

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

October 12, 1999

HAND DELIVERED

Ms. Lori Wrotenbery, Director
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

12276

99 OCT 13 AM 3:13

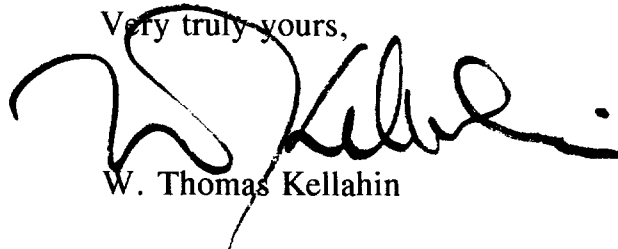
OIL CONSERVATION DIV.

**Re: Application of Burlington Resources Oil & Gas Company
for Compulsory Pooling, San Juan County, New Mexico
Section 36, T27N, R8W, NMPM
W/2 & NW/4: Brookhaven Com Well No. 8
W/2 & SW/4: Brookhaven Com Well No. 8-A**

Dear Ms. Wrotenbery:

On behalf of Burlington Resources Oil & Gas Company, please find enclosed our referenced application which we request be set for hearing on the Examiner's docket now scheduled for November 4, 1999. Also enclosed is our proposed advertisement of this case for the NMOCD docket.

Very truly yours,



W. Thomas Kellahin

cc: Burlington Resources Oil & Gas Company
Attn: Shannon Nichols

PROPOSED ADVERTISEMENT FOR NMOCD DOCKET

12276

CASE___: Application of Burlington Resources Oil & Gas Company for compulsory pooling, San Juan County, New Mexico. Applicant seeks an order pooling all owners of mineral interests in the Mesaverde formation and the Chacra formation underlying the following described acreage within Section 36, T27N, R8W, NMPM, San Juan County, New Mexico, in the following manner: (i) a 320-acre gas spacing unit consisting of the W/2 of this section for gas production from the Blanco-Mesaverde Gas Pool to be dedicated to the proposed Brookhaven Com Well No. 8 to be located in the NW/4 and to the Brookhaven Com Well No. 8-A to be located in the SW/4 of this section (ii) for a standard 160-acre gas spacing unit consisting of the NW/4 of this section for gas production from the Otero-Chacra Gas Pool to be dedicated to the Brookhaven Com Well No. 8 and (iii) for a standard 160-acre gas spacing unit consisting of the SW/4 of this section for Chacra gas production to be dedicated to the Brookhaven Com Well No. 8-A. Applicant seeks to be designated as the operator of these wells. Said units are to be dedicated to Burlington Resources Oil & Gas Company's Brookhaven Com Wells No. 8 and 8-A are to be drilled as a "dual completion" at a standard gas well locations within this section.

These wells are located approximately 15 miles northeast of the El Huerfano Trading Post on New Mexico State Highway 44, New Mexico.

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

**IN THE MATTER OF THE APPLICATION
OF BURLINGTON RESOURCES OIL & GAS
COMPANY FOR COMPULSORY POOLING,
SAN JUAN COUNTY, NEW MEXICO.**

CASE NO. 12276

APPLICATION

Comes now BURLINGTON RESOURCES OIL & GAS COMPANY, by its attorneys, Kellahin & Kellahin, and in accordance with Section 70-2-17(c) (1978) applies to the New Mexico Oil Conservation Division for an order pooling all owners of mineral interests in the Mesaverde formation and the Chacra formation underlying the following described acreage within Section 36, T27N, R8W, NMPM, San Juan County, New Mexico, in the following manner:

- (i) a 320-acre gas spacing unit consisting of the W/2 of this section for gas production from the Blanco-Mesaverde Gas Pool to be dedicated to the proposed Brookhaven Com Well No. 8 to be located in the NW/4 and to the Brookhaven Com Well No. 8-A to be located in the SW/4 of this section;
- (ii) for a standard 160-acre gas spacing unit consisting of the NW/4 of this section for gas production from the Otero-Chacra Gas Pool to be dedicated to the Brookhaven Com Well No. 8; and
- (iii) for a standard 160-acre gas spacing unit consisting of the SW/4 of this section for gas production from the Otero-Chacra Gas Pool to be dedicated to the Brookhaven Com Well No. 8-A.

Applicant seeks to be designated as the operator of these wells. Said units are to be dedicated to Burlington Resources Oil & Gas Company's Brookhaven Com Wells No. 8 and 8-A which are to be drilled as "dual completions" at a standard gas well locations within this section.

In support of its application, Burlington Resources Oil & Gas Company ("Burlington") states:

1. Burlington is a 63.427118% working interest owner in the Mesaverde formation in the W/2 of Section 36, T27N, R8W, NMPM, San Juan County, New Mexico and is the proposed operator for:

(a) the Brookhaven Com Well No. 8 to be located within Unit C of this section and drilled as a dual completion gas well in the Blanco Mesaverde Gas Pool and the Otero-Chacra Gas Pool; and

(b) the Brookhaven Com Well No. 8-A to be located within the SW/4 of this section and drilled as a dual completion gas well in the Blanco Mesaverde Gas Pool and the Otero-Chacra Gas Pool.

2. By Letter Agreement dated May 24, 1952 this proposed spacing unit was included within acreage subject to a November 27, 1951 farmout/operating agreements between Brookhaven Oil Company and San Juan Production Company (collectively the "GLA-46 Agreement") which set forth a drilling obligation for 18 Mesaverde wells to be drilled within the contract area.

3. This drilling obligation has been satisfied.

4. Thereafter and only by unanimous agreement made on an individual well basis, did the parties decide to make any future well subject to the GLA-46 Agreement.

5. Burlington is the successor to San Juan Production Company and Energy Resources Corporation (formerly Total Minatome) and others are successors to Brookhaven Oil Company, (the "GLA-46 Group")

6. On July 30, 1998, Burlington proposed to the other working interest owners in this spacing unit the drilling of the Brookhaven Com Well No. 8 as a Mesaverde/Chacra dual completion at an estimated well cost of \$427,630.00 to be governed by the parties signing a new joint operating agreement instead of being subject to the GLA-46 Agreement.

7. In response, by letter dated August 24, 1998, Total Minatome attempted to participate under the terms of the GLA-46 agreements because certain of its provisions are very favorable to Minatome and include (a) the right for Minatome to be a "carried interest" so that Minatome keeps 50 % of its production and Burlington (San Juan) recovers 100 % of Minatome's (Brookhaven) share of costs only out of 50% of Minatome's share of production and without any penalty; and (b) limits Total Minatome's share of well costs to not more than 50% of a total well cost not to exceed \$45,000.00.

8. In September, 1998, Burlington was advised that Total Minatome sold its interest to Energy Resources Corporation (successor in name to Taurus Exploration USA, Inc.)

9. On September 18, 1998, Burlington advised the GLA-46 Group, including Energen Resources Corporation, that the GLA-46 Agreement did not apply to this new well proposal and they could either (a) elect to participate by signing a new joint operating agreement or (b) farmout out their interests to Burlington.

10. On August 25, 1999, Burlington advised the GLA-46 Group, including Energy Resources Corporation, that it was withdrawing its offer to drill and complete the Brookhaven Well No. 8 under the terms set forth in its September 18, 1998 letter.

11. On September 15, 1999, Burlington made a second formal request for all working interest owners to sign a new joint operating agreement for this well.

12. On September 15, 1999, Burlington proposed to the other working interest owners in this spacing unit the drilling of a second Mesaverde well in this same spacing unit (the "Brookhaven Com Well No. 8-A" and identified in Burlington's proposal as the Brookhaven Com Well No. 9.) as a Mesaverde/Chacra dual completion at an estimated well cost of \$427,630.00 to be governed by the parties signing a new joint operating agreement instead of being subject to the GLA-46 Agreement.

13. Despite its good faith efforts, Burlington has not been able to obtain the voluntary agreement of certain mineral owners as indicated on Exhibit "A".

14. As set forth in Division Order R-10877 and Order R-10878, the Division has already decide this issue in favor of issuing a compulsory order which pooled the GLA-46 Group's interest for the drilling of other wells because:

(a) if the Division does not pool the interests of the GLA-46 Group, and subsequent litigation determines that the GLA-46 Group's interpretation of the GLA-46 Agreement is incorrect, Burlington will be forced to consolidate the interests once again, either by a new agreement or by compulsory pooling. The well will have been drilled by that time, and the GLA-46 Group, in deciding whether or not to voluntarily participate in the well will have knowledge as to its success giving them an unfair advantage over Burlington; or

(b) if Burlington's interpretation of the GLA-46 Agreement is subsequently determined to be incorrect, the GLA-46 Group will have been voluntarily committed under the terms of the GLA-46 Agreement and will simply be dropped from the compulsory pooling order.

15. Pursuant to Section 70-2-17(c) NMSA (1978) and in order to obtain its just and equitable share of production from these wells and these spacing units, Burlington needs an order of the Division pooling the described spacing units and described mineral interests involved.

16. In accordance with the Division's notice requirements, a copy of this application has been sent to the parties to be pooled as shown on Exhibit "A".

17. Burlington requests that this matter be set for a hearing before the Division on the next available Examiner's docket now scheduled for November 4, 1999.

WHEREFORE, Burlington, as applicant, requests that this application be set for hearing on November 4, 1999 before the Division's duly appointed examiner, and that after notice and hearing as required by law, the Division enter its order pooling the mineral interests described in these spacing units for the drilling, completing and operating these wells at standard gas well locations and upon terms and conditions which include:

- (1) Burlington Resources Oil & Gas Company be named operator;
- (2) provisions for applicant and all working interest owners to participate in the costs of drilling, completing, equipping and operating for each well;
- (3) in the event a working interest owner fails to elect to participate in each well, then provision be made to recover out of production the costs of the drilling, completing, equipping and operating for each well including a risk factor penalty of 200 %;
- (4) provision for overhead rates per month drilling and per month operating and a provision providing for an adjustment method of the overhead rates as provided by COPAS;
- (5) for such other and further relief as may be proper.

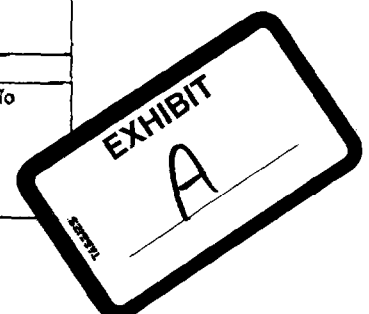
RESPECTFULLY SUBMITTED:

A handwritten signature in black ink, appearing to read 'W. Thomas Kellahin', written over a horizontal line.

W. THOMAS KELLAHIN
KELLAHIN & KELLAHIN
P. O. Box 2265
Santa Fe, New Mexico 87504

Working Interest Owner	Mesaverage Interest	Share Interest	Participation
Cross Timbers Oil Company Attn: Win Ryan 810 Houston Street Suite 2000 Fort Worth, TX 76102-6298	1.5625%	0.00%	No
Cheryl Potenziani P.O. Box 36600, Station D Albuquerque, NM 87176	0.926703%	0.529544%	No
Energen Resources Corporation Attn: Rich Corcoran 2198 Bloomfield Highway Farmington, NM 87401	15.049651%	11.680158%	No
Westport Oil & Gas Company Attn: Kent Davis 410 Seventeenth Street, Ste 2300 Denver, CO 80202-4436	6.761437%	5.247607%	No

Carolyn Nielsen Sedberry C/o Bank of America Attn: Ed DiRe P.O. Box 2546 Fort Worth, TX 76113-2546	1.878502%	1.073430%	No
Roger Nielsen 1200 Danbury Drive Mansfield, TX 76063	1.878502%	1.073430%	No
C. Fred Luthy Jr. C/o Bank of America Attn: Ed DiRe P.O. Box 2546 Fort Worth, TX 76113-2546	1.853198%	1.058971%	No
Cyrene L. Inman C/o Bank of America Attn: Ed DiRe P.O. Box 2546 Fort Worth, TX 76113-2546	1.853198%	1.058970%	No
FA & HB Cronican Rev Trust C/o Bank of America Attn: Ed DiRe P.O. Box 2546 Fort Worth, TX 76113-2546	1.052185%	0.601249%	No
William C. Briggs C/o Bank of America Attn: Ed DiRe P.O. Box 2546 Fort Worth, TX 76113-2546	0.938940%	0.536537%	No
Herbert R. Briggs C/o Bank of America Attn: Ed DiRe P.O. Box 2546 Fort Worth, TX 76113-2546	0.939562%	0.536893%	No
Marcia Berger C/o Bank of America Attn: Ed DiRe P.O. Box 2546 Fort Worth, TX 76113-2546	0.939252%	0.536715%	No
WWR Enterprises C/o Bank of America Attn: Ed DiRe P.O. Box 2546 Fort Worth, TX 76113-2546	0.939252%	0.536715%	No



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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)

January 24, 2000

HAND DELIVERED

Ms. Lori Wrotenbery, Director
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

00 JAN 24 PM 3:33
OIL CONSERVATION DIV.

**Re: FIRST AMENDED APPLICATION
NMOCD Case 12276:**

**Application of Burlington Resources Oil & Gas Company for
Compulsory Pooling, San Juan County, New Mexico
Section 36, T27N, R8W, NMPM**

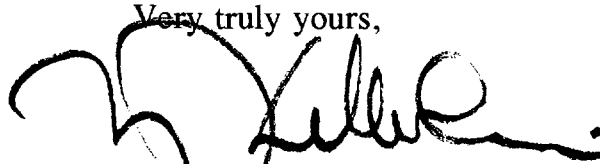
W/2 & NW/4: Brookhaven Com Well No. 8

W/2 & SW/4: Brookhaven Com Well No. 8-A

Dear Ms. Wrotenbery:

On behalf of Burlington Resources Oil & Gas Company, please find enclosed our referenced First Amended Application which was the subject of an Examiner's hearing held on January 20, 2000 and continued to February 3, 2000.

Very truly yours,



W. Thomas Kellahin

cc: Division:

Attn: Rand Carroll, Esq.

Mark Ashley, Examiner

J. Scott Hall, Esq.

Burlington Resources Oil & Gas Company

Attn: Shannon Nichols

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

**IN THE MATTER OF THE APPLICATION
OF BURLINGTON RESOURCES OIL & GAS
COMPANY FOR COMPULSORY POOLING,
SAN JUAN COUNTY, NEW MEXICO.**

CASE NO. 12276

FIRST AMENDED APPLICATION

Comes now BURLINGTON RESOURCES OIL & GAS COMPANY, by its attorneys, Kellahin & Kellahin, and in accordance with Section 70-2-17.C NMSA (1978), or in the alternative in accordance with Section 70-2-17.E NMSA (1978), applies to the New Mexico Oil Conservation Division for an order pooling all owners of mineral interests in the Mesaverde formation and the Chacra formation underlying the following described acreage within Section 36, T27N, R8W, NMPM, San Juan County, New Mexico, in the following manner:

- (i) a 320-acre gas spacing unit consisting of the W/2 of this section for gas production from the Blanco-Mesaverde Gas Pool to be dedicated to the proposed Brookhaven Com Well No. 8 to be located in the NW/4 and to the Brookhaven Com Well No. 8-A to be located in the SW/4 of this section;
- (ii) for a standard 160-acre gas spacing unit consisting of the NW/4 of this section for gas production from the Otero-Chacra Gas Pool to be dedicated to the Brookhaven Com Well No. 8; and
- (iii) for a standard 160-acre gas spacing unit consisting of the SW/4 of this section for gas production from the Otero-Chacra Gas Pool to be dedicated to the Brookhaven Com Well No. 8-A.

Applicant seeks to be designated as the operator of these wells. Said units are to be dedicated to Burlington Resources Oil & Gas Company's Brookhaven Com Wells No. 8 and 8-A which are to be drilled as "dual completions" at a standard gas well locations within this section.

In support of its application, Burlington Resources Oil & Gas Company ("Burlington") states:

BACKGROUND

1. Burlington is a 63.427118% working interest owner in the Mesaverde formation in the W/2 and is a 51.324453% working interest owner in the Chacra formation in the NW/4 and a 74.529781% working interest owner in the Charca formation in the SW/4 all in Section 36, T27N, R8W, NMPM, San Juan County, New Mexico and is the proposed operator for:

(a) the Brookhaven Com Well No. 8 to be located within Unit C of this section and drilled as a dual completion gas well in the Blanco Mesaverde Gas Pool and the Otero-Chacra Gas Pool; and

(b) the Brookhaven Com Well No. 8-A to be located within the SW/4 of this section and drilled as a dual completion gas well in the Blanco Mesaverde Gas Pool and the Otero-Chacra Gas Pool.

2. By Letter Agreement dated May 24, 1952 this proposed spacing unit was included within acreage subject to a November 27, 1951 farmout/operating agreements between Brookhaven Oil Company and San Juan Production Company (collectively the "GLA-46 Agreement") which set forth a drilling obligation for 18 Mesaverde wells to be drilled within the contract area and which entitled San Juan Production Company to earn 50% of Brookhaven Oil Company's interest in the contract area.

3. This drilling obligation has been satisfied and 50% of Brookhaven Oil Company's interest in the contract area was earned by San Juan Production Company.

4. Since all earning provisions of GLA-46 Agreement were satisfied, thereafter and only by agreement made on an individual well basis, did the parties decide to make any future well subject to the cost limitations or carrying provisions of the GLA-46 Agreement.

5. Burlington is the successor to San Juan Production Company and Energen Resources Corporation "Energen" (formerly Total Minatome) and others are successors to Brookhaven Oil Company, (collectively, including Energen, the "GLA-46 Group")

6. On July 30, 1998, Burlington proposed to the other working interest owners in this spacing unit the drilling of the Brookhaven Com Well No. 8 as a Mesaverde/Chacra dual completion at an estimated well cost of \$427,630.00 to be governed by the parties signing a new joint operating agreement instead of adopting the cost limitations and carrying provisions of the GLA-46 Agreement.

7. In response, by letter dated August 24, 1998, Total Minatome attempted to adopt and participate under the terms of the GLA-46 agreements because certain of its provisions are very favorable to Minatome and include (a) the right for Minatome to be a "carried interest" so that Minatome keeps 50 % of its production and Burlington (San Juan) recovers 100 % of Minatome's (Brookhaven) share of costs only out of 50 % of Minatome's share of production and without any penalty; and (b) limits Total Minatome's share of well costs to not more than 50 % of a total Mesaverde well cost not to exceed \$90,000.00 (Brookhaven's share could not exceed \$45,000) or more than 50 % of a total Chacra well costs not to exceed \$28,550 (Brookhaven's share could not exceed \$14,275.00).

8. In September, 1998, Burlington was advised that Total Minatome sold its interest to Energen Resources Corporation "Energen" (successor in name to Taurus Exploration USA, Inc.)

9. On September 18, 1998, Burlington advised the GLA-46 Group, including Energen, that the GLA-46 Agreement did not apply to this new well proposal and they could either (a) elect to participate by signing a new joint operating agreement or (b) farmout out their interests to Burlington with the understanding that these options would only be available if all GLA-46 Owners elected one of these options.

10. On August 25, 1999, Burlington advised the GLA-46 Group, including Energen, that it was withdrawing its offer to drill and complete the Brookhaven Well No. 8 under the terms set forth in its September 18, 1998 letter because not all GLA-46 Owners elected one of these options.

11. On September 15, 1999, Burlington made a second formal request for all working interest owners to sign a new joint operating agreement for this well.

12. On September 15, 1999, Burlington proposed to the other working interest owners in this spacing unit the drilling of a second well in this same spacing unit (the "Brookhaven Com Well No. 8-A" and identified in Burlington's proposal as the Brookhaven Com Well No. 9.) as a Mesaverde/Chacra dual completion at an estimated well cost of \$427,630.00 to be governed by the parties signing a new joint operating agreement instead of adopting the GLA-46 Agreement.

13. The GLA-46 Group admits that Burlington's AFE estimate of \$427,630.00 for each of these wells represents a fair and reasonable estimate of the current cost of such wells.

GLA-46 GROUP'S POSITION

14. The GLA-46 Group contends it can adopt and participate in the Brookhaven Wells under the terms of the GLA-46 Agreement which are very favorable to GLA-46 Group and, if adopted, include the right for the GLA-46 Group to be a "carried interest" so that:

- (a) Burlington pays for the total cost of the well, including casing;
- (b) then from 25 % of the production, Burlington recoups 50 % of the costs of a Mesaverde well or a Chacra well (excluding casing);
- (c) the total costs (excluding casing) of a Mesaverde well cannot exceed \$90,000.00 of which Brookhaven's share is not more than \$45,000.00 and cannot exceed \$28,5500 for a Chacra well of which Brookhaven's share is to not more than \$14,275;
- (d) the GLA-46 Group keeps its share of 25 % of the production until payout of the recoverable costs and then keeps its share of 50 % of the production.

BURLINGTON'S POSITION

15. Burlington contends that the 1951 GLA-46 Agreement:

- (a) imposed an obligation on Burlington to drill 18 single completion Mesaverde wells which entitled it to earn 50 % of the GLA-46 Group's interest in the contract area;
- (b) Burlington has completed that drilling obligation and has earned a 50 % interest in the contract acreage and has no obligation to the GLA-46 Group, including Energen, to drill any more Mesaverde wells;
- (c) the drilling of more wells on the acreage has been and can be accomplished only upon consent of the parties as to costs and payment provisions;

(d) Beginning on November 20, 1953, the parties started adopting and amending the GLA-46 Agreements to either increase the amount of drilling costs for wells or to alter the carrying provision;

(e) As a result, after the drilling of the obligatory 18 Mesa Verde wells, the GLA-46 Agreement has been adopted at least 26 times to deal with the drilling of additional wells and address the issue of the costs recoverable from the carried parties necessitated by increasing well costs;

(f) Because those maximum recoupments do not adequately cover present drilling costs, the GLA-46 Agreement has been adopted and applied to certain wells to provide for the recoupment of **actual** drilling costs or for participation by the non-operating working interest owners in the drilling and completing of the wells;

(d) despite Burlington's efforts, we have been unable to reach an agreement with the GLA-46 Group as to the costs and allocations for new Mesaverde or Chacra wells;

(e) the absence of agreement on cost and allocation permits Burlington to properly invoke compulsory pooling procedures.

**CLAIM FOR RELIEF PURSUANT
TO
SECTION 70-2-17.C NMSA (1978)**

16. Despite Burlington's good faith efforts to reach a voluntary agreement concerning well costs and payment of well costs, the GLA-46 Group has refused to (i) pay their proportionate share of those fair and current well costs and (ii) demands that Burlington carry their interests by adopting the provisions of GLA-46 Agreement.

17. The GLA-46 Group has attempted to elect to participate in the subject wells by attempting to adopt the terms of the November 27, 1951 GLA-46 Agreements and contends that their share of current well costs is (i) limited to their proportionate share of \$90,000 for a Mesaverde well and \$28,550 for a Chacra well and not their proportionate share of \$427,630.00 which is the current cost of Mesaverde/Chacra dual well; and (ii) that Burlington can recover their share only out of 25 % of their share of production as set forth in the GLA-46 Agreements.

18. Therefore, pursuant to Section 70-2-17.C NMSA (1978), the owners indicated on Exhibit "A" have not agreed to pool their interest for purposes of paying for the drilling and completion these wells as proposed by Burlington.

19. As set forth in Division Order R-10877 and Order R-10878, the Division has already decide this issue in favor of issuing a compulsory order which pooled the GLA-46 Group's interest for the drilling of other wells because:

(a) if the Division does not pool the interests of the GLA-46 Group, and subsequent litigation determines that the GLA-46 Group's interpretation of the GLA-46 Agreement is incorrect, Burlington will be forced to consolidate the interests once again, either by a new agreement or by compulsory pooling. The well will have been drilled by that time, and the GLA-46 Group, in deciding whether or not to voluntarily participate in the well will have knowledge as to its success giving them an unfair advantage over Burlington; or

(b) if Burlington's interpretation of the GLA-46 Agreement is subsequently determined to be incorrect, the GLA-46 Group will have been voluntarily committed under the terms of the GLA-46 Agreement and will simply be dropped from the compulsory pooling order.

20. Finally, the Division found that:

"(19) It is the Division's position that the interpretation of the GLA-46 Agreement should be deferred to the courts.

(20) Burlington's compulsory pooling case against Total is appropriate, and in order to consolidate all of the interest within the proposed spacing unit, the interest of Total should be pooled by this order."

21. Burlington contends that the Brookhaven Wells are not subject to the cost limitations or carrying provisions of the GLA-46 Agreement and therefore has filed these two compulsory pooling cases.

22. Pursuant to Section 70-2-17.C NMSA (1978) and in order to obtain its just and equitable share of production from these wells and these spacing units, Burlington needs an order of the Division pooling the described spacing units and described mineral interests involved.

**CLAIM FOR RELIEF PURSUANT
TO
SECTION 70-2-17.E NMSA (1978)**

23. In the alternative, Burlington claims that should the Division determine that the GLA-46 Agreement cost limitations and carrying provisions apply to these wells such that (i) Burlington's recovery of the GLA-46 Group's share of the current estimated Mesaverde/Charca dual well costs of \$427,630.00 is limited to a total Mesa Verde Well cost ceiling of \$90,000 and to a total Chacra well cost ceiling of \$28,550 (excluding casing to be paid for by Burlington) and (ii) is to be recovered by Burlington out of 25 % of the GLA-46 Group's interest in production, then, and in that event, the provisions of Section 70-2-17.E NMSA (1978) apply and Division must modify the GLA-46 Agreement to the extent necessary to prevent waste in accordance with this statutory provision of the New Mexico Oil & Gas Act.

24. These wells are necessary in order to recover Mesaverde and Chacra reserves which will not otherwise be recovered.

25. In the event the Division determines that GLA-46 Agreement applies and then fails to modify the GLA-46 Agreement waste will occur because it is uneconomic for Burlington to drill these marginal wells under the economic limitations imposed by the GLA-46 Agreements and the reserves which could have been produced by these wells will be left unrecovered in the reservoirs.

26. Pursuant to Section 70-2-17.E NMSA (1978) and in order to obtain its just and equitable share of production from these wells and these spacing units, Burlington needs an order of the Division pooling the described spacing units and described mineral interests involved.

27. In accordance with the Division's notice requirements, a copy of this amended application has been sent to the parties shown on Exhibit "A".

WHEREFORE, Burlington, as applicant, requests that the Division enter its order pooling the mineral interests described in these spacing units for the drilling, completing and operating these wells at standard gas well locations and upon terms and conditions which include:

- (1) Burlington Resources Oil & Gas Company be named operator;
- (2) provisions for applicant and all working interest owners to participate in the costs of drilling, completing, equipping and operating for each well;

- (3) in the event a working interest owner fails to elect to participate in each well, then provision be made to recover out of production the costs of the drilling, completing, equipping and operating for each well including a risk factor penalty of 200 %;
- (4) provision for overhead rates of \$4500 per month drilling and \$450 per month operating and a provision providing for an adjustment method of the overhead rates as provided by COPAS;
- (5) provisions for adopting the dual well provisions of Burlington's Joint Operating Agreement dated 1/1/99 including pages 9.A through 9.E and Article XV.F
- (6) for such other and further relief as may be proper.

RESPECTFULLY SUBMITTED:

A handwritten signature in black ink, appearing to read 'W. Thomas Kellahin', with a large, stylized initial 'W'.

W. THOMAS KELLAHIN
KELLAHIN & KELLAHIN
P. O. Box 2265
Santa Fe, New Mexico 87504

Cross Timbers Oil Company Attn: Win Ryan 810 Houston Street Suite 2000 Fort Worth, TX 76102-6293	1.5625%	0.00%	No
Cheryl Potenziani P.O. Box 36600, Station D Albuquerque, NM 87176	0.926703%	0.529544%	No
Energex Resources Corporation Attn: Rich Corcoran 2198 Bloomfield Highway Farmington, NM 87401	15.049651%	11.680158%	No
Westport Oil & Gas Company Attn: Kent Davis 410 Seventeenth Street, Ste 2300 Denver, CO 80202-4436	6.761437%	5.247607%	No

Carolyn Nielsen Sedberry C/o Bank of America Attn: Ed DiRe P.O. Box 2546 Fort Worth, TX 76113-2546	1.878502%	1.073430%	No
Roger Nielsen 1200 Danbury Drive Mansfield, TX 76063	1.878502%	1.073430%	No
C. Fred Luthy Jr. C/o Bank of America Attn: Ed DiRe P.O. Box 2546 Fort Worth, TX 76113-2546	1.853198%	1.058971%	No
Cyrene L. Inman C/o Bank of America Attn: Ed DiRe P.O. Box 2546 Fort Worth, TX 76113-2546	1.853198%	1.058970%	No
FA & EB Cronican Rev Trust C/o Bank of America Attn: Ed DiRe P.O. Box 2546 Fort Worth, TX 76113-2546	1.052185%	0.601249%	No
William C. Briggs C/o Bank of America Attn: Ed DiRe P.O. Box 2546 Fort Worth, TX 76113-2546	0.938940%	0.536537%	No
Herbert R. Briggs C/o Bank of America Attn: Ed DiRe P.O. Box 2546 Fort Worth, TX 76113-2546	0.939562%	0.536893%	No
Marcia Berger C/o Bank of America Attn: Ed DiRe P.O. Box 2546 Fort Worth, TX 76113-2546	0.939252%	0.536715%	No
WWR Enterprises C/o Bank of America Attn: Ed DiRe P.O. Box 2546 Fort Worth, TX 76113-2546	0.939252%	0.536715%	No



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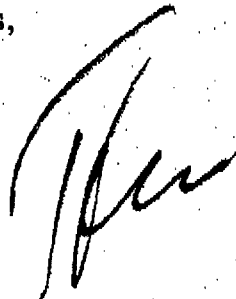
TO: Mr. Mark Ashley
OF: Oil Conservation Division
FAX NO: (505) 326-9781

REF: NMOCD Cases 12276 and 12277
GLA-46 compulsory poolings:
(a) Brookhaven 3B E/2 Sec 16, T31N, R11W
(b) Brookhaven 8 & 8A W/2 Sec 36, T27N, R8W

Dear Mark:

In accordance with your telephone message yesterday, please find attached proposed advertisements for both the referenced cases. If possible, I would still like to get this on the February 3, 2000 docket. If not then your March docket is fine.

Regards,



This information contained in this Facsimile Message and Transmission is ATTORNEY PRIVILEGED AND CONFIDENTIAL information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this Facsimile in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

PROPOSED ADVERTISEMENT FOR NMOCD DOCKET

CASE 11276: continued and readvertised from January 20, 2000, Examiner Hearing

Application of Burlington Resources Oil & Gas Company for compulsory pooling in accordance with Section 70-2-17.C, or in the alternative in accordance with Section 70-2-17.E NMSA (1978), San Juan County, New Mexico. Applicant contends that these wells are not subject to the cost limitations or carrying provisions of a 1951 agreement and the uncommitted interests can be pooled pursuant to Section 70-2-17.C NMSA (1978). In the alternative, applicant contends that should the Division determine such provisions apply to these wells, then the Division must modify those provisions to the extent necessary to prevent waste in accordance with Section 70-2-17.E NMSA (1978). Applicant seeks an order pooling all owners of mineral interests in the Mesaverde formation and the Chacra formation underlying the following described acreage within Section 36, T27N, R8W, NMPM, San Juan County, New Mexico, in the following manner: (i) a 320-acre gas spacing unit consisting of the W/2 of this section for gas production from the Blanco-Mesaverde Gas Pool to be dedicated to the proposed Brookhaven Com Well No. 8 to be located in the NW/4 and to the Brookhaven Com Well No. 8-A to be located in the SW/4 of this section (ii) for a standard 160-acre gas spacing unit consisting of the NW/4 of this section for gas production from the Otero-Chacra Gas Pool to be dedicated to the Brookhaven Com Well No. 8 and (iii) for a standard 160-acre gas spacing unit consisting of the SW/4 of this section for Chacra gas production to be dedicated to the Brookhaven Com Well No. 8-A. Applicant seeks to be designated as the operator of these wells. Said units are to be dedicated to Burlington Resources Oil & Gas Company's Brookhaven Com Wells No. 8 and 8-A are to be drilled as a "dual completion" at a standard gas well locations within this section.

These wells are located approximately 15 miles northeast of the El Huerfano Trading Post on New Mexico State Highway 44, New Mexico.

**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 PURPOSE OF CONSIDERING:**

**CASE NO. 12276
CASE NO. 12277**

**IN THE MATTER OF THE APPLICATIONS
OF BURLINGTON RESOURCES OIL & GAS
COMPANY FOR COMPULSORY POOLING,
SAN JUAN COUNTY, NEW MEXICO**

**BURLINGTON RESOURCES OIL & GAS COMPANY'S
MEMORANDUM IN SUPPORT
OF ITS FIRST AMENDED APPLICATION**

Comes now BURLINGTON RESOURCES OIL & GAS COMPANY ("Burlington") by its attorneys, Kellahin & Kellahin, and requests that the New Mexico Oil Conservation Division ("NMOCD") allow it to amend its compulsory pooling applications, over the objection of Energen Resources Corporation and others (collectively the "GLA-46 Group"), to allege that in the event the Division determines that the cost limitations and carrying provisions of a November 27, 1951 farmout/operating agreement (the GLA-46 Agreement) still applies to these proposed wells, then the provisions of Section 70-2-17.E NMSA (1978) apply and Division must modify the GLA-46 Agreement to the extent necessary to prevent waste in accordance with this statutory provision of the New Mexico Oil & Gas Act and in support states:

SUMMARY OF ESSENTIAL FACTS

Division Case 12276:

(1) In Case 12276, Burlington Resources Oil & Gas Company, in accordance with Section 70-2-17.C NMSA (1978), or in the alternative in accordance with Section 70-2-17.E NMSA (1978), seeks an order pooling all uncommitted owners of mineral interests in the Mesaverde formation and the Chacra formation underlying the following described acreage within Section 36, T27N, R8W, NMPM, San Juan County, New Mexico, in the following manner:

(i) a 320-acre gas spacing unit consisting of the W/2 of this section for gas production from the Blanco-Mesaverde Gas Pool to be dedicated to the proposed Brookhaven Com Well No. 8 to be located in the NW/4 and to the Brookhaven Com Well No. 8A to be located in the SW/4 of this section;

(ii) for a standard 160-acre gas spacing unit consisting of the NW/4 of this section for gas production from the Otero-Chacra Gas Pool to be dedicated to the Brookhaven Com Well No. 8; and

(iii) for a standard 160-acre gas spacing unit consisting of the SW/4 of this section for gas production from the Otero-Chacra Gas Pool to be dedicated to the Brookhaven Com Well No. 8A.

(2) On July 30, 1998, Burlington proposed to the other working interest owners in this spacing unit the drilling of the Brookhaven Com Well No. 8 as a Mesaverde/Chacra dual completion at an estimated well cost of \$427,630.00 to be governed by the parties signing a new joint operating agreement instead of adopting the cost limitations and carrying provisions of the GLA-46 Agreement.

(3) On September 15, 1999, Burlington proposed to the other working interest owners in this spacing unit the drilling of a second well in this same spacing unit (the "Brookhaven Com Well No. 8A" and identified in Burlington's proposal as the Brookhaven Com Well No. 9.) as a Mesaverde/Chacra dual completion at an estimated well cost of \$427,630.00 to be governed by the parties signing a new joint operating agreement instead of adopting the GLA-46 Agreement.

(4) The GLA-46 Group admits that Burlington's AFE estimate of \$427,630.00 for each of these wells represents a fair and reasonable estimate of the costs of such wells as of July 30, 1998.

In Case 12277:

(5) In Case 12277, Burlington Resources Oil & Gas Company, in accordance with Section 70-2-17.C NMSA (1978), or in the alternative in accordance with Section 70-2-17.E NMSA (1978), seeks an order pooling all uncommitted owners of mineral interests in the Mesaverde formation underlying the E/2 of Section 16, T31N, R11W, NMPM, San Juan County, New Mexico, for a 320-acre gas spacing unit consisting of this half section for gas production from the Blanco-Mesaverde Gas Pool to be dedicated to the proposed Brookhaven Com B Well No. 3B to be located within the NE/4SE/4 of this section.

(6) On December 14, 1998 and again on September 15, 1999, Burlington proposed to the other working interest owners in this spacing unit the drilling of the Brookhaven Com B Well No. 3B as a Mesaverde formation completion at an estimated well cost of \$386,488.00 to be governed by the parties signing a new joint operating agreement instead of adopting the cost limitations and carrying provisions of the GLA-46 Agreement.

(7) The GLA-46 Group admits that Burlington's AFE estimate of \$386,488.00 for this well represents a fair and reasonable estimate of the costs as of October 22, 1998.

GLA-46 GROUP'S POSITION

(8) The GLA-46 Group contends that the Division cannot enter a compulsory pooling order for these wells because on November 27, 1951, the original parties contracted for a well development plan which provided for certain cost limitations and carrying provisions which are still in effect.

(9) The GLA-46 Group contends it can adopt and participate in the Brookhaven Wells under the terms of the GLA-46 Agreement which are very favorable to GLA-46 Group and, if adopted, include the right for the GLA-46 Group to be a "carried interest" so that as to the GLA-46 acreage within a spacing unit:

- (a) Burlington pays for the total cost of the well, including casing;
- (b) then from 25 % of the production, Burlington recoups 50 % of the costs of a Mesaverde well or a Chacra well (excluding casing);

- (c) the total costs (excluding casing) of a Mesaverde well cannot exceed \$90,000.00 of which Brookhaven's share is not more than \$45,000.00 and cannot exceed \$28,500.00 for a Chacra well of which Brookhaven's share is not more than \$14,275.00;
- (d) the GLA-46 Group keeps its share of 25 % of the production until payout of the recoverable costs and then keeps its share of 50 % of the production.

BURLINGTON'S POSITION

(10) If the NMOCD believes that the cost limitations and carrying provisions of the GLA-46 Agreement still apply, the Burlington contends that the NMOCD has the authority to issue compulsory pooling orders in these cases thereby modifying the original parties' plan for the costs of the development set forth in the 1951 GLA-46 Agreement so that these wells can be drilled because:

- (a) these wells are necessary in order to recover Mesaverde and Chacra reserves which will not otherwise be recovered;
- (b) the cost limitations and the carrying provision of GLA-46 Agreement preclude the economic drilling of these wells;
- (c) waste will occur in the event the Division fails to modify the GLA-46 Agreement because it is uneconomic for Burlington to drill these marginal wells under the economic limitations imposed by the GLA-46 Agreement and the reserves which could have been produced by these wells will be left unrecovered in the reservoirs;
- (d) the provisions of Section 70-2-17.E NMSA (1978) apply and Division should modify the GLA-46 Agreement to the extent necessary to prevent waste in accordance with this statutory provision of the New Mexico Oil & Gas Act; and
- (e) Pursuant to Section 70-2-17.E NMSA (1978) and in order to obtain its just and equitable share of production from these wells and these spacing units, the Division should pool the described spacing units and described mineral interests involved.

(11) In support of its claim Burlington introduced evidence which demonstrates that:

(a) these wells are necessary in order to recover Mesaverde and Chacra reserves which will not otherwise be recovered;

(b) both the Mesaverde and Chacra wells will be marginal wells;

(c) if Burlington is not subject to the cost limitations and carrying provisions of the GLA-46 Agreement, then Burlington will spend \$247,000 to realize an expected profit of \$185,000 on the Brookhaven 8 well; will spend \$294,000 to realize an expected profit of \$232,000 on the Brookhaven 8A well; and will spend \$196,000 to realize an expected profit of \$158,000 on the Brookhaven Com B Well No 3B;

(d) however, if Burlington is subject to the cost limitations and carrying provisions of the GLA-46 Agreement, then Burlington will spend \$427,000 but realize a profit of only \$93,000 on the Brookhaven 8 well; will spend \$427,000 but realize a profit of only \$163,000 on the Brookhaven 8A well; and will spend \$386,000 but realize a profit of only \$53,000 on the Brookhaven Com B Well No. 3B;

(e) if Burlington is subject to the cost limitations and carrying provisions of the GLA-46 Agreement, then Burlington will recover its investment in 3.26 years on the Brookhaven 8 well and in 2.27 years on the Brookhaven 8-A well;

(f) correspondingly, if the GLA-46 Group enjoys the cost limitations and carrying provisions of the GLA-46 Agreement then for no investment is expected to enjoy a profit of \$236,000 on the Brookhaven 8 well; a profit of \$166,000 on the Brookhaven 8A well; and a profit of \$259,000 on the Brookhaven Com B Well No. 3B;

(g) however, if the GLA-46 Group's interest is not subject to the cost limitations and carrying provisions of the GLA-46 Agreement then the GLA-46 Group will invest \$180,000 and enjoy an estimated profit of \$144,000 on the Brookhaven 8

well; invest \$133,000 to enjoy an estimated profit of \$100,000 on the Brookhaven 8A well; and invest \$190,000 to enjoy an estimated profit of \$153,000 on the Brookhaven Com B Well No. 3B;

(h) waste will occur because it is uneconomic for Burlington to drill these marginal wells under the economic limitations imposed by the GLA-46 Agreement and the reserves which could have been produced by these wells will be left unrecovered in the reservoirs.

BURLINGTON'S CITATION OF AUTHORITY

Burlington's position is supported by decisions of the New Mexico Supreme Court, the New Mexico Oil & Gas Act, by a prior decision of the Division, and by the GLA-46 Agreement.

Court cases:

In 1963, the New Mexico Supreme Court in Sims v. Mechem, 72 N.M. 186, 382 P.2d 183 (NM 1963) considered the compulsory pooling powers of the Commission in a case in which the appellant specifically challenged the Commission's authority to enter a pooling order which "violated" the written agreement of the parties. Although reversed on other grounds, the Court upheld the Commission's action on this point and ruled that any agreement between owners may be modified by the Commission:

"Unquestionably the commission is authorized to require pooling of property when such pooling has not been agreed upon by the parties (citing to what is now 70-2-17.C NMSA 1978), and it is clear that the pooling of the entire west half of Section 25 had not been agreed upon. It is also clear from sub-section (e) of the same section (citing to what is now 70-2-17.E) that any agreement between owners and lease-holders may be modified by the commission. [emphasis added] But the authority of the commission to pool property or to modify existing agreements relating to production within a pool under either of these sub-sections must be predicted on the prevention of waste."

In 1975, the New Mexico Supreme Court, again, considered the compulsory pooling authority of the Commission and in Rutter & Wilbanks Corp. v. Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582 (NM 1975) held that not only did the Commission have compulsory pooling authority to pool separately owned tracts within a spacing or proration unit, it had the power to pool separately owned tracts within an oversize non-standard spacing unit. In doing so, the Court approved of the Commission's decision to compulsory pool a 409-acre spacing unit and a 407-acre spacing unit each of which had a completed well and could have been dedicated to standard 320-acre spacing units for the Washington Ranch-Morrow Gas Pool. (See OCC Order Nos. R-4353 and R-4354). The point is that when necessary to prevent waste, the Division can and did modify the agreement of sharing revenues within a spacing unit, required the inclusion of additional acreage and thereby dilute the royalty interest of Rutter & Wilbanks over its objection.

Division cases:

Similarly, the Division has previously modified an existing operating agreement when its terms precluded the drilling of a well which the Division considered necessary in order to prevent waste. On January 11, 1996, in Case 11434, the Division held a hearing on the application of Meridian Oil Company for a compulsory pooling order for a Mesaverde infill well against Doyle Hartman and Four Star Oil & Gas Company. In this case, both Four Star and Hartman contended the Division did not have the authority to authorize the compulsory pooling of a Mesaverde infill well because the original parties in the spacing unit had signed a 1953 operating agreement which contained a plan for the spacing of but one single Mesaverde well within a 320-acre spacing unit. On February 22, 1996, the Division entered Order R-10545 and decided that the Division, in accordance with Section 70-2-17.E NMSA (1978), had the authority and would exercise that authority to modify this 1953 operating agreement to the extent necessary to prevent waste and to issue a compulsory pooling order so that the infill well could be drilled.

A further review of NMOCD compulsory pooling orders, shows that on October 24, 1990, the NMOCD issued Order R-9332 which granted an application by Doyle Hartman for compulsory pooling in which he was allowed to pool his undeveloped acreage in the Eumont Gas Pool into an existing gas spacing unit already operated by Chevron and containing a existing well. Hartman was further authorized to drill a second "infill well" over Chevron's objection. The point is that when necessary to prevent waste, the Division can and did modify the existing voluntary agreement of Chevron for the operations of its existing spacing unit and its well and required the inclusion of additional acreage and additional wells over the objection of Chevron.

The GLA-46 Agreement:

In the 1951 GLA-46 Agreement, the original parties specifically agreed that their agreement would be modified to be consistent with the orders and rules of the NMOCD when they provided at page 11:

"Unless disapproved by final administrative action by either the Federal or State government, and until such disapproval, this agreement shall be binding upon the parties. In the event of any decision disapproving of this agreement or of any provision or any part thereof, the parties agree that the intent of this contract shall prevail so that neither party shall be denied the intended rights described herein, and to that end, they will use their best efforts to agree on the necessary modifications hereof to cure the causes for disapproval"[emphasis added]

CONCLUSION

Conservation laws and the rules, regulations and orders promulgated thereunder have the effect of modifying the provisions of existing leases and other contracts and agreements. Without that effect, then parties could make agreements which are contrary to or inconsistent with what the NMOCD determines are appropriate rules for development of a pool, including the cost of wells, economic waste caused by drilling too many or too few wells, well locations, well density, spacing unit sizes, production allowables, and gas-oil ratios, etc.

The statutory and administrative compulsory pooling rules and orders are a proper and necessary exercise of the police powers of the State of New Mexico. The NMOCD has jurisdiction to interpret, clarify, amend and supplement its own orders and to resolve any challenges to the public issue of conservation of oil and gas.

The NMOCD is not being asked to resolve the "private rights" of the parties created under the 1951 GLA-46 Agreement. As the Division has already said in Order R-10878 when it previously compulsorily pooled the GLA-46 Group's interest: "it is the Division's position that the interpretation of the GLA-46 Agreement should be deferred to the courts."

However, there is no dispute about the fact that the 1951 GLA-46 Agreement precludes the drilling of a necessary well. Burlington can recover only \$45,000 from the GLA-46 Group for Mesaverde/Chacra wells which will cost more than \$427,000 and for a Mesaverde well which will cost more than \$386,000. and in doing so can only be paid out of 25 % of the GLA-46 Group's share of that production. If the NMOCD believes that the cost limitations and carrying provisions of the GLA-46 Agreement still apply, then it is simply not possible in the year 2000 to drill new Mesaverde and Chacra wells under the economic constraints of 1973.

The Division has the authority and the responsibility to issue a compulsory pooling order in accordance with Section 70-2-17.C or Section 70-2-17.E NMSA (1978) in these cases so that these wells can be drilled under appropriate terms and conditions which will prevent waste and protect correlative rights.

RESPECTFULLY SUBMITTED:

A handwritten signature in black ink, appearing to read 'W. Thomas Kellahin', written in a cursive style.

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