WESTPORT OIL AND GAS COMPANY, INC.

410 Seventeenth Street #2300 Denver Colorado 80202-4436
Telephone: 303 573 5404 Fax: 303 573 5609

MAY 1

MAY 5-1-00

VIA OVERNIGHT MAIL

April 26, 2000

Burlington Resources Oil & Gas Company
Attention: Shannon Nichols
P.O. Box 4289
Farmington, NM 87499-4289

Re: **Brookhaven Com #8, #8A, B #3B Wells**
San Juan County, New Mexico

Ladies and Gentlemen:

Enclosed for your further handling are the following:

1. Brookhaven Com #8 Signed AFEs for the Mesaverde and Chacra formations and Westport's check no. 50704 for $42,666.00
2. Brookhaven Com #8A Signed AFEs for the Mesaverde and Chacra formations and Westport's check no. 50706 for $35,747.00
3. Brookhaven Com B #3B Signed AFE for the Mesaverde formation and Westport's check no. 50705 for $42,980.00
4. Westport's Geological Well Information Requirements for the three wells

Westport's approval of the AFEs and checks enclosed herein are requirements of New Mexico Oil Conservation Division orders R-11340 and R-11341 to participate in the drilling of the wells. Westport continues to maintain that the Farmout Agreement and Operating Agreement dated 11/27/53 are still in force and effect and that the operations proposed by the AFEs are subject to such agreements.

Please send joint interest billings to the letterhead address. If you have any questions, please call me at (303) 575-0125.

Sincerely,

Kent S. Davis, CPL
Senior Landman

cc: Mike Morella, Westport

New Mexico Oil Conservation Division ✓
Attention: Mr. Mark Ashley
2040 South Pacheco
Santa Fe, NM 87505

Energen Resources Corporation
Attention: Mr. Rich Corcoran
2198 Bloomfield Highway
Farmington, NM 87401

MKJ
3-29-00

BURLINGTON RESOURCES

SAN JUAN DIVISION

CERTIFIED MAIL-Return Receipt Requested

To: See Attached Distribution List

March 27, 2000

RE: Compulsory Pooling Order R-11340
Brookhaven Com #8A
Mesaverde/Chacra New Drill
NE SW Section 36, T27N, R8W
San Juan County, New Mexico

Dear Interest Owner:

Burlington Resources Oil & Gas Company, as operator, proposes to drill, complete and equip the Brookhaven Com #8A as a Mesaverde/Chacra dual completion new drill (proposed depth: 5340'). The Mesaverde completion will have a W/2 dedication and the Chacra completion will have a SW/4 dedication. We hope to stake the well in the NE/4 SW/4 of Section 36, T27N, R8W.

The working interest in the proposed well is shown in the table below.

Working Interest Owner	MV Ownership %	CH Ownership %
Burlington Resources Oil & Gas Company	63.427118	75.529781
* Merchants Resources #1 L. P.	1.5625	0.00
** Cheryl Potenziani	0.926703	0.529544
Energen Resources Corporation	15.049651	11.680158
Westport Oil & Gas Company	6.761437	5.247607
Carolyn Sedberry	1.878502	1.073430
Roger Nielsen	1.878502	1.073430
C. Fred Luthy Jr.	1.853198	1.058971
Cyrene L. Inman	1.853198	1.058970
FA & HB Cronican Rev Trust	1.052185	0.601249
William C. Briggs	0.938940	0.536537
Herbert R. Briggs	0.939562	0.536893
Marcia Berger	0.939252	0.536715
WWR Enterprises	0.939252	0.536715

* Merchants Resources # 1 L.P. has executed the new Joint Operating Agreement dated February 1, 1999, and should make a participation election as provided for under the Agreement.

** Cheryl Potenziania has previously elected to participate in the proposed well under the previous AFE. However, because of the failure to execute the Joint Operating Agreement as provided, will need to make an election under the Order discussed below.

Please reference our past correspondence on the captioned well. As you are aware, Burlington Resources Oil & Gas Company (Burlington) filed with the New Mexico Oil Conservation Division

for compulsory pooling of the drilling unit for said well. After hearing the matter, the Oil Conservation Division issued Order R-11340 (copy enclosed) pooling the acreage and interests necessary for drilling.

Burlington, pursuant to the terms of the enclosed Order, is hereby notifying each of you, as non-consenting working interest owners, of your right to participate in the well pursuant to this Order. For your review, I am enclosing a copy of the itemized estimated well and facility costs, and the Authority for Expenditure.

Burlington would still like to secure your voluntarily execution of the Joint Operating Agreement dated February 1, 1999, that we originally sent to you under cover letter dated May 18, 1999, and provided a second time under cover letter dated September 15, 1999. If you choose to timely execute said Joint Operating Agreement, and make a participation election under the Joint Operating Agreement, we will either make application to vacate the Order or dismiss you from the Order.

If, however, you elect to participate or Farmout in the well pursuant to the terms of the Order you should do the following:

1. Evidence your election to participate by reviewing the estimated well costs and executing the enclosed Authority for Expenditure.

2. Prepay your proportionate share of the $581,120 total estimated completed well costs. The prepayment should be in the form of a cashiers check or certified bank check.

The executed Authority for Expenditure and the prepayment of well costs must be returned to Burlington at the letterhead address within thirty (30) days of your receipt of this letter.

If you do not voluntarily join in the well within the thirty (30) day period, or if we do not receive your joinder pursuant to the referenced Order within the thirty (30) day period, it will be assumed that you have elected not to participate in the well. Burlington, under the terms of the Order, has the right to drill the well and recover your pro-rata share of reasonable well costs from production. Burlington will also be allowed to recover an additional two hundred percent (200%) of reasonable well costs as a charge for bearing risk of drilling the well.

Any questions may be directed to the undersigned at (505) 599-4010.

Sincerely,

Shannon Nichols
Senior Landman

NM 391A – well file

xc: New Mexico Oil Conservation Division w/AFE
Attn: Mr. Mark Ashley
2040 South Pacheco
Santa Fe, New Mexico 87505

Brookhaven Com #8A
Distribution List

Energen Resources Corporation
Attn: Rich Corcoran
2198 Bloomfield Highway
Farmington, NM 87401

Cheryl L. Potenziani
P.O. Box 36600, Station D
Albuquerque, NM 87176

Marcia Berger
C/o Bank of America
Attn: Ed Di Re
P.O. Box 2546
Fort Worth, TX 76113-2546

Herbert R. Briggs
C/o Bank of America
Attn: Ed Di Re
P.O. Box 2546
Fort Worth, TX 76113-2546

William C. Briggs
C/o Bank of America
Attn: Ed Di Re
P.O. Box 2546
Fort Worth, TX 76113-2546

Cyrene L. Inman
C/o Bank of America
Attn: Ed Di Re
P.O. Box 2546
Fort Worth, TX 76113-2546

Merchants Resources #1 L.P.
Two Greenspoint Park Suite 380-S
16800 Greenspoint Park Drive
Houston, TX 77060

Westport Oil & Gas Company
Attn: Kent Davis
410 Seventeenth Street, Ste 2300
Denver, CO 80202-4436

Roger B. Nielsen
1200 Danbury Dr.
Mansfield, TX 76063

Carolyn Nielsen Sedberry
C/o Bank of America
Attn: Ed Di Re
P.O. Box 2546
Fort Worth, TX 76113-2546

WWR Enterprises Inc.
C/o Bank of America
Attn: Ed Di Re
P.O. Box 2546
Fort Worth, TX 76113-2546

F. A. & H. B. Cronican Trust
C/o Bank of America
Attn: Ed Di Re
P.O. Box 2546
Fort Worth, TX 76113-2546

C. Fred Luthy, Jr.
C/o Bank of America
Attn: Ed Di Re
P.O. Box 2546
Fort Worth, TX 76113-2546

Burlington Resources
San Juan Division
Post Office Box 4289
Farmington, New Mexico, 87499
(505) 326-9700

AUTHORITY FOR EXPENDITURE

AFE No.: _____ Property Number _____ Date: 3/12/00

Lease/Well Name: BROOKHAVEN COM #8A DP Number: _____

Field Prospect: BLANCO MV & LARGO CHACRA Region: Farmington

Location: K SEC 36 T27N R8W County: SAN JUAN State: NM

AFE Type: DEVELOPMENT 01 Original X Supplement ___ Addendum ___ API Well Type _____

Operator: BURLINGTON RESOURCES

Objective Formation: OTERO CHACRA Authorized Total Depth (Feet): 5340'

Project Description: Drill,Comp., & set Facilities for this dual **Chacra**/Mesaverde

Estimated Start Date: 5/1/00 Prepared By: R. Nelms

Estimated Completion Date: 7/1/00

GROSS WELL DATA

	Drilling		Workover/	Construction	
	Dry Hole	Suspended	Completion	Facility	Total
Days:		4	3		7
This AFE:		$111,170	$97,130	$25,880	$234,180
Prior AFE's:					$0
Total Costs:	$0	$111,170	$97,130	$25,880	$234,180

JOINT INTEREST OWNERS

Company:	Working Interest Percent	Dry Hole $	Completed $
BROG	75.52978 %	$0	$176,876
TRUST		$0	$0
Others:	24.47022 %	$0	$57,304
AFE TOTAL:	100.00000 %	$0	$234,180

BURLINGTON RESOURCES

Recommend: _____ Date: 3/20/00 Approved: _____ Date: 3/23/00
Reservoir Engineer Division Team Leader

Recommend: _____ Date: 3/20 Approved: _____ Date: 3/20/00
Geologist Regional Landman

PARTNER APPROVAL

Company Name: _____

Authorized By: _____ Date: _____

Title: _____

Burlington Resources
San Juan Division
Post Office Box 4289
Farmington, New Mexico, 87499
(505) 326-9700

AUTHORITY FOR EXPENDITURE

AFE No.: _____ Property Number _____ Date: 3/12/00

Lease/Well Name: BROOKHAVEN COM #8A DP Number: _____

Field Prospect: BLANCO MV & LARGO CHACRA Region: Farmington

Location: K SEC 36 T27N R8W County: SAN JUAN State: NM

AFE Type: DEVELOPMENT 01 Original X Supplement ___ Addendum ___ API Well Type _____

Operator: BURLINGTON RESOURCES

Objective Formation: BLANCO MESAVERDE Authorized Total Depth (Feet): 5340'

Project Description: Drill,Comp., & set Facilities for this dual **Mesaverde**/Chacra

Estimated Start Date: 5/1/00 Prepared By: R. Nelms

Estimated Completion Date: 7/1/00

GROSS WELL DATA

	Drilling		Workover/	Construction	
	Dry Hole	Suspended	Completion	Facility	Total
Days:		5	6		11
This AFE:		$152,930	$159,830	$34,180	$346,940
Prior AFE's:					$0
Total Costs:	$0	$152,930	$159,830	$34,180	$346,940

JOINT INTEREST OWNERS

Company:	Working Interest Percent	Dry Hole $	Completed $
BROG	63.42712 %	$0	$220,054
TRUST		$0	$0
Others:	36.57288 %	$0	$126,886
AFE TOTAL:	100.00000 %	$0	$346,940

BURLINGTON RESOURCES

Recommend: _____ Date: 3/20/00 Approved: _____ Date: 3/23/00
Reservoir Engineer Division Team Leader

Recommend: _____ Date: 3/20 Approved: _____ Date: 3/20/00
Geologist Regional Landman

PARTNER APPROVAL

Company Name: _____

Authorized By: _____ Date: _____

Title: _____

Burlington Resources
Cost Estimate

Well Name: Brookhaven Com #8A
Location: T27N, R08W, Sec 36
AFE Type: BOT
Formation: MV
Proposed TD: 5340'
15.5# 5.5" J-55 casing, mud drilled, PEX & CMR required.

Prepared By: LCW
Date: 3/8/00
Approved By: [signature] 3/8/00
Date:
Int. TD: na
Cost/ft: $49.57

Intangible Costs

Estimated Days: 9.0

Account Number				Chacra Estimated Cost	MV Estimated Cost	Total Estimated Cost
248						
03	Location Cost			5,000	5,000	10,000
05	Move-in, Move-out			5,000	5,000	10,000
07	Rig Cost	(9 days @ $6,600/day)		25,200	37,800	63,000
08	Safety Equipment			0	0	0
10	Drilling Fluid	(9 days @ $1,600/day) + mud		10,120	15,180	25,300
16	Stimulation Fluids			3,200	4,800	8,000
17	Bits			6,800	10,200	17,000
18	Cementing			14,800	22,200	37,000
22	Coring and Analysis			0	0	0
23	Fuel			1,700	1,700	3,400
25	Rentals			650	650	1,300
26	Fishing			0	0	0
28	Other Rentals			0	0	0
29	Transportation			2,000	2,000	4,000
32	Directional Service			0	0	0
33	Inspection			1,000	1,000	2,000
34	Logging Services			9,600	9,600	19,200
36	Production Testing			0	0	0
37	Swabbing,Snubbing,Coiled Tubing			0	0	0
39	Stimulation			0	0	0
43	Consultants	(9 days @ $500/day)		1,800	2,700	4,500
44	Technical Services			0	0	0
45	Roustabout Labor			1,800	2,700	4,500
46	Miscellaneous			3,600	5,400	9,000
49	Packer Rentals			0	0	0
53	Environmental Costs			0	0	0
54	Disposal Costs			400	600	1,000
60	District Tools			800	1,200	2,000
72	Overhead	(9 days @ $178/day)		640	960	1,600
	Total Intangibles			**94,110**	**128,690**	**222,800**

Tangible Costs

80	Casing					35,900
	8-5/8" 24# K-55	320'	@ $9.29/ft)	1,500	1,500	
	5-1/2" 15.5# J-55	5340'	@ $6.16/ft)	13,160	19,740	
81	Tubing					0
84	Casing & Tubing Equipment					0
86	Wellhead Equipment			3,000	3,000	6,000
	Total Tangibles					**41,900**
	Total Cost			**111,770**	**152,930**	**264,700**

Burlington Resources Oil & Gas
Completion Estimate

Well Name: BROOKHAVEN COM #8A
Location: K SEC 36 T27N R8W
AFE Type: DEVELOPMENT 01
Formation: BLANCO MV & LARGO CHACRA

Prepared By: R. Nelms
Date: 3/2/00
Approved By:

Intangible Costs

Account Number	Estimated Days:	MV Cost	CHACRA Cost	Total Estimated Cost
249				
02	Location, Roads or Canals	1,000	1,000	2,000
03	Construction and Maintenance			0
04	Surface Restoration	500	500	1,000
05	Move-in, Move-out	2,400	2,400	4,800
07	Fees of Contractor - Daywork ($2400/d) 9 DAYS	14,400	7,200	21,600
09	Drilling Fluid System - Liquids			0
10	Gas and Air Drilling ($1450/d) 9 DAYS	8,700	4,350	13,050
12	Specialty Fluids and Chemicals	500	500	1,000
15	Onsite Disposal Svc.			0
16	Fresh Water $700/tank	7,000	3,500	10,500
17	Bits	300	300	600
18	Primary Cement			0
19	Remedial Cementing			0
23	Fuel for air package ($450/day) 9 DAYS	3,000	1,050	4,050
25	Drill Work String Rentals (Surface)			0
26	Fishing Tool Rentals			0
27	Tank Rentals $20/tank/day	1,800	1,200	3,000
28	Other Rental	500	500	1,000
29	Transportation $300/tank	4,000	2,000	6,000
30	Offsite Disposal Service			0
33	Tubular Inspection			0
34	Cased Hole Services	6,500	5,500	12,000
37	Swabbing & Coiled Tubing			0
38	Stimulation (Acid Ball off)	3,000	3,000	6,000
39	Fracturing	72,000	38,000	110,000
43	Consultants $500/day	3,000	1,500	4,500
44	Technical Contract Svc. Tracer Perf Eff. Log	4,800	3,500	8,300
45	Roustabout Labor			0
46	Miscellaneous			0
49	Packer Rental $2000+$900+$900	2,000	1,800	3,800
60	District Tool Rental ($250/day)	1,500	1,000	2,500
72	Overhead (Contingency 5%)	6,000	4,130	10,130
74	Employee Expense			
	Total Intangibles	**142,900**	**82,930**	**225,830**

Tangible Costs

81	Tubing 1-1/2" 2.76# J-55 IJ @ $2.33/FT (3000 ft		6,700	6,700
81	Tubing 1-1/2" 2.9# shavedEUE @ $2.051 (4450 ft	9,130		9,130
82	Packers and Bridge Plugs	2,100	2,100	4,200
84	Casing/Liner Equipment			0
85	Tubing Equipment	500	200	700
86	Wellhead Equipment & Tree	5,200	5,200	10,400
	Total Tangibles	**16,930**	**14,200**	**31,130**
	Total Completion Cost	**159,830**	**97,130**	**256,960**

Burlington Resources Oil & Gas
Facilities Estimate

Well Name: BROOKHAVEN COM #8A
Location: K SEC 36 T27N R8W
AFE Type: DEVELOPMENT 01
Formation: **BLANCO MV** & LARGO CHACRA

Prepared By: R. Nelms
Date: 3/2/00
Approved By:

Tangible Costs

Account Number	Estimated Days:	MV Cost	CH Cost	Total Estimated Cost
247				
02	Labor-Contract, Roustabout, Consultants	3,500	3,500	7,000
03	Company Vehicles			0
08	Location, Roads & Canals			0
12	Overhead			0
17	Damages, Property Losses			0
20	Equip. Coating and Insulation	800	800	1,600
26	SWD Filtering			0
27	Separators	14,000	10,000	24,000
28	Gas Sweetening			0
29	Pumping Units			0
31	Prime Mover			0
32	Tanks	5,900	2,000	7,900
33	Metering Equipment			0
34	Flow Line			0
36	Building			0
39	Flowlines, Piping, Valves & Fittings	2,500	2,500	5,000
35	Compressors (Screw w/200# dis.)			0
44	Technical Contract Svc.			0
47	Rental Compressors & Maintenance			0
48	Rental Equipment			0
49	Cathodic Protection	4,000	4,000	8,000
50	Right Of Way			0
51	Minor Pipelines			0
53	Surface Pumps			0
54	Electrical Accessories	0	0	0
55	Miscellaneous-Facility Expense	1,000	1,000	2,000
57	Pulling Unit Costs			0
60	Oper. Owned Equip/Facilities			0
62	Env. Compliance-Assessment			0
63	Env. Compliance (Remediation)			0
68	Direct Labor			0
69	Benefits			0
73	Freight /Transportation	1,000	1,000	2,000
72	Overhead (Contingency 5%)	1,480	1,080	2,560
81	Tubing			0
82	Rods			0
83	Downhole Pumps			0
84	Alternative Artificial Lift Equip.			0
86	Convent Artificial Lift Wellhead Equip.			0
88	Communication Systems			0
95	Employee Meals			0
96	Gas Dehydrator			0
	Total Facility Cost	**34,180**	**25,880**	**60,060**

MILLER, STRATVERT & TORGERSON, P.A.

LAW OFFICES

RANNE B. MILLER
ALAN C. TORGERSON
ALICE T. LORENZ
GREGORY W. CHASE
LYMAN G. SANDY
STEPHEN M. WILLIAMS
STEPHAN M. VIDMAR
ROBERT C. GUTIERREZ
SETH V. BINGHAM
JAMES B. COLLINS
TIMOTHY R. BRIGGS
RUDOLPH LUCERO
DEBORAH A. SOLOVE
GARY L. GORDON
LAWRENCE R. WHITE
SHARON P. GROSS
VIRGINIA ANDERMAN
MARTE D. LIGHTSTONE
J. SCOTT HALL
THOMAS R. MACK
TERRI L. SAUER
JOEL T. NEWTON
THOMAS M. DOMME

RUTH O. PREGENZER
JEFFREY E. JONES
MANUEL I. ARRIETA
ROBIN A. GOBLE
JAMES R. WOOD
DANA M. KYLE
KIRK R. ALLEN
RUTH M. FUESS
KYLE M. FINCH
H. BROOK LASKEY
KATHERINE W. HALL
FRED SCHILLER
PAULA G. MAYNES
DEAN B. CROSS
MICHAEL C. ROSS
CARLA PRANDO
KATHERINE N. BLACKETT
JENNIFER L. STONE
ANDREW M. SANCHEZ
M. DYLAN O'REILLY
AMINA QUARGNALI-LINSLEY
BEATE BOUDRO

COUNSEL

PAUL W. ROBINSON
ROSS B. PERKAL
JAMES J. WIDLAND
BRADLEY D. TEPPER
GARY RISLEY

OF COUNSEL

WILLIAM K. STRATVERT
RALPH WM. RICHARDS

ALBUQUERQUE, NM
500 MARQUETTE N.W., SUITE 1100
POST OFFICE BOX 25687
ALBUQUERQUE, NM 87125-0687
TELEPHONE: (505) 842-1950
(800) 424-7585
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150 WASHINGTON AVE., SUITE 300
POST OFFICE BOX 1986
SANTA FE, NM 87504-1986
TELEPHONE: (505) 989-9614
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FARMINGTON, NM
300 WEST ARRINGTON, SUITE 300
POST OFFICE BOX 869
FARMINGTON, NM 87499-0869
TELEPHONE: (505) 326-4521
FACSIMILE: (505) 325-5474

LAS CRUCES, NM
500 S. MAIN ST., SUITE 800
POST OFFICE BOX 1209
LAS CRUCES, NM 88004-1209
TELEPHONE: (505) 523-2481
FACSIMILE: (505) 526-2215

PLEASE REPLY TO SANTA FE

February 4, 2000

BY HAND-DELIVERY
Mr. Mark Ashley
New Mexico Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87501

Re: NMOCD Case Nos. 12276 and 12277; Application of Burlington Resources Oil and Gas Company for Compulsory Pooling, San Juan County, New Mexico

Dear Mr. Ashley:

Enclosed herewith are the original and four copies of the draft Order of the Division submitted by Energen Resources Corporation, Westport Oil and Gas Company, Inc., Bank of America, Carolyn Nelson Sedberry, C. Fred Luthy, Jr., Cyrene Inman, The F. A. and H. B. Cronican Revocable Trust, William C. Briggs, Herbert R. Briggs, Marcia Berger, and WWR Enterprises, Inc. For your convenience, I am also enclosing an additional copy on a 3 ½ floppy disk.

Very Truly Yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall by Amanda Olsen

J. Scott Hall

Enclosure(s) – as stated
JSH:ao

Cc: W. Thomas Kellahin, Esq. (with order) (by hand-delivery)

6621/23699/Ashley ltr.doc

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**

IN THE MATTER OF THE APPLICATION OF BURLINGTON RESOURCES OIL & GAS COMPANY FOR COMPULSORY POOLING SAN JUAN COUNTY, NEW MEXICO — **CASE NO. 12277**

ORDER OF THE DIVISION
(Energen's Draft)

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on January 20, 2000, at Santa Fe, New Mexico, before the Examiner Mark Ashley.

NOW, on this ___ day of _____, 2000, the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice of this proceeding requesting relief under NMSA 1978, Section 70-2-17(C), having been given as required by law, the Division has jurisdiction of this case and its subject matter thereof.

(2) At the request of the Applicant, Burlington Resources Oil and Gas Company ("Burlington"), Case No. 12276 and Case No. 12277 were consolidated for purposes of hearing.

(3) Burlington seeks an order pooling all mineral interests underling the following described acreage within Section 36, T27N, R8W, NMPM, San Juan County, New Mexico, in the following manner:

(a) 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;

(b) 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

(c) 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.

(4) Burlington also seeks an order pooling all mineral interests in the Mesaverde formation within the E/2 of Section 16, T31N, R11W, NMPM, San Juan County, New Mexico, for a 320-acre gas spacing unit consisting of the E/2 of said Section 16 for gas production from the Blanco-Mesaverde Gas Pool to be dedicated to Applicant's proposed Brookhaven Com B Well No. 3-B, to be located in the NE/4, SE/4 of said Section 16.

(5) Energen Resources Corporation, Westport Oil & Gas Company, Inc., Bank of America (Oil & Gas Assets Management Division), Carolyn Nelson Sedberry, C. Fred Luthy, Jr., Cyrene Inman, the F. A. and H. B. Cronican Revocable Trust, William C. Briggs, Herbert R. Briggs, Marcia Berger, and WWR Enterprises, Inc. (referred herein as "the GLA-46 Interest Owners") appeared at the hearing through counsel and opposed the applications on the basis that their interests are governed by a Farmout and Operating Agreement dated November 27, 1951 (the "GLA-46 Agreement"), as amended, between Brookhaven Oil Company, predecessor-in-interest to the GLA-46 Interest Owners and San Juan Production Company, predecessor-in-interest to Burlington.

(6) The evidence establishes that the GLA-46 Agreement has been amended twenty-seven times to, *inter alia*, include the acreage that is the subject of these consolidated compulsory pooling applications.

(7) It is the position of the GLA-46 Interest Owners, that under the express provisions of Section 70-2-17 (C) of the New Mexico Oil and Gas Act of NMSA 1978, that a voluntary agreement governing the drilling and development of the subject lands exists, and therefore, the Division may not force pool this acreage.

(8) Burlington, also represented by counsel, contends that the November 27, 1951 GLA-46 Agreement set forth a drilling obligation for eighteen Mesaverde wells to be drilled within the contract area. Burlington contends that the eighteen well drilling obligation was satisfied in 1956 and consequently the agreement no longer applies.

(9) The GLA-46 Interest Owners presented witness testimony and documentary evidence establishing that the parties' predecessors-in-interest, as well as

Burlington drilled more than ninety wells under the agreement, beginning in 1951 and continuing through the 1990's.

(10) Burlington and the GLA-46 Interest Owners both presented evidence showing that Burlington had solicited participation in the drilling of the wells that are the subject of these consolidated applications under the terms of a new farmout agreement or, alternatively, under a new joint operating agreement, both of which were intended to release the parties and the subject acreage from the terms of the GLA-46 Agreement.

(11) The GLA-46 Interest Owners presented evidence establishing that they consistently notified Burlington of their intention to participate in the drilling of the wells under the terms of the GLA-46 Agreement. The GLA-46 Interest Owners also presented a significant amount of documentary evidence establishing that Burlington and its predecessors consistently and continuously regarded the GLA-46 Agreement as an "active" and "governing" agreement applicable to "all depths" and to all acreage, including the lands that are the subject of Burlington's applications.

(12) Although the preponderence of the evidence established that Burlington recognized the continuing applicability of the GLA-46 Agreement, it was further established that Burlington no longer intended to honor the Agreement for the reason that its terms were not economically favorable. Witness and exhibit testimony established that the force majuere provisions of the the GLA-46 Agreement (Para. 14) do not include a change in economic circumstances as an event excusing Burlington's performance.

(13) During the course of the hearing on the consolidated applications, Burlington, through its counsel, moved to amend its pleadings to seek alternative relief under NMSA 1978, Section 70-2-17(E) in order to invoke the Division's authority to modify the terms of the GLA-46 Farmout and Operating Agreement. The GLA-46 Interest Owners objected to the motion for the reason that Burlington's request was untimely, constituted surprise, resulted in prejudice and would violate their rights to due process. Subsequently, on January 24, 2000, Burlington filed amended applications in Case No. 12276 and Case No. 12277. On February 2, 2000, the GLA-46 Interest Owners filed a Motion to Strike the amended applications. Both parties provided the hearing examiner with legal memoranda addressing the propriety of Burlington's motion to amend its pleadings. Counsel for the parties also presented oral argument on the Motion to Strike on February 3, 2000.

(14) Section 70-2-17(C) of the New Mexico Oil and Gas Act says, in part, "...where, however, such owner or owners have not agreed to pool their interests...the Division...shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit."

(15) It has been the longstanding administrative interpretation of Section 70-2-17(C) by the Division, that an applicant has the burden of affirmatively proving that the owners of mineral interests in a spacing unit "have not agreed to pool their interests...."

It has also been the Division's interpretation that such a showing is a mandatory precondition to the exercise of the Division's authority to pool property interests under Section 70-2-17(C), and where the evidence adduced at hearing is not sufficient to substantiate such a finding in an order, then the Division is obliged to deny the application. This interpretation is consistent with prior Division precedent in cases with similar factual circumstances.

(16) The applicant in these consolidated cases failed to provide sufficient evidence to refute that the GLA-46 Agreement does exist ,is binding and does govern the drilling and development of the subject proration units.

(17) The GLA-46 Interest Owners established, by preponderance of the evidence, that the GLA-46 Farmout and Operating Agreement was in existence and continued to apply to the subject acreage.

(18) In addition to the findings in the foregoing Paragraphs 15 and 16 above, the Division accords significant weight to the effect of Burlington's motion to amend its applications in order to invoke relief under Section 70-2-17(E), requesting that the Division modify the GLA-46 Agreement. Burlington's motion, itself, is an admission of the existence and applicability of the GLA-46 Agreement.

(19) Since under the "forced pooling" statutes (Section 70-2-17 of the NMSA 1978), there exists in this matter an agreement between the parties owning undivided interests in the proposed gas spacing and proration units, an order from the Division pooling the interest of said parties is unnecessary.

(20) The applications for compulsory pooling should be denied.

(21) Pursuant to the oral arguments of counsel on February 3, 2000, it was ruled that the GLA-46 Interest Owners' Motion to Strike was granted.

(22) Burlington's motion to amend its applications to invoke relief under Section 70-2-17(E) should also be denied.

IT IS THEREFORE ORDERED:

(1) The application of Burlington Resources Oil and Gas Company in Case No. 12276 seeking an order pooling all mineral interests in the Mesaverde formation and Chacra formation underling the acreage described in Paragraph 3, above, and located within Section 36, T27N, R8W NMPM, San Juan County, New Mexico, is hereby denied.

(2) The application of Burlington Resources Oil and Gas Company in Case No. 12277 seeking an order pooling all mineral interests in the Mesaverde formation

within the E/2 of Section 16, T31N, R11W, NMPM San Juan County, New Mexico, is hereby denied.

(3) Burlington's motion to amend its applications in Case No. 12276 and Case No. 12277 is denied. The Amended Applications filed by Burlington on January 24, 2000 are hereby stricken.

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

_____
LORI WROTENBERY, DIRECTOR

SEAL

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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)

February 3, 2000

HAND DELIVERED

Mr. Mark Ashley, Hearing Examiner
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: ***NMOCD Case No. 12276***
Application of Burlington Resources Oil & Gas Company for compulsory pooling
San Juan County, New Mexico
Brookhaven 8 & 8-A wells

Dear Mr. Ashley:

On behalf of Burlington Resources Oil & Gas Company, please find enclosed a proposed order for entry in the referenced case heard on January 20, 2000.

Very truly yours,

W. Thomas Kellahin

cc: ***Burlington Resources Oil & Gas Company***
Attn: Alan Alexander
J. Scott Hall, Esq.
Attorney for Energen et al.

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

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

BURLINGTON RESOURCES OIL & GAS COMPANY'S PROPOSED ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on January 20, 2000, at Santa Fe, New Mexico, before Examiner Mark Ashley.

NOW, on this _____ day of February, 2000, the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction over the parties, of this cause and the subject matter thereof.

(2) The applicant, 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. 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 the operator of these units and wells. These 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.

BACKGROUND

(3) 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 75.529781% 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.

(4) By Letter Agreement dated May 24, 1952 this proposed spacing unit was included within acreage subject to a November 27, 1951 farmout/operating agreement between Brookhaven Oil Company and San Juan Production Company, and as subsequently amended, (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.

(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 Agreement 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 participate in this well by signing 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 costs of such wells as of July 30, 1998.

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 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

(15) Burlington contends that:

(a) the 1951 GLA-46 Agreement imposed an obligation on Burlington's predecessor 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's predecessor completed that drilling obligation and earned a 50% interest in the contract acreage and therefore Burlington 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) 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;

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

(f) as a result, after the drilling of the obligatory 18 Mesaverde wells, the GLA-46 Agreement has been amended and 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;

(g) because those maximum recoupments do not adequately cover present drilling costs, the GLA-46 Agreement has been amended and adopted for 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;

(h) 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;

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

(j) 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.

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

(16) **The Division finds** as to Burlington's claim for relief pursuant to Section 70-2-176.C NMSA (1978) that:

(a) Section 70-2-17.C NMSA (1978) provides, in part:

> "Where, however, such owner or owners have not agreed to pool their interests,....the Division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste shall pool all or any part of such lands or interest or both in the spacing unit or proration unit as a unit."

(b) 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;

(c) the GLA-46 Group has attempted to elect to participate in these wells by attempting to adopt the terms of the November 27, 1951 GLA-46 Agreement 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 cost of Mesaverde/Chacra dual well as of July 30, 1998; 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;

(d) pursuant to Section 70-2-17.C NMSA (1978), the owners indicated on Exhibit "A" of Burlington's application have not signed Burlington's proposed Joint Operating Agreement and therefore have not agreed to pool their interest for purposes of paying for the drilling and completion these wells as proposed by Burlington;

(e) 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:

(i) 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

(ii) 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.

(iii) it is the Division's position that the interpretation of the GLA-46 Agreement should be deferred to the courts;

(f) the Division need not attempt to engage in such an adjudication of a contractual dispute. Burlington's compulsory pooling case against the GLA-46 Group is appropriate and the Division can decide this pooling case despite this contractual dispute for the reasons set forth in Division Order R-10878.

(g) Burlington's compulsory pooling case against the GLA-46 Group is appropriate, and in order to consolidate all of the interest within the proposed spacing unit, the interest of the GLA-46 Group should be pooled by this order;

(h) 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)

(17) 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 as of July 30, 1998 is limited to a total Mesaverde 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.

(18) 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 Charca 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 and will spend $294,000 to realize an expected profit of $232,000 on the Brookhaven 8-A well;

(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 and will spend $427,000 but realize a profit of only $163,000 on the Brookhaven 8-A well;

(e) 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 and a profit of $166,000 on the Brookhaven 8-A well;

(f) 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 and invest $133,000 to enjoy an estimated profit of $100,000 on the Brookhaven 8-A well;

(g) 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.

(19) **The Division finds** as to Burlington's claim for relief pursuant to Section 70-2-17.E NMSA (1978) that:

(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 provisions of the 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.

Risk Factor Penalty

(20) In support of a 200% risk factor penalty, Burlington introduced evidence which demonstrates that:

(a) if Burlington is not subject to the cost limitations and carrying provisions of the GLA-46 Agreement, then Burlington will recover its investment in 1.57 years on the Brookhaven 8 well and in 1.48 years on the Brookhaven 8-A well;

(b) 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;

(c) if the GLA-46 Group is allowed to participate under the cost limitations and carrying provisions of the GLA-46 Agreement, then Burlington estimates it will receive a 25.1% rate of return on its investment for the Brookhaven 8 well and a 38.7% rate of return on its investment for the Brookhaven 8-A well which will cause it not to drill these wells;

(d) if the GLA-46 Group participates under a pooling order and pays its share of current well costs, then Burlington estimates it will receive a 67.1% rate of return on its investment for the Brookhaven 8 well and a 73.3% rate of return on its investment for the Brookhaven 8-A well;

(e) however, if the GLA-46 Group does not participate under a pooling order with a -0-% risk factor penalty, then Burlington will pay for the GLA-46 Group's share of the well costs, but Burlington estimates it will receive only a 46.4% rate of return on its investment for the Brookhaven 8 well and only a 56.0% rate of return on its investment for the Brookhaven 8-A well;

(f) if the GLA-46 Group does not participate under a pooling order with a 200% risk factor penalty, then Burlington estimates it will receive a 64% rate of return on its investment for the Brookhaven 8 well and a 64.3% rate of return on its investment for the Brookhaven 8-A well which will be less than but close to the rates of return Burlington would receive if the GLA-46 Group pays its share of current well costs share of current well costs and elects to voluntarily participate pursuant to a compulsory pooling order as described in subparagraph (d) above;

(21) The Division finds that:

(a) Burlington seeks a pooling order providing options to participate or to be a carried interest subject to a non-consent penalty;

(b) The Division is authorized to approve a maximum 200% risk factor penalty in pooling cases. The Division should approve Burlington's request for the adoption of the maximum penalty;

(c) the risk penalty to be applied to the compulsory pooled parties who elect to be carried should be set at 200% of their proportionate share of actual total current completed well costs;

(d) joint operating agreements currently being used in New Mexico commonly provide for risk factor penalties equal to or in excess of 200% for subsequent operations and that such practice is not contrary to the Division's statutory authority to apply a maximum of 200% to uncommitted interest owners who are compelled to participate pursuant to a compulsory pooling order;

(e) 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%.

Overhead Rates

(22) Burlington proposes to use its COPAS Accounting Procedures attached as Exhibit "C" to its Joint Operating Agreement, dated February 1, 1999 with overhead rates of $4,500/month drilling and $450/month producing which the Division finds to be fair

(23) The Division finds that 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 are appropriate in the case.

dual completion JOA provisions

(24) Burlington proposes to use the provisions for adopting the dual well provisions of Burlington's Joint Operating Agreement dated 2/1/99 including pages 9.A through 9.E and Article XV.F for commingling are appropriate in this case.

(25) The Division finds that provisions for adopting the dual well provisions of Burlington's Joint Operating Agreement dated 2/1/99 including pages 9.A through 9.E and Article XV.F for commingling are appropriate in this case.

Authority For Expenditures "AFE"

(26) The Division's determination of the reasonableness of an AFE is based upon Burlington's undisputed testimony that an estimated total completed well costing $427,630.00 was reasonable and accurate as of July 30, 1998.

Other findings

(27) To avoid the drilling of unnecessary wells, to protect correlative rights, to prevent waste and to afford to the owners of each interest in said units the opportunity to recover or receive without unnecessary expense his just and fair share of hydrocarbon production in any pool, the subject application should be approved by compulsory pooling of any working interest owner who owned an interest not voluntarily committed to the drilling of these wells by signing Burlington's joint operating agreement as of October 12, 1999, (date the application was filed) and any these party's successors, grantees, or assignees.

(28) Approval of the application will afford the applicant the opportunity to produce its just and equitable share of the gas in these formations/pools, will prevent the economic loss caused by the drilling of unnecessary wells, avoid the augmentation of risk arising from the drilling of an excessive number of wells and will otherwise prevent waste and protect correlative rights.

(29) Pursuant to Section 70-2-17.C and 70-2-17.E NMSA (1978) and in order to obtain its just and equitable share of potential production underlying these spacing units, Burlington Resources Oil & Gas Company should be granted an order by the Division pooling the identified and described working interest owners set forth in Exhibit "A" of Burlington Resources Oil & Gas Company's application (hereinafter "compulsory pooled parties") so as to prevent waste and protect correlative rights for the drilling of these well at standard well locations upon terms and conditions which include:

(a) Burlington Resources Oil & Gas Company be named operator;

(b) Provisions for all compulsory pooled parties to participate in the costs of drilling, completing, equipping and operating these wells;

(c) In the event a compulsory pooled party fails to timely elect to voluntarily commit its interest and participate pursuant to this order, then said compulsory pooled party's interest is hereby involuntarily committed to participation pursuant to the terms and conditions of the compulsory pooling provisions of this order and shall be deemed a non-consenting owner whose interest shall be carried so that the carrying parties can recover out that compulsory pooled party's share of production, that compulsory pooled party's share of the costs of the drilling, completing, equipping and operating the well, including a risk factor penalty of 200%;

(d) Provisions for a compulsory pooled party who timely elects to join in the wells to pay his share of overhead rates per month for drilling and operating costs and a provision providing for an adjustment method of the overhead rates as provided by COPAS;

(30) Approval as set forth above and in the following order will avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the production in any pool resulting from this order.

IT IS THEREFORE ORDERED THAT:

(1) The application of Burlington Resources Oil & Gas Company in this case is hereby **GRANTED** and Burlington Resources Oil & Gas Company is hereby designated operator of these wells and their corresponding spacing units.

(2) Each and every compulsory pooled party received actual notice of this hearing in accordance with Division Rule 1207 which the Division finds to have afforded each said party a fair and reasonable opportunity to appear and participate.

(3) Effective as of the date of the filing of the application in this case, the interests of the working interest owners ("compulsory pooled parties") identified in Exhibit "A" of Burlington's application, including, if any, their assignees, successor and grantees, in the Mesaverde formation and in 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.

are hereby pooled for purposes of involuntary commitment to participate in 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.

(4) Applicant is hereby designated as the operator of these wells and authorized to drill these wells and to dedicate the above described acreage to these units.

(5) Burlington's proposed drilling-completion program and the corresponding Authority for Expenditures ("AFE") is hereby **APPROVED**.

(6) The terms and conditions of the AAPL Form 610-1982 Model Form Operating Agreement submitted as Burlington's Exhibit 4 are incorporated herein by reference and shall be binding upon all compulsory pooled parties, **including the following:**

(a) 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;

(b) provisions for adopting the dual well provisions of Burlington's Joint Operating Agreement dated 2/1/99 including pages 9.A through 9.E and Article XV.F for commingling.

PROVIDED HOWEVER THAT, the operator of these units shall commence the drilling of these wells on or before the 1st day of June, 2000, and shall thereafter continue the drilling of these wells with due diligence to a depth sufficient to test the Mesaverde formation.

PROVIDED FURTHER THAT, in the event the operator does not commence the drilling of the first of these wells on or before the 1st day of June, 2000, Decretory Paragraph No. (3) of this order shall be null and void and of no effect whatsoever, unless said operator obtains an extension of time from the Division for good cause shown.

PROVIDED FURTHER THAT, should these wells not be drilled to completion, or abandonment, within 120 days after commencement thereof, the operator shall appear before the Division Director and show cause why Decretory Paragraph No. (2) of this order should not be rescinded.

(7) After the effective date of this order, the operator shall furnish the Division and each compulsory pooled party in the subject unit an itemized schedule of estimated total well costs for each well.

(8) Within 30 days from the date the schedule of estimated well costs is furnished to him, any compulsory pooled party shall have the right to make a **separate election** as to each well by paying his share of estimated well costs for each well to the operator in lieu of paying his share of reasonable total well costs out of production, and any such compulsory pooled party who pays his share of estimated total completed well costs as provided above shall remain liable for operating costs but shall not be liable for risk factor penalty charges.

(9) The operator shall furnish the Division and each compulsory pooled party with an itemized schedule of actual well costs within 180 days following completion of the well; if no objection to the actual well cost is received by the Division and the Division has not objected within 45 days following receipt of said schedule, the actual well costs shall be the reasonable well costs; provided however, if there is an objection to actual well costs within said 45-day period the Division will determine reasonable well costs after public notice and hearing.

(10) Within 60 days following determination of reasonable well costs, any compulsory pooled party who has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(11) The operator is hereby authorized to withhold from the compulsory pooled party the following costs and charges from production:

A. The pro rata share of reasonable well costs attributable to each compulsory pooled party who has not paid his share of estimated well costs within 30 days from the date of schedule of estimated well costs is furnished to him; and

B. As a charge for the risk involved in the drilling of the well, 200 percent of the pro rata share of reasonable well costs attributable to each compulsory pooled party who has not paid his share of estimated total completed well costs within 30 days from the date the schedule of estimated costs is furnished to him.

(12) The operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(13) $4,500 per month while drilling and $450 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each compulsory pooled party, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each compulsory pooled party's interest.

(14) The operator shall furnish the Division and each compulsory pooled party with an itemized schedule of actual well costs to be charged on a monthly basis in the form of a joint interest billing within 90 days, or as soon thereafter as is practical, following completion of the well; if no objection to the actual well cost or the joint interest billing is received by the Division and the Division has not objected within 45 days following receipt of said schedule, the actual well costs shall be the reasonable well costs; provided however, if there is an objection to actual well costs within said 45-day period the Division will determine reasonable well costs after public notice and hearing.

(15) Any unleased mineral interest who is a compulsory pooled party shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

(16) Any well costs or charges which are to be paid out of production shall be withheld only from the working interest's share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(17) All proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in San Juan County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; the operator shall notify the Division of the name and address of said escrow agent within 30 days from the date of first deposit with said escrow agent.

(18) Should all the compulsory pooled parties reach voluntary agreement with the applicant subsequent to the entry of this order, this order shall thereafter be of no further effect.

(19) The operator of the subject well and unit shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the compulsory pooling provisions of this order.

(20) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

LORI WROTENBERY, DIRECTOR

MILLER, STRATVERT & TORGERSON, P.A.

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PLEASE REPLY TO SANTA FE

February 2, 2000

HAND DELIVERED
Ms. Florene Davidson
New Mexico Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

00 JAN 33 PM 4 OIL CONSERVATION DIV

Re: NMOCD Case No. 12276 and Case No. 12277 (Consolidated); Application of Burlington Resources Oil and Gas Company for Compulsory Pooling, San Juan County,New Mexico.

Dear Ms. Davidson:

Enclosed for filing are the original and one copy of (1) GLA-46 Interest Owners' Post-Hearing Memorandum and (2) GLA-46 Interest Owners' Motion To Strike. For convenience, Energen Resources Corporation, Westport Oil and Gas Company, Bank of America, Carolyn Nelson Sedberry, C. Fred Luthy, Jr., Cyrene Inman, The F. A. and H. B. Cronican Revocable Trust, William C. Briggs, Herbert R. Briggs, Marcia Berger, and WWR Enterprises, Inc. have been referred to as the "GLA-46 Interest Owners" in these proceedings.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall

Enclosures – as stated
JSH/ao

cc: Mark Ashley, NMOCD (with enclosures)
Lyn Hebert , NMOCD (with enclosures)
W. Thomas Kellahin (with enclosures)

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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**

IN THE MATTER OF THE APPLICATION OF BURLINGTON RESOURCES OIL & GAS COMPANY FOR COMPULSORY POOLING SAN JUAN COUNTY, NEW MEXICO **CASE NO. 12277**

00 JAN 23 PM 4:07 OIL CONSERVATION DIV.

GLA-46 INTEREST OWNERS' MOTION TO STRIKE

Energen Resources Corporation, Westport Oil and Gas Company, Inc. Bank of America, Carolyn Nelson Sedberry, C. Fred Luthy, Jr., Cyrene Inman, The F. A. and H. B. Cronican Revocable Trust, William C. Briggs, Herbert R. Briggs, Marcia Berger, and WWR Enterprises, Inc, through their counsel, Miller, Stratvert & Torgerson, P.A. (J. Scott Hall), move that the Division enter its order striking the Amended Applications filed in these consolidated proceedings by Burlington Resources Oil and Gas Company on January 24, 2000. In support, Energen, *et al.*, state:

1. These cases were noticed and advertised on the Division's regular examiner hearing document pursuant to Burlington's applications for relief under NMSA 1978 § 70-2-17(C). Burlington's Pre-Hearing Statement was similarly limited to Section 70-2-17(C) and the consolidated cases were heard on January 20, 2000.

2. During the course of the hearing, in view of a number of admissions against interests, unfavorable testimony and exhibit evidence, Burlington abandoned its original theory that no voluntary agreement applied to the development of the subject lands. Instead, by way of a speaking motion, Burlington attempted to request new relief under NMSA 1978 § 70-2-17(E).
3. Energen had prepared to address only one issue through its single witness: the existence of a Farmout and Operating Agreement that governed the drilling and development of the subject lands. Burlington's attempt to amend its request for relief raised fundamentally different issues. Accordingly, Energen objected to the effort to amend the pleadings for the reasons that Burlington's request was untimely, constituted surprise, resulted in prejudice and would violate Energen's right to due process.
4. The hearing examiner deferred ruling on the motion and requested the parties to brief the issue. Regardless, Burlington filed its Amended Applications on January 24, 2000 without having received leave to do so.
5. Points and authorities in support of this Motion To Strike are set forth in the GLA-46 Interest Owners' Post-Hearing Memorandum filed on this same day.

WHEREFORE, Energen Resources Corporation, *et al.* request the Division enter its order striking Burlington's Amended Applications and otherwise denying the relief sought therein.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By: _____

J. Scott Hall, Esq.
Post Office Box 1986
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Attorneys for Energen Resources Corporation, Westport Oil and Gas Company, Inc., Bank of America, Carolyn Nelson Sedberry, C. Fred Luthy, Jr., Cyrene Inman, The F. A. and H. B. Cronican Revocable Trust, William C. Briggs, Herbert R. Briggs, Marcia Berger, and WWR Enterprises, Inc

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Strike was sent this 7 day of February, 2000 to the following counsel of record:

Marilyn Hebert, Esq.
Oil Conservation Division
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Santa Fe, New Mexico 87505

W. Thomas Kellahin, Esq.
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_____
J. Scott Hall

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

IN THE MATTER OF THE APPLICATION OF BURLINGTON RESOURCES OIL & GAS COMPANY FOR COMPULSORY POOLING SAN JUAN COUNTY, NEW MEXICO — CASE NO. 12277

GLA-46 INTEREST OWNERS' POST-HEARING MEMORANDUM

Energen Resources Corporation, Westport Oil and Gas Company, Inc., Bank of America (Oil and Gas Management Division), Carolyn Nelson Sedberry, C. Fred Luthy, Jr., Cyrene Inman, The F. A. and H. B. Cronican Revocable Trust, William C. Briggs, Herbert R. Briggs, Marcia Berger, and WWR Enterprises, Inc.,[1] through their counsel, Miller, Stratvert & Torgerson, P.A. (J. Scott Hall) present this Post-Hearing Memorandum at the request of Examiner Ashley and in support of their Motion To Strike. Energen, *et al.*, all own working interests in the subject lands affected by Burlington's compulsory pooling applications.

SUMMARY STATEMENT

The interests of Energen, *et al.* are subject to an existing farmout and operating agreement governing drilling and development on the subject lands and consequently, the

[1] For convenience, these working interest owners in the acreage affected by the two applications are referred to, together, as "Energen" or "the GLA-46 interest owners." Except for Energen Resources Corporation and Westport Oil and Gas Company, Inc., the remaining parties are occasionally referred to in the record as the "Dacresa Group".

interests are not subject to compulsory pooling. The entry of an order including a finding recognizing the existence of the agreement is not an interpretation of the terms of the agreement. Neither is this a matter to be deferred to the courts. Under the operation of NMSA § 70-2-17 (C) and Division precedent, there is no basis for the exercise of the Division's compulsory pooling authority in this case, and consequently, Burlington's applications must be denied. Burlington's request to invoke NMSA § 70-2-17 (E) is inconsistent with its original position and is untimely. Granting the request would violate the opponents' due process rights.

INTRODUCTION

Initially, Burlington had described these consolidated cases as nothing more than "plain-vanilla" compulsory pooling cases.[2] After having heard the witness testimony and considered the substantial documentary evidence, it is apparent to all that Burlington's initial description of these cases was off the mark.

Burlington has specifically invoked the Division's authority under Section 70-2-17 (C). According to Burlington, under that statutory subsection, it need do little more than show that "[it] has not been able to obtain of the voluntary agreement of certain mineral owners" in the spacing units to be dedicated to its proposed wells.[3] Once such a showing is made, it is Burlington's view that it is virtually entitled to have the Division bestow compulsory pooling orders on it. According to Burlington, there is no need for the Division to concern itself with any evidence or arguments over the applicability of any

[2] Pg. 10, Burlington Resources Oil and Gas Company's Motion To Quash

[3] Para. 13, Application (Case No. 12276); Para. 8, Application (Case No. 12277)

farmout and operating agreement. Its mere denial that the "GLA-46" Agreement continues to apply is sufficient justification for the invocation of the Division's compulsory pooling authority. Even if there were such an agreement, Burlington says, it was extinguished back in 1956 when its 18-well drilling obligation was satisfied.[4] Consequently, as Burlington would have it, any dispute regarding the operating agreement should be deferred to the courts. Burlington accordingly resisted any discovery on this issue.

Energen has a different view of the case.

Energen contends that under the pooling statute[5], Burlington has the burden of affirmatively proving that the owners of mineral interests in a spacing unit "have not agreed to pool their interests...". Such a showing is a mandatory pre-condition to the exercise of the Divisions authority to pool property interests under Section 70-2-17(C), and where the evidence adduced at hearing is not sufficient to substantiate such a finding in an order, then the Division is obliged to deny the applications. Correspondingly, Energen rightfully raised the issue at hearing and its position was borne-out by the considerable evidence that was brought to light.

At the hearing, Burlington was swamped with a large volume of evidence showing that some 100 wells have been drilled under the GLA-46 Agreement since the 1950's and right into the 1990's; not just the eighteen wells which Burlington says ended the Agreement's applicability. Witness testimony, Burlington's own internal memoranda and, indeed, advice from its own title attorneys established that this long-standing

[4] Exhibit A-64.

[5] NMSA 1978 § 70-2-17 (C)

farmout and operating agreement is an "active"[6] and "governing"[7] agreement that continues in full force and effect today. According to Burlington, it is an "all depths", "all acreage" agreement under which Burlington owns the valuable operating rights exclusively.

Consequently, rather than continue to defend its original position in the face of such overwhelming proof, in mid-hearing, Burlington attempted to abandon its Applications for relief under Section 70-2-17 (C) and sought to invoke the Division's authority to modify the farmout and operating agreement under NMSA § 70-2-17(E) (1978) instead. Although due process considerations prevent Burlington from amending its case in such a manner, its effort to do so was a clear admission of this salient fact: Energen's working interests are voluntarily committed under GLA-46. Consequently, under the operation of both Section 70-2-17 (C) and Division precedent, the interests are not available to be compulsorily pooled.

The only proper course of action for the Division is the denial of the two Applications.

BACKGROUND FACTS

By its October 13, 1999 Application, Burlington Resources Oil and Gas Company, ("Burlington"), sought the forced pooling of certain oil and gas lease working interests for the drilling of Burlington's Brookhaven Wells 8 and 8-A located in the W/2 of Section 36, T-27-N, R-8-W and the Brookhaven Com "B" 3-B Well in the E/2 of Section 16, T-31-N, R-11-W, in San Juan County (the "Subject Lands"). Among the

[6] Exhibit A-54
[7] Exhibit A-56

interests Burlington sought to pool are the working interests of Energen and a number of other interest owners which are subject to a pre-existing contract, the GLA-46 Agreement. Through their respective predecessors in interest, under the GLA-46 Agreement, the operating rights of Energen, *et al.*, in the Subject Lands were transferred to Burlington. It has been the consistent interpretation of all the parties that under GLA-46, Burlington and its predecessors was the exclusive owner of the operating rights and executive rights under the acreage, and that Burlington was obliged to drill each of the available "drilling sites" in each of the formations or pools in the subject acreage. (GLA-46 Operating Agreement, Para. 4; Ex. A-1). If the drilling sites were not drilled, the Agreement provided for the release of the undrilled acreage. Over the years, approximately 100 wells were drilled by El Paso/Meridian/Burlington under the GLA-46 Agreement to all of the predominant producing formations in the area. Indeed, as far as we were able to document, Burlington continued to drill Mesaverde wells under the agreed-on well cost provisions as recently as 1992[8] and has drilled a number of Fruitland Coal wells since. (An evidentiary chronology of the ongoing application of the GLA-46 Agreement is attached hereto as Exhibit A.)

Earlier, when Burlington purposed the wells that are the subject of these consolidated applications, Energen, following a long-standing course of dealing, advised Burlington that it would voluntarily participate in the wells pursuant to the terms of the GLA-46 Agreement under which its interests were previously committed. In response, changing its prior position, Burlington advised Energen that: (1) the GLA-46 is no longer

[8] Exhibit A-56

applicable; and (2) its terms are no longer economically favorable.[9] Simultaneously, despite its unilateral declaration that the GLA-46 no longer applied, Burlington sought to have the existing contract released and replaced with a new form of agreement. All of the GLA-46 non-operators objected as the form of operating agreements proposed by Burlington would require them to give up substantive contract rights. The GLA-46 owners continued to assert that Burlington should adhere to the long-established practice of drilling wells under the terms of the existing agreement. Accordingly, as had been done so many times in the past, Energen, *et al.* all elected to participate in the proposed wells under the terms of GLA-46.

I. SECTION 70-2-17 REQUIRES THE DIVISION TO DETERMINE WHETHER OR NOT A VOLUNTARY AGREEMENT EXISTS BEFORE IT CAN FORCE POOL THESE WORKING INTERESTS.

The parties' disagreement is founded on a primary, threshold issue: whether lands that are voluntarily committed under a valid, existing agreement are subject to being compulsorily pooled under the terms of N.M.S.A. 1978 § 70-2-17 (C). This initial issue necessarily implicates the question of whether the Division has jurisdiction to proceed, a question that should be addressed at the outset. Burlington urges, incorrectly, that the issue is one that should necessarily be deferred to the courts.[10] According to Burlington, the Division needn't concern itself with whether GLA-46 continues to apply. Rather, the Division is to accept as true Burlington's pleaded allegations that (1) GLA-46 does not

[9] The provisions of the GLA-46 Farmout and Operating Agreement do not include a change in economic circumstances as a *force majeure* event excusing Burlington's performance. (Para. 14, Ex. A-1)

[10] Burlington cites to NMOCD Case No. 11809 (Burlington/Total-Minatome Corporation), but the order issued in that case (Order No. R-10878) is not valid precedent. The examiner's erroneous order issued in that case was pending appeal de novo before the Commission when the well that was the subject of that case was abandoned as a dry hole. Consequently, the appeal was made moot.

apply and (2) consequently, it does not have the voluntary agreement of the other interest owners. In essence, Burlington seeks to deter the Division from taking up the voluntary participation issue by suggesting that the matter is a sophisticated legal dispute that only the courts, and not the Division, have the exclusive jurisdiction and competence to address.

Burlington's argument is directly contrary to the operation of the express provision of the pooling statute that specifically obligates the Division to address the voluntary agreement issue[11]. Indeed, by taking the expedient route of deferring the voluntary agreement issue to the courts, the Division would be abdicating a mandatory duty which the Legislature has specifically directed it to perform. This is the one agency that courts have recognized as having primary jurisdiction over such oil and gas issues. See Viking Petroleum v. Oil Conservation Com'n., 100 N.M. 451, 672, P.2d 280 (1983): ("Special weight is given to the experience, technical competence and specialized knowledge of the Oil Conservation Commission.")

It is Energen's position that the Division must necessarily address the voluntary agreement issue before it exercises its police powers to consolidate real property interests under the compulsory pooling statute. Typically, the compulsory pooling orders that the Division issues contains an express finding to the following effect:

> "(__) There are interest owners in the subject proration unit that have not agreed to pool their interests."

[11] "Voluntary agreements" are also referred to in Section 70-2-18. This companion section to Section 70-2-17 imposes a statutory obligation on an operator to obtain a voluntary agreement or a pooling order prior to first production from the spacing or proration unit.

Such findings have been included in hundreds of compulsory pooling orders for decades now, and the industry, as well as practitioners before the Division, have come to rely on the Division's manner of interpreting and exercising its authority under the pooling statute. As such, the Division's consistent interpretation and application of the pooling statute is established as a form of legal precedent.[12] The Division's standard practice of considering evidence of and making a finding on the voluntary agreement issue fulfills the directive under the pooling statute. In other words, the Division does not exercise its authority until it first makes a finding that "[the] owners have not agreed to pool their interests and develop their lands as a unit."[13] See Sims v. Mechem 72 N.M. 186, 382 P.2d 183 (1963): ("Unquestionably, the [Division] is authorized to require pooling of property when such pooling has not been agreed upon by the parties." *Emphasis added.*)

II. THE DIVISION CANNOT DEFER THE VOLUNTARY AGREEMENT ISSUE TO THE COURTS.

The Division must address the voluntary agreement issue. It cannot defer the matter to a court on the rationale it is a contract dispute. To do so is an improper delegation of an administrative function that the pooling statute expressly directs the Division to perform.

In 1981, the New Mexico Court of Appeals held that administrative bodies and officers cannot delegate power, authority and functions which under the law may be exercised only by them. Kerr-McGee Nuclear Corp. v. New Mexico Environmental Imp.

[12] See Chisolm v. Defense Logistics Agency 656 F.2d 42, 47 (3rd. Cir. 1981).

[13] Section 70-2-17(C) says, in part, "Where, however, such owner or owners have not agreed to pool their interests...the division...shall pool all or any part of such lands or interest or both in the spacing or proration unit as a unit."

Bd., 97 N.M. 88, 97, 637 P.2d 38, 47 (Ct. App. 1981). The Court held that duties which are quasi-judicial in nature, and which require the exercise of judgment cannot be delegated. Id. As Kerr-McGee was a case of first impression in New Mexico, the New Mexico Court of Appeals relied on Oklahoma case law. Oklahoma law, therefore, provides guidance in this area. The Supreme Court of Oklahoma in Van Horn Oil Co. v. Oklahoma Corp. Com'n., 753 P.2d 1359, 1363 (1988) cited to the same Oklahoma authority relied on by the New Mexico Court of Appeals when it quoted:

> Administrative bodies and officers cannot alienate, surrender, or abridge their powers and duties, or delegate authority and functions which under the law may be exercised only by them; and, although they may delegate merely ministerial functions, in the absence of statute or organic act permitting it, they cannot delegate powers and functions discretionary or quasi-judicial in character, or which require the exercise of judgment.

citing, Anderson v. Grand River Dam Authority, 446 P.2d 814 (1968). The Anderson Court also quoted with approval from American Jurisprudence and Corpus Juris Secundum as follows:

> In 2 Am. Jur. 2nd Administrative Law, § 222, it is said: It is a general principal of law, expressed in the maxim "delegates non protest delegare", that a delegated power may not be further delegated by the person to whom such power is delegated and that in all cases of delegated authority, or personal trust or confidence is reposed in the agent and especially where the exercise and application of the power is made subject to his judgment or discretion, the authority is purely personal and cannot be delegated to another ***. A commission charged by law with power to promulgate rules, cannot in turn, delegate that power to another."

State ex rel. Cartright v. Southwestern Bell Telephone Co., 622 P.2d 675 (1983) citing Anderson v. Grand River Dam Authority, 446 P.2d 814, 818 (1968). Because New Mexico has expressly adopted Oklahoma law, it is the law in this state that an administrative body may not delegate a statutory function.

Statutes are to be interpreted so as to facilitate their operation and the achievement of the goals contained within the statute. Bryant v. Lear Siegler Management Services Corp., 115 N.M. 502, 511, 853 P.2d 753, 762 (Ct. App. 1993).

Generally, the Legislature, not the administrative agency, establishes the policy and the primary standards to which the agency must conform. State ex rel. Taylor v. Johnson, 125 N.M. 343, 350, 961 P.2d 768, 775 (1998). "The administrative agency's dissertation may not justify altering, modifying or extending the reach of a law created by the Legislature." Id. citing In re Proposed Revocation of Food and Drink Purveyor's Permit, 102 N.M. 63, 66, 691 P.2d 64, 67 (Ct. App. 1984) (stating that an "agency cannot amend or enlarge its authority through rules and regulations"). This is exactly the action urged by Burlington here. It seeks to have the Division nullify and/or modify a contractual agreement, an action that is clearly in excess of the agency's authority under the pooling statute.

Burlington engages in tactical sophistry when it says Energen seeks to have the Division resolve a contractual dispute. Energen seeks just the opposite. It asks that the Division do nothing more than make a proper finding that Energen's working interests are not subject to pooling as they were voluntarily committed to the proposed wells under a pre-existing agreement. Conversely, a finding that the parties have not agreed to pool their interests is, in itself, an adjudication of the contract. Such a finding would operate as an effective nullification of a private agreement that far exceeds the invocation of the Divisions authority under Section 70-2-17 (C). The finding requested by Energen does not have such an effect. To the contrary, a finding that the lands are committed under the agreement maintains the status quo and does not upset the long-standing contractual

relationship. If there is any doubt about the effect of the Division's order in this case, then such doubt must necessarily be resolved in favor of preserving an agreement that was negotiated at arms-length between private parties.

Lastly, if the Division does not examine the voluntary agreement issue, then Energen is left without any available remedy or recourse. It is necessary for Energen to exhaust its administrative remedies. Neff v. State Taxation and Revenue Dept., 116 N.M. 240, 243, 861 P.2d 281, 284 (Ct. App. 1983). The exhaustion doctrine applies where an administrative agency alone has authority to pass on the very question raised by the one resorting to judicial relief. Pan Am. Petroleum Corp. v. El Paso Natural Gas Co., 77 N.M. 481, 487, 424 P.2d 397, 403 (1966). Were the Division to follow the erroneous rationale applied in Case No. 11809 and attempt to defer the issue to a court, it is virtually assured that the court would cite to the exhaustion doctrine and turn right around and send the issue directly back to the Division for resolution.

III. DIVISION PRECEDENT ESTABLISHES THAT THESE APPLICATIONS MUST BE DENIED

Disputes of this nature are not new to the Division. Direct, on-point precedent from a number of compulsory pooling cases establish that these facts require the denial of these Applications. Accordingly, the Examiner is requested to take administrative notice of the record in the following cases:

> **Case No. 8606; Order No. R-8013; Application of Doyle Hartman for Simultaneous Dedication and Compulsory Pooling, Lea County, New Mexico.** In 1985, the Applicant, Doyle Hartman sought to force pool lands that were subject to a 1951 Operating Agreement entered into by the parties' predecessors in interest. The compulsory pooling portion of the application was denied due to the Applicant's failure to provide evidence to refute that the operating agreement was not binding.

Case No. 10658; Order No. R-9841; Application of Mewbourne Oil Company for Compulsory Pooling, Eddy County, New Mexico. In 1993, the Applicant, Mewbourne Oil Company, sought to pool the interests of Devon Energy Corporation. Devon opposed the application on the grounds that the parties were bound to operating agreements entered into by their predecessors in 1953 and 1958. Mewbourne argued that the compulsory pooling was justified because the terms of the operating agreement were "unfavorable". Order No. R-9841 dismissing the Application provided as follows: "*FINDING: Since under the "force pooling" statutes (Chapter 70-2-17 of the NMSA 1978) there exists in this matter an agreement between the two parties owning undivided interests in a proposed 320-acre gas spacing and proration unit, an order from the Division pooling said parties is unnecessary.*" The comments of the Division's counsel in the transcript of hearing are notable as it is expressed that, in such cases, the Division makes no determination on the merits of the terms of the operating agreement, but determines only whether the agreement exists.

Case No. 11434; Order No. R-10545; Application of Meridian Oil, Inc. for Compulsory Pooling and Unorthodox Well Location, San Juan County, New Mexico. In 1995, the applicant, Meridian Oil, Inc., (Burlington's predecessor), sought to force pool the working interests of Doyle Hartman, Four Star Oil & Gas (Texaco) and others. Hartman and Four Star opposed the application on the grounds that the lands were subject to a pre-existing 1953 Communitization Agreement and an Operating Agreement pooling their interests and governing the drilling and development of the lands. The hearing examiner recognized the applicability of the 1953 agreements and dismissed the case due to the applicant's failure to exercise good faith in negotiations.

Case No. 11960; Order No. R-11009; Application of Redstone Oil and Gas Company for Compulsory Pooling and Unorthodox Well Location, Eddy County, New Mexico (Consolidated for hearing with Case No. 11927; Application of Fasken Land & Minerals, Ltd. for Compulsory Pooling, etc.; and Case No. 11877; Application of Fasken Land & Minerals, Ltd. for Compulsory Pooling, etc.) These 1998 cases involved the efforts of the applicants to force pool lands into 640 and 320 acre spacing and proration units that were covered, in part, by a 1970 operating agreement governing operations in the Rock Tank Unit and certain adjoining leases. Whether the 1970 agreements were applicable was a threshold issue to be decided before the Division exercised its compulsory pooling authority. Prior to the issuance of the final orders in these cases, the parties were able to negotiate an agreement for the development of the acreage and consequently, the compulsory pooling portions of the cases were dismissed.

Copies of the referenced orders are attached together as Exhibit B.

Where the evidence clearly supports a finding that the commitment of working interests is governed by an operating agreement, farmout, communitization or other similar agreement, then those interests are not subject to compulsory pooling. In each of those cases, the applicant failed to make the showing required by the statute. Each time, the applicant either failed to obtain the compulsory pooling relief sought or the application was denied outright. This case is no different and the Division should not hesitate to deny the forced pooling of the interests involved here.

IV. IF BURLINGTON IS ALLOWED TO CHANGE ITS CLAIM FOR RELIEF "MID-STREAM," ENERGEN, *ET AL.*, WILL BE UNFAIRLY PREJUDICED AND DENIED THEIR RIGHT TO DUE PROCESS.

Energen was not given adequate notice that Burlington would proceed with a claim for relief under NMSA 1978 § 70-2-12 (E), rather than § 70-2-12 (C). Energen suffered prejudice and surprise as it was unable to adequately prepare argument and evidence for the claim under Subsection E. Therefore any Order exercising the Division's authority under Subsection E that might be based upon the presentation of the parties at the hearing held January 20, 2000 would deprive Energen of its right to due process.

It is axiomatic that the right to fundamental due process requires that respondents to an administrative proceeding be afforded adequate notice. The notice must adequately apprise them of the claims with regard to both facts and law that will be at issue in the proceeding sufficient to allow them to adequately prepare evidence and argument

essential to their defense. See, e.g., Wirtz v. State Educational Retirement Board, 122 N.M. 292, 923 P.2d 1177 (Ct.App. 1996); Dente v. State Taxation and Revenue Dept., 1997 – NMCA 99, 124 N.M. 93 (Ct.App. 1997); Mills v. State Board of Psychologist Examiners, 1997 – NMSC – 28, 123 N.M. 421 (1997); see also, Koch, Administrative Law and Practice at § 5.33 [1] (West 1997) (while technical pleading requirements are not required in administrative proceedings, "the test is whether the private party understood the issues and the pleadings were sufficient to afford a full opportunity to meet the charges") (citing Citizens State Bank v. FDIC, 751 F.2d 209, 213 (8th Cir. 1984)) and at § 5.33 [3] (the party bringing the administrative action must give a clear statement of the theory upon which they base their claim for relief. The party cannot "introduce a new theory after the hearing has begun without advising the parties in time to develop an adequate defense. There must be a fair opportunity to participate."); NLRB v. United Aircraft Corp., 490 F.2d 1105 (2d Cir. 1973) (order entered by agency is invalid where party not informed of issues to be decided at hearing).

Moreover, "[i]t is well-settled that [an applicant] may not change theories in midstream without giving respondents reasonable notice of the change." The respondents must be supplied with "the opportunity to present arguments under the new theory of violation..." Rodale Press, Inc. v. FTC, 407 F.2d 1252, 1256-7 (D.C. Cir. 1968); accord, Jaffee & Co. v. SEC, 446 F.2d 389, (2d Cir. 1971); see also Modjeska, Administrative Law, Practice and Procedure at § 4.11 (Law. Co-Op. 1982) (citations omitted) ("[a]djudication of issues not raised in the notice or pleadings violates timely notice requirements, as do prejudicial shifts in legal theories during the course of the proceedings").

Burlington is in direct violation of Rule 1207 of the Division's rules. The notice provided by Burlington in its Applications, its Pre-Hearing Statement as well as in the advertisements for the NMOCD Docket for Cases 12276 and 12277 provided notice for and contemplated a hearing based upon Burlington's claims under § 70-2-17(C), rather than claims brought under § 70-2-17(E). Burlington now seeks an Order of the Division granting it relief under Subsection E, although it provided Energen with absolutely no notice prior to the hearing that it would be seeking relief under Subsection E.

V. THE DIVISION SHOULD ENTER AN ORDER DENYING BURLINGTON'S REQUEST FOR NEW RELIEF AND STRIKING THE AMENDED APPLICATIONS.

Burlington's last-minute abandonment of its initial theory and its last-ditch effort to amend its claim for relief constitutes unfair surprise to the prejudice of the GLA-46 interest owners ability to meet the pleadings and present an adequate defense. A denial of their right to due process unquestionably results.

If a party is allowed to amend after an administrative hearing *has already begun*, serious prejudice to the nonmoving party can result, prejudice that rises to a level of a violation of the party's due process rights. See Dole v. Arco Chemical Co., 921 F.2d 484, 488 (3rd Cir. 1990).

The New Mexico courts have consistently condemned amendment of pleadings that cause surprise or prejudice or which are sought after a proceeding has already begun. "Even under a rule allowing liberality in pleadings and liberality in the amendment of pleadings, an amendment should not be allowed if the effect is one of undue surprise or prejudice to the opposing party. The purpose of pleadings is to give the party opponent notice of the claims being made. In New Mexico, the allowance of amendment of

pleadings is discretionary with the court, and the key factor in the exercise of discretion is prejudice to the opposing party." Beyale v. Arizona Public Service Co., 105 N.M. 112, 729 P.2d 1366 (Ct.App. 1986) (citations omitted).

"Where a motion to amend comes late in the proceedings and seeks to materially change the [applicant's] theories of recovery, the court may deny such motion....'[I]f the [proposed] amendment substantially changes the theory on which the case has been proceeding and is proposed late enough so that the opponent would be required to engage in significant new preparation, the court may deem it prejudicial.' See also Panis v. Mission Hills Bank, N.A., 60 F.3d 1486, 1494 (10th Cir.1995) (untimeliness may constitute valid basis for denying leave to amend complaint)." Dominguez v. Dairyland Ins. Co., 1997 – NMCA – 65 ¶ 17, 123 N.M. 448, 453 (Ct.App. 1997) (citations omitted); accord, Wirtz v. State Educational Retirement Board, 122 N.M. 292, 923 P.2d 1177 (Ct.App. 1996) (grant of motion to amend pleadings is abuse of discretion if results in prejudice to other party); Lunn v. Time Ins. Co., 110 N.M. 73, 792 P.2d 405 (1990) (trial court did not abuse discretion by denying motion to amend, when request was first made orally at hearing on motion for summary judgment); Aetna Finance Co. v. Gaither, 118 N.M. 246, 880 P.2d 857 (1994) (refusal to allow motion to amend pleadings at close of trial not an abuse of discretion); Cantrell v. Dendahl, 83 N.M. 583, 494 P.2d 1400 (Ct.App. 1972) (denial of motion to amend pleadings not abuse of discretion where proceeding already begun and only one witness remained to be heard); see also Oceanair of Florida, Inc. v. NTSB, 888 F.2d 767 (11th Cir. 1989) (a motion to amend should not be granted where the amendment would state a new cause of action); 2 Am.Jur.2d, Administrative Law, at § 292 ("if an administrative complaint is amended to include new

counts after the close of hearings, additional hearings must be held to address the new violations.")

When leave to amend is sought after the commencement of an administrative hearing, the burden is on the party seeking to amend to show that 1) the new allegations involve the same legal theory; 2) the allegations arise from the same factual situation or sequence; and 3) the respondent would raise the same or similar defenses to the allegations. Burlington utterly failed to meet its burden here. See FPC Holdings, Inc. v. NLRB, 64 F.3d 935, 941-42 (4th Cir. 1995); accord Usery v. Marquette Cement Mfg. Co., 568 F.2d 902 (2d Cir. 1977) (where party seeks leave to amend pleadings during an administrative hearing in order to proceed under a different theory, the non-moving party suffers prejudice).

Clearly the overwhelming weight of the authority cited and discussed herein shows that a motion to amend, such as that made by Burlington at the end of the hearing in this matter, must be denied because to allow such an amendment adding a new and wholly different claim constitutes unfair surprise. Energen had no way to know that Burlington would switch theories while the hearing was in progress, and therefore, cannot reasonably have been expected to present evidence in its behalf on the new claim. Indeed, Burlington's request for relief under Subsection E, in effect asking the Division to re-write a contract, is directly inconsistent with its original claim that the GLA-46 Agreement did not apply to these lands. Had Energen been notified that Burlington would pursue a claim based upon Subsection E, it would have prepared and presented a very different case.

The only proper course of action for the Division under these circumstances is to enter an order denying Burlington's request for new relief and striking the amended applications. For the reasons stated above, the Division must likewise deny Burlington's claims for relief under Section 70-2-17 (C).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Hearing Memorandum was sent this 7 day of February, 2000 to the following counsel of record:

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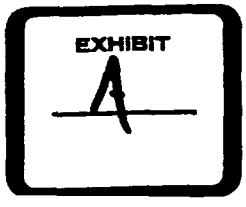
Energen Resources

Case No. 12276 – Application of Burlington for Compulsory Pooling, San Juan County (Chacra formation)
Case No. 12277 – Application of Burlington for Compulsory Pooling, San Juan County (Blanco-Mesaverde Gas Pool)

CHRONOLOGY

	Date	Event
Exhibit 1	11/27/1951	Farmout Agreement by and between Brookhaven Oil Company and San Juan Production Company. Brookhaven Oil Company, predecessor in interest to Energen's Resources Corporation, assigns 100 percent of its operating rights to San Juan Production Company, predecessor in interest to El Paso Natural Gas Company, Meridian Oil Production, Inc. and Burlington Resources Oil and Gas Corporation
Exhibit 1	11/27/1951	Operating Agreement by and between Brookhaven Oil Company and San Juan Production Company. The Operating Agreement is attached as Exhibit B to the 11/27/1951 Farmout Agreement. Brookhaven assigns 100 percent of its operating rights on the subject acreage and designates San Juan as operator. The Operating Agreement includes drilling obligations for a minimum number of Mesaverde wells and provides for the release and reassignment of any acreage that is not drilled or developed under the Operating Agreement. The agreement also provides for the drilling of additional wells in the Mesaverde formation as well as the development of formations above and below the Mesaverde formation. The Farmor's share of drilling costs are borne by one half of its propionate share of production until payout. Drilling costs for Mesaverde wells are limited to $45,000.00. Drilling costs for non-Mesaverde formations wells are determined pursuant to an agreement of the parties with the Farmor's share of costs to be paid out of the production. Any assignments require the written consent of the Farmor.
Exhibit 2	05/24/1952	Supplement to Operating Agreement dated November 27, 1951 between El Paso Natural Gas Company and Brookhaven Oil Company. GLA-46 is amended to include lands in the W/2 Sec. 36, T-27-N, R-8-W and E. /2 Sec. 16, T-31-N, R-11-W.
Exhibit 3	11/20/1953	4th Amendment to Operating Agreement (Costs under Operating Agreement changed – Pictured Cliffs wells)
Exhibit 4	11/23/1953	Supplement to Operating Agreement. Agreement between Brookhaven Oil Company *et al.* and El Paso Natural Gas Company amending GLA-46 to include additional lands.



	03/01/1954	9th Amendment to Operating Agreement (percent ORRI on lease clarified)
	03/23/1954	10th Amendment (Fourth Supplement) to Operating Agreement (Acreage – well obligation added)
	08/31/1954	Letter Agreement between Brookhaven Oil Company and El Paso Natural Gas Company adding NW/4 NE/4 Sec. 16 T31N, R11W to the terms of the GLA-46.
Exhibit 5	05/22/1956	Amendment to Operating Agreement (GLA-46) dated November 27, 1951 amends GLA-46 to exempt Brookhaven from the costs of drilling and development to the base of the Mancos shale under the SE/4 NW/4 of Section 36, T 26 N, R 13 W.
Exhibit 6	01/23/1958	BLM decision approving second supplement to November 27, 1951 GLA-46 agreement. The decision notes that Brookhaven Oil Company, Dacresa Corporation and El Paso Natural Gas Company agree that the terms and conditions of 11/27/1951 Operating Agreement apply to the subject oil and gas lease.
Exhibit 7	05/17/1962	BLM decision approving supplement to Operating Agreement of November 27, 1951. The approval notes that Brookhaven acknowledges El Paso's operating rights as provided by the agreement and the designation of El Paso as operator. The decision further acknowledges El Paso's assumption of obligations under the Operating Agreement.
Exhibit 8	05/24/1962	Internal memorandum, El Paso Natural Gas Company, Land Department: Discusses amendment of GLA-46 to address costs of drilling Dakota and Pictured Cliffs wells.
Exhibit 9	06/29/1962	Internal memorandum, El Paso Natural Gas Company, Land Department: Discusses the amendment of GLA-46 to address drilling costs for Dakota wells and dual completion wells. The memorandum recites "Section 5D1 provides for the cost allocation for a Mesaverde well and also requires that El Paso furnish all casing without reimbursement from Brookhaven."
Exhibit 10	08/06/1962	Internal memorandum, El Paso Natural Gas Company: Discusses the costs of Dakota wells under the agreement. Memorandum notes that Section 5D1 provides for the cost allocation for a Mesaverde well and requires that El Paso furnish all casing without reimbursement from Brookhaven.
Exhibit 11	09/27/1962	El Paso Natural Gas Company advises Brookhaven of its plan to schedule the drilling of a Dakota well in the east half of Section 16 T 31 N, R 11 W under the terms of GLA-46.
Exhibits 12 to 15	11/29/1962	Telegram documenting agreement between El Paso, Brookhaven Oil Company and Dacresa Corporation addressing the amendment of GLA-46 to provide for Brookhaven to earn a 1/8th overriding royalty interest with an after payout back-in 50 percent working interest. The amendment applies only to acreage in the E/2 of Sec. 16, T31N, R11W.

Exhibit 16	11/30/1962	Supplement to Operating Agreement dated November 27, 1951. Additional lands are added. Section 5 D 2 of the original agreement is amended to provide for the negotiation of drilling costs for wells drilled deeper than the Mesaverde formation.
Exhibit 17	04/04/1973	13th Amendment to Operating Agreement (Costs Under Operating Agreement changed – Pictured Cliffs/Chacra wells) Letter agreement between El Paso Natural Gas Company and Brookhaven Oil Company, *et al.* amending terms of GLA-46 to provide for the costs of drilling dual Pictured Cliffs-Chacra wells and, separately, Chacra wells.
Exhibit 18	10/11/1974	Internal memorandum, El Paso Natural Gas Company. Discussion of the 1974 drilling program under GLA-46 and Brookhaven's agreement for the recovery of drilling costs for Pictured Cliffs wells. Thomas Scott, President of Brookhaven, indicates dissatisfaction with delays in the drilling program and threatens to withdraw from the cost recovery agreement. Mr. Scott "also stated that he would like to see the remaining undrilled blocks he owns an interest in drilled."
Exhibit 19	11/07/1974	Correspondence from Thomas B. Scott, Jr., President of Brookhaven Oil Company to C. L. Perkins, Senior Vice-President of El Paso Natural Gas Company. The letter references the drilling cost recovery agreement with El Paso: "Therefore, I would be willing to permit the present day actual costs if El Paso would drill some wells on our properties, and I was thinking particularly of the properties we jointly have in the so-called Cedar Hill area, Townships 31 north and 32 north, 10 west, San Juan County, New Mexico."
	11/15/1974	14th Amendment to Operating Agreement (with Amoco) (Costs under Operating Agreement changed – Pictured Cliffs wells)
Exhibit 21	12/05/1974	Correspondence from Brookhaven Oil Company (Thomas Scott) to El Paso Natural Gas Company (D. N. Canfield). The letter returns El Paso's November 15, 1974 amendment to GLA-46 unexecuted and demands El Paso satisfy its drilling obligations under GLA-46. "There are probably more than twenty undrilled Pictured Cliffs and Farmington sand locations."
Exhibit 22	01/14/1975	Internal memorandum, El Paso Natural Gas Company. Exhibits and plats showing all acreage subject to Brookhaven GLA-46, along with wells scheduled to be drilled on 1974 and 1975 drilling programs.
Exhibit 23	02/25/1975	Correspondence from Brookhaven Oil Company (Thomas Scott) to El Paso Natural Gas Company (D. N. Canfield). Brookhaven agrees to amend Section 5D1 of GLA-46 to

		increase the costs for drilling Mesaverde wells from $45,000.00 to $90,000.00, subject to subsequent agreement on the program for drilling Pictured Cliffs wells. "Because we do not agree with drilling Mesaverde wells purely for the reason of accelerating income, Brookhaven and Dacresa will not require any specific number of wells to be drilled within any specific time."
Exhibit 24	03/13/1975	15th Amendment to Operating Agreement (with Amoco) (Costs under Operating Agreement changed – Mesaverde wells)
	03/27/1975	Letter agreement between El Paso Natural Gas Company and Brookhaven Oil Company and Dacresa Corporation amending paragraph 5D1 of GLA-46 to provide, among other things that Brookhaven's obligation to pay its share of drilling costs out of production shall not exceed....as to a Mesaverde well, $45,000.00 or one half of the estimated cost of $90,000.00. "In consideration for your execution of this letter agreement, El Paso agrees to drill, or cause to be drilled, twelve gross wells on acreage covered by the Operating Agreement of November 27, 1951..."
Exhibit 25	03/31/1975	Internal memorandum, El Paso Natural Gas Company: Discusses the amendment of GLA-46 and the addition of six additional Pictured Cliffs wells to the company's drilling program.
Exhibit 26	04/03/1975	Correspondence from Brookhaven Oil Company to El Paso Natural Gas Company documenting the amendment of the drilling costs provisions of GLA-46 and the subsequent letter agreement of April 4, 1973.
Exhibit 27	04/03/1975	Letter agreement between Brookhaven Oil Company and El Paso Natural Gas Company amending the terms of the 11/27/1951 GLA-46 agreement to provide for an increase in the recoupable drilling costs for wells drilled to specified depths. "Brookhaven and Dacresa's obligation to pay their share of drilling costs out of production shall not exceed the following: 4. As to a Mesaverde well, $45,000.00 or one half of the estimated costs of $90,000.00."
	04/03/1975	16th Amendment to Operating Agreement (Costs under Operating Agreement changed – Pictured Cliffs, Chacra, Pictured Cliffs/Chacra and Mesaverde wells)
Exhibit 28	04/15/1975	Correspondence from El Paso Natural Gas Company (D. N. Canfield) to Brookhaven Oil Company (Tom Scott) discussing modification of GLA-46 Pictured Cliffs and Mesaverde cost recovery provisions. Discusses further the drilling of twelve Pictured Cliffs wells under the Pictured Cliffs development program.

No Exhibit	12/19/1990	26th Amendment to Operating Agreement (with Amoco) (Recoup full well cost for Scott Com #291)
	01/21/1991	Internal memorandum, Meridian Oil, refers to ongoing litigation affecting properties under GLA-46. "Continue with existing operations...in the normal course of business."
Exhibit 55	06/14/1991	Total Minatome Corporation, predecessor in interest to Energen in the subject lands and under GLA-46, advises Meridian of its election to participate in the drilling of the Scott No. 1R, the Scott No. 5R, the Atlantic Com A No. 7R and the Brookhaven Com B No. 3R wells under the terms of the GLA-46 agreement.
Exhibit 56	10/20/1992	Correspondence from John F. Zent, Area Landman, Merdian Oil to working interest owners under GLA-46 lands for three wells. The letter explains the application of the terms of GLA-46 to the drilling and recompletion of three Atlantic Com wells. With respect to the Atlantic Com A No. 7R well, Meridian explains its efforts in 1991 to have all parties execute a modern form JOA providing for a 100/300/300 non-consent penalty. As Meridian's proposal was not agreeable to the working interest owner, "Meridian proceeded to drill the well under the two governing agreements and carried a total 24.681282 percent non-consent."
Exhibit 57	10/23/1992	Correspondence from John F. Zent, Area Landman, Meridian Oil to GLA-46 parties. Meridian acknowledges the applicability of the GLA-46 Operating Agreement to the re-drill of the Scott No. 1R well in Section 29, T 32 N, R 10 W. Meridian seeks the amendment of the GLA-46 agreement to provide for the recoupment of 100 percent of actual drilling completion and facilities costs in excess of the $45,000.00 maximum recoupment provision under GLA-46.
Exhibit 58	01/14/1997	Correspondence from Burlington's title attorney, Michael Cunningham, to James Strickler, Burlington Resources, Advising that the GLA-46 Agreement "covers all depths."
Exhibit 59	04/1/1997	Correspondence from James R. J. Strickler, Senior Staff Landman for Burlington Resources Oil and Gas Company, to Total Minatome Corporation requesting farmout of acreage subject to the GLA-46 agreement. According to Burlington, the farmout agreement operates as an amendment to the November 27, 1951 GLA-46 Operating Agreement. Burlington states: "On November 27, 1951, Brookhaven Oil Company and San Juan Production Company entered into an Operating Agreement pertaining to certain lands in San Juan County, New Mexico. Said agreement as amended provided for the drilling of Mesaverde wells by San Juan Production Company and the recovery of Brookhaven's share of the costs of drilling of such wells subject to the limitations and in

		accordance with the provisions of said agreement."
Exhibit 60	05/22/1997	Correspondence from James R. J. Strickler, Senior Staff Landman for Burlington Resources to Total Minatome Corporation. Burlington acknowledges the applicability of GLA-46 to at least the Pictured Cliffs and Mesaverde formations. Contrary to the advice received from Michael Cunningham, Burlington contends that GLA-46 "was never intended to cover deep gas." Burlington solicits the amendment of GLA-46 by the execution of Burlington's April 1, 1997 JOA or, alternatively, by the release of Total's acreage under GLA-46 by farmout.
Exhibit 61	05/23/1997	Total Minatome Corporation advises Burlington Resources, Inc. of its intention to participate in the drilling of the Marcotte No. 2 well, Section 8, T 31 N, R 10 W, under the terms of GLA-46.
Exhibit 62	05/30/1997	Total Minatome Corporation advises Burlington Resources, Inc. of its intention to participate in the drilling of the Scott No. 24 well, Section 9, T 31 N, R 10 W, under the terms of GLA-46.
Exhibit 63	06/16/1997	Correspondence from James R. J. Strickler, Senior Staff Landman for Burlington Resources to Total Minatome Corporation, soliciting Total's support for a proposed deep Pennsylvanian test in Sections 8 and 9, T 31 N, R 10 W. Burlington seek Total's participation in its 14,000 foot well under a 1982 610 Operating Agreement with a 400 percent non-consent penalty, or by the election to go non-consent or by the farmout of all of Total's interest under the Archrock Prospect area in San Juan County. Both the terms of the proposed JOA and farmout agreement operate to effect the release of Total's acreage under GLA-46.
Exhibit 64	09/18/1998	Correspondence from Shannon Nichols, Landman, Burlington Resources to non-operating working interest owners, Brookhaven Com No. 8 well. "We have received a number of response electing to participate under the terms and conditions of that certain Operating Agreement dated November 27, 1951, GLA-46. It is Burlington's position that the provisions of GLA-46 do not apply to this well in as much as the drilling obligations, terms and conditions of GLA-46 were satisfied with the drilling of the initial 18 wells on GLA-46 lands as set out in the Agreement." Burlington proposes participation on a consent or non-consent basis under the JOA or by way of farmout.
Exhibit 65	11/16/1998	Correspondence from Richard Corcoran, Landman, Energen Resources to Shannon Nichols, Burlington Resources. Energen responds to Burlington's September 18, 1998 well proposal by electing to farmout its interests for the

		Brookhaven Com No. 8 well only. "Energen's election is done as an accommodation to Burlington Resources to allow the subject well to be drilled and that such election shall not be misconstrued as agreement by Energen that provisions of GLA-46 do not apply to the subject well." Rather, Energen specifically declares that GLA-46 will continue to apply to all future exploration or development efforts without limitation as to depth, interval or formation. Energen's election is good for 30 days. The subject well is not drilled and the election expires.
Exhibit 66	12/14/1998	Burlington solicits Energen's participation in the drilling of the Brookhaven Com B No. 3B well under Burlington's form of JOA.
No Exhibit	12/14/1998	Correspondence from Burlington Resources to Energen Resources MAQ, Inc., *et al*, proposing the drilling of the Brookhaven Com B No. 3B well.
No Exhibit	01/05/1999	Energen verbally approves the drilling of the Brookhaven Com B No. 3B well.
No Exhibit	01/06/1999	Energen Resources MAQ, Inc. agrees to participate in the drilling and completion of the Brookhaven Com B No. 3B well subject to the terms of the November 27, 1951 Operating Agreement and all applicable supplements and amendments (GLA-46).
Exhibit 67	01/07/1999	Correspondence from Energen to Burlington indicating its approval for the drilling of the Brookhaven Com B No. 3B well under the terms of the GLA-46 agreement.
Exhibit 68	05/18/1999	Correspondence from James R. J. Strickler, Senior Staff Landman, Burlington Resources, to GLA-46 working interest owners. Burlington proposes replacement of the GLA-46 Operating Agreement with its February 1, 1999 Joint Operating Agreement. Referring to GLA-46, Burlington says "Burlington is unwilling to accommodate the non-operators under the original earning provision due to simple economics."
Exhibit 69	08/25/1999	Correspondence from Shannon Nichols, Petroleum Landman, Burlington Resources to non-operating working interest owners (Brookhaven Com No. 8). Burlington withdraws its offer for participation options in the drilling of the Brookhaven Com No. 8 well outlined in its letter of September 18, 1998. Burlington indicates it will send another JOA for the subject well "and other lands previously subject to GLA-46."
Exhibit 70	09/09/1999	Burlington's solicits Energen's joinder in an eight well drilling program under the Operating Agreement proposed earlier. Burlington threatens to force pool Energen's interest unless a positive response is made by September 25, 1999.
Exhibit 71	09/15/1999	Burlington's second request to GLA-46 owners to participate in the drilling of the Brookhaven Com No. 8 well under the

		terms of Burlington's blanket operating agreement dated February 1, 1999.
No Exhibit	09/15/1999	Correspondence from Burlington Resources to GLA-46 working interest owners soliciting their participation in the drilling of the Brookhaven Com No. 9 well under Burlington's proposed February 1, 1999 Operating Agreement.
Exhibit 72	09/15/1999	Correspondence from Burlington Resources to GLA-46 working interest owners soliciting participation of the drilling of the Brookhaven Com B No. 3B well under the terms of Burlington's February 1, 1999 Operating Agreement.
Exhibit 73	10/11/1999	Energen affirmatively elects to participate in the drilling of the Brookhaven Com No. 8, Brookhaven Com No. 9 and the Brookhaven Com B No. 3B wells under the terms of the November 27, 1951 Operating Agreement as amended (GLA-46).
	10/11/1999	Energen elects to participate in the drilling and completion of the Brookhaven Com No. 9 well subject to the terms of the Operating Agreement dated November 27, 1951, as amended (GLA-46).
	10/11/1999	Energen elects to participate in the drilling and completion of the Brookhaven Com B No. 3B well subject to the terms of that certain operating agreement dated November 27, 1951, as amended, (GLA-46).
	10/13/1999	Energen receives notice of Burlington's application for compulsory pooling before the NMOCD.
Exhibit 75	10/13/1999	Correspondence from John F. Zent, Land Manager, Burlington Resources to Richard P. Corcoran, Land Manager, Energen Resources Corporation. Burlington responds to Energen's election to participate in the drilling of the Brookhaven Com 8, Brookhaven Com 9 and Brookhaven Com B No. 3B wells under the terms of GLA-46. Burlington asserts that GLA-46 does not govern the drilling of additional new wells on the subject acreage. Burlington indicates that it has initiated compulsory pooling proceedings before the NMOCD to "expedite a final resolution."
	01/02/2000	NMOCD Examiner Hearing on consolidated cases 12276 and 12277. At the hearing, Burlington's witnesses admit the continued applicability of GLA 46.

Exhibit 29	03/04/1976	Internal memorandum, El Paso Natural Gas Company, documenting discussions with Tom Scott of Brookhaven Oil Company to amend the Pictured Cliffs costs recovery provisions of GLA-46. "In consideration for this, El Paso would schedule ten Pictured Cliffs wells to be drilled on farmout acreage before the end of the year."
Exhibit 30	04/19/1976	17th Amendment to Operating Agreement (Pay costs of wells – not carried)
Exhibit 31	04/19/1976	18th Amendment to Operating Agreement: Correspondence from El Paso Natural Gas Company (Don Wadsworth) to Brookhaven Oil Company (Tom Scott) documenting, among other things, a letter agreement providing for the drilling of ten Pictured Cliffs wells and four Mesaverde wells during 1976.
Exhibit 32	04/21/1976	Correspondence to Don Wadsworth, El Paso Natural Gas, from Thomas Scott, President, Brookhaven
Exhibit 33	05/03/1976	Internal Memorandum, El Paso Natural Gas Company, EPNG's practice for cost allocations for dual completions (P.C. and Tertiary Sands) was to bill GLA-46 rates to P.C. and 100% of actual costs for Tertiary Sands, as there was no specific amendment addressing costs for Tertiary Sands formation wells.
Exhibit 34	05/20/1976	19th Amendment to Operating Agreement: Correspondence from El Paso Natural Gas Company to Brookhaven Oil Company, *et al.* requesting amendment of GLA-46 to address recovery of drilling costs for Tertiary sands wells.
Exhibit 35	05/20/1976	Internal Memorandum, El Paso Natural Gas Company: Discusses operation of GLA-46 Agreement where costs of drilling to unspecified formation are not addressed.
Exhibit 36	07/14/1976	El Paso Natural Gas internal memorandum, from Don Wadsworth, to D. C. Cowart
Exhibit 37	10/28/1976	20th Amendment to Operating Agreement: Letter agreement among Brookhaven Oil Company, Dacresa Corporation and El Paso Natural Gas Company amending paragraph 5D of the GLA-46 Operating Agreement to provide for the participation in 100 percent of well costs, limited only to the Atlantic Com A No. 7A and Atlantic Com B No. 8A Mesaverde wells.
Exhibit 38	11/16/1976	21st Amendment to Operating Agreement (Pay costs of wells – not carried)
Exhibit 39	03/16/1977	22nd Amendment to Operating Agreement (Pay costs of wells – not carried)
Exhibit 40	03/16/1977	Internal memorandum, El Paso Natural Gas Company: Documentation of agreement among Brookhaven, Dacresa and El Paso for the non-operators to pay their share of costs for ten Mesaverde infield wells drilled under El Paso's 1977 drilling program. The memorandum repeats that Mesaverde well costs under GLA-46 are $90,000.00 per well.

Exhibit 41	01/23/1978	23rd Amendment to Operating Agreement (Pay costs of wells – not carried)
Exhibit 42	01/23/1978	Correspondence from Brookhaven Oil Company (Thomas B. Scott, Jr.) to El Paso Natural Gas Company reiterating that costs of drilling program wells for 1978 drilling program is in accordance with 1975 and 1976 letter agreements amending GLA-46. El Paso notes concurrence.
Exhibit 43	08/07/1979	Correspondence from Lear Petroleum Corporation, Inc., successor-in-interest to Brookhaven Oil Company, to El Paso Natural Gas Company advising that Lear wishes to have its share of drilling costs recouped out of production pursuant to the amendatory letter dated April 3, 1975.
Exhibit 44	07/03/1985	Correspondence from Lear Petroleum Corporation, Inc. to El Paso Exploration Company advising that Lear will approve El Paso's AFE for the drilling of the Scott No. 2 in Section 31, T 32 N, R 10 W without waiver of any rights under the November 27, 1951 GLA-46 agreement.
Exhibit 45	07/19/1985	El Paso seeks clarification of Lear's July 3, 1985 letter. El Paso asked whether Lear is willing to release the GLA-46 agreement, for this well only.
Exhibit 46	07/25/1985	Lear Petroleum responds to El Paso's July 19, 1985 letter and advises that it expects to be reimbursed for the costs of drilling if the subject well is determined to be an "obligation well" under the GLA-46 agreement.
	08/08/1986	Letter agreement between Meridian Oil and Lear Petroleum amending the terms of the GLA-46 Operating Agreement to include gas balancing provisions.
Exhibit 47	09/02/1987	24th A Amendment to Operating Agreement (with Amoco) (Non-consent – Atlantic D Com E #6 R) The amendment provides for a 200 percent non-consent provision for actual drilling costs, payable out of production.
Exhibit 48	09/02/1987	24th B Amendment to Operating Agreement (with Potenziani) (Non-consent – Atlantic D Com E #6 R) The amendment provides for a 100 percent non-consent provision for actual drilling costs, payable out of production.
Exhibit 49	11/03/1987	25th Amendment to Operating Agreement (with Amoco) (Recoup full well cost)
	11/03/1987	Amendment # 25 provides that paragraph 5D1 of the GLA-46 is amended to allow Amoco to pay 100 percent of its actual drilling costs for three specified Fruitland coal wells.
Exhibit 50	12/07/1987	Meridian circulates GLA-46 Gas Balancing Agreement (GBA) Amendment to all GLA-46 owners. GBA Para. 13: Gas balancing "in effect as long as Operating Agreement is in effect."
Exhibit 51	07/26/1989	Internal memorandum, Meridian Oil Company: Discusses the possible acquisition of interests under the GLA-46 agreement

		and documents Meridian's interpretation of the agreement as follows: "EPPC carries Amoco, *et al.*, and recoups drilling costs as limited below out of one half of each parties' networking interest. Production from one well should not be used to pay drilling costs of another well." Drilling costs to be recouped from Amoco, *et al.* are limited to each formation and do not including casing. Casing is furnished by EPPC without reimbursement. Mesaverde $45,000.00 "The agreement gives EPPC control of the acreage because the other parties have no way to propose and force wells to be drilled; however, EPPC is required to carry the other parties unless the agreement is amended for each party either join in the well or allow EPPC to recoup its proportionate share of the actual costs of the well. This is what was done on the Scott wells. Unfortunately, each time we wish to drill a well, we have to amend the agreement. An attempt in early 1988 to replace the old Operating Agreement with a modern 1982 form agreement was not favorably received by Amoco or Minatome."
Exhibit 52	01/15/1990	Contract Summary Sheet. According to Meridian, Gas Balancing Agreement Amendment applies to all GLA-46 parties.
Exhibit 53	02/27/1990	Meridian compiles a comprehensive list of GLA-46 acreage and wells.
Exhibit 54	06/14/1990	Total Minatome Corporation participates in drilling of Atlantic Com A #7-R under terms of GLA-46. (See Meridian's 10/20/92 letter: Well drilled under the GLA-46 "Governing Agreement.")
	06/15/1990	Internal memorandum, Meridian Oil, Brief of GLA-46: Brief Heading: GLA 46, Dated 11/27/51, Status: Active "Pursuant to Operating Agreement of 11-27-51: - EPNG was obligated to fully develop acreage in the Mesaverde formation." "- EPNG has authority to drill all wells without consent of other parties. Such parties are entitled to copies of well logs, tests and reports and access to the derrick floor." References memo of Tom Hawkins dated July 26, 1989 (not attached).

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 8606
Order No. R-8013

APPLICATION OF DOYLE HARTMAN FOR SIMULTANEOUS DEDICATION AND COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8 a.m. on July 2, 1985, at Santa Fe, New Mexico, before Examiner Gilbert P. Quintana.

NOW, on this 20th day of August, 1985, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, Doyle Hartman, seeks an order pooling all mineral interests from the surface to the base of the Jalmat Gas Pool underlying the NW/4 of Section 8, Township 24 South, Range 37 East, NMPM, Lea County, New Mexico, forming a previously approved 160-acre non-standard spacing and proration unit in the Jalmat Gas Pool.

(3) The applicant proposes to simultaneously dedicate said gas proration unit to his existing E. E. Jack Well No. 1 located 1980 feet from the North line and 660 feet from the West line (Unit E) of said Section 8 and his proposed E. E. Jack Well No. 5 to be drilled at a standard location within said unit.

(4) Marilyn A. Tarlton, interest owner in the subject proration unit and trustee of the surviving trustor's trust of the Lortscher Family Trust, dated November 26, 1980, has not agreed to the drilling of said E. E. Jack Well No. 5.

EXHIBIT 8

OCT 23 1985

(5) Evidence was presented showing that an operating agreement entitled, "Operating Agreement", dated January 16, 1951, covering the subject unit area, was entered into by and between Howard Hogan, operator, and Charles T. Scott, Harold S. Russell, Herbert J. Schmitz, and F. D. Lortscher, non-operators.

(6) Said operating agreement was modified December 15, 1954, by an agreement entitled, "Modification of Operating Agreement" and was entered into by and between R. Olsen, operator, and the same non-operators in Finding No. (5) above.

(7) The applicant, Doyle Hartman, controls 66.667 percent of the subject proration unit, including the titles of Howard Hogan, R. Olsen, Herbert J. Schmitz, and Charles T. Scott, Jr.

(8) Marilyn A. Tarlton controls the title of F. D. Lortscher, which is 20 percent of the subject proration unit.

(9) Ms. Tarlton contends that the applicant, other interest owners, and herself are governed by the operating agreements in Findings Nos. (5) and (6) above, hereafter referred to as the "Agreements."

(10) The "Agreements" have provisions for the drilling of additional wells on the subject proration unit, including provisions for non-consent drilling risk penalties, drilling supervision charges, and production supervision charges.

(11) The applicant failed to provide evidence to refute that the "Agreements" are not binding and do not govern the operation of the subject proration unit.

(12) Because of a lack of evidence to the contrary, it appears that the "Agreements" are current binding operating agreements for the subject proration unit, having provisions governing those issues to be addressed in compulsory pooling cases obviating the need for such a hearing in this case.

(13) The compulsory pooling portion of this application should be denied.

(14) The simultaneous dedication portion of this application should be approved, provided the proposed new well is drilled under the provisions of the "Agreements."

IT IS THEREFORE ORDERED THAT:

(1) The portion of the application of Doyle Hartman seeking an order pooling all mineral interests from the surface to the base of the Jalmat Gas Pool underlying the NW/4 of Section 8, Township 24 South, Range 37 East, NMPM, Lea County, New Mexico, is hereby denied.

(2) The previously approved 160-acre non-standard gas proration unit, comprising the NW/4 of said Section 8, shall be simultaneously dedicated to the proposed E. E. Jack Well No. 5 and the applicant's E. E. Jack Well No. 1 located in Unit E of said Section 8 provided the E. E. Jack Well No. 5 is drilled under the terms of the "Agreements."

(3) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

R. L. STAMETS
Director

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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. 10658
ORDER NO. R-9841

APPLICATION OF MEWBOURNE OIL COMPANY FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on January 21, 1993, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 3rd day of February, 1993, the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, Mewbourne Oil Company, seeks an order pooling all mineral interests from the base of the Abo formation to the base of the Morrow formation, underlying the following described acreage in Section 35, Township 17 South, Range 27 East, NMPM, Eddy County, New Mexico, and in the following manner:

> the W/2 forming a standard 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within said vertical extent, which presently includes, but is not necessarily limited to, the Undesignated Scoggin Draw-Atoka Gas Pool, Undesignated North Illinois Camp-Morrow Gas Pool, Undesignated Scoggin-Morrow Gas Pool and Undesignated Logan Draw-Morrow Gas Pool;

the NW/4 forming a standard 160-acre gas spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing within said vertical extent, which presently includes only the Undesignated Logan Draw-Wolfcamp Gas Pool; and,

the E/2 NW/4 forming a standard 80-acre oil spacing and proration unit for any pools developed on 80-acre spacing within said vertical extent, of which there are currently none.

(3) Said units are to be dedicated to the applicant's Chalk Bluff "35" Federal Well No. 2, to be drilled at an orthodox gas well location within the SE/4 NW/4 (Unit F) of said Section 35.

(4) Devon Energy Corporation (Devon), successor owner of Malco Refineries, Inc.'s interest in the NW/4 and NW/4 SW/4 of said Section 35, appeared at the hearing through counsel and opposed the application on the basis that its interest is governed by an operating agreement with Mewbourne Oil Company, who is the successor owner of the Stanolind Oil and Gas Company underlying the same acreage.

(5) Devon claims its interest is bound under the agreements reached by Malco Refineries, Inc. and Stanolind Oil and Gas Company in July, 1953 and April, 1958, being Devon's Exhibit "A" and "B" in this case.

Mewbourne, also represented by counsel, contends that a supplemental agreement is necessary where acreage outside the "contract lands" are included in a spacing unit, being the NE/4 SW/4 and S/2 SW/4 of said Section 35, which is 100% Mewbourne-contracted properties. Since both parties have not agreed to a "supplemental agreement", Mewbourne contends that the original agreement is invalid and seeks to force-pool Devon's interest into the W/2 spacing unit.

FINDING: Since under the "force-pooling" statutes (Chapter 70-2-17 of the NMSA 1978) there exists in this matter an agreement between the two parties owning undivided interests in a proposed 320-acre gas spacing and proration unit, an order from the Division pooling said parties is unnecessary.

(6) This case should therefore be dismissed.

IT IS THEREFORE ORDERED THAT:

(1) Case No. 10658 is hereby dismissed.

(2) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

WILLIAM J. LEMAY
Director

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. 11434
ORDER NO. R-10545

APPLICATION OF MERIDIAN OIL, INC. FOR COMPULSORY POOLING AND AN UNORTHODOX GAS WELL LOCATION, SAN JUAN COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on January 11, 1996, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 22nd day of February, 1996, the Division Director, having considered the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, Meridian Oil, Inc. ("Meridian"), seeks an order pooling all mineral interests in the Blanco-Mesaverde Pool underlying an existing 313.63-acre gas spacing and proration unit comprising Lots 1, 2, 7, 8, 9, 10, 15, and 16 (the E/2 equivalent) of Section 23, Township 31 North, Range 9 West, NMPM, San Juan County, New Mexico, for the drilling and completion of its proposed Seymour Well No. 7-A to be drilled at an unorthodox infill gas well location 1,615 feet from the South line and 2,200 feet from the East line (Unit J) of said Section 23.

(3) Said unit is currently dedicated to Meridian's Seymour Well No. 7 (API No. 30-045-10597), located at a standard gas well location 1,170 feet from the North line and 970 feet from the East line (Lot 1/Unit A) of said Section 23.

(4) By New Mexico Oil Conservation Commission ("Commission") Order No. 799, dated February 25, 1949, the Blanco-Mesaverde Pool was created, defined, and 320-acre spacing was established therefor. By Order No. R-128-C, issued on December 16, 1954 the Commission instituted gas prorationing in the Blanco-Mesaverde Pool to be made effective March 1, 1955. By Order No. R-1670-T, dated November 14, 1974, the rules governing the Blanco-Mesaverde Pool were amended to permit the optional "infill drilling" of an additional well on each 320-acre gas spacing and proration unit within the Blanco-Mesaverde Pool.

(5) Prior to the hearing Doyle Hartman and Margaret Hartman, doing business as Doyle Hartman, Oil Operator ("Hartman"), who own a 12.500% working interest in the subject acreage, filed a motion to dismiss this case. By letter dated January 8, 1996 the Division denied Hartman's request and this matter remained on the Division's docket for the immediate hearing.

(6) At the time of the hearing Hartman and Four Star Oil & Gas Company ("Four Star") again requested that this matter be dismissed on the grounds that the subject acreage is currently subject to an Operating Agreement and a Communitization Agreement that have been in effect since 1953 and that Meridian failed to undertake reasonable efforts to obtain voluntary joinder of their respective interests in drilling the proposed infill well.

(7) Meridian was allowed to present testimony on land and ownership matters in this case, which indicates that:

(a) the E/2 equivalent of said Section 23 consists of two separate Federal oil and gas leases, each dated May 1, 1948, with:

(i) tract 1 comprising the NE/4 equivalent of said Section 23 issued to John C. Dawson; and,

(ii) tract 2 comprising the SE/4 equivalent of said Section 23 issued to Claude A. Teel;

(b) on March 30, 1953 a communitization agreement was made for the E/2 equivalent of said Section 23 between Southern Union Gas Company, Meridian's predecessor in interest and as operator of the Seymour Well No. 7, and Skelly Oil Company, Four Star's predecessor in interest;

(c) on April 10, 1953, the working interest owners in the E/2 equivalent of said Section 23 entered into an operating agreement which:

(i) provided for the drilling of the Seymour Well No. 7 in Unit "A" of said Section 23;

(ii) designated Southern Union Gas Company operator of the unit;

(iii) governs operations in the Mesaverde formation in the E/2 equivalent of said Section 23; and,

(iv) binds the successors and assigns of the original parties; and,

(d) on November 10, 1953 Southern Union Gas Company spudded the Seymour Well No. 7 and completed it as a producing Mesaverde gas well to which the E/2 equivalent of said Section 23 was dedicated.

(8) By letters dated January 27 and April 12, 1993 Meridian advised all working interest owners within this 320-acre unit that the 1953 Operating Agreement did not contain any subsequent well provisions and therefore proposed a new Joint Operating Agreement for the drilling of an "infill" Blanco-Mesaverde well in the SE/4 equivalent of said Section 23.

(9) Meridian by letter dated October 31, 1995 renewed its request for a voluntary agreement of the working interests for the drilling of the proposed infill well. Eight days later by letter dated November 8, 1995 Meridian filed with the Division its application to force pool this acreage for the Seymour Well No. 7-A.

(10) *It is both Four Star's and Hartman's position that pursuant to Section 70-2-17.C of the New Mexico Oil & Gas Act of N.M.S.A. 1978 the owners of Mesaverde rights in the E/2 equivalent of said Section 23 have a voluntary agreement in place and that the Division may not force pool this acreage.*

FINDING: Pursuant to Section 70-2-17.E. of said Act the Division may modify the 1953 Operating Agreement to the extent necessary to prevent waste. The Division therefore has jurisdiction over this matter.

(11) Meridian, however, failed to make reasonable efforts to adequately obtain voluntary joinder of all working interests for further development of this acreage prior to filing its application, see Finding Paragraph (9), above; therefore, this case should be dismissed at this time.

IT IS THEREFORE ORDERED THAT:

Case No. 11434 is hereby dismissed.

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

SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

WILLIAM J. LEMAY
Director

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. 11960
Order No. R-11009

APPLICATION OF REDSTONE OIL & GAS COMPANY FOR COMPULSORY POOLING AND AN UNORTHODOX GAS WELL LOCATION, EDDY COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on April 2, 1998, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 28th day of July, 1998, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given and, the Division has jurisdiction of this case and its subject matter.

(2) At the request of the applicant, the record, evidence and testimony presented in Case No. 11927, heard by the Division on February 5th and March 5th, 1998, were incorporated in this case.

(3) The applicant, Redstone Oil & Gas Company (Redstone), seeks an order pooling all mineral interests from the surface to the base of the Morrow formation underlying the following described area in Section 12, Township 23 South, Range 24 East, NMPM, Eddy County, in the following manner:

> all of Section 12 thereby forming a standard 640-acre gas spacing and proration unit for any formations and/or pools spaced on 640 acres within that vertical extent, which presently include but are not necessarily limited to the Rock Tank-Lower Morrow and Rock Tank-Upper Morrow Gas Pools; and,

the N/2 of Section 12 thereby forming a standard 320-acre gas spacing and proration unit for any formations and/or pools spaced on 320 acres within that vertical extent.

These units are proposed to be dedicated to a well to be drilled at an unorthodox gas well location 500 feet from the North line and 2515 feet from the East line (Unit B) of Section 12.

(4) This case was heard in conjunction with Case No. 11877, a competing force pooling application filed by Fasken Land and Minerals, Ltd. (Fasken), which was heard by the Division on February 5th and March 5th, 1998.

(5) By letter dated June 23, 1998, Redstone advised the Division that it has reached a voluntary agreement with Fasken with regards to the development of the subject acreage, and requested that the force pooling portion of this case be dismissed.

(6) Redstone's request to dismiss the force pooling portion of this case should be granted.

(7) The evidence and testimony presented in this case indicates that:

a) the proposed well is located within both the Rock Tank-Upper Morrow and Rock Tank-Lower Morrow Gas Pools, both of which are governed by special rules and regulations promulgated by Division Order No. R-3428, which require standard 640-acre spacing and proration units with wells to be located no closer than 1650 feet from the outer boundary of the section nor closer than 330 feet from any governmental quarter-quarter section line or subdivision inner boundary;

b) the proposed well is located within one mile of the Rock Tank-Upper Pennsylvanian Pool, which is currently governed by Rule 104.C. of the Division Rules and Regulations, which requires standard 320-acre gas spacing and proration units with wells to be located no closer than 1650 feet from the nearest end boundary nor closer than 660 feet from the nearest side boundary of the spacing unit nor closer than 330 feet from any quarter-quarter section line or subdivision inner boundary; and,

c) applicant's geologic evidence and testimony demonstrate that a well drilled at the proposed location will best enable the applicant to recover the remaining gas reserves within the Upper Morrow "A" Sand interval underlying Section 12.

(8) Excluding Fasken, which has effectively withdrawn its objections in this case, no other offset operator and/or interest owner appeared at the hearing in opposition to the proposed unorthodox gas well location.

(9) Approval of the proposed unorthodox gas well location will provide the applicant the opportunity to produce its just and equitable share of the gas underlying the proposed proration unit(s), and will not violate correlative rights.

IT IS THEREFORE ORDERED THAT:

(1) The application of Redstone Oil & Gas Company for an order pooling all mineral interests from the surface to the base of the Morrow formation underlying all of Section 12, Township 23 South, Range 24 East, NMPM, Eddy County, New Mexico, thereby forming a standard 640-acre gas spacing and proration unit, and the N/2 of Section 12 thereby forming a standard 320-acre gas spacing and proration unit, these units to be dedicated to a well to be drilled at an unorthodox gas well location 500 feet from the North line and 2515 feet from the East line (Unit B) of Section 12, is hereby dismissed.

(2) The applicant, Redstone Oil & Gas Company, is hereby authorized to drill a well at an unorthodox gas well location 500 feet from the North line and 2515 feet from the East line (Unit B) of Section 12, Township 23 South, Range 24 East, NMPM, Eddy County, New Mexico, to test the Rock Tank-Upper Morrow Gas Pool, Rock Tank-Lower Morrow Gas Pool and Rock Tank-Upper Pennsylvanian Gas Pool.

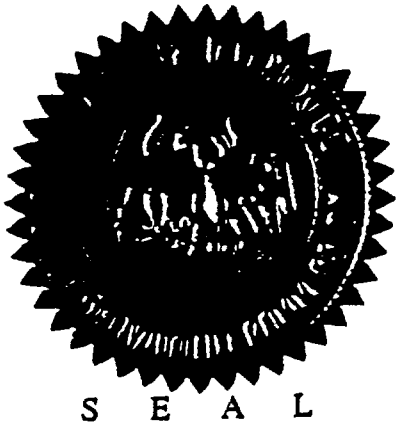
(3) All of Section 12 shall be dedicated to the well forming a standard 640-acre gas spacing and proration unit in the Rock Tank-Upper and Rock Tank-Lower Morrow Gas Pools, and the N/2 of Section 12 shall be dedicated to the well forming a standard 320-acre gas spacing and proration unit in the Rock Tank-Upper Pennsylvanian Gas Pool.

(4) Jurisdiction is hereby retained for the entry of such further orders as the Division may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

LORI WROTENBERY
Director



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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. 11927
Order No. R-10977

APPLICATION OF REDSTONE OIL & GAS COMPANY FOR COMPULSORY POOLING AND UNORTHODOX GAS WELL LOCATION, EDDY COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on February 19 and March 5, 1998, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 17th day of April, 1998, the Division Director, having considered the record and the recommendations of the Examiner, and being fully advised,

FINDS THAT:

(1) The applicant, Redstone Oil & Gas Company (Redstone), seeks an order pooling all mineral interests from the surface to the base of the Morrow formation underlying the following described acreage in Section 12, Township 23 South, Range 24 East, NMPM, Eddy County, New Mexico, and in the following manner:

> all of Section 12 thereby forming a standard 640-acre gas spacing and proration unit for any and all formations and/or pools spaced on 640 acres within said vertical extent which presently includes but is not necessarily limited to the Rock Tank-Upper Morrow and Rock Tank-Lower Morrow Gas Pools; and,
>
> the N/2 thereby forming a standard 320-acre spacing and proration unit for any and all formations and/or pools spaced on 320 acres within said vertical extent.

Said units are to be dedicated to a well to be drilled at an unorthodox gas well location 500 feet from the North line and 2515 feet from the East line (Unit B) of Section 12.

(2) This case was consolidated with Case No. 11877 at the February 5, 1998 hearing for the purpose of testimony. In competing companion Case No. 11877, Fasken Land and Minerals, Ltd. (Fasken) seeks an order pooling all mineral interests from the surface to the base of the Morrow formation underlying all of Section 12, Township 23 South, Range 24 East, NMPM, Eddy County, New Mexico, thereby forming a standard 640-acre gas spacing and proration unit for the Rock Tank-Upper Morrow and Rock Tank-Lower Morrow Gas Pools, and the N/2 of said Section 12 thereby forming a standard 320-acre spacing and proration unit for any and all formations and/or pools spaced on 320 acres within said vertical extent. Said units are to be dedicated to the applicant's proposed Carnero "12" Federal Com Well No. 1 to be drilled at an unorthodox gas well location 500 feet from the North line and 2265 feet from the West line (Unit C) of Section 12.

(3) Subsequent to the February 5, 1998 hearing, Fasken filed a motion to dismiss Redstone's application in Case No. 11927 on the basis that Redstone's attempt to reach a voluntary agreement with the various interest owners in Section 12 for the drilling of its proposed well is insufficient for the following reasons:

1) On January 26, 1998, counsel for Redstone Oil & Gas Company filed a compulsory pooling application with the Division seeking to pool acreage within Section 12, Township 23 South, Range 24 East, NMPM (Case No. 11927); and,

b) Redstone did not formally propose the drilling of its well to the various interest owners in Section 12 until February 9, 1998.

(4) Oral arguments were presented to the Division on March 5, 1998, at which time the Division granted Fasken's motion to dismiss.

(5) Case No. 11927 should therefore be dismissed.

IT IS THEREFORE ORDERED THAT:

(1) The application of Redstone Oil & Gas Company for an order pooling all mineral interests from the surface to the base of the Morrow formation underlying all of Section 12, Township 23 South, Range 24 East, NMPM, Eddy County, New Mexico, thereby forming a standard 640-acre gas spacing and proration unit for any and all formations and/or pools spaced on 640 acres within said vertical extent which presently includes but is not necessarily limited to the Rock Tank-Upper Morrow and Rock Tank-Lower Morrow Gas Pools, and the N/2 of Section 12 thereby forming a standard 320 acre spacing and proration unit for any and all formations and/or pools spaced on 320-acres within said vertical extent, said units to be dedicated to a well to be drilled at an unorthodox gas well location 500 feet from the North line and 2515 feet from the East line (Unit B) of Section 12, is hereby dismissed.

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

LORI WROTENBERY
Director

S E A L

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. 11877
Order No. R-11007

APPLICATION OF FASKEN LAND AND MINERALS, LTD. FOR COMPULSORY POOLING AND AN UNORTHODOX GAS WELL LOCATION, EDDY COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on February 5 and March 5, 1998, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 28th day of July, 1998, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given and the Division has jurisdiction of this case and its subject matter.

(2) Case Nos. 11877 and 11927 were consolidated at the time of the February 5th hearing for the purpose of testimony.

(3) The applicant in Case No. 11877, Fasken Land and Minerals, Ltd. (Fasken), seeks an order pooling all mineral interests from the surface to the base of the Morrow formation underlying the following described area in Section 12, Township 23 South, Range 24 East, NMPM, Eddy County, New Mexico, in the following manner:

> all of Section 12 thereby forming a standard 640-acre gas spacing and proration unit for formations and/or pools spaced on 640 acres within that vertical extent, which presently include but are not necessarily limited to the Rock Tank-Upper Morrow and Rock Tank-Lower Morrow Gas Pools;

the N/2 of Section 12 thereby forming a standard 320-acre gas spacing and proration unit for any formations and/or pools spaced on 320 acres within that vertical extent which presently include but are not necessarily limited to the Undesignated Rock Tank-Upper Pennsylvanian Gas Pool.

These units are to be dedicated to the applicant's proposed Carnero "12" Federal Com Well No. 1 to be drilled at an unorthodox gas well location 500 feet from the North line and 2265 feet from the West line (Unit C) of Section 12.

(4) This case was originally heard in conjunction with Case No. 11927, a competing force pooling application filed by Redstone Oil & Gas Company (Redstone).

(5) Pursuant to Fasken's motion to dismiss, Case No. 11927 was dismissed by the Division by Order No. R-10977 entered on April 17, 1998.

(6) At the request of Redstone, the record, evidence and testimony presented in Case No. 11927 were incorporated in Case No. 11960, which was heard by the Division on April 2, 1998.

(7) By letter dated July 1, 1998, Fasken advised the Division that it has reached a voluntary settlement with Redstone with regards to the development of the subject acreage, and requested that Case No. 11877 be dismissed.

(8) Fasken's request for dismissal should be granted.

IT IS THEREFORE ORDERED THAT:

(1) The application of Fasken Land and Minerals, Ltd., for an order pooling all mineral interests from the surface to the base of the Morrow formation underlying all of Section 12, Township 23 South, Range 24 East, NMPM, Eddy County, New Mexico, thereby forming a standard 640-acre gas spacing and proration unit, and the N/2 of Section 12 thereby forming a standard 320-acre gas spacing and proration unit, these units to be dedicated to its proposed Carnero "12" Federal Com Well No. 1 to be drilled at an unorthodox gas well location 500 feet from the North line and 2265 feet from the West line (Unit C) of Section 12, is hereby dismissed.

(2) Jurisdiction is hereby retained for the entry of such further orders as the Division may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

LORI WROTENBERY
Director

S E A L

KELLAHIN AND KELLAHIN
ATTORNEYS AT LAW
EL PATIO BUILDING
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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)

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

January 28, 2000

Via Facsimile

J. Scott Hall, Esq
Miller, Stratvert & Torgerson, P.A.
150 W. Washington Avenue, Suite 300
Santa Fe, New Mexico 87504

Re: NMOCD Case 12276 and NMOCD Case 12277
Applications of Burlington Resources Oil & Gas Company
San Juan County, New Mexico

Dear Scott:

Please find enclosed a copy of Burlington's Exhibit 7 which was introduced at the January 20, 2000 hearing.

At the conclusion of the hearing of the referenced case on January 20, 2000, Mr. Ashley and Mr. Carroll continued these cases to the February 3, 2000 docket in order to allow me to amend Burlington's compulsory pooling applications to include the alternative relief of having the Division modify the 1951 GLA-46 Agreement pursuant to Section 70-2-17.E NMSA (1978). On Monday, January 24, 2000, I filed the amended applications and provided you with copies.

At this point, Burlington has presented its evidence, amended its applications and would ask that Mr. Ashley take these cases under advisement at the February 3, 2000 hearing. I do not plan to be at this hearing.

I propose that we submit our respective draft orders to Mr. Ashley on or before the February 3rd hearing. If you are planning to do anything in addition to submitting a draft order at the February 3rd hearing, I would appreciate you advising by Monday, January 31, 2000.

Very truly yours,

W. Thomas Kellahin

cfx: Oil Conservation Division
Attn; Mark Ashley, Hearing Examiner

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PLEASE REPLY TO SANTA FE

January 28, 2000

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
117 North Guadalupe Street
Santa Fe, New Mexico 87501

Re: NMOCD Case Nos. 12276 and 12277; Application of Burlington Resources Oil and Gas Company for Compulsory Pooling, San Juan County, New Mexico

Dear Tom:

Thank you for your letter today transmitting the copy of the Exhibit 7 materials from the above cases.

I want to make sure that you, Examiner Ashley and I are in agreement on the status of this particular proceeding. As we left things at the conclusion of the hearing on January 20th, I understood that the Examiner deferred ruling on your speaking motion to amend your pleadings to request new relief under Section 70-2-17(F). Because I objected, the Examiner did not grant your motion for leave to amend, asking instead that we both address the issue in memorandums to be filed on February 2nd.

It is my view that Burlington's late request for relief to essentially have the Examiner re-write a farmout agreement would require a substantially different evidentiary basis than currently exists in the record. Likewise, I would have conducted completely different direct and cross-examination and would have been required to present additional evidence to address the new issues that arise under a subsection (F) case. Consequently, until the examiner decides whether this is a compulsory pooling case under Section 70-2-17(C), as originally pleaded, or is a contract re-write case under subsection (F), I do not plan on presenting additional evidence on the February 3rd

hearing. However, I do plan to be available on that day in the event the examiner calls for more oral argument from counsel.

Should you wish to discuss, please do not hesitate to call.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall

JSH/ao

cc: Mark Ashley, NMOCD

6621/23699/Kellahin7ltr.doc

MILLER, STRATVERT & TORGERSON, P. A.

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FACSIMILE TRANSMISSION COVER SHEET

DATE: January 31, 2000

TO: Mark Ashley FAX NO.: 827-8177

FROM: J. Scott Hall, Esq. OPERATOR: Amanda Olsen

MESSAGE:

NUMBER OF PAGES INCLUDING COVER SHEET: 3

IF YOU DO NOT RECEIVE THE ENTIRE DOCUMENT, PLEASE CALL OUR SANTA FE OFFICE AS SOON AS POSSIBLE AT (505) 989-9614.

* * * * * * * *

Bank of America

Bank of America Private Bank
Oil and Gas Management
TX1-497-04-07
PO Box 2546
Fort Worth, TX 76113-2546

Tel 817.390.6161
Fax 817.390.6494

January 19, 2000

Mr. Mark Ashley
New Mexico Oil Conservation Division
2040 South Pacheco Street
Santa Fe, New Mexico 87504

By Facsimile (505) 827-7177

Re: Case No. 12276 and No. 12277; Application of Burlington Resources Oil and Gas Company

Dear Mr. Ashley:

Bank of America administers trust interests for the benefit of Carolyn Nelson Sedberry, C. Fred Luthy, Jr., Cyrene Inman, The F.A. and H.B. Cronican Revocable Trust, William C. Briggs, Herbert R. Briggs, Marcia Berger, and WWR Enterprises, Inc. These working interest owners derive their interests from the former shareholders of the Dacresa Corporation and are identified as the "Dacresa Group" in the attachments to Burlington's Applications in the above-referenced cases.

The Dacresa Group succeeded to the interests of Thomas B. Scott under the November 27, 1951 Farmout and Operating Agreement (the GLA-46 Agreement). For decades, the Dacresa Group has participated in the drilling of scores of wells in the San Juan Basin under GLA-46 with Burlington and its predecessors, Meridian and El Paso Natural Gas Company. As had been past practice for decades, when the three Brookhaven wells that are the subject of these cases were proposed, Burlington was notified that the Dacresa Group would participate under the terms of the GLA-46 Agreement that governs operations on the subject lands.

Burlington's newly adopted position that the Agreement no longer applies and that it must force-pool the Dacresa Group's GLA-46 interests is directly inconsistent with its long-established conduct. For years, Burlington/Meridian/El Paso, et al have exercised exclusive operating authority and have honored the terms of GLA-46. It is our position that the Dacresa Group's working interests have been voluntarily committed to the proposed wells under its contract with Burlington. Accordingly, the Dacresa Group's interests are not subject to being force-pooled and Burlington may not use the Oil Conservation Division to rewrite its contract.

On behalf of the Dacresa Group, we respectfully request that Burlington's application be denied.

Sincerely,

Janet Cunningham

Janet Cunningham, CPL
Vice President
Oil & Gas Asset Management Group

MJ
1-19-00

WESTPORT OIL AND GAS COMPANY, INC.

410 Seventeenth Street #2300 Denver Colorado 80202-4436
Telephone: 303 573 5404 Fax: 303 573 5609

VIA OVERNIGHT MAIL

January 18, 2000

Mr. Mark Ashley
New Mexico Oil Conservation Division
2040 South Pacheco Street
Santa Fe, New Mexico 87504

Re: Case No. 12276 and No. 12277
Application of Burlington Resources Oil and Gas Company
for Compulsory Pooling
San Juan County, New Mexico

Dear Examiner Ashley:

Westport Oil and Gas Company is the owner of certain leasehold working interests that Burlington Resources seeks to have force-pooled in the above-referenced proceedings.

The working interests of Westport and its predecessors-in-interest are subject to that Farmout and Operating Agreement dated November 27, 1951, also known as the GLA-46 Agreement. Under GLA-46, Burlington (and its predecessors-in-interest) acquired the exclusive operating rights on the affected acreage and approximately 100 wells have been drilled under the terms of the agreement. In each case, Westport, Burlington, and their respective predecessors have consistently regarded GLA-46 to be the governing agreement for drilling and development. Correspondingly, consistent with past practice, Westport notified Burlington that it would participate in the drilling of the wells referenced in Burlington's applications pursuant to the terms of GLA-46.

It is Westport's position that its working interests are voluntarily committed to the proposed wells under its existing contract with Burlington; any ruling by the Conservation Division would invalidate a long-standing farmout and operating agreement between 14 companies and individuals. Consequently, Westport respectfully requests that Burlington's applications be dismissed.

WESTPORT OIL AND GAS COMPANY, INC.

By: _____
Kent S. Davis, Senior Landman

MILLER, STRATVERT & TORGERSON, P.A.
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PLEASE REPLY TO SANTA FE

January 17, 2000

Lori Wrotenbery, Chair
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: NMOCC Case # 12276 and 12277; Applications of Burlington Resources Oil & Gas Company for Compulsory Pooling, San Juan County, New Mexico
De Novo

Dear Ms. Wrotenbery:

On November 16, 1999, pursuant to an earlier agreement between counsel for the applicant, Burlington Resources Oil and Gas Company, and Energen Resources Corporation, we filed an application for Hearing *De Novo* in the above matter for the limited purpose of resolving Burlington's Motion to Quash Subpoenas. Since that time, counsel agreed to narrow the scope of discovery by eliminating geological and geophysical information and Burlington has accordingly produced documents responsive to the remaining items identified in the subpoenas. Correspondingly, for the present, there is no further need to pursue the discovery issue before the Commission and we accordingly request that Energen's *De Novo* Application be dismissed without prejudice. In withdrawing the Application, we assume and rely on Burlington's full compliance with the discovery agreement reached by counsel

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall

JSH/ao

Cc: W. Thomas Kellahin
Lyn Herbert
Rand Carroll
Mark Ashley

6621/23699/Wrotenbury5.doc

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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)

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January 13, 2000

HAND DELIVERED
11:55 AM

Scott Hall, Esq.
Miller, Stratvert & Torgerson, P.A.
150 Washington Avenue Suite 300
Santa Fe, New Mexico 87501

Re: NMOCD Case 12276 and NMOCD Case 12277
Applications of Burlington Resources Oil & Gas Company
San Juan County, New Mexico

Dear Scott:

I am enclosing the following additional documents from Burlington which you requested in your letter dated January 12, 2000:

(1) The exhibits and attachments referenced in the July 26, 1989 Memorandum from Tom Hawkins to Tommy Nusz were provided to you on November 29, 1999 as Documents numbered 000509 through 000522;

(2) The "proposal by Mr. G. T. McAlpin under cover dated September 3, 19992" referenced in the October 20, 1992 correspondence from John F. Zent to "Attached Working Interest Owners" is attached as Document numbered 0001809-0001810;

(3) Burlington believes that "any related materials referenced in the October 20, 1992 correspondence from John F. Zent" were included in the documents already provided to you with the exception of an operating agreement dated November 1, 1976 between McAlpin and Burlington which is attached as Document numbered 0001811-0001836;

(4) "Letter from Burlington to Sunwest Bank dated November 26, 1996" referenced in the correspondence from James R. Strickler to Michael Cunningham in a letter dated January 8, 1997 is attached as Document numbered 0001837-0001838;

(5) "Letter from Sunwest Bank to Burlington dated December 28, 1996" referenced in the correspondence from James R. Strickler to Michael Cunningham in a letter dated January 8, 1997 is attached as Document numbered 0001839-0001840; and

(6) The "your GLA-46 Summary" referenced in letters from Michael Cunningham to James Strickler dated January 14, 1997 and from James Strickler to Michael Cunningham dated January 8, 1997 is attached as Document numbered 00041-0001843;

These and all previous documents have been provided to you without waving Burlington's objections including relevancy, privilege, attorney work product and confidentiality.

Very truly yours,

W. Thomas Kellahin

cfx: Oil Conservation Division
Attn: Rand Carroll, Esq.
Attn: Mark Ashley, Examiner
Burlington Resources Oil & Gas Company
Attn: Alan Alexander

MILLER, STRATVERT & TORGERSON, P.A.

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January 12, 2000

BY FACSIMILE TRANSMISSION: 505-982-2047
W. Thomas Kellahin, Esq.
Kellahin & Kellahin
117 North Guadalupe Street
Santa Fe, New Mexico 87501

Re: NMOCD Case Nos. 12276 and 12277; Application of Burlington Resources Oil and Gas Company for Compulsory Pooling, San Juan County, New Mexico

Dear Mr. Kellahin:

I acknowledge, with thanks, the receipt of the additional materials under cover of your letter dated January 11, 2000. I wish to clarify the record on a couple of matters discussed in your letter:

First, the documents produced this week were clearly included within the scope of materials described both in the subpoena duces tecum issued by the Division on October 28, 1999 and in my discovery proposal of November 3, 1999 which Burlington agreed to on November 29, 1999. My December 13th letter was not a new request for additional documents. Rather, I pointed out Burlington's November 29th production was incomplete. In this regard, the production continues to be incomplete as the following documents relating to GLA-46 have yet to be provided:

> That document identified as "your GLA-46 Summary" in the January 14, 1997 correspondence from Michael Cunningham to James Strickler, Senior Staff Landman, Burlington Resources (Bates No. 849).
>
> The "proposal by Mr. G.T. McAlpin under cover dated September 3, 1992" and any related materials referenced in the October 20, 1992 correspondence from John F. Zent to "Attached Working Interest Owners".

The following documents identified in and enclosed with the January 8, 1997 correspondence from James R. J. Strickler to Michael Cunningham (Bates No. 79): "(1) Letter from Burlington to Sunwest Bank dated November 26, 1996; (2) Letter from Sunwest Bank to Burlington dated December 28, 1996; (3) GLA-46 Summary."

The exhibits and attachments referenced in the July 26, 1989 Memorandum from Tom Hawkins to Tommy Nusz.

In addition, the production of the documents relating to the litigation in W. Grafton Berger, *et al.* v. El Paso Natural Gas Company, *et al.*, is obviously incomplete. However, we do not seek the production of any additional materials relating to this litigation at this time. Burlington is requested to produce the remaining documents as soon as possible so that further delays can be avoided.

Second, certain objections are mentioned. To date, the only objections interposed by Burlington are (1) relevance and (2) availability of geologic data and ownership documents from the public record, and the production of proprietary seismic data . No other objections were asserted, and consequently, all other objections, including those relating to privilege, attorney work product and confidentiality, are waived.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall

JSH/ao

Cc: Mark Ashley – NMOCD
Rand Carroll - NMOCD
Rich Corcoran, Energen

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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)

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

January 11, 2000

Scott Hall, Esq.
Miller, Stratvert & Torgerson, P.A.
150 Washington Avenue Suite 300
Santa Fe, New Mexico 87501

HAND DELIVERED

Re: NMOCD Case 12276 and NMOCD Case 12277
Applications of Burlington Resources Oil & Gas Company
San Juan County, New Mexico

Dear Scott:

On November 29, 1999, and without any obligation to do so, Burlington accepted your proposal set forth in your letter of November 3, 1999, and provided you with 848 pages of documents. On December 13, 1999, you requested additional documents. It has taken considerable time and effort to locate these additional documents consisting of 1059 pages and numbered page 850 through page 1808. Please find those documents enclosed. These and all previous documents have been provided to you without waving Burlington's objections including relevancy, privilege, attorney work product and confidentiality.

As you know, the referenced cases were originally docketed for hearing on November 4, 1999. Since then, they have been repeatedly continued to accommodate you. They were last set for hearing on December 2, 1999. On November 30, 1999, you advised me that you could not be prepared for hearing and so as a further accommodation to you I continued them to December 16, 1999. Then your letter of December 13, 1999, requests certain additional specific documents and the cases were continued to January 20, 2000.

It is Burlington intention to proceed with the hearing of these cases on the Division's Examiner docket now scheduled for January 20, 2000.

Very truly yours,

W. Thomas Kellahin

cfx: Oil Conservation Division
Attn: Rand Carroll, Esq.
Attn: Mark Ashley, Examiner
Burlington Resources Oil & Gas Company
Attn: Alan Alexander

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PLEASE REPLY TO SANTA FE

December 16, 1999

DRC
DE
FILE: 12276 12277

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
117 North Guadalupe Street
Santa Fe, New Mexico 87501

Re: NMOCD Case Nos. 12276 and 12277; Application of Burlington Resources Oil and Gas Company for Compulsory Pooling, San Juan County, New Mexico

Dear Mr. Kellahin:

Thank you for your December 14, 1999 correspondence on the above. Let me take this opportunity to set the record straight:

At Energen's request, the Division issued subpoenas duces tecum on October 28, 1999. Rather than produce documents, Burlington filed its Motion To Quash on November 1, 1999, stating objections to the subpoenas on three grounds: (1) relevance, (2) availability of geologic data and ownership documents in the public records, and (3) the production of proprietary seismic data. Significantly, Burlington did not object on the basis of privilege. Subsequently, on November 2nd, you proposed a pre-hearing procedure to address the discovery issue by allowing additional time to produce the documents or appeal an adverse ruling on the Motion To Quash to the Commission. By correspondence dated November 2, 1999, I agreed to the proposal. Additionally, by letter of November 3, 1999, Energen undertook a good faith effort to reconcile Burlington's objections and agreed to forego the production of all geological, geophysical and engineering information "...provided Burlington agrees in-turn to produce the remaining materials identified in the subpoena." On November 16th, the Division's counsel granted Burlington's Motion To Quash and Energen accordingly filed its Application For Hearing De Novo on November 16, 1999. Subsequently, On November 29th, you wrote to me and said: "... I am accepting your proposal set forth in your letter to me dated November 3, 1999...". A number of documents were produced with your letter on that same day.

A comprehensive review of the limited documents produced by Burlington has verified that compliance with the agreement between counsel is incomplete. As identified in my letter of December 13, 1999, (copy attached), it is clear that Burlington possesses a number of additional documents and other materials that directly relate to the issue of whether Energen's interests are previously committed and are subject to being pooled. This is not, as you say, a new request for documents. Rather, we seek the production of documents described in the subpoena and clearly contemplated under our agreement.

It is hoped Burlington will honor the agreement of its counsel and produce these relevant documents sufficiently in advance of the January 20, 2000 examiner hearing.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall

Enclosure(s) – as stated

JSH/ao

Cc: Rand Carroll, NMOCD
David Catanach, NMOCD
Rich Corcoran, Energen
Rusty Cook, Energen

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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)

December 14, 1999

Via Facsimile

Scott Hall, Esq.
Miller, Stratvert & Torgerson, P.A.
150 Washington Avenue Suite 300
Santa Fe, New Mexico 87501

Re: ***NMOCD Case 12276 and NMOCD Case 12277***
Applications of Burlington Resources Oil & Gas Company
San Juan County, New Mexico

Dear Mr. Hall:

I am responding to your letter dated December 13, 1999, in which you state that you are "reluctant to have the Division hear the pooling cases until the discovery issues are resolved either by agreement or by the de novo appeal".

I wish to remind you that the discovery issues in fact have been resolved because on November 29, 1999, and without any obligation to do so, Burlington accepted your proposal set forth in your letter of November 3, 1999, and provided you with 848 pages of documents. For you to now contend that this matter is not resolved by agreement is not true.

I also note that you are attempting to preserve an opportunity to have the Commission hear the Division's decision to quash the Energen subpoena while arguing that the discovery issues have not yet been resolved by agreement. You cannot have it both ways. And in fact, you have failed to take appropriate action to have the Commission timely hearing this matter at its December 9, 1999 hearing and accordingly have abandoned that opportunity. Obviously, you did so because we have an agreement to voluntarily provide certain of the documents in the Energen subpoena even though the Division has agreed with Burlington that this contract issue is not relevant to its decision concerning entry of a compulsory pooling order.

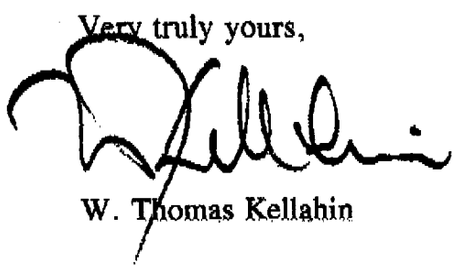
Further, I am unable to resolve the inconsistency in your letter when you incorrectly argue that "Burlington has not objected to the production of title opinions or related land-file materials in its Motion to Quash Subpoenas" and yet in the next paragraph acknowledged that on November 16, 1999 the Division granted "Burlington's Motion to Quash in full..." which obviously included all documents. I wish to make it very clear to you--Burlington has objected and will continue to object that none of these documents are relevant to the entry of a compulsory pooling order by the Division. As the Division advised in Order R-10877 and R-10878 this contractual dispute is for the courts and not the Division to resolve.

As you know, the referenced cases were originally docketed for hearing on November 4, 1999. Since then, they have been repeatedly continued to accommodate you. They were last set for hearing on December 2, 1999. On November 30, 1999, you advised me that you could not be prepared for hearing and so as a further accommodation to you I continued them to December 16, 1999. Now, you again request a continuance and more documents.

Your letter of December 13, 1999, requests certain additional specific documents. I assume that you have thoroughly reviewed the documents already provided so that this latest request in fact is your final request. Therefore, I have asked Burlington to see if they have or can locate any of the additional documents you are inquiring about. Please be advised that this is the last time I will accommodate you.

Burlington has agreed to continue this case to the January 20, 2000 docket which should give you more than enough time to do whatever you intend to do.

Very truly yours,



W. Thomas Kellahin

cfx: Oil Conservation Division
Attn: Rand Carroll, Esq.
Attn: David R. Catanach
Burlington Resources Oil & Gas Company
Attn: Alan Alexander

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PLEASE REPLY TO SANTA FE

December 13, 1999

BY FACSIMILE TRANSMISSION: 505-982-2047

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
117 North Guadalupe Street
Santa Fe, New Mexico 87501

C 1/20

Re: NMOCD Case Nos. 12276 and 12277; Application of Burlington Resources Oil and Gas Company for Compulsory Pooling, San Juan County, New Mexico

Dear Tom:

In response to my November 3, 1999 letter, certain Burlington documents responsive to the earlier subpoenas were produced under cover of your letter of November 29, 1999. Your letter indicated the documents "...related to Energen's contention that the referenced wells are subject to the...GLA-46 Farmout and Operating Agreement." In the context of this contention, our October 28, 1999 Subpoena duces tecum requested, among other materials, the following:

> 5. All title take-offs, title reports, acquisition opinions, drill-site opinions, security opinions and division order opinions for the Brookhaven wells...and an any ofhte lands subject to or affected by the GLA 46 Agreement.

Included among the documents produced on November 29, 1999 were (1) that First Supplemental Title Opinion dated April 5, 1988 by John H. Schultz, P.C.; (2) Letter dated January 8, 1997 from Burlington landman James Strickler to attorney Michael Cunningham requesting an opinion on the applicability of GLA-46; and (3) memorandum dated January 21, 1991 relating to ongoing litigation affecting the GLA-46 agreement. However, there were no documents relating to items (2) and (3) included among the materials produced. There were likewise no other title opinion materials produced other than the 1988 opinion.

Burlington has not objected to the production of title opinions or related land-file materials in its Motion To Quash Subpoenas or otherwise, and we would accordingly ask that those materials be produced. Similarly, the production of non-privileged materials related to the 1991 litigation over GLA-46 would not be objectionable in any event, and we would ask that these documents be provided as well. Without question, all of these materials are related to the primary issue in dispute: whether or not the GLA-46 Agreement is applicable to the lands that are the subject of Burlington's pooling proceedings.

As you know, the Division's earlier letter-decision granting Burlington's Motion To Quash in full is pending appeal de novo before the NMOCC pursuant to the agreement of counsel. Because of the importance of this particular issue, I am reluctant to have the Division hear the pooling cases until the discovery issues are resolved either by agreement or by the de novo appeal of the letter-decision. Correspondingly, I would request your concurrence in the continuance of the two cases from the December 16, 1999 examiner docket until such time as the discovery issues are settled.

Please let me hear from you as soon as possible.

Very truly yours,

J. Scott Hall

JSH/ao

Cc: Rand Carroll
David Catanach
Rich Corcoran, Energen/Farmington

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PLEASE REPLY TO SANTA FE

December 13, 1999

BY FACSIMILE TRANSMISSION: 827-8177
Lori Wrotenbery, Chair
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: NMOCC Case # 12276 and 12277; Applications of Burlington Resources Oil & Gas Company for Compulsory Pooling, San Juan County, New Mexico

Dear Ms. Wrotenbery:

Pursuant to an agreement between counsel, the Division's November 16, 1999 decision granting Burlington Resources Oil and Gas Company's Motion to Quash Subpoenas is currently pending before the Commission pursuant to the Application for Hearing De Novo filed on behalf of Energen Resources Corporation. Counsel continue to work to resolve the discovery issue, but we are not quite there. (See copy of today's correspondence to Mr. Kellahin, attached.)

These two pooling cases remain on the Division's examiner docket for December 16, 1999. However, on behalf of Energen, I request that these cases be continued until such time as the discovery dispute is resolved.

As I will be leaving for Midland shortly and will be out of communication until Wednesday at the earliest, I have taken the liberty of sending this request for continuance to you directly without conferring with Mr. Kellahin today.

Thank you.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall

JSH/ao

Cc: David Catanach
W. Thomas Kellahin
Rand Carroll

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PLEASE REPLY TO SANTA FE

December 1, 1999

BY FACSIMILE TRANSMISSION: 827-8177
Lori Wrotenbery, Chair
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: NMOCC Case # 12276 and 12277; Applications of Burlington Resources Oil & Gas Company for Compulsory Pooling, San Juan County, New Mexico

Dear Ms. Wrotenbery:

By agreement of counsel, the Division's November 16, 1999 letter ruling granting Burlington's Motion to Quash Subpoenas was appealed to the Commission. In the interim, counsel have attempted to work out a compromise on the discovery dispute and on November 29th, Burlington produced a certain number of documents available for our review.

I have asked Mr. Kellahin for additional time to review the documents and he has agreed. Although the matter is on appeal to the Commission, the case continues to be carried on the Division Examiner docket. Accordingly, on behalf of Energen Resources Corporation, it is requested that the two referenced cases presently set for hearing on December 2, 1999 be continued to the December 16, 1999 Examiner Docket. Mr. Kellahin concurs with this request, and it is hoped the discovery dispute can be resolved in the interim.

Thank you.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall

JSH/ao

Cc: W. Thomas Kellahin (by facsimile transmission)
Marylin Hebert (by facsimile transmission)
Rand Carroll (by facsimile transmission)

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MJ
11-30-99

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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)

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

November 29, 1999

HAND DELIVERED

J. Scott Hall, Esq.
Miller, Stratvert & Torgerson, PA
150 Washington Ave, Ste 300
Santa Fe, New Mexico 87501

Re: PRODUCTION OF DOCUMENTS

(1) 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

(2) Case 12277: Application of Burlington Resources Oil & Gas Company for Compulsory Pooling, San Juan County, New Mexico
E/2 Section 16, T31N, R11W, NMPM

Dear Mr. Hall:

As you know, these cases are currently pending hearing on December 2, 1999 before a Division Examiner. In addition, Energen has filed a DeNovo application with the Commission seeking to reverse the Division's decision granting Burlington's motion to quash Energen's subpoena. I wish to resolve the subpoena issue so these cases can be heard on December 2nd.

Accordingly, I am accepting your proposal set forth in your letter to me dated November 3, 1999 in which you offered to resolve the subpoena dispute by limiting Energen's request to the documents related to Energen's contention that the referenced wells are subject to the November 27, 1951 GLA-46 Farmout and Operating Agreement. Please find enclosed 848 pages of documents. In doing so, Burlington is not admitting that these documents are relevant to the compulsory pooling proceedings. In fact, Burlington believes that the Division's November 16, 1999 letter quashing Energen's subpoena in its entirety was the proper and appropriate action.

Very truly yours,

W. Thomas Kellahin

cfx: Oil Conservation Division
Attn: Rand Carroll, Esq.
Attn: Mark Ashley
cfx: Burlington Resources Oil & Gas Company
Attn: Alan Alexander

NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

November 16, 1999

BY FAX AND MAIL

Scott Hall, Esq.
Miller, Stratvert & Torgerson, P.A.
P.O. Box 1986
Santa Fe, NM 87504-1986

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, NM 87504

RE: Case Nos. 12276 and 12277---Motion to Quash Subpoenas filed by Burlington Resources Oil and Gas Company

Dear Messrs. Hall and Kellahin:

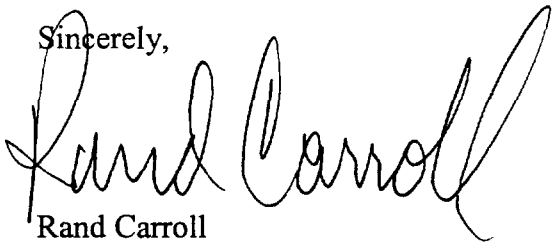
The Division hereby grants the Motion to Quash in full. These issues, or very similar issues, were present in the cases resulting in Order Nos. R-10877 and R-10878. In those cases, the Division also granted motions to quash subpoenas.

The Division's compulsory pooling orders now limit the effect of such orders to "all uncommitted mineral interest owners". If in fact Energen is already committed under the GLA-46 Agreement (which is a matter of contract interpretation that the Division defers to the courts), the compulsory pooling order will not apply to Energen.

The Division also does not normally order the production of geological/geophysical data in compulsory pooling cases if an objection is filed. In this case, Energen is capable of generating its own data and interpretations, or hiring it done, and the Division will not require Burlington to turn over information it has developed at its own expense. Data not relevant to the cases at issue will not, of course, be ordered produced either.

The hearings in these cases are scheduled for Thursday, November 18, 1999.

Sincerely,



Rand Carroll
Legal Counsel

c: Michael Stogner, OCD Hearing Examiner

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BRADLEY D. TEPPER, COUNSEL

PLEASE REPLY TO SANTA FE

November 16, 1999

BY HAND-DELIVERY
Lori Wrotenbery, Director
New Mexico Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: NMOCC Case # 12276 and 12277; Applications of Burlington Resources Oil & Gas Company for Compulsory Pooling, San Juan County, New Mexico

Dear Ms. Wrotenbery:

Enclosed for filing is the Application of Energen Resources Corporation for Hearing De Novo.

As is briefly explained in the Application, the Division today granted a Motion To Quash filed on behalf of Burlington Resources Oil and Gas Company in this compulsory pooling proceeding. As evidenced by the attached correspondence, during the briefing on the motion, counsel for both Burlington and Energen agreed that the hearing on the merits at the Division would be continued to allow either side to pursue an appeal on the discovery issue to the Commission. I would appreciate receiving confirmation that the November 18, 1999 examiner hearing has been continued.

Thank you.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall

JSH/ao

Enclosure(s) – as stated

Cc: W. Thomas Kellahin
Marylin Hebert
Rand Carroll

6621/23699/Wrotenbury1.doc

STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
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
CASE No. 12277

99 NOV 16 PM 3:45
OIL CONSERVATION DIV

APPLICATION FOR HEARING DE NOVO

Energen Resources Corporation, a party of record adversely affected by the decision of the New Mexico Oil Conservation Division granting the Motion To Quash Subpoenas filed on behalf of Burlington Resources Oil and Gas Company, hereby applies for a hearing *De Novo* before the New Mexico Oil Conservation Commission pursuant to NMSA Section 70-2-13 (1987 Repl.). A copy of the Division's November 16, 1999 decision is attached.

In these compulsory pooling cases, Burlington Resources seeks to pool working interests which Energen contends were previously voluntarily committed to the proposed wells under a pre-existing agreement. As an important pre-condition to the exercise of its compulsory pooling authority, NMSA Section 70-2-17(C) directs that the Division must first make a finding that "[the] owners have not agreed to pool their interests...". Such a finding must, of course, be made in writing and must have sufficient support in the record. See Amoco Production Company v. Heimann, 904 F.2d 1405 (10th Cir. 1990).

Energen seeks to subpoena documents and materials1 that will allow it to more fully develop evidence and arguments directly related to the voluntary commitment issue. The Division's decision

granting Burlington's Motion To Quash prevents the agency from considering relevant evidence and means that any decision on the voluntary commitment issue will not have adequate support in the record. Energen will be deprived of its right to a full and fair hearing as a consequence.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By _____

J. Scott Hall
Post Office Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

Attorneys for Energen Resources Corp.

1 Energen does not seek the production of engineering, geologic or geophysical materials.

Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was mailed to counsel of record on the 15th day of November, 1999, as follows:

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
117 North Guadalupe Street
Santa Fe, New Mexico 87501

Marilyn Hebert, Esq.
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

J. Scott Hall

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FACSIMILE TRANSMISSION COVER SHEET

DATE: November 16, 1999

TO: Rand Carroll FAX NO.: 827-8177

FROM: Scott Hall OPERATOR: Amanda Olsen

MESSAGE:

NUMBER OF PAGES INCLUDING COVER SHEET: 3 + 3 = 6

IF YOU DO NOT RECEIVE THE ENTIRE DOCUMENT, PLEASE CALL OUR SANTA FE OFFICE AS SOON AS POSSIBLE AT (505) 989-9614.

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PLEASE REPLY TO SANTA FE

November 16, 1999

VIA FACSIMILE: 505-827-8177
Mr. Rand Carroll
New Mexico Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87501

Re: Re: NMOCD Case No. 12171; Application of Gillespie Oil, Inc. for Unit Expansion, West Lovington Strawn Unit, Lea County, New Mexico

Dear Mr. Carroll:

In these compulsory pooling cases, Burlington seeks to pool working interests which Energen contends have been voluntarily committed to the wells under a pre-existing agreement. As an important pre-condition to the exercise of its compulsory pooling authority, Sec. 70-2-17(C) directs that the Division must first make a finding that "[the] owners have not agreed to pool their interests...". As is always the case, such a written finding of fact must have sufficient support in the record. (See Amoco Production Co. v. Heimann, 904 F.2d 1405 [10th Cir. 1990]). Accordingly, Energen is attempting to subpoena Burlington's documents in order to develop evidence that directly relates to this issue and, in response, Burlington filed a Motion To Quash, which was granted just this afternoon.

Counsel in the above cases proposed a pre-hearing procedure to resolve the discovery issue precipitated by Burlington's Motion To Quash. (See copies of November 2, 1999 letters, attached.) Burlington's counsel identified a briefing schedule on the Motion To Quash and proposed that, in the event of an adverse ruling, the case would be continued and Burlington would be allowed to pursue an appeal on the discovery issue to the Commission.

On behalf of Energen, we agreed, provided we would have the same opportunity to appeal an adverse discovery ruling as Burlington.

As a Commission appeal on the discovery issue is now assured, it is assumed that these cases will be continued from the November 18th docket in accordance with the agreement of the parties. Can you verify?

Very truly yours,

J. Scott Hall

JSH/ao

Enclosures – two November 2, 1999 letters

Cc: Michael Stogner
W. Thomas Kellahin, Esq.

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PLEASE REPLY TO SANTA FE

November 2, 1999

BY FACSIMILE TRANSMISSION: 827-8177
David Catanach
New Mexico Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: NMOCC Case # 12276 and 12277; Applications of Burlington Resources Oil & Gas Company for Compulsory Pooling, San Juan County, New Mexico

Dear Mr. Catanach:

I have received a copy of Mr. Kellahin's fax letter today. On behalf of Energen Resources Corporation, we agree to Burlington's proposal for pre-hearing procedures provided Energen is afforded a like opportunity to pursue a Commission appeal on the discovery issue.

Very truly yours,

J. Scott Hall

JSH/ao

Cc: W. Thomas Kellahin

6621/23699/Catanach.doc

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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 (RET/1955-1991)

November 2, 1999

VIA FACSIMILE

Mr. David R. Catanach, Hearing Examiner
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: Proposed prehearing procedures
NMOCD Case 12276 and NMOCD Case 12277
Applications of Burlington Resources Oil & Gas Company
San Juan County, New Mexico

Dear Mr. Catanach:

On behalf of Burlington Resources Oil & Gas Company, I propose the following pre-hearing procedures for the referenced cases. As the files will reflect, these cases are currently set for hearing on November 4, 1999. On Thursday, October 28th, Mr. Hall, for Energen Resources Company, filed and served two subpoenas. Four days later, on Monday, November 1st, I filed a motion to quash the two subpoenas. In addition, also on Monday, Mr. Hall filed a motion requesting continuance of these cases.

Therefore, I propose the following:

(1) the cases be consolidated for hearing;

(2) the cases be continued to the November 18th docket;

(3) Mr. Hall be allowed four days, until 4:00 PM on Friday, November 5th to file any response to the motion to quash;

(4) the Division will decide the motion to quash on or before Thursday, November 11th;

(5) if the motion to quash is granted, the cases will proceed to an evidentiary hearing on November 18th docket;

(6) if the motion to quash is denied, then the cases will be continued until the December 2nd docket to provide additional time to either produce the documents or appeal that decision to the Commission.

I believe the foregoing provides a fair and equitable procedure for effectively managing these cases.

Very truly yours,

W. Thomas Kellahin

cfx: Scott Hall, Esq.
attorney for Energen Resources Corporation

MILLER, STRATVERT & TORGERSON, P. A.

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DATE: November 16, 1999

TO: Michael Stogner FAX NO.: 827-8177

FROM: J. Scott Hall, Esq. OPERATOR: Amanda Olsen

MESSAGE:

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VIA FACSIMILE: 505-827-8177
Mr. Rand Carroll
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Re: Re: NMOCD Case No. 12171; Application of Gillespie Oil, Inc. for Unit Expansion, West Lovington Strawn Unit, Lea County, New Mexico

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J. Scott Hall

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Cc: Michael Stogner
W. Thomas Kellahin, Esq.

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PLEASE REPLY TO SANTA FE

November 5, 1999

BY FACSIMILE TRANSMISSION: 827-8177
Ms. Florene Davidson
New Mexico Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: NMOCC Case # 12276 and 12277; Applications of Burlington Resources Oil & Gas Company for Compulsory Pooling, San Juan County, New Mexico

Dear Ms. Davidson:

Attached, is a copy of Energen's Response To Burlington's Motion To Quash in the above matter. Originals of the filing will be hand-delivered for filing on Monday.

Thank you.

Very truly yours,

J. Scott Hall

JSH/ao

W. Thomas Kellahin, Esq.

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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**

IN THE MATTER OF THE APPLICATION OF BURLINGTON RESOURCES OIL & GAS COMPANY FOR COMPULSORY POOLING SAN JUAN COUNTY, NEW MEXICO — **CASE NO. 12277**

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OIL CONSERVATION DIV.

ENERGEN RESOURCES CORPORATION'S RESPONSE TO BURLINGTON RESOURCES OIL & GAS COMPANY'S MOTION TO QUASH

Energen Resources Corporation, ("Energen"), through its counsel, MILLER, STRATVERT & TORGERSON, P.A. (J. Scott Hall), for its Response Burlington's Motion to Quash, states:

On October 12th and 13th, 1999, Burlington filed two Applications with the Oil Conservation Division ("Division") requesting orders pooling the working interests of Energen, and others, in the Mesaverde formation and the Chacra formation underlying the acreage described in the Applications.

As has been explained in Energen Resources Corporation's Motion to Continue, the parties' disagreement in this case is founded on a primary, threshold issue: Whether lands that are voluntarily committed under a valid, existing agreement are subject to being compulsorily pooled under the terms of NMSA 70-2-17 (1978). The circumstances of this case dictate that this issue should be further developed in order to satisfy Energen's right to a full and fair hearing and to enable the Division to enter a fully formed and well reasoned decision supported by an adequate evidentiary record.

By its consolidated Applications, Burlington is placing the Division in an untenable possession. Burlington seeks to invoke the Division's authority under § 70-2-17 to compulsorily pool previously contracted property interests. By so doing, Burlington asks the Division to exercise its police powers in excess of the concisely prescribed authority granted under the pooling statute. In effect, Burlington is asking the Division to exercise its authority to undo an voluntary participation agreement.

Certain of the working interest in the lands that are targeted by the subject of these two compulsory pooling Applications are subject to a pre-existing contract, the GLA-46 Agreement. Through their respective predecessors in interest, under the GLA-46 Agreement, the operating rights of Energen, et al., in the subject lands were transferred to Burlington. Since the GLA-46 Agreement was entered into by the parties in 1951, dozens of wells have been drilled by El Paso Natural Gas Company and its successors, Meridian Oil and Burlington Resources, to all of the predominant producing formations in the area.

Consistent with this established course of dealing under the GLA-46 Agreement, when Burlington proposed the two wells that are the subject of these consolidated Applications, Energen advised Burlington that it would voluntarily participate in the wells pursuant to the terms of GLA-46, just as its predecessors in interest had done numerous times. Burlington's response has been to follow two inconsistent courses of action: On the one hand, Burlington has sought the release and, separately, the modification of the GLA-46 Agreement by having Energen execute a new joint operating agreement. On the other hand, simultaneously, Burlington has unilaterally disavowed the GLA-46 Agreement, contending that it does not apply at all.

The Division must give careful consideration of the factual circumstances surrounding this voluntary agreement and allow such facts to be more fully developed through the conduct of discovery. The pre-existing status of this matter, as it is brought to the Division, is this: the parties have a valid and recognized contract that has effected the transfer of operating rights in the subject acreage from Energen to Burlington. By this pre-existing transfer of operating rights, Burlington presently owns the executive rights and other property rights necessary for it to drill and operate the well. The GLA-46 transfer, then, means that Energen's interests have previously been voluntarily committed. In exchange for the operating rights that Burlington has already received, and as consideration to Energen, its interests are to be carried for a certain percentage of its proportionate share of well costs. This is, in every sense of the meaning of § 70-2-17 (C), a pre-existing, voluntary commitment to participate in the well. Under such circumstances, previously committed acreage is not subject to being pooled under the statute.

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If Burlington is going to promote an argument that the GLA-46 lands are not voluntarily committed to the wells, then Energen is entitled to pursue discovery on the factual underpinnings of Burlington's contention.

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The law favors liberal discovery in any proceeding. Carter v. Burns Construction Co. Inc., 85 N.M. 27, 31, 508 P.2d 1324, 1328 (Ct. App. 1973); Cert. denied, 85 N.M. 5, 508 P.2d1302 (1973). The applicable relevance standard in discovery is also broadly construed. Smith v. MCI Telecommunications Corp., 137 F.R.D. 454, 463 (S.D.N.Y.). Here, by law, the Division is obliged to make findings of ultimate facts material to the issues before it. Further, the Division's findings are required to have substantial support in the record and must also disclose the reasoning of the Division. See Fasken v. Oil

Conservation Com'n, 87 N.M. 292, 532 P.2d 588 (1975). The Division cannot do this without receiving evidence from the materials to be produced pursuant to the subpoenas. Accordingly, absent full and complete compliance with the subpoena, it is not likely that the parties will be able to make a complete presentation of relevant evidence to that Division and due process will not be served as a consequence. The Division should enforce the subpoena to accord due process.

Administrative proceedings must conform to the fundamental principals of justice and due process requirements. This requires that the administrative process authorize pre-trial discovery under appropriate circumstances such as exists here. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, N.M. 5, 546 P.2d 70 (1975). The discovery procedures were originally adopted by the New Mexico courts in order to eliminate the old sporting theory of justice and to allow each party, prior to the adjudicatory hearing, to discover all facts, documents, and other materials which might support that party's position. Without proper discovery, a party uniquely in possession of evidence may withhold that information from the adjudicatory body and bring forth only evidence that favors its position, suppressing that which disfavors its case. In the previous application involving the GLA-46 Agreement, Burlington was able to delay and avoid compliance with the Division's subpoenas until the well that was the subject of the pooling proceeding in that case proved to be, unfortunately for all, a dry hole. Burlington should not be permitted to continue to evade the Division's processes again.

ENERGEN'S PROPOSED DISCOVERY COMPROMISE

It is apparent that the threshold issue in this case, the pre-existing, voluntary commitment of Energen's working interests to the well, focuses primarily on the terms of

the GLA-46 agreement, the interpretations, historical practices and the course of conduct of the parties (and their successors) thereunder. The relevance of all documents and materials related to these matters is obvious, contrary to the assertions of Burlington, making its carte blanche refusal to produce documents of any kind wholly inappropriate. Yet, the scope of Energen's discovery should be focused accordingly.

To facilitate the resolution of this discovery dispute, Energen proposes to limit its discovery to materials related only to the land and contract issues, eliminating the production of any geological, geophysical or engineering data otherwise described in the subpoena. This solution offers a fair compromise that will expedite the Division's consideration of this case. Such a solution will go a long way toward satisfying Energen's right to a full and fair hearing while simultaneously avoiding any prejudice to Burlington.

Energen has proposed such a compromise to Burlington (see correspondence of counsel, Exhibit A, attached), but has received no response to date.

CONCLUSION

Burlington has attempted to mischaracterize these proceedings by stating that the GLA-46 Agreement does not apply. The issue of primary importance is whether the lands Burlington seeks to pool are, in fact, available to be pooled at all, or whether they were previously committed to the wells. Energen has expressed its willingness to resolve this discovery dispute by foregoing the production of all geological, geophysical, and engineering information. Energen, however, respectfully requests that the Division deny the Motion to Quash order Burlington to produce the remaining materials identified in the subpoenas.

MILLER, STRATVERT & TORGERSON, P.A.

By: J. Scott Hall

J. Scott Hall, Esq.
Post Office Box 1986
Santa Fe, New Mexico 87504
(505) 989-9614

Attorneys for Energen Resources Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Burlington Oil & Gas Company's Motion to Quash was sent this 8 day of November, 1999 to the following counsel of record:

Rand Carroll, Esq.
Oil Conservation Division
2040 South Pacheco Street
Santa Fe, New Mexico 87505

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
117 North Guadalupe Street
Santa Fe, New Mexico 87501

J. Scott Hall

MILLER, STRATVERT & TORGERSON, P. A.

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PLEASE REPLY TO SANTA FE

November 3, 1999

W. Thomas Kellahin, Esq.
Kellahin and Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504-2265

VIA FACSIMILE

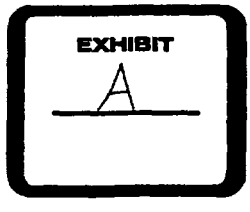
Re: NMOCD Case No.s 12276 and 12277; Application of Burlington Resources Oil and Gas Company for Compulsory Pooling,
San Juan County, New Mexico

Dear Tom:

I have reviewed the Motion To Quash filed on behalf of Burlington Resources in the above cases. I believe the Division has made quite clear in the past that counsel are expected to make a good faith effort to settle any discovery dispute before bringing the matter before an examiner. Accordingly, I would offer the following:

Burlington's primary objection is to the production of geological, geophysical and engineering data. Burlington objects to the production of these materials on grounds that they are proprietary and that Burlington would be placed at a competitive disadvantage. To resolve this particular objection, Energen will agree to forego the production of all geological, geophysical and engineering information, provided that Burlington agrees in-turn to produce the remaining materials identified in the subpoenas.

I believe this is a reasonable compromise of Burlington's objections. Please provide me with Burlington's response to this proposal at your earliest convenience.



Very truly yours,

J. Scott Hall

JSH/rm

cc: Rich Corcoran
Rusty Cook

MILLER, STRATVERT & TORGERSON, P. A.

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FACSIMILE TRANSMISSION COVER SHEET

DATE: November 5, 1999

TO: Florene Davidson FAX NO.: 827-8177

FROM: J. Scott Hall, Esq. OPERATOR: Amanda Olsen

MESSAGE:

NUMBER OF PAGES INCLUDING COVER SHEET:

IF YOU DO NOT RECEIVE THE ENTIRE DOCUMENT, PLEASE CALL OUR SANTA FE OFFICE AS SOON AS POSSIBLE AT (505) 989-9614.

* * * * * * * *

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November 5, 1999

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Ms. Florene Davidson
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2040 South Pacheco
Santa Fe, New Mexico 87505

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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**

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To facilitate the resolution of this discovery dispute, Energen proposes to limit its discovery to materials related only to the land and contract issues, eliminating the production of any geological, geophysical or engineering data otherwise described in the subpoena. This solution offers a fair compromise that will expedite the Division's consideration of this case. Such a solution will go a long way toward satisfying Energen's right to a full and fair hearing while simultaneously avoiding any prejudice to Burlington.

Energen has proposed such a compromise to Burlington (see correspondence of counsel, Exhibit A, attached), but has received no response to date.

CONCLUSION

Burlington has attempted to mischaracterize these proceedings by stating that the GLA-46 Agreement does not apply. The issue of primary importance is whether the lands Burlington seeks to pool are, in fact, available to be pooled at all, or whether they were previously committed to the wells. Energen has expressed its willingness to resolve this discovery dispute by foregoing the production of all geological, geophysical, and engineering information. Energen, however, respectfully requests that the Division deny the Motion to Quash order Burlington to produce the remaining materials identified in the subpoenas.

MILLER, STRATVERT & TORGERSON, P.A.

By: J. Scott Hall

J. Scott Hall, Esq.
Post Office Box 1986
Santa Fe, New Mexico 87504
(505) 989-9614

Attorneys for Energen Resources Corporation

MILLER, STRATVERT & TORGERSON, P. A.

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PLEASE REPLY TO SANTA FE

November 3, 1999

W. Thomas Kellahin, Esq.
Kellahin and Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504-2265

VIA FACSIMILE

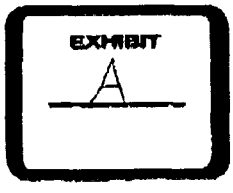
Re: NMOCD Case No.s 12276 and 12277; Application of Burlington Resources Oil and Gas Company for Compulsory Pooling, San Juan County, New Mexico

Dear Tom:

I have reviewed the Motion To Quash filed on behalf of Burlington Resources in the above cases. I believe the Division has made quite clear in the past that counsel are expected to make a good faith effort to settle any discovery dispute before bringing the matter before an examiner. Accordingly, I would offer the following:

Burlington's primary objection is to the production of geological, geophysical and engineering data. Burlington objects to the production of these materials on grounds that they are proprietary and that Burlington would be placed at a competitive disadvantage. To resolve this particular objection, Energen will agree to forego the production of all geological, geophysical and engineering information, provided that Burlington agrees in-turn to produce the remaining materials identified in the subpoenas.

I believe this is a reasonable compromise of Burlington's objections. Please provide me with Burlington's response to this proposal at your earliest convenience.



Very truly yours,

J. Scott Hall

JSH/rm

cc: Rich Corcoran
Rusty Cook

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

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

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)

November 2, 1999

VIA FACSIMILE

Mr. David R. Catanach, Hearing Examiner
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: ***Proposed prehearing procedures***
NMOCD Case 12276 and NMOCD Case 12277
Applications of Burlington Resources Oil & Gas Company
San Juan County, New Mexico

Dear Mr. Catanach:

On behalf of Burlington Resources Oil & Gas Company, I propose the following pre-hearing procedures for the referenced cases. As the files will reflect, these cases are currently set for hearing on November 4, 1999. On Thursday, October 28th, Mr. Hall, for Energen Resources Company, filed and served two subpoenas. Four days later, on Monday, November 1st, I filed a motion to quash the two subpoenas. In addition, also on Monday, Mr. Hall filed a motion requesting continuance of these cases.

Therefore, I propose the following:

(1) the cases be consolidated for hearing;

(2) the cases be continued to the November 18th docket;

(3) Mr. Hall be allowed four days, until 4:00 PM on Friday, November 5th to file any response to the motion to quash;

(4) the Division will decide the motion to quash on or before Thursday, November 11th;

(5) if the motion to quash is granted, the cases will proceed to an evidentiary hearing on November 18th docket;

(6) if the motion to quash is denied, then the cases will be continued until the December 2nd docket to provide additional time to either produce the documents or appeal that decision to the Commission.

I believe the foregoing provides a fair and equitable procedure for effectively managing these cases.

Very truly yours,

W. Thomas Kellahin

cfx: Scott Hall, Esq.
attorney for Energen Resources Corporation

MILLER, STRATVERT & TORGERSON, P. A.

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JAMES J. WIDLAND, COUNSEL
BRADLEY D. TEPPER, COUNSEL

PLEASE REPLY TO SANTA FE

November 2, 1999

BY FACSIMILE TRANSMISSION: 827-8177
David Catanach
New Mexico Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: NMOCC Case # 12276 and 12277; Applications of Burlington Resources Oil & Gas Company for Compulsory Pooling, San Juan County, New Mexico

Dear Mr. Catanach:

I have received a copy of Mr. Kellahin's fax letter today. On behalf of Energen Resources Corporation, we agree to Burlington's proposal for pre-hearing procedures provided Energen is afforded a like opportunity to pursue a Commission appeal on the discovery issue.

Very truly yours,

J. Scott Hall

JSH/ao

Cc: W. Thomas Kellahin

6621/23699/Catanach.doc

MILLER, STRATVERT & TORGERSON, P. A.

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BRADLEY D. TEPPER, COUNSEL

PLEASE REPLY TO SANTA FE

November 1, 1999

By facsimile: 982-2047
W. Thomas Kellahin, Esq.
Kellahin & Kellahin
117 North Guadalupe Street
Santa Fe, New Mexico 87501

By Hand Delivery
Rand Carroll, Esq.
New Mexico Oil Conservation Division
2040 South Pacheco Street
Santa Fe, New Mexico 87505

Re: Application of Burlington for Compulsory Pooling
Case Nos. 12276 and 12277

Dear Counsel:

Enclosed are copies of Energen's Motions to Continue in the above-referenced cases.

Sincerely,

Amanda Olsen, CLA
Paralegal

/ao

Enclosure(s) – as stated

6621/23699/counsel2ltr.doc

STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
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

99 NOV -1 PM 4:28
OIL CONSERVATION DIV.

ENERGEN RESOURCE CORPORATION'S MOTION TO CONTINUE

Energen Resources Corporation, ("Energen"), through its counsel, MILLER, STRATVERT & TORGERSON, P.A. (J. Scott Hall), moves to continue the hearing presently set for November 4, 1999. As grounds for this motion, Energen states:

By its October 13, 1999 Application, Burlington Resources Oil and Gas Company, ("Burlington"), seeks the forced pooling of certain oil and gas lease working interests for the drilling of Burlington's Brookhaven Com Wells 8 and 8-A located in the W/2 of Section 36, T-27-N, R-8-W, NMPM, in San Juan County (the "Subject Lands"). Among the interests Burlington seeks to pool are the working interests of Energen and a number of other interest owners which are subject to a pre-existing contract, (the GLA 46 Agreement). Through their respective predecessors in interest, under the GLA 46 Agreement, the operating rights of Energen, et al., in the Subject Lands were transferred to Burlington. Over the years, scores of wells were drilled by El Paso/Meridian/Burlington under the GLA-46 to all of the predominant producing formations in the area.

Earlier this year, when Burlington proposed the wells that are the subject of this application, Energen, following a long-standing course of dealing, advised Burlington that it would voluntarily participate in the well pursuant to the terms of the GLA-46 under which its interests were previously committed. In response, changing its prior position, Burlington advised that (1) the GLA-46 is no longer applicable, and (2) its terms are no longer economically favorable. Simultaneously, despite its unilateral declaration that the GLA-46 no longer applied, Burlington sought to have the existing contract released and replaced with a new form of agreement.

The parties' disagreement is founded on a primary, threshold issue: (1) Whether lands that are voluntarily committed under a valid, existing agreement are subject to being compulsorily pooled under the terms of NMSA 70-2-17 (1978). This initial issue necessarily implicates the question whether the Division has jurisdiction to proceed, a question that should be addressed at the outset.

This focal issue should be further developed in order to fulfill Energen's right to a full and fair hearing and to enable the Division to enter a fully informed and well reasoned decision that is supported by an adequate evidentiary record.

Burlington's application was filed on October 13, 1999. Our Entry of Appearance on behalf of Energen was not made until October 28, 1999. On that same day, at Energen's request, the Division issued a subpoena duces tecum seeking the production of documents directly related to the GLA 46 issue. The subpoena calls for the documents to

be produced on November 3rd, the day before the presently scheduled hearing. Given the present time-frame at work, Burlington's compliance may be difficult and the time allowed for Energen's review will probably be inadequate. Under these circumstances, it is in the interests of the parties and the Division to continue the case from the November 4th docket to a time to allow for the proper conduct of discovery and the further development of this important issue. On information and belief, there is no lease expiration problem and rig-scheduling should not be at issue. No prejudice will result from a continuance.

Burlington's concurrence with this motion has been requested. Counsels have exchanged voice-mail messages, but as of today, it is not certain whether Burlington will concur.

Expedited consideration of this motion is requested. An identical motion is being submitted this same day in the companion compulsory pooling case, Case No. 12,277.

Respectfully submitted

MILLER, STRATVERT & TORGERSON, P.A.

By_____

J. Scott Hall
Attorneys for Energen Resources Corp.
Post Office Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application was sent this 18th day of November 1999 to the following counsel of record:

Rand Carroll, Esq.
Oil Conservation Division
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(by hand-delivery)

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504
(by facsimile transmission)

J. Scott Hall

MILLER, STRATVERT & TORGERSON, P. A.

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PLEASE REPLY TO SANTA FE

November 1, 1999

BY FACSIMILE TRANSMISSION: 827-8177
Lori Wrotenbery, Director
New Mexico Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: NMOCC Case # 12276 and 12277; Applications of Burlington Resources Oil & Gas Company for Compulsory Pooling, San Juan County, New Mexico

Dear Ms. Wrotenbery:

Attached is a courtesy copy of Energen Resources Corporation's Motion for Continuance in Case No. 12276. An identical motion was also filed in Case NO. 12277 as these matters have not been consolidated.

The motions seek a continuance of these compulsory pooling cases presently set for hearing on November 4, 1999. Accordingly, I request the Division's expedited consideration of the motions.

Thank you for your cooperation.

Very truly yours,

J. Scott Hall

J. Scott Hall

JSH/ao

Enclosure(s) – as stated

Cc: W. Thomas Kellahin (without enclosure by facsimile transmission)
Rand Carroll (without enclosure by facsimile transmission)
David Catanach (with enclosure - via hand delivery)

6621/23699/wrotenbery.doc

STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
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

ENERGEN RESOURCE CORPORATION'S
MOTION TO CONTINUE

Energen Resources Corporation, ("Energen"), through its counsel, MILLER, STRATVERT & TORGERSON, P.A. (J. Scott Hall), moves to continue the hearing presently set for November 4, 1999. As grounds for this motion, Energen states:

By its October 13, 1999 Application, Burlington Resources Oil and Gas Company, ("Burlington"), seeks the forced pooling of certain oil and gas lease working interests for the drilling of Burlington's Brookhaven Com Wells 8 and 8-A located in the W/2 of Section 36, T-27-N, R-8-W, NMPM, in San Juan County (the "Subject Lands"). Among the interests Burlington seeks to pool are the working interests of Energen and a number of other interest owners which are subject to a pre-existing contract, (the GLA 46 Agreement). Through their respective predecessors in interest, under the GLA 46 Agreement, the operating rights of Energen, et al., in the Subject Lands were transferred to Burlington. Over the years, scores of wells were drilled by El Paso/Meridian/Burlington under the GLA-46 to all of the predominant producing formations in the area.

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Respectfully submitted

MILLER, STRATVERT & TORGERSON, P.A.

By_____

J. Scott Hall
Attorneys for Energen Resources Corp.
Post Office Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application was sent this 12th day of November 1999 to the following counsel of record:

Rand Carroll, Esq.
Oil Conservation Division
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(by hand-delivery)

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504
(by facsimile transmission)

J. Scott Hall

STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
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

ENERGEN RESOURCE CORPORATION'S MOTION TO CONTINUE

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Expedited consideration of this motion is requested. An identical motion is being submitted this same day in the companion compulsory pooling case, Case No. 12,277.

Respectfully submitted

MILLER, STRATVERT & TORGERSON, P.A.

By_____

J. Scott Hall
Attorneys for Energen Resources Corp.
Post Office Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application was sent this 12th day of November 1999 to the following counsel of record:

Rand Carroll, Esq.
Oil Conservation Division
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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)

November 1, 1999

HAND DELIVERED

Mr. David R. Catanach, Hearing Examiner
Rand Carroll, Esq., Division Attorney
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87504

Re: ***Motion to Quash Subpoenas***
NMOCD Case 12276 and NMOCD Case 12277
Applications of Burlington Resources Oil & Gas Company
San Juan County, New Mexico

Gentlemen:

On behalf of Burlington Resources Oil & Gas Company, please find enclosed our motion to quash the two subpoenas issued and served on October 28, 1999. These cases are pending hearing on November 4, 1999.

Very truly yours,

W. Thomas Kellahin

cc: Hand Delivered:
Scott Hall, Esq.
attorney for Energen Resources Corporation

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 FOR A SPACING UNIT FOR ITS BROOKHAVEN COM WELLS NO. 8 & 8-A (W/2 SECTION 36, T27N, R8W) SAN JUAN COUNTY, NEW MEXICO — CASE 12276

IN THE MATTER OF THE APPLICATION OF BURLINGTON RESOURCES OIL & GAS COMPANY FOR COMPULSORY POOLING FOR A SPACING UNIT FOR ITS BROOKHAVEN COM B WELL NO. 3B (E/2 SECTION 16, T31N, R11W) SAN JUAN COUNTY, NEW MEXICO — CASE 12277

BURLINGTON RESOURCES OIL & GAS COMPANY'S MOTION TO QUASH SUBPOENA ISSUED AT THE REQUEST OF ENERGEN RESOURCES CORPORATION

BURLINGTON RESOURCES OIL & GAS COMPANY ("Burlington") by its attorneys, Kellahin & Kellahin, hereby moves the Division to Quash the Subpoena Duces Tecum issued October 28, 1999 at the request of Scott Hall, attorney for Energen Resources Corporation ("Energen") in Division case 12276 and Division Case 12277 which subpoena was served on October 28, 1999 commands Burlington to appear at 3:00 PM, Wednesday, November 3, 1999 before the Division and to produce documents set forth in the Subpoena Duces Tecum.

As grounds for its Motion to Quash Subpoena Duces Tecum, Burlington states the following:

BACKGROUND

1. Burlington, as operator, has proposed to the other working interest owners to drill three gas wells on certain acreage in the San Juan Basin:

(a) Brookhaven Com Well No. 8 to be located in the NW/4 of Section 36, T27N, R8W which will be drilled for an estimated cost of $427,630.00 and dually completed in the Mesaverde and Chacra formations (OCD Case 12276);

(b) Brookhaven Com Well No. 8-A to be located in the SW/4 of Section 36, T27N, R8W which will be drilled for an estimated cost of $427,630.00 and dually completed in the Mesaverde and Chacra formations (OCD Case 12276); and

(c) Brookhaven Com B Well No. 3B to be located in the SE/4 of Section 16, T31N, R11W which will be drilled for an estimated cost of $386,488.00 and completed in the Mesaverde formation (OCD Case 12277).

(The "Brookhaven Wells")

2. The acreage upon which Burlington proposes to drill the Brookhaven Wells was, in the early 1950s, subject to a November 27, 1951 farmout/operating agreement between Brookhaven Oil Company ("Brookhaven") and San Juan Production Company ("San Juan") called the "GLA-46 Agreement".

3. Burlington is the successor in interest to the rights and obligations of San Juan. Energen is one of the successors in interest to the rights and obligations of Brookhaven.

4. In response to Burlington's proposal, Energen contends it can participate in the Brookhaven Wells under the terms of the GLA-46 Agreement which are very favorable to Energen and include the right for Energen 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 the well (excluding casing) which cannot exceed $90,000.00; and

(c) Energen keeps its share of 25 % of the production until payout of the well costs and then keeps its share of 50 % of the production.

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

(a) imposed an obligation on Burlington to drill 18 single completion Mesaverde wells;

(b) Burlington has completed that drilling obligation 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 unanimous consent of the parties as to costs and allocation;

(d) despite Burlington's efforts, there is no agreement 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

6. Burlington contends that the Brookhaven Wells are not subject to the GLA-46 Agreement and therefore has filed these two compulsory pooling cases.

7. For Energen's contractual dispute with Burlington, Energen has sought and obtained a Division subpoena seeking:

(a) personal files of Alan Alexander, John Zent and James R. J. Strickler relating to the Brookhaven Wells, the Scott Well No. 24 and the Marcotte Well No. 2; and the GLA-46 Agreements;

(b) all documents relating to the GLA-46 Agreements.

8. In addition, Energen seeks, by subpoena, Burlington's geophysical and geological data concerning the Marcotte Well No. 2 and the Scott Well No. 24 in addition to the Brookhaven Wells.

PRIOR DIVISION DECISIONS

9. This matter has already been before the Division in Burlington's prior compulsory pooling cases against the GLA-46 Group including Total Minatome (Energen's predecessor) concerning the formation of two 640-acre "deep gas" Pennsylvanian formation spacing units:

(a) Case 11808, Order R-10877
Scott Well No. 24, Section 9, T31N, R10W

(b) Case 11809, Order R-10878
Marcotte Well No. 2, Section 8,T31N, R10W

10. In the Scott/Marcotte compulsory pooling cases, the Division granted Burlington's motion to quash subpoenas issued at the request of the GLA-46 Group which, like Energen's subpoenas, sought Burlington's GLA-46 Agreement records and geophysical data.

11. On July 10, 1997 the Division heard Burlington's applications in the Scott/Marcotte cases and on September 12, 1997 **granted** Burlington's applications and issued compulsory pooling orders R-10877 (Scott Well) and R-10878 (Marcotte Well).

12. In the Scott/Marcotte compulsory pooling cases, the Division declined to become involved in the contractual dispute between Burlington and Total Minatome over the interpretation of GLA-46, and instead, pooled the GLA-46 Group's interests 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."

13. 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."

14. The Marcotte well was drilled and abandoned as a "dry hole" in the Pennsylvanian formations and the Scott well was not drilled.

ISSUES RELEVANT TO THE BROOKHAVEN COMPULSORY POOLING CASES

The relevant issues before the Division in the Brookhaven compulsory pooling cases are:

(1) pre-hearing negotiations between Burlington and the GLA-46 Group (including Energen) as to the Brookhaven wells;

(2) interest ownership in the Brookhaven wells' spacing units;

(3) information concerning dates wells proposed;

(4) overhead rates for supervision

(5) proposed risk penalty

(6) estimated costs of wells (AFE)

EVIDENCE RELEVANT TO THE BROOKHAVEN COMPULSORY POOLING CASES

The relevant evidence before the Division in the Brookhaven compulsory pooling cases are:

(1) communications with Burlington which demonstrate Burlington's willingness to negotiate a voluntary agreement which Energen has in its own possession and control.

(2) ownership records for the Energen interest which are within its own control or are matters of public record.

(3) information concerning dates each well was proposed which are a matter of record already known to Energen.

(4) overhead rates for supervision are not resolved by a search of Burlington's files but by Energen doing its own homework and using widely known information in the industry and available to Energen.

(5) proposed risk penalty

(6) estimated well costs ("AFE")

SUBPOENAS SEEK PRODUCTION OF IRRELEVANT DOCUMENTS

Energen seeks extensive production of contract documents and geologic and geophysical data which is irrelevant to the issues in the Brookhaven pooling cases.

GLA-46 contract documents and correspondence

Energen seeks to engage the Division in the resolution of a contractual dispute the resolution of which is beyond the jurisdiction of the Division to decide. In doing so, Energen seeks contract documents irrelevant to the Brookhaven Well compulsory pooling cases. That data is irrelevant because the Division has already found that "The interpretation of the GLA-46 Agreement should be deferred to the courts"; and that "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." **(See Orders R-10877 and R-10878)**

While GLA-46 Agreements are a matter of public record or information within the control and possession of Energen, who acquired the Total Minatome interest, the important point is that because of the precedent set by the Division in prior pooling cases on this subject, that contractual dispute is not relevant to the Brookhaven compulsory pooling cases.

In addition to seeking the GLA-46 Agreement documents, Energen also wants Burlington to produce the documents relating to efforts to obtain voluntary participation and/or compulsory pooling" for the Scott and Marcotte wells. The Scott/Marcotte well documents are not relevant to the Brookhaven compulsory pooling cases.

geophysical data:

Energen seeks irrelevant geophysical data from the Marcotte Well No. 2, the Scott Well No. 24 and the Brookhaven wells. That data is irrelevant because:

(1) The Scott/Marcotte wells were the subject of compulsory pooling cases in 1997 involving not the Mesaverde or Charca formations but an effort to drill and complete Pennsylvanian formation gas wells;

(2) Burlington's Pennsylvanian formation geophysical data for the Scott/Marcotte wells is for an area some 26 miles north-west from the Brookhaven Com 8 and 8-A wells and some 4 miles east from the Brookhaven COM B Well 3B;

(3) The Scott/Marcotte geophysical data was not used to determine the well locations or spacing units for the Brookhaven wells;

(4) The area covered by the Scott/Marcotte geophysical data does not include the Brookhaven wells. **See Exhibit "A"**

(5) Burlington did **not** used any geophysical data for determining the Brookhaven well locations or spacing units;

geological data:

Energen seeks irrelevant geological data from the Marcotte Well No. 2, the Scott Well No. 24, and the Brookhaven wells. That data is irrelevant because:

> The Burlington geological data for the Mesaverde and Chacra formation from the area of the Scott/Marcotte well locations is too far removed from the Brookhaven wells to be relevant in determining the risk of the Brookhaven wells.

ENERGEN SEEKS DOCUMENTS AVAILABLE IN PUBLIC RECORDS OR ITS OWN FILES

geologic data:

Burlington has used currently available public geologic and petroleum engineering data concerning the Mesaverde and Chacra formations to evaluate the risk involved in the Brookhaven wells. This data is also available to Energen, including but not limited to Division files and records, from which Energen can reach its own opinions and conclusions about the appropriate risk factor penalty. For example, there are some 25 Mesaverde wells in the nine section area surrounding the Brookhaven Com Wells 8 and 8-A and some 37 Mesaverde wells in the nine section area surrounding the Brookhaven B Com Well No. 3B. The publicly available data includes production, completed intervals, logs, formation depths, etc., which Energen can use to evaluate the risk factor penalty.

Energen is asking Burlington to prepare Energen's case and to do Energen's research. All relevant data is available in public records or in the possession of Energen to address the risk factor penalty. Burlington has no obligation or duty to do homework for Energen.

documents and correspondence:

Of the relevant issues involved in these compulsory pooling cases, Energen:

(a) has in its own possession and control, communications with Burlington which demonstrate Burlington's willingness to negotiate a voluntary agreement;

(b) ownership records for Energen are within its own control or are matters of public record;

(c) information concerning dates each well was proposed are a matter of record already known to Energen;

SUBPOENAS SEEK PRODUCTION OF BURLINGTON'S CONFIDENTIAL AND PROPRIETARY SEISMIC DATA

Burlington is the owner of seismic data which is the confidential business information and the trade secrets of Burlington.

Because Energen owns mineral interests in the Pennsylvanian formation in the Scott/Marcotte vicinity, it is using the Brookhaven pooling cases, which involve the Mesaverde and Charca formations, as an excuse to have Burlington disclose its confidential data concerning the Pennsylvanian formation to Energen. That disclosure will provide Energen with Burlington's confidential data and give Energen either (a) a competitive advantage in other tracts in which it owns an interest and/or (b) establish a commercial value for purposes of selling or trading their interest to others.

It is no solution for Energen to contend that Burlington can be protected by simply signing a "confidentiality agreement" with Energen. This matter was fully briefed and argued before the Division in the Scott/Marcotte cases and was resolved against Energen's position.

CONCLUSION

Burlington seeks a pooling order providing options to participate or to be a carried interest subject to a non-consent penalty. The Division is authorized to approve a maximum 200% risk factor penalty in pooling cases. Burlington seeks the adoption of the maximum penalty.

Subpoena is burdensome and oppressive and seeks to obtain Burlington confidential, proprietary geologic/geophysical data and attempts to have the Division litigate a contractual dispute between Burlington and Energen over the GLA-46 Agreement. None of which is relevant to the risk factor penalty issue.

This is a plain vanilla compulsory pooling case which Energen is seeking to unnecessarily complicate in order to create confusion so that Energen can:

(1) give itself a competitive advantage in other tracts in which it owns an interest;

(2) establish a commercial value for what up until now has been "rank wildcat" deep gas Pennsylvanian formation property.

(3) attempt to have the Division litigate a contractual dispute between Burlington and Energen over the GLA-46 Agreement.

Regardless of its motives, the Subpoena should be quashed in its entirety.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading was transmitted by facsimile to opposing counsel this 1st day of November, 1999 as follows:

Scott Hall, Esq.
Miller Law Firm
150 Washington Avenue, Suite 300
Santa Fe, New Mexico 87501

W. Thomas Kellahin

VERIFICATION

STATE OF NEW MEXICO)
)SS.
COUNTY OF SAN JUAN)

Before me , the undersigned authority, personally appeared Alan Alexander, who being first duly sworn, stated that he is a petroleum landman with Burlington Resources Oil & Gas Company and is knowledgeable about the facts and circumstances of this matter and the factual statements and opinions set forth in this pleading are true and correct to the best of his knowledged and belief.

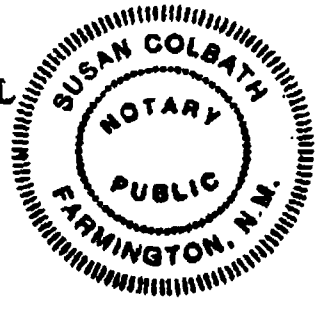
Alan Alexander

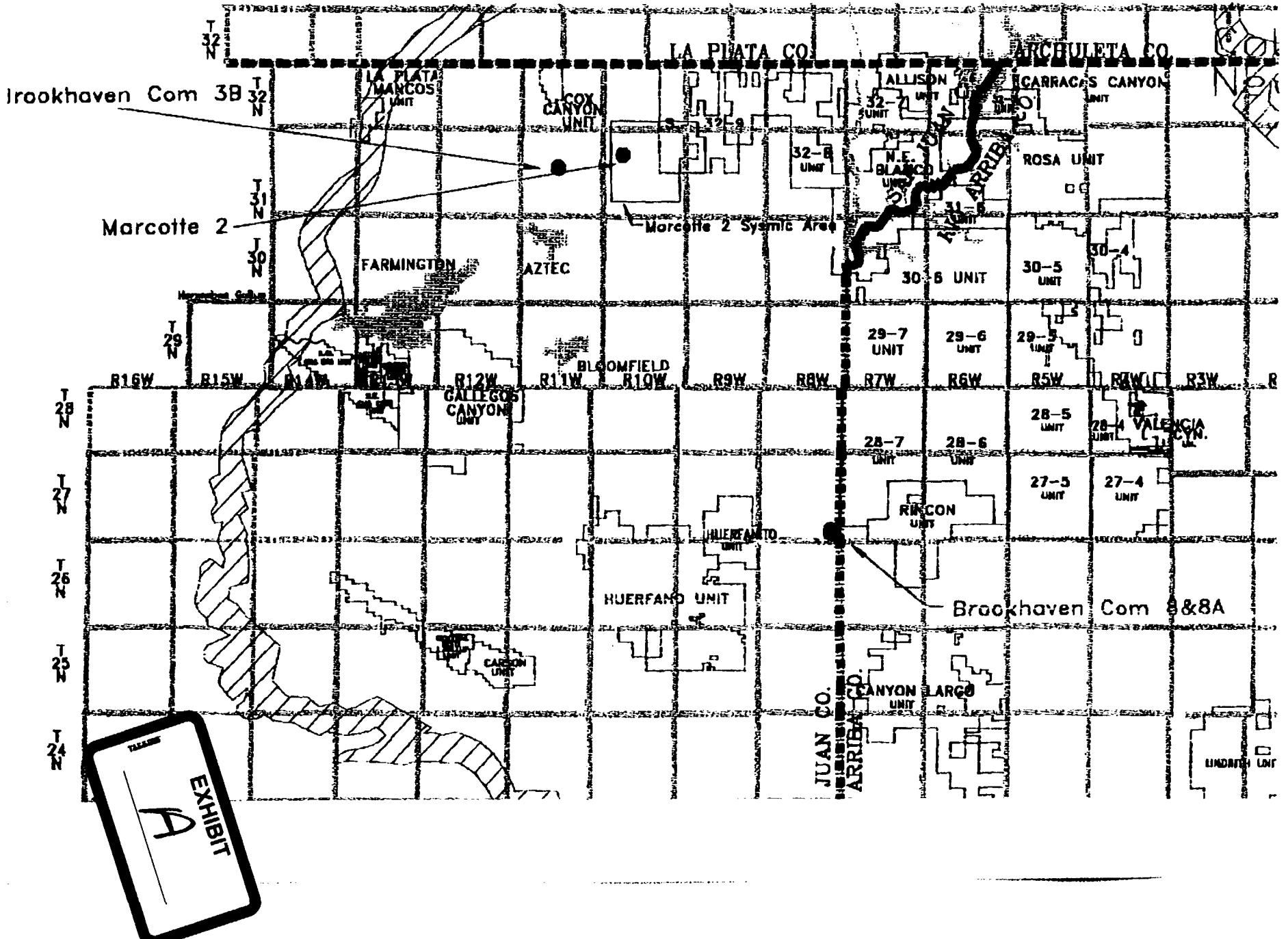
SUBSCRIBED AND SWORN to before me this 1 day of November, 1999, by Alan Alexander.

Notary Public

My commission expires: 01-10-01

SEAL




Brookhaven Com 3B
Marcotte 2
Marcotte 2 Sysmic Area
Brookhaven Com 8&8A
LA PLATA CO.
ARCHULETA CO.
JUAN CO.
ARRIBA CO.
LA PLATA MANCOS UNIT
COX CANYON UNIT
ALLISON UNIT
CARRACAS CANYON UNIT
32-8 UNIT
N.E. BLANCO UNIT
ROSA UNIT
SAN JUAN RIVER
31-6 UNIT
30-6 UNIT
30-5 UNIT
30-4
FARMINGTON
AZTEC
BLOOMFIELD
29-7 UNIT
29-6 UNIT
29-5 UNIT
GALLEGOS CANYON UNIT
28-5 UNIT
28-4 UNIT
VALENCIA CYN.
28-7 UNIT
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HUERFANO UNIT
CARSON UNIT
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EXHIBIT A

STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
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

ENERGEN RESOURCE CORPORATION'S MOTION TO CONTINUE

Energen Resources Corporation, ("Energen"), through its counsel, MILLER, STRATVERT & TORGERSON, P.A. (J. Scott Hall), moves to continue the hearing presently set for November 4, 1999. As grounds for this motion, Energen states:

By its October 13, 1999 Application, Burlington Resources Oil and Gas Company, ("Burlington"), seeks the forced pooling of certain oil and gas lease working interests for the drilling of Burlington's Brookhaven Com Wells 8 and 8-A located in the W/2 of Section 36, T-27-N, R-8-W, NMPM, in San Juan County (the "Subject Lands"). Among the interests Burlington seeks to pool are the working interests of Energen and a number of other interest owners which are subject to a pre-existing contract, (the GLA 46 Agreement). Through their respective predecessors in interest, under the GLA 46 Agreement, the operating rights of Energen, et al., in the Subject Lands were transferred to Burlington. Over the years, scores of wells were drilled by El Paso/Meridian/Burlington under the GLA-46 to all of the predominant producing formations in the area.

Earlier this year, when Burlington proposed the wells that are the subject of this application, Energen, following a long-standing course of dealing, advised Burlington that it would voluntarily participate in the well pursuant to the terms of the GLA-46 under which its interests were previously committed. In response, changing its prior position, Burlington advised that (1) the GLA-46 is no longer applicable, and (2) its terms are no longer economically favorable. Simultaneously, despite its unilateral declaration that the GLA-46 no longer applied, Burlington sought to have the existing contract released and replaced with a new form of agreement.

The parties' disagreement is founded on a primary, threshold issue: (1) Whether lands that are voluntarily committed under a valid, existing agreement are subject to being compulsorily pooled under the terms of NMSA 70-2-17 (1978). This initial issue necessarily implicates the question whether the Division has jurisdiction to proceed, a question that should be addressed at the outset.

This focal issue should be further developed in order to fulfill Energen's right to a full and fair hearing and to enable the Division to enter a fully informed and well reasoned decision that is supported by an adequate evidentiary record.

Burlington's application was filed on October 13, 1999. Our Entry of Appearance on behalf of Energen was not made until October 28, 1999. On that same day, at Energen's request, the Division issued a subpoena duces tecum seeking the production of documents directly related to the GLA 46 issue. The subpoena calls for the documents to

be produced on November 3rd, the day before the presently scheduled hearing. Given the present time-frame at work, Burlington's compliance may be difficult and the time allowed for Energen's review will probably be inadequate. Under these circumstances, it is in the interests of the parties and the Division to continue the case from the November 4th docket to a time to allow for the proper conduct of discovery and the further development of this important issue. On information and belief, there is no lease expiration problem and rig-scheduling should not be at issue. No prejudice will result from a continuance.

Burlington's concurrence with this motion has been requested. Counsels have exchanged voice-mail messages, but as of today, it is not certain whether Burlington will concur.

Expedited consideration of this motion is requested. An identical motion is being submitted this same day in the companion compulsory pooling case, Case No. 12,277.

Respectfully submitted

MILLER, STRATVERT & TORGERSON, P.A.

By _____

J. Scott Hall
Attorneys for Energen Resources Corp.
Post Office Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application was sent this 1st day of November 1999 to the following counsel of record:

Rand Carroll, Esq.
Oil Conservation Division
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(by hand-delivery)

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J. Scott Hall