

802.2
802.3

Verne, B. Michael

From: [REDACTED]
Sent: Monday, July 09, 2012 3:33 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: oil & gas/unproductive real property exemptions

Dear Mike:

Thanks for taking the time to discuss our exemption question this afternoon. As discussed, I'm writing to confirm the applicability of the unproductive real property exemption under the HSR Act to the transaction described below.

Company A proposes to purchase certain producing and non-producing oil and gas reserves assets (the "Assets") from Company B for approximately \$635 million, subject to certain purchase price adjustments (the "Purchase"). The Assets consist of (i) developed and producing oil and gas reserves, and associated exploration and production assets related to such properties; (ii) non-producing oil and gas reserves at anticipated future drilling locations; and (iii) certain additional assets, including gathering pipelines. Certain of the non-producing oil and gas reserves may be adjacent to the developed and producing oil and gas reserves. The non-producing oil and gas reserves are undeveloped and have produced no revenue to date.

We understand that the PNO staff has articulated the following principles:

1. Reserves of oil and gas that are presently producing may be included in the \$500 million carbon-based mineral reserves exemption under 16 C.F.R. § 802.3(a).
2. Reserves of oil and gas that have not generated revenues in excess of \$5 million during the 36 months preceding the Purchase are exempt — with no dollar limit — as unproductive real property under 16 C.F.R. § 802.2(c), and therefore do not count toward the \$500 million carbon-based mineral reserves exemption limit in § 802.3(a).
3. Non-producing oil and gas reserves are exempt — with no dollar limit — as unproductive real property even if they are adjacent to producing reserves that are also part of the Purchase, so long as the adjacent producing reserves qualify for the carbon-based mineral reserves exemption under 16 C.F.R. § 802.3(a).
4. Non-producing oil and gas reserves may be treated separately from producing oil and gas reserves that are located at different depths under a single tract of land. The producing oil and gas reserves under such tract will count towards the \$500 million carbon-based mineral reserves exemption limit of § 802.3(a), and the non-producing reserves under such tract will fall under the unproductive real property exemption and have no dollar limit.

Based on these principles, we have determined the following:

1. The developed and producing oil and gas reserves, and the associated exploration and production assets related to such properties, are valued at approximately \$290 million and are therefore exempt pursuant to 16 C.F.R. § 802.3(a). In determining whether real property qualifies for exemption under 16 C.F.R. § 802.3(a), Company A may consider only the value of

Company B's assets that are sold as part of the Purchase, and not the value of any of Company A's existing assets.

2. The non-producing oil and gas reserves are exempt pursuant to 16 C.F.R. § 802.2(c). The exception to what constitutes unproductive real property articulated in 16 C.F.R. § 802.2(c)(2)(iii) applies only where non-producing real property is adjacent to non-exempt real property. Additionally, non-producing oil and gas reserves are treated separately from producing oil and gas reserves that are located at different depths under a single tract of land. Thus, while certain of the non-producing oil and gas reserves contemplated in the Purchase may be adjacent to productive reserves or located under the same tract of land at different depths relative to productive reserves, because those productive reserves are separately exempt pursuant to 16 C.F.R. § 802.3(a), the non-producing reserves remain exempt as unproductive real property pursuant to 16 C.F.R. § 802.2(c).
3. The remaining assets, which include gathering pipelines, do not fall under the exemptions in 16 C.F.R. §§ 802.2(c) or 802.3, but are valued at substantially less than \$68.2 million and therefore do not meet the HSR Act's size-of-transaction test.

* * *

Given the exemptions set forth in 16 C.F.R. §§ 802.3(a) and 802.2(c), we have concluded that Company A may acquire the Assets from Company B without filing notification under the HSR Act. Please let us know at your earliest convenience if you agree with our conclusions outlined above. Thanks very much.

Sincerely,

[Redacted Signature]

[Redacted Signature]

AGREE -
BM
K. WALSH CONCURS.
7/9/12

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Thank you in advance for your cooperation and assistance.