, Evidence, and Argument of San Juan Coal Company.*

Very truly yours,



William F. Carr
of Holland & Hart LLP

WFC:keh
Enclosure

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

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MAY 13 2003

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

Oil Conservation Division

**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 CONCOMITANT EXPANSION
OF THE BASIN-FRUITLAND COAL (GAS) POOL,
RIO ARRIBA, SAN JUAN, MCKINLEY, AND
SANDOVAL COUNTIES, NEW MEXICO.**

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

**MOTION IN LIMINE TO EXCLUDE THE TESTIMONY, EVIDENCE, AND
ARGUMENT OF SAN JUAN COAL COMPANY**

BP America Production Company and Burlington Resources Oil & Gas Company LP (collectively "Movants") move the Oil Conservation Commission ("Commission") to prohibit the San Juan Coal Company ("San Juan") from raising once again the issues presented to the Commission in Case No. 12743. San Juan admits that the testimony, evidence and arguments it intends to raise in this matter are identical to that presented to the Commission in Case No. 12734. *See* San Juan's Pre-Hearing Statement at 10-11 (February 28, 2003) (hereinafter "San Juan Statement"). San Juan has appealed the Commission's order in Case No. 12743 (Order No. R-11175-B) to the Secretary of the Energy, Minerals, and Natural Resources Department as well as the District Court of Santa Fe County (First Judicial District Court Cause No. D-0101-CV-2003-00343). As result, San Juan is precluded from re-litigating these same issues before the Commission in this matter.

I. Since San Juan Presented Its Issues and Evidence Concerning Infill Drilling in the San Juan Basin to the Commission in Case No. 12743, it is Precluded From Raising Those Issue Again in this Matter.

A. The Doctrines of Collateral Estoppel and Res Judicata Prevent A Party From Endlessly Relitigating The Same Issues.

The doctrine of collateral estoppel (or issue preclusion) prevents a party from relitigating issues and facts decided adversely to the party in a prior proceeding. *See Ford v. New Mexico Department of Public Safety*, 119 N.M. 405, 891 P.2d 546, 548 (Ct.App. 1994). The doctrine of res judicata prevents a party from repeatedly bringing the same cause of action against the same person or their privies. *Blea v. Sandoval*, 107 N.M. 554, 761 P.2d 432, 436 (Ct.App. 1988). “As the court of appeals aptly put it in the *Ford* case, a litigant is “not entitled to more than one fair bite at the apple.” *Ford*, 891 P.2d at 548.

These preclusive principles apply equally to administrative proceedings when a party has been provided a “full and fair opportunity to litigate” the issues. *Southworth v. Santa Fe Services*, 125 N.M. 489, 963 P.2d 566, 569 (Ct.App. 1998). Because of the procedural framework in place for hearings before this Commission, there is no doubt that San Juan was provided with a full and fair opportunity to litigate any issues associated with infill drilling in the Basin Fruitland Coal Gas Pool and that this agency’s Order is “entitled to preclusive effect.” *Amoco v. Heimann*, 904 F.2d 1405, 1417 (10th Cir. 1990).

Indeed, San Juan has been afforded not one, but also a second, third, and even fourth bite at this apple. San Juan presented its concerns to the Oil Conservation Division in Case No. 12734 in November 2001. San Juan took a second bite at the apple when it appealed the Division’s order and presented its arguments to the

Commission on October 29-31, 2002. Undaunted, San Juan presented its arguments yet a third time on February 10, 2003, when, on San Juan's petition, the Secretary of the Department of Energy, Minerals and Natural Resources conducted a public interest review of the Commission's order in Case No. 12734. San Juan has now appealed this matter to the District Court of Santa Fe County (First Judicial District Court Cause No. D-0101-CV-2003-00343). San Juan now seeks to raise these issues for the fourth time in this appeal to the Commission. Since San Juan has had a full and fair opportunity to raise and litigate any issues this coal company has with infill drilling in the Basin-Fruitland Coal Gas Pool, the Commission is not required as a matter of law or equity to entertain these same tired arguments once again. *Supra*.

B. San Juan acknowledges that it desires to raise the same issues and present that same evidence that was before the Commission in Case No. 12734.

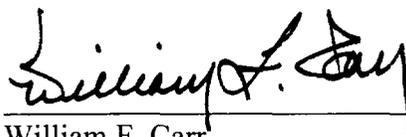
San Juan's Pre-Hearing Statement at pages 10-11 (copy attached) states that it seeks to raise the same issues and present the same testimony that was fully presented to the Commission in Case No. 12734. The only difference between this case and Case No. 12734 is that this matter involves the entire Basin-Fruitland Coal Gas Pool, while Case No. 12734 addressed the Richardson infill area in this same pool. However, the issues and analysis remain the same -- only the geographic area has changed. *See* San Juan Statement at 2-3. Indeed, the Commission's reasons for granting Richardson's infill application in Case No 12734 did not turn on any geologic, hydrologic, mineral, or other innate qualities unique to the Richardson infill area, and therefore those reasons apply equally to the area that is the subject of this application. *See* OCC Order No. R-11775-B. San Juan simply seeks to raise the same issues and utilize the same

testimony to argue that infill drilling should be precluded in a slightly enlarged portion of the Basin-Fruitland Coal Gas Pool than included in the Richardson infill area in Case No. 12734. Accordingly, because the subject matter of its proposed evidence and the outcome it seeks are identical to the evidence and desired result in Case No. 12734, San Juan is precluded from raising the same issues in another administrative proceeding. As a matter of law, San Juan is not entitled to raise yet again the same tired issues and present the same extensive evidence that was before the Commission in Case No. 12734.

Conclusion.

The doctrines of collateral estoppel and res judicata preclude San Juan from unfairly and wastefully having yet another “day in court” on the issues it had a full and fair opportunity to litigate in Case No. 12734. As a result, movants respectfully request that the Commission enter an order precluding San Juan from presenting (1) the evidence identified in its prehearing statement, and (2) presenting any other evidence bearing upon the same issues addressed by the Commission in Case No. 12734.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion In Limine to Exclude the Testimony, Evidence, and Argument of San Juan Coal Company was served upon the following counsel of record via facsimile and first class mail this 13th day of May 2003.

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William F. Carr

**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:**

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

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FEB 28 2003

Oil Conservation Division

Case No. 12,888

De Novo

PRE-HEARING STATEMENT OF SAN JUAN COAL COMPANY

This pre-hearing statement is submitted by San Juan Coal Company ("San Juan") as required by the Oil Conservation Commission and the scheduling letters of January 16, 2003 and February 11, 2003.

APPEARANCES

Parties

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Attention: Charles E. Roybal
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Attorneys

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EXHIBIT A

Dugan Production Corp.

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LP

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Williams Production Company
Koch Exploration Company, LLC
Chevron U.S.A. Inc.

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STATEMENT OF THE CASE

Lands

San Juan has requested *de novo* review only insofar as the following lands in San Juan County, New Mexico, are involved:

Township 30 North, Range 14 West, N.M.P.M.

Section 17: All
Section 18: All

Township 30 North, Range 15 West, N.M.P.M.

Section 13: S½
Section 14: S½
Section 23: All
Section 24: All

Section 25: All
Section 26: All
Section 35: All

The above lands ("Coal Lease Lands") are the remaining lands within San Juan's coal leases that are not covered by Case No. 12734, which involves Richardson Operating Company's Special Application for Infill Drilling and is currently on review to the Secretary of Energy, Minerals and Natural Resources. San Juan understands that Dugan Production Corporation ("Dugan") claims operating rights to the majority of the oil and gas leases on the Coal Lease Lands.

Pending Application for Stay

There is currently pending before the Commission an Application by San Juan Coal Company for a Stay of the Division's Order No. R-8768-C on certain lands within San Juan's coal leases pending consideration of this matter by the Oil Conservation Commission ("Commission"). That Application for Stay has been pending since December 5, 2002. The January 16, 2003 scheduling memorandum in this case indicated that the Chair intends to issue an order on the Application in the "near future."

Procedure

At the January 15 scheduling conference in this matter, San Juan proposed that the Commission hearing could be bifurcated to allow hearing on issues relating to the Coal Lease Lands to proceed separately from the remainder of this proceeding. The Coal Lease Lands area present certain unique issues that are not presented elsewhere, and San Juan's Application for Hearing *De Novo* in this matter involves only the Coal Lease Lands. At that time, counsel for Dugan did not agree to San Juan's proposal, but wanted to consider the matter further.

San Juan Underground Mine

On the Coal Lease Lands, San Juan Coal Company is the lessee of two federal coal leases. The Coal Lease Lands cover most of what is known as the "Deep Lease," Federal Coal Lease No. NM 28093, and the northern portion of what is known as the "Deep Lease Extension," Federal Coal Lease No. NM 99144. The remaining portions of the Deep Lease and Deep Lease Extension, together with two state leases (one in Section 36, Township 30 North, Range 15 West, and the other in Section 32, Township 30 North, Range 14 West), are at issue in OCC Case No. 12734 involving Richardson Operating Company and currently on *de novo* review by the Secretary of the New Mexico Energy, Minerals and Natural Resources Department.

San Juan has operated surface coal mines in the area for decades, but in October of 2002, after years of initial underground mine construction, it began mining coal using a longwall mining system at the San Juan Underground Mine located, in part, on the Coal Lease Lands. The Underground Mine will replace the existing surface mines at San Juan and La Plata as the sole source of supply for the San Juan Generating Station ("SJGS"). San Juan will use primarily its longwall mining system to mine coal, which became operational in October of 2002. The longwall mining system is an enormous piece of equipment (1000 feet long), which mines a "panel" of coal 1000 feet wide and up to almost 2 miles long.

The San Juan Underground Mine will be the sole coal supplier to SJGS, which is operated by Public Service Company of New Mexico. SJGS is the second largest power plant in New Mexico, and supplies much of the electricity distributed in New Mexico.

SJCC and SJGS each generate substantial payrolls and tax, which benefit state and local governments.

The San Juan Underground Mine involved an initial capital investment of approximately \$150 million, with additional investments planned over time. San Juan plans to employ over 300 people in the Underground Mine and associated operations (when in full production), with an annual payroll of about \$33 million. San Juan plans to extract approximately 100 million tons or more of coal from the Underground Mine through the year 2017 under the current contract with SJGS, which will yield about \$250 million in royalty from the federal leases (based on a royalty rate of 8%). One half of the federal royalty is payable to the state under applicable federal leasing statutes. In addition, coal production from the two adjacent state coal leases is expected to generate an additional \$25 million in royalty revenue to the State Land Office. There is also the possibility of coal mining beyond 2017, especially in the "Twin Peaks" area immediately east of the existing coal leases, which could result in a royalty stream beyond that date.

Generally, the Underground Mine is designed so that mining occurs in a sequence, which begins in the west of the mine permit area, and proceeds east. The economic viability of the Underground Mine depends upon systematic, uninterrupted development of the coal reserve. Adherence to the mine plan is important because if the longwall miner is required to stop production for prolonged periods (days), explosive gases can accumulate, and the risk of an underground explosion increases. Moreover, stopping and moving the longwall equipment around wellbores itself poses safety risks and is cumbersome, time consuming and costly.

Compatibility of Conventional CBM Wells with Coal Development

San Juan has serious concerns about the compatibility of conventional coalbed methane ("CBM") development on the Coal Lease Lands and San Juan's development of the coal itself. Before realizing fully the characteristics of the Fruitland Coal formation and the adjacent formations that form the roof and floor of the mine area, San Juan initially thought that a good solution to the conflict between coal development and CBM development was for CBM development to occur ahead of mining. Because mining proceeds slowly, it initially appeared that CBM development could proceed in advance of coal mining. However, upon further study, San Juan concluded that additional wellbores and fracturing activities in the coal in advance of mining raised serious safety concerns.

Many of these safety concerns stem from the instability of the geologic formations at and immediately above the roof and at and immediately below the floor in the San Juan Underground Mine. San Juan did not fully appreciate the full ramifications of this instability until it gained experience in working underground in this local area. Formations in the roof and floor are relatively unstable in their natural state and can become even more unstable as a result of hydraulic fracturing. These conditions result in an increased risk of roof failure and floor instability. These risks increase the health and safety risks to San Juan's employees and also increase the risk of a catastrophic event that could bury or strand San Juan's longwall mining system, causing potential abandonment of a piece of mine equipment costing tens of millions of dollars.

In addition to hydraulic fracturing, another problem for coal development caused by gas operations is the existence of steel well casing in the coal seam. The federal Mine Safety and Health Administration (MSHA) regulations require that before mining

operations can approach to within 150 or 300 feet of an active wellbore (leaving a 300 or 600 foot in diameter buffer, depending upon interpretation of MSHA Regulations), the wellbore must be plugged and abandoned according to MSHA requirements. If San Juan is able to reach a buyout agreement with the operator, ordinarily it can plug and abandon the well and mine through the area, avoiding the need to bypass coal. However, if a well has been fractured in the coal, even with a buyout, the fractured condition of the coal could still require that the coal be bypassed for safety reasons. If San Juan is unable to reach a buyout agreement, it also must bypass and leave un-mined a substantial block of coal. This bypass of coal results in loss of royalty and taxes to the State of New Mexico. In addition to the waste of coal, gas development and in-fill wells could otherwise impede mining operations, causing diminished safety and increased costs and delays in mining that could lead to interruption of coal supply. These events could lead to higher costs and less secure supply of electricity for the customers of SJGS. The more wells that are drilled or re-completed, the greater the problems for the mine, especially if wells are located in certain areas of the mine plan.

Recovery of CBM in Mining Operations

San Juan has the right to vent gas in its mining operations, but the potential exists for recovering CBM through gob vent bore holes and horizontal bore holes drilled by San Juan into the face of its target coal seam running parallel with the coal seam to drain methane in advance of mining. The possible recovery of gas in this manner has been described in the letter of February 5, 2003, to Dugan from San Juan. This process differs from conventional CBM production in numerous respects, including that a horizontal borehole is not fractured, it is not cased with steel, and it exposes far more coal than a

conventional CBM well would expose. The horizontal boreholes would not pose the problems for mining that conventional CBM wells pose and would not inflict the damage on the coal seam that conventional CBM wells would. The degassing would meet MSHA safety regulations and help avoid spontaneous combustion. It is not yet clear that commercial quantities of gas exist or will be recovered in the area of the Coal Lease Lands, but San Juan's letter to Dugan does provide that if gas is collected and if it is safe, economic and practical, San Juan would like to make that gas available for Dugan's gathering and distribution.

Infill Wells are Uneconomic and Inefficient.

The Oil and Gas Act and Division Regulations preclude approval of the application. The Act states in part:

the division may establish a pro-ration unit for each pool, such being the area that can be efficiently and economically drained by one well, and in so doing the division shall consider the economic loss caused by the drilling of unnecessary wells, the protection of correlative rights . . . the prevention of waste, the avoidance of augmentation of risks arising from the drilling of an excessive number of wells, and the prevention of reduced recovery which might result from the drilling of too few wells.

NMSA 1978 § 70-2-17B. It is contrary to law and to the public interest to allow inefficient or uneconomic infill wells to damage the coal seam. For the most part, the infill wells proposed for the Coal Lease Area would not be economic or efficient because the CBM resource in most of the area is marginal at best. The impact of these marginal wells on the far more valuable coal gas reserve further illustrates that the infill wells would be contrary to the Oil and Gas Act as uneconomic and inefficient. They are unnecessary and would result in the waste of the coal resource and augmentation of risk.

The Commission should consider alternative CBM recovery methods in the mine area that do not damage the coal.

Also, because Pictured Cliffs wells in the area produce from this coal seam, any Pictured Cliffs wells that Dugan already operates would help achieve the production it seeks through infill. Pictured Cliffs wells are actually Fruitland coal producers. Thus, in effect, any production from Pictured Cliffs wells by Dugan drains Fruitland coal.

To support its position, San Juan will present evidence on (a) mine safety requirements and their impact on the waste of coal that is bypassed, including the prevention of fires, (b) the lack of economic return and need for additional wellbores or re-completions, (c) economic loss and risk caused by drilling unnecessary wells, (d) the dangers of fracturing in the coal seam, (e) economic and physical waste, (f) conservation of mineral resources, (g) protection of neighboring properties, and (h) the public interest.

PROPOSED EVIDENCE

San Juan Coal Company's Proposed Witnesses

<u>Witness</u>	<u>Estimated Time¹</u> <u>(approx.)</u>	<u>Estimated Exhibits</u> <u>(approx.)</u>
Dr. Steve Bessinger (Mining Engineer)	2 Hrs.	25
John Mercier (Geologist)	30 Min.	5
John Hattner (Geologist)	30 Min.	5
Dan Paul Smith (Engineer)	60 Min.	20

¹ Time estimates are for direct examination.

San Juan May Call

George Gilfillan (San Juan Senior Contract Analyst)	30 Min.	5
Paul Bertoglio (Engineer)	30 Min.	5

With respect to the mine area, Dr. Bessinger will testify concerning the subjects of his testimony before the Secretary in her review of OCC Case No. 12734 (*De Novo*). He will address longwall mining operations, mine roof and floor conditions, safety concerns associated with hydraulic fracturing, MSHA regulations, quantities of bypassed coal, the San Juan mine plan, investment of San Juan and the value of the coal reserves, the history of San Juan's operations and leases, supply of coal to SJGS, public benefit of the coal supply, ventilation and mine degassing, and potential recovery of CBM in mining operations.

With respect to Coal Lease Lands, John Mercier will testify concerning the subjects of his testimony before the Commission in OCC Case No. 12734. His testimony may address coal desorption data and geology of the mine area, including coal thickness.

With respect to Coal Lease Lands, John Hattner will testify concerning the subjects of his testimony before the Commission in OCC Case No. 12734 concerning geology of the mine area and foundational matters of geology for the testimony of Dan Paul Smith.

With respect to the Coal Lease Lands, Dan Paul Smith will testify concerning the subjects of his testimony in OCC Case No. 12734. He will address the gas content of the coal in the area in and around the Coal Lease Lands, the economics of the gas resource

and wells in the Coal Lease Lands, desorption data, and production of gas from the coal seam and adjoining formations.

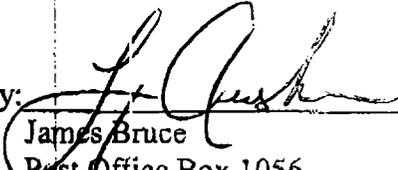
George Gilfillan may testify concerning San Juan's coal leases, the history of San Juan's operations, the value of the coal reserves, the royalty and associated benefits of coal mining to the public and governments, the coal sales contract with SJGS, and issues related to proceedings before the BLM.

With regard to the Coal Lease Lands, Paul Bertoglio may testify concerning the subjects of his testimony before the OCC in OCC Case No. 12734. He would address the economics of the gas resource and CBM wells in the area of the Coal Lease Lands, gas content of the coal, gas production techniques, and production from the Pictured Cliffs formation.

Respectfully Submitted,

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COMPANY

By:


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record via first class mail this 28th day of February, 2003.

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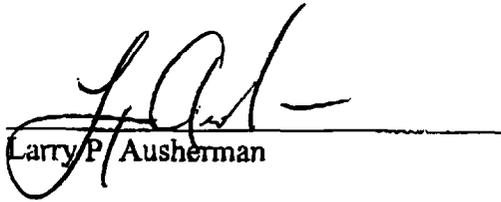
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