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November 21, 1997

PLEASE REPLY TO SANTA FE

Mr. William J. LeMay
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

HAND DELIVERED

Re: NMOCD Case No.s 11808 and11809; Application of Burlington Resources Oil and Gas Company for Compulsory Pooling, Unorthodox Well Location and Non-Standard Spacing and Proration Unit, San Juan County, New Mexico. **De Novo**

Dear Mr. LeMay:

Enclosed for filing today is Total's Response to Burlington's Motion to Quash Subpoena. Thank you for your assistance in this matter.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall

J. Scott Hall

JSH:CMB

cc: W. Thomas Kellahin, Esq. (w/enclos.)
J.E. Gallegos, (w/ enclos)
Lynn Hebert, Esq. (w/enclos.)
William F. Carr, Esq. (w/enclos.)

BEFORE THE

OIL CONSERVATION DIVISION

NEW MEXICO DEPARTMENT OF ENERGY AND MINERALS

IN THE MATTER OF THE APPLICATION OF
BURLINGTON RESOURCES OIL & GAS COMPANY
FOR COMPULSORY POOLING AND A NON-STANDARD
GAS PRORATION AND SPACING UNIT, SAN JUAN
COUNTY, NEW MEXICO

CASE NO. 11808
CASE NO. 11809
(Consolidated)
De Novo

TOTAL'S RESPONSE TO BURLINGTON'S
MOTION TO QUASH SUBPOENA

Total Minatome Corporation, ("Total"), for its response to the Burlington Resources Motion To Quash, states:

BACKGROUND FACTS

For decades, Total and Burlington, and their respective predecessors in interest, have been joint participants in the drilling of numerous wells in all the predominant formations in the San Juan Basin pursuant to a pre-existing land agreement. That agreement, the GLA-46 Agreement, establishes the voluntary commitment of Total's acreage to those various well proposals and at no point in the history of the agreement was the compulsory pooling of Total's interests ever contemplated or necessary. For every well proposed by El Paso/Meridian/Burlington, Total has each time indicated its willingness to participate under the GLA-46 Agreement and each time, El Paso/Meridian/Burlington, too, abided by the terms of the pre-existing agreement.

During the course of the proceedings before the Division, Burlington acknowledged the continued applicability of the GLA-46 Agreement to various depths, including the sub-Dakota completion depths proposed for its Marcotte No. 2 and Scott No. 24 wells. It is undisputed that Burlington sought the amendment of the GLA-46 Agreement preparatory to the drilling and

development of Burlington's Arch Rock Deep Penn prospect. (See, inter alia, Burlington's April 1, 1997 correspondence, Exhibit A, attached.) Total did not amend the GLA-46 land agreement; Instead, Total indicated it was voluntarily participating in Burlington's Marcotte 2 and Scott 24 wells by committing Total's acreage under the GLA-46, consistent with past practice. (See, Total's May 23, 1997 correspondence, Exhibit B, attached.)

Total's acreage is committed to the two wells. Burlington, on the other hand, no longer wishes to honor the GLA-46 land agreement. This is the larger context framing the dispute presently before the Commission.

THE TOTAL SUBPOENA AND THE MOTION TO QUASH

Burlington has attempted to trivialize these proceedings by its claims that Total is merely using the administrative process to "ride-down" the wells to obtain well data in order to gain a "competitive advantage". In other words, Burlington wishes the Commission to draw the inference that ulterior motives are behind Total's resistance to the pooling of its interest. Burlington ignores the true issues in this proceeding and its Motion To Quash is accordingly off-point.

More accurately, the salient issues before the Commission are these:

(1) Total's acreage interests are voluntarily committed to Burlington's proposed wells by contract and within the meaning of § 70-2-18. Consequently, Total's acreage is not subject to pooling by the Commission. Nevertheless, disregarding the pre-existing GLA-46 land agreement, Burlington initiated the administrative process to pool Total's otherwise committed acreage. Consequently, the availability of Total's acreage, Total's voluntary commitment under the GLA-46, Burlington's past and present interpretation and application of the GLA-46 are issues implicated here.

(2) Evidence elicited during the course of the compulsory pooling process reflects that Burlington violated the implied standard of good faith that applies to the operator's efforts to obtain voluntary participation as a pre-condition to bringing a pooling application under Section 70-2-18. It is also clear that Burlington has violated acceptable customs and practices of the industry in proposing its wells, a further indication of Burlington's disregard of the good faith standard. These violations began last spring and have continued throughout these proceedings. For instance, Burlington has recently tendered an AFE to the pooled interest owners that does not accurately reflect estimated drilling and completion costs for the Scott No. 24 well in the face of knowledge that the actual costs for the recently completed Marcotte No. 2 were several magnitudes greater than the estimates reflected in its AFE.

(3) The issue of risk is always a part of any compulsory pooling proceeding. Indeed, by its refusal to accept Total's election and tender of its share of estimated well costs, Burlington has sought to use the statutory risk penalty provision as tool to gain leverage in this case. Both the election and risk issues are directly pertinent to this case. See Viking Petroleum, Inc. v. Oil Conservation Com'n., 100 N.M. 451, 672 P.2d 280 (1983).

These are among the issues Total will raise before the Commission. Consequently, all the materials sought by Total are clearly "pertinent" within the meaning of Section 70-2-8 and Total is entitled to their production.

Burlington's Confidentiality/Proprietary Data Objection

Burlington's assertion that the subpoenaed materials include proprietary business data is not a proper basis for objecting to the subpoena. Indeed, it has become clear that Burlington's primary concern is that confidentiality be maintained for such data, not that the data be withheld.

This is a concern that can be accommodated by both the Commission and Total: Burlington has previously indicated its willingness to produce the data under confidentiality restrictions, although on the condition that Total also execute Burlington's Joint Operating Agreement. While Total cannot execute Burlington's JOA and release its property interests under the GLA-46 land agreement, it is agreeable to entering into a Commission-approved Confidentiality Agreement. Such an arrangement has been proposed to Burlington, but Burlington persists in its demand that Total waive its rights under the GLA-46 and in this *de novo* proceeding. (See correspondence between counsel dated November 5, 1997, November 10, 1997 and November 11, 1997, along with a proposed form of confidentiality agreement, Exhibits C, D, E and F.)

The reasonable course of action for the Commission is to require Burlington to obey the subpoena and to further require Total to abide by a Confidentiality Agreement. With that, Burlington's concerns over the release of proprietary data are obviated.

Burlington's Disregard For the Administrative Process

In cases before the Commission, it is incumbent on both counsel and the parties to work together to resolve their procedural and discovery disputes so that the Commission receives a full and complete presentation of the evidence. Burlington has exhibited a wholesale disregard for the principle throughout: Total's efforts to work a compromise of this discovery dispute have gone without response from Burlington (See, Exhibit G, attached.)

Again, it should be remembered that this situation is of Burlington's making; not the Commission's or Total's. Burlington commenced its drilling program without having its land issues resolved, before the issuance of pooling orders and before the resolution of the spacing issue. Throughout, it has been obvious that adherence to the applicable provisions of the Oil and

Gas Act and the administrative process has been low on Burlington's list of priorities. The Commission should not countenance such conduct in this case.

Total's Right To A Full And Fair Hearing

The law favors liberal discovery in any proceeding. Carter v. Burns Constr. Co., Inc., 85 N.M. 27, 31, 508 P.2d 1324, 1328 (Ct. App. 1973); cert. denied, 85 N.M. 5, 508 P.2d 1302 (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 Commission is obliged to make findings of ultimate facts materials to the issues before it. Further, the Commission's findings are required to have substantial support in the record and must also disclose the reasoning of the Commission. See Fasken v. Oil Conservation Com'n., 87 N.M. 292, 532 P.2d 588 (1975). This the Commission cannot do without receiving evidence from the materials to be produced pursuant to the subpoenas. This *de novo* proceeding under Section 70-2-13 is the final opportunity afforded the parties to establish a record in the event of further appeals. 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 the Commission and due process will be dis-served as a result.

The Commission should enforce the subpoena to accord due process.

CONCLUSION

Burlington's relevance objections are disproved as baseless. Moreover, Burlington's concerns about the uncontrolled release of proprietary information are eliminated by the confidentiality agreement. Accordingly, the Commission should end Burlington's disobedience

to the subpoena and order production of the requested materials under the terms of the confidentiality agreement.

MILLER, STRATVERT & TORGERSON, P.A.

By J. Scott Hall

J. Scott Hall
Post Office Box 1986
Santa Fe, New Mexico 87501
Attorneys for Total Minatome Corporation

Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was mailed to counsel of record on the 21 day of November, 1997, as follows:

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504-2265
Attorneys for Burlington Resources Oil & Gas Company

Lynn Hebert, Esq.
New Mexico Oil Conservation Division
2040 S. Pacheco St.
Santa Fe, NM 87505-5472

J. E. Gallegos, Esq.
Gallegos Law Firm, P.C.
460 St. Michaels Drive #300
Santa Fe, New Mexico 87505-7602

William F. Carr, Esq.
Campbell, Carr, Berge & Sheridan
P.O. Box 2208
Santa Fe, NM 87504

J. Scott Hall

BURLINGTON RESOURCES

SAN JUAN DIVISION

April 1, 1997

RECEIVED

APR 04 1997

LAND ADMINISTRATION

Total Minatome Corporation
Attn: Ms. Deborah Gilchrist, Land Manager
2 Houston Center, Suite 2000
P.O. Box 4326
Houston, TX 77210-4326

RE: GLA-46
Amendment
San Juan County, New Mexico

Dear Ms. Gilchrist:

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 cost of drilling such wells subject to the limitations and in accordance with the provisions of said Agreement.

Total Minatome Corporation (Total) in consideration for Burlington Resources Oil & Gas Company (Burlington) showing Total proprietary geology, 2D and 3D seismic for the purpose of exploring and drilling for a deep gas Pennsylvanian well located in the SE/4 of Section 8, T31N, R10W, (Arch Rock Prospect) San Juan County, New Mexico, agrees to amend the November 27, 1951 Operating Agreement. Total and Burlington shall set a mutually agreeable time and place to show Total management the Arch Rock prospect geology and seismic which will include a data and well package, on or before April 19, 1997. Total, after said prospect review shall have a fifteen (15) day election period to either 1) participate in the drilling and completion of a Pennsylvanian well in Section 8, T31N, R10W, San Juan County, New Mexico, or 2) Farmout its interest in the Arch Rock Prospect on those certain terms and conditions outlined on Exhibit "A" to this Letter Agreement.

By this Letter Total Minatome Corporation as successors in interest to Lear Petroleum Partners Operating Company, L.P. (formerly Brookhaven Oil Company) and Burlington Resources Oil & Gas Company (formerly El Paso Gas Company) as successor in interest to San Juan Production Company, do hereby evidence the Amendment to the Operating Agreement dated November 27, 1951 as amended to provide for the following:

EXHIBIT A

NMOCD Case No. 11808
NMOCD Case No. 11809
Exhibit No. 9

Total agrees to amend the Operating Agreement dated November 27, 1951, by deleting paragraphs 5-14, Exhibit "C" (Accounting Procedure) and the August 8, 1986 Letter Agreement (Gas Balancing Agreement) in its entirety, and replacing with the attached Exhibit "B", AAPL Model Form 610 1982 Operating Agreement. Said Operating Agreement provides among other things with the following:

1. 400% Non-Consent Penalty
2. $25,000 Limitation of Expenditure
3. 1984 COPAS Accounting Procedure
4. The Preferential Right to Purchase Provision deleted
5. Gas Balancing Agreement.
6. Effective Date, April 1, 1997

Please evidence your acceptance of the foregoing by signing and returning a copy of this letter to the undersigned within fifteen (15) days of your receipt.

Yours very truly,

Burlington Resources Oil & Gas Company

By: _____

James R.J. Strickler
Senior Staff Landman

JRS/dg
amend_27

Agreed to and Accepted this _____day of _____, 1997.

TOTAL MINATOME CORPORATION

By: _____

Title: _____

EXHIBIT "A"

TOTAL MINATOME CORPORATION
ARCH ROCK PROSPECT

	GROSS ACRES	NET ACRES
<u>Township 31 North, Range 10 West, N.M.P.M.</u>		
Section 3: Lot 4 North and West of River	1.00	0.429
Lot 4 South and East of River	39.00	6.673
Lots 5 thru 9, S/2 NW/4	259.51	48.658
Section 4: Lot 5, E/2 SW/4,	118.64	22.245
NW/4 SW/4 and Part SW/4 NW/4	50.00	8.856
Section 8: Lots 1,2,4 and 5	158.74	29.764
Section 9: Lots 1,2, NE/4 NW/4	120.55	22.603
Section 13: Lots 3 and 4	69.21	11.537
Section 14: Lot 10,	40.51	6.753
SW/4 NW/4, NW/4 SW/4, E/2SW/4	160.00	30.000
Section 15: SE/4 NW/4	40.00	7.500
Section 16: NW/4 NE/4, SE/4 NE/4, SE/4 NW/4 NW/4 SW/4, SE/4 SW/4, NW/4 SE/4, SE/4 SE/4, SW/4 SE/4, SW/4 SE/4	280.00	47.836
	40.00	40.00
Section 17: Lots 1 thru 10	404.63	75.868
Section 23: NW/4 NE/4,	40.00	14.835
NE/4 NW/4,	40.00	6.834
NE/4 SE/4	40.00	7.500
Section 24: NW/4 SW/4	40.00	7.500
<u>Township 31 North, Range 11 West, N.M.P.M.</u>		
Section 2: SE/4 SW/4	40.00	10.000
<u>Township 32 North, Range 10 West, N.M.P.M.</u>		
Section 31: Lots 5,6,11,12,13,14,19 and 20	318.46	59.711
San Juan County, New Mexico		
Total Gross Acres	2,300.25 Gross Acres, More or Less	
Total Net Acres	429.102 Net Acres, More or Less	

*Insofar and only insofar as said lands and leases covers depths below the base of the Mesaverde Formation.

*It is the intent of Total Minatome Corporation (Total) to Farmout all their Leasehold, Right, Title and interest of Total's in the described Lands and Leases in this Exhibit "A", whether such Exhibit "A" fails to include or inaccurately sets forth the description of Lands or interest under the subject Lands and Leases.

TOTAL

TOTAL MINATOME CORPORATION

May 23, 1997

Burlington Resources, Inc.
3535 East 30th St.
P.O. Box 4289
Farmington, New Mexico 87499-4289
Attention: James J. Strickler

MAY 30 1997

PRODUCTION ACCTG.

Re: Marcotte #2
Pennsylvanian formation
Section 8, T31N-R10W
San Juan County, New Mexico

Gentlemen:

Total Minatome Corporation (TMC) agrees to participate in the above referenced well per the terms and conditions of the Farmout and Operating Agreement dated November 27, 1951, between Brookhaven Oil Company and San Juan Production Company, as amended and supplemented.

Enclosed is one fully executed copy of your participation letter dated April 22, 1997 on behalf of TMC.

Sincerely,

Deborah J. Gilchrist
Landman

TOTAL
2 HOUSTON CENTER, SUITE 2200, 909 FANNIN • P.O. BOX 4326 • HOUSTON, TEXAS 77210-4326
TELEPHONE (713) 739-3000 • TELECOPIER (713) 739-3160 • TELEX 762293

EXHIBIT B

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FAX: (505) 989-9857

November 5, 1997

PLEASE REPLY TO SANTA FE

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

BY HAND DELIVERY

Re: NMOCD Case No.s 11808 and 11809 (De Novo); Application of Burlington Resources Oil and Gas Company For Compulsory Pooling, San Juan County, New Mexico

Dear Tom:

I have received the Burlington Response to Total Minatome Corporation's Second Motion For Stay. In this regard, I believe it is incumbent on counsel and the parties to make a good faith effort to compromise their differences on a particular matter rather than ask the Division or Commission to settle each and every dispute that may arise during the course of a proceeding. Accordingly, please regard this as Total's invitation to Burlington to effect an interim compromise of the election participation/well data confidentiality issue.

The present dispute may be briefly summarized as thus: On the one hand, Total wishes to exercise its right under the compulsory pooling orders to avoid the statutory risk penalty. At the same time, Total wishes to have access to the requested well data. On the other hand, Burlington wishes to preserve the confidentiality of certain well data and this particular concern constituted the basis for Burlington's rejection of Total's payment of its share of estimated well costs. If I correctly understand Burlington's position, as represented in the Response, particularly at page 5, the only reason Burlington rejected Total's payment is because Total is not a signatory to a confidentiality agreement. In this regard, it should be noted that until now, we have never been

EXHIBIT
C

asked to execute a confidentiality agreement.

A common-sense solution to this particular dispute is obvious: Total will agree to execute an agreement protecting the confidentiality of the data it has requested from Burlington. By so doing, Burlington's concerns over the data are obviated and Total's payment of well costs under the pooling order should be rendered a non-issue. Accordingly, if Burlington will stipulate that Total's payment of its share of estimated well costs was both proper and timely and is not an issue in contention in this proceeding, then Total will agree to be bound by the terms of an acceptable confidentiality agreement approved by an order entered by the Commission or the Division Director.

To facilitate the prompt resolution of this particular matter, I have prepared the enclosed original of a proposed Stipulation And Agreement Governing the Confidentiality Certain Information for your review.

Thank you for your consideration of this proposal. Please let me hear from you before the end of business tomorrow.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall, Esq.

cc: Wm. J. LeMay, Director, NMOCD
Lynn Hebert, Esq. NMOCC Counsel
Rand Carroll, Esq. NMOCD Counsel
Norman Inman, Esq. Total Minatome Corporation
J.E. Gallegos, Esq.

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

W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

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

November 10, 1997

Scott Hall, Esq.
Miller Law Firm
P. O. Box 1986
Santa Fe, New Mexico 87501

Re: NMOCD Case 11809 (Order R-10878)
Application of Burlington Resources
Oil & Gas Company for Compulsory Pooling
Marcotte Well No. 2

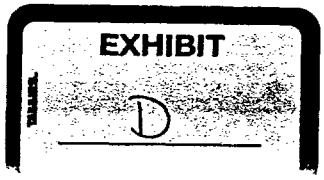
Dear Mr. Hall:

I have been involved in hearing at the Division and have not been able to respond until now to your letter dated November 5, 1997 in which you propose a Stipulation and Confidentiality Agreement which your client will sign provided Burlington agrees that:

(a) Minatome's qualified tender of payment was **both timely and properly** made and

(b) is not an issue in contention in this proceedings.

You have attempted to link the resolution of one disputed issue with another disputed issue while your client still attacks the compulsory pooling order and is doing so "under protest and without prejudice to any rights, claims or defenses which it may assert..." This is not acceptable to Burlington who still maintains that Minatome failed to properly and timely elect to participate pursuant to the compulsory pooling order.



Once again, in an effort to settle this matter, Burlington offers Minatome an opportunity to commit its interest in the Marcotte well and resolve its dispute with Burlington by signing Burlington's Joint Operating Agreement.

Minatome's refusal to sign Burlington's proposed Joint Operating Agreement gave Burlington no other choice but to apply to the Division for a compulsory pooling order. Now that the Marcotte well has been drilled, Minatome says it desires to participate in the well, but at the same time has appealed the compulsory pooling order and, among other things, has asked the Division to issue a subpoena for Burlington's confidential data.

As I understand it, Total Minatome's only reason for refusing to sign Burlington's Joint Operating Agreement is because that agreement contains a 400% non-consent penalty for any **subsequent** operations after drilling the Marcotte well. As you should know, such a subsequent operations percentage penalty is know very common and a search of the Division compulsory pooling case files will disclose to you dozens of examples of joint operating agreement with such penalties. However, the 200% risk factor penalty in a compulsory pooling order has nothing to do with the 400% subsequent operations penalty in a joint operating agreement. A compulsory pooling order fails to address subsequent operations, gas balancing, confidentiality and numerous other items.

By its qualified election, Total Minatome asserts it wanted to participate pursuant to the compulsory pooling order in order to avoid the 200% risk factor penalty imposed in that order for failure to participate in the Marcotte Well.

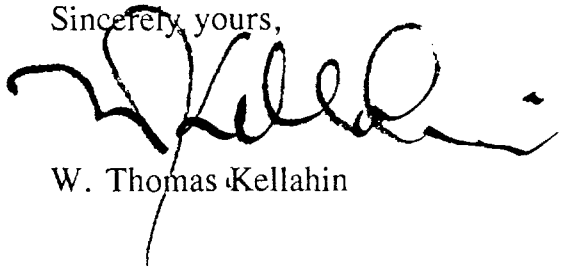
By signing the Joint Operating Agreement, including its confidential agreement, Total Minatome would be doing the same thing it says it wanted to do with the compulsory pooling order--that is to participate in the Marcotte well without being penalized. If Total Minatome will sign the Burlington's Joint Operating Agreement, Burlington would be agreeable to reducing the 400% subsequent operations penalty to 300% which is the equivalent of the Division's penalty of costs plus 200%.

Contrary to your contention, Total Minatome has been asked to sign a confidentiality agreement. As you should know, such a confidentiality provision is found at page 14(b) of the Joint Operating Agreement

Your reference to page 5 of Burlington's Response in opposition to Minatome's Stay Motion--"Minatome was asked to do only what all of the consenting working interest owners have already done--to sign a confidential agreement." is not an indication that Burlington will be satisfied with "any confidentiality agreement". I direct your attention to the fact that those interest owners, including Burlington, signed a joint operating agreement and in doing so agreed to be bound by the confidentiality agreement contained in that joint operating agreement.

We again offer your client the same opportunity--to voluntarily participate in the Marcotte well by signing Burlington's Joint Operating Agreement which will resolve this and all other disputed issues.

Sincerely yours,



W. Thomas Kellahin

cc: William J. LeMay, Director OCD
Lyn Hebert, Esq. Counsel OCC
Rand Carroll, Esq. Counsel OCD
Gene Gallegos, Esq.

cc: Burlington Resources
Attn: John Bemis, Esq.
Attn: Alan Alexander

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PAUL W. ROBINSON, COUNSEL

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POST OFFICE BOX 1986
SANTA FE, N.M. 87501-1986
TELEPHONE: (505) 989-9614
FAX: (505) 989-9857

PLEASE REPLY TO SANTA FE

November 11, 1997

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

Re: NMOCD Case No.s 11808 and 11809 (De Novo); Application of Burlington Resources Oil and Gas Company For Compulsory Pooling, San Juan County, New Mexico (**De Novo**)

Dear Tom:

Thank you for your November 10, 1997 letter regarding our offer to execute a confidentiality agreement. While your letter is neither fully nor directly responsive to my November 10th letter, it is my understanding that Burlington refuses to enter into a confidentiality agreement unless Total executes Burlington's customized Join Operating Agreement. By so doing, Burlington asks Total to waive its rights in the **de novo** proceeding as well as the long-standing property rights it owns with Burlington under the GLA-46 Agreement. This, Total cannot do.

As you know, it is Total's position that it had voluntarily committed its acreage to the Marcotte No. 2 and Scott No. 24 wells under the terms of the GLA-46 Agreement. The GLA-46 Agreement is binding on both Total and Burlington and has been followed by both parties on numerous other wells without restriction as to depth. As a consequence, Total's acreage, having been previously committed, may not be the subject of a pooling proceeding. Similarly, Burlington may not utilize the Division's authority under §70-2-17(C) as a tool to abrogate a pre-existing land contract between the parties. These are the reasons Total has resisted Burlington's inappropriate pooling applications and has refused to execute the JOA's.

Given the foregoing, it should be clear that the 400% risk penalty provision is not the only reason Total is unable to execute Burlington's customized JOA, as your letter incorrectly concludes. Moreover, in this context, your reference to the subsequent operations provisions of the JOA is off-base: In this regard, you should refer to Article XV(C) on page 14 of the proposed

EXHIBIT 7

JOA which makes the non-consent provisions of Article VI(B) specifically applicable to the drilling of the initial well, including the 400% risk penalty rate. There should be no debate about the meaning of this particular provision of Burlington's JOA, and consequently, the offer of a 300% risk penalty for subsequent operations seems rather pointless.

Again, for the record, Total cannot sign Burlington's JOA and waive its rights. However, our offer to enter into a mutually acceptable confidentiality agreement governing discovery during the pendency of the **de novo** proceeding still stands.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall, Esq.

cc: Wm. J. LeMay
Lynn Hebert, Esq
J.E. Gallegos, Esq.
Norman Inman, Esq.

BEFORE THE

OIL CONSERVATION DIVISION

NEW MEXICO DEPARTMENT OF ENERGY AND MINERALS

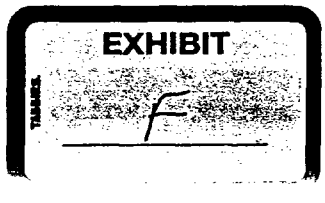
IN THE MATTER OF THE APPLICATION OF BURLINGTON RESOURCES OIL & GAS COMPANY FOR COMPULSORY POOLING AND A NON-STANDARD GAS PRORATION AND SPACING UNIT, SAN JUAN COUNTY, NEW MEXICO	CASE NO. 11808 CASE NO. 11809 (Consolidated) **DE NOVO**

STIPULATION AND AGREEMENT GOVERNING THE PROTECTION OF CONFIDENTIAL INFORMATION

Total Minatome Corporation, ("Total"), and Burlington Resources Oil and Gas Company ("Burlington"), by and through their undersigned counsel of record, desire to formulate a mechanism for resolution of claims of confidential information with respect to certain documents requested by the parties in connection with the above referenced proceedings, and for this purpose agree and stipulate:

1. When used in this Stipulation, the word "documents" means all written, recorded, electronic or graphic matter whatsoever, including, but not limited to hearing and deposition transcripts and exhibits, interrogatory answers, demands to admit and responses thereto, documents and data produced by any party or non-party in this action whether pursuant to subpoena or by agreement. "Division" means The New Mexico Oil Conservation Division. "Commission" means the New Mexico Oil Conservation Commission.

2. Any party producing documents in this action which contain, disclose, or pertain to trade secrets, unpublished financial data, technological developments, pricing or cost information, production or sales forecasts or strategy, well data, geological data, geophysical



data, engineering data, reserve information, land title information, the terms of executory contracts, or other similar commercially sensitive information of a non-public nature may designate such documents as "CONFIDENTIAL", which documents shall be so marked. Documents which any party deems to be confidential will be so designated at the time of production by stamping the documents. Stamped identification may be made either on the original document or on a duplicate copy produced to any party.

3. Any party or non-party giving deposition testimony in connection with these proceedings may designate that portion of his testimony deemed to be confidential by advising counsel for all other parties of the pages of the deposition transcript to be so treated.

4. Confidential documents may be referred to in proceedings before The New Mexico Oil Conservation Division, The New Mexico Oil Conservation Commission and related Court proceedings, interrogatory answers, motions and briefs, and may be used in depositions and marked as deposition exhibits and hearing exhibits. However, no such document shall be used for any of these purposes unless it, or the portion of that paper where it is revealed, is appropriately marked and separately filed under seal with the Division, Commission or court.

5. Except with prior written consent of the party asserting confidential treatment, no document designated as confidential and no information contained therein may be disclosed to any person other than:

a) Attorneys of record in these proceedings and employees of such counsel to whom it is necessary that the material be shown for purposes of these proceedings; or

b) Inside counsel of a party working directly on these proceedings, including staff and support personnel who are working directly on these proceedings under the direction of

counsel and to whom it is necessary that the material be shown for purposes of these proceedings; or

c) Bona fide outside experts (and their employees not employed or retained by either party or by competitor of either party) consulted by such attorneys in the preparation or presentation of the case; or

d) The parties to these proceedings, witnesses and a reasonable number of staff personnel of the parties necessary to aid counsel in the preparation and presentation of the case; or

e) Employees of parties involved solely in one or more aspects of organizing, filing, coding, converting, storing or retrieving data and/or designing programs for handling data connected with these proceedings.

6. Except for those persons identified in subparagraphs 5(a) through 5(e) respectively, no person authorized under the terms hereof to receive access to confidential documents shall be granted access to them until such person has read this Stipulation and agrees in writing to be bound by same and to have submitted to the continuing jurisdiction of the Division, Commission or Court. Counsel shall be responsible for maintaining a list of all persons to whom such documents are disclosed as well as copies of agreements signed by them. Copies of such lists and agreements shall be furnished to counsel for other parties on request.

7. Whenever a party objects to the designation of a document as confidential, it may apply to the Division, Commission or court for a ruling that the document shall not be so treated, giving notice to the party or non-party producing the document. Until the Division, Commission or court enters an order changing the designation, the document shall be given the restricted

treatment initially assigned to it. In ruling on any such motions the burden or proof for purposes of establishing whether or not a document is confidential shall be upon the party asserting the claim of confidentiality as provided by Rule 1-026(c)(7) of the Rules of Civil Procedure for the District Courts.

8. The provisions of this Stipulation shall not terminate at the conclusion of this action and the Division, Commission or Court then having jurisdiction shall retain continuing jurisdiction to enforce it. Documents designated confidential and all copies of the same (other than exhibits of record) shall be returned to the party or person producing such documents within 30 days after the conclusion of this action, upon and within 30 days of request.

9. No confidential information or documents produced in these proceedings may be used for any purpose except in connection with these proceedings. It is expressly recognized that since, to accommodate a prompt resolution of the issues raised in these proceedings, the parties will be providing documents on an expedited basis and without lengthy discovery proceedings, such production expressly does not constitute a waiver, inadvertent or express, of any objections which might be made in other proceedings and under other circumstances to the production or disclosure of any document or information produced or disclosed in these proceedings.

10. If, at any time, when confidential information is in the possession of any party, such information is subpoenaed by any court, administrative or legislative body, or any other person purporting to have authority to subpoena such information, the party to whom the subpoena is directed will not produce such information without first giving written notice of the subpoena (including the delivery of a copy thereof) to the attorneys for the producing party, on the earlier of the 24 hours after receipt of the subpoena, or four (4) days prior to the time when production

of the information is requested by the subpoena. In the even that a subpoena purports to require production of such confidential information on less than four (4) days notice, the party to whom the subpoena is directed shall give immediate telephonic notice of the receipt of such subpoena, and forthwith hand deliver a copy thereof, to the attorneys for the producing party.

11. Nothing in this Stipulation shall operate as an admission by any party that any particular document is, or is not, admissible in evidence at the final hearing of this action, nor shall it preclude any party from raising any other objection to produce.

12. Insofar as the provisions of any protective orders entered in this action restrict the communication and use of the documents produced thereunder, such orders shall continue to be binding after the conclusion of this action.

13. This Stipulation shall be submitted to the Division, Commission or Court then having jurisdiction for its approval, adoption and continuing jurisdiction.

Dated: _____

BURLINGTON RESOURCES OIL AND GAS COMPANY

By_____
W. Thomas Kellahin, Esq.
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, NM 87504-2265
(505) 982-4285

TOTAL MINATOME CORPORATION

By_____
J. Scott Hall, Esq.
Miller,Stratvert & Torgerson, P.A.
Post Office Box 1986
Santa Fe, NM 87504-1986
(505) 989-9614

MILLER, STRATVERT & TORGERSON, P.A.

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SETH V. BINGHAM
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SANTA FE, N.M. 87501-1986
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FAX: (505) 989-9857

PLEASE REPLY TO SANTA FE

November 18, 1997

William F. Carr, Esq.
Campbell, Carr, Berge & Sheridan
P.O. Box 2208
Santa Fe, NM 87504

BY FACSIMILE

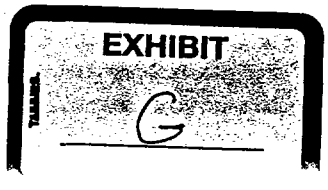
Re: NMOCD Case No.s 11808 and 11809; Application of Burlington Resources Oil and Gas Company for Compulsory Pooling, San Juan County, New Mexico (**De Novo**)

Dear Bill:

I understand you are representing Burlington Resources in the referenced consolidated *de novo* cases while Tom Kellahin is on vacation.

As you may know, a subpoena duces tecum was issued on October 31, 1997 directing Burlington to produce certain materials on November 12th. Tom filed a Motion To Quash on behalf of Burlington on November 10th and although the Burlington motion was not ruled on, the November 12, 1997 production of documents did not go forward.

We intend to seek Burlington's compliance with the subpoena duces tecum prior to the Commission hearing. However, I first wish to make a good faith effort to compromise this discovery dispute. Accordingly, you are requested to ascertain Burlington's position with respect to production of the itemized documents and materials identified in the subpoena and advise at your earliest convenience.



Our offer to enter into the Confidentiality Agreement proposed earlier still stands.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall, Esq.

JSH:CMB
Enclosures

cc: Wm. J. LeMay, NMOCC
Lynn Hebert, Esq., Commission Counsel
W. Thomas Kellahin, Esq.
J.E. Gallegos, Esq.
Norman Inman, Esq., Total Minatome Corporation

BEFORE THE

OIL CONSERVATION DIVISION

NEW MEXICO DEPARTMENT OF ENERGY AND MINERALS

IN THE MATTER OF THE APPLICATION OF
BURLINGTON RESOURCES OIL & GAS COMPANY
FOR COMPULSORY POOLING AND A NON-STANDARD
GAS PRORATION AND SPACING UNIT, SAN JUAN
COUNTY, NEW MEXICO

CASE NO. 11808
CASE NO. 11809
(Consolidated)
De Novo

TOTAL'S RESPONSE TO BURLINGTON'S
MOTION TO QUASH SUBPOENA

Total Minatome Corporation, ("Total"), for its response to the Burlington Resources Motion To Quash, states:

BACKGROUND FACTS

For decades, Total and Burlington, and their respective predecessors in interest, have been joint participants in the drilling of numerous wells in all the predominant formations in the San Juan Basin pursuant to a pre-existing land agreement. That agreement, the GLA-46 Agreement, establishes the voluntary commitment of Total's acreage to those various well proposals and at no point in the history of the agreement was the compulsory pooling of Total's interests ever contemplated or necessary. For every well proposed by El Paso/Meridian/Burlington, Total has each time indicated its willingness to participate under the GLA-46 Agreement and each time, El Paso/Meridian/Burlington, too, abided by the terms of the pre-existing agreement.

During the course of the proceedings before the Division, Burlington acknowledged the continued applicability of the GLA-46 Agreement to various depths, including the sub-Dakota completion depths proposed for its Marcotte No. 2 and Scott No. 24 wells. It is undisputed that Burlington sought the amendment of the GLA-46 Agreement preparatory to the drilling and

development of Burlington's Arch Rock Deep Penn prospect. (See, inter alia, Burlington's April 1, 1997 correspondence, Exhibit A, attached.) Total did not amend the GLA-46 land agreement; Instead, Total indicated it was voluntarily participating in Burlington's Marcotte 2 and Scott 24 wells by committing Total's acreage under the GLA-46, consistent with past practice. (See, Total's May 23, 1997 correspondence, Exhibit B, attached.)

Total's acreage is committed to the two wells. Burlington, on the other hand, no longer wishes to honor the GLA-46 land agreement. This is the larger context framing the dispute presently before the Commission.

THE TOTAL SUBPOENA AND THE MOTION TO QUASH

Burlington has attempted to trivialize these proceedings by its claims that Total is merely using the administrative process to "ride-down" the wells to obtain well data in order to gain a "competitive advantage". In other words, Burlington wishes the Commission to draw the inference that ulterior motives are behind Total's resistance to the pooling of its interest. Burlington ignores the true issues in this proceeding and its Motion To Quash is accordingly off-point.

More accurately, the salient issues before the Commission are these:

(1) Total's acreage interests are voluntarily committed to Burlington's proposed wells by contract and within the meaning of § 70-2-18. Consequently, Total's acreage is not subject to pooling by the Commission. Nevertheless, disregarding the pre-existing GLA-46 land agreement, Burlington initiated the administrative process to pool Total's otherwise committed acreage. Consequently, the availability of Total's acreage, Total's voluntary commitment under the GLA-46, Burlington's past and present interpretation and application of the GLA-46 are issues implicated here.

(2) Evidence elicited during the course of the compulsory pooling process reflects that Burlington violated the implied standard of good faith that applies to the operator's efforts to obtain voluntary participation as a pre-condition to bringing a pooling application under Section 70-2-18. It is also clear that Burlington has violated acceptable customs and practices of the industry in proposing its wells, a further indication of Burlington's disregard of the good faith standard. These violations began last spring and have continued throughout these proceedings. For instance, Burlington has recently tendered an AFE to the pooled interest owners that does not accurately reflect estimated drilling and completion costs for the Scott No. 24 well in the face of knowledge that the actual costs for the recently completed Marcotte No. 2 were several magnitudes greater than the estimates reflected in its AFE.

(3) The issue of risk is always a part of any compulsory pooling proceeding. Indeed, by its refusal to accept Total's election and tender of its share of estimated well costs, Burlington has sought to use the statutory risk penalty provision as tool to gain leverage in this case. Both the election and risk issues are directly pertinent to this case. See Viking Petroleum, Inc. v. Oil Conservation Com'n., 100 N.M. 451, 672 P.2d 280 (1983).

These are among the issues Total will raise before the Commission. Consequently, all the materials sought by Total are clearly "pertinent" within the meaning of Section 70-2-8 and Total is entitled to their production.

Burlington's Confidentiality/Proprietary Data Objection

Burlington's assertion that the subpoenaed materials include proprietary business data is not a proper basis for objecting to the subpoena. Indeed, it has become clear that Burlington's primary concern is that confidentiality be maintained for such data, not that the data be withheld.

This is a concern that can be accommodated by both the Commission and Total: Burlington has previously indicated its willingness to produce the data under confidentiality restrictions, although on the condition that Total also execute Burlington's Joint Operating Agreement. While Total cannot execute Burlington's JOA and release its property interests under the GLA-46 land agreement, it is agreeable to entering into a Commission-approved Confidentiality Agreement. Such an arrangement has been proposed to Burlington, but Burlington persists in its demand that Total waive its rights under the GLA-46 and in this *de novo* proceeding. (See correspondence between counsel dated November 5, 1997, November 10, 1997 and November 11, 1997, along with a proposed form of confidentiality agreement, Exhibits C, D, E and F.)

The reasonable course of action for the Commission is to require Burlington to obey the subpoena and to further require Total to abide by a Confidentiality Agreement. With that, Burlington's concerns over the release of proprietary data are obviated.

Burlington's Disregard For the Administrative Process

In cases before the Commission, it is incumbent on both counsel and the parties to work together to resolve their procedural and discovery disputes so that the Commission receives a full and complete presentation of the evidence. Burlington has exhibited a wholesale disregard for the principle throughout: Total's efforts to work a compromise of this discovery dispute have gone without response from Burlington (See, Exhibit G, attached.)

Again, it should be remembered that this situation is of Burlington's making; not the Commission's or Total's. Burlington commenced its drilling program without having its land issues resolved, before the issuance of pooling orders and before the resolution of the spacing issue. Throughout, it has been obvious that adherence to the applicable provisions of the Oil and

Gas Act and the administrative process has been low on Burlington's list of priorities. The Commission should not countenance such conduct in this case.

Total's Right To A Full And Fair Hearing

The law favors liberal discovery in any proceeding. Carter v. Burns Constr. Co., Inc., 85 N.M. 27, 31, 508 P.2d 1324, 1328 (Ct. App. 1973); cert. denied, 85 N.M. 5, 508 P.2d 1302 (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 Commission is obliged to make findings of ultimate facts materials to the issues before it. Further, the Commission's findings are required to have substantial support in the record and must also disclose the reasoning of the Commission. See Fasken v. Oil Conservation Com'n., 87 N.M. 292, 532 P.2d 588 (1975). This the Commission cannot do without receiving evidence from the materials to be produced pursuant to the subpoenas. This *de novo* proceeding under Section 70-2-13 is the final opportunity afforded the parties to establish a record in the event of further appeals. 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 the Commission and due process will be dis-served as a result.

The Commission should enforce the subpoena to accord due process.

CONCLUSION

Burlington's relevance objections are disproved as baseless. Moreover, Burlington's concerns about the uncontrolled release of proprietary information are eliminated by the confidentiality agreement. Accordingly, the Commission should end Burlington's disobedience

to the subpoena and order production of the requested materials under the terms of the confidentiality agreement.

MILLER, STRATVERT & TORGERSON, P.A.

By _____

J. Scott Hall
Post Office Box 1986
Santa Fe, New Mexico 87501
Attorneys for Total Minatome Corporation

Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was mailed to counsel of record on the 24 day of November, 1997, as follows:

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504-2265
Attorneys for Burlington Resources Oil & Gas Company

Lynn Hebert, Esq.
New Mexico Oil Conservation Division
2040 S. Pacheco St.
Santa Fe, NM 87505-5472

J. E. Gallegos, Esq.
Gallegos Law Firm, P.C.
460 St. Michaels Drive #300
Santa Fe, New Mexico 87505-7602

William F. Carr, Esq.
Campbell, Carr, Berge & Sheridan
P.O. Box 2208
Santa Fe, NM 87504

J. Scott Hall

BURLINGTON RESOURCES

SAN JUAN DIVISION

April 1, 1997

RECEIVED

APR 04 1997

LAND ADMINISTRATION

Total Minatome Corporation
Attn: Ms. Deborah Gilchrist, Land Manager
2 Houston Center, Suite 2000
P.O. Box 4326
Houston, TX 77210-4326

RE: GLA-46
Amendment
San Juan County, New Mexico

Dear Ms. Gilchrist:

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 cost of drilling such wells subject to the limitations and in accordance with the provisions of said Agreement.

Total Minatome Corporation (Total) in consideration for Burlington Resources Oil & Gas Company (Burlington) showing Total proprietary geology, 2D and 3D seismic for the purpose of exploring and drilling for a deep gas Pennsylvanian well located in the SE/4 of Section 8, T31N, R10W, (Arch Rock Prospect) San Juan County, New Mexico, agrees to amend the November 27, 1951 Operating Agreement. Total and Burlington shall set a mutually agreeable time and place to show Total management the Arch Rock prospect geology and seismic which will include a data and well package, on or before April 19, 1997. Total, after said prospect review shall have a fifteen (15) day election period to either 1) participate in the drilling and completion of a Pennsylvanian well in Section 8, T31N, R10W, San Juan County, New Mexico, or 2) Farmout its interest in the Arch Rock Prospect on those certain terms and conditions outlined on Exhibit "A" to this Letter Agreement.

By this Letter Total Minatome Corporation as successors in interest to Lear Petroleum Partners Operating Company, L.P. (formerly Brookhaven Oil Company) and Burlington Resources Oil & Gas Company (formerly El Paso Gas Company) as successor in interest to San Juan Production Company, do hereby evidence the Amendment to the Operating Agreement dated November 27, 1951 as amended to provide for the following:

EXHIBIT A

NMOCD Case No. 11808
NMOCD Case No. 11809
Exhibit No. 9
Submitted by: Total Minatome Corp.

Total agrees to amend the Operating Agreement dated November 27, 1951, by deleting paragraphs 5-14, Exhibit "C" (Accounting Procedure) and the August 8, 1986 Letter Agreement (Gas Balancing Agreement) in its entirety, and replacing with the attached Exhibit "B", AAPL Model Form 610 1982 Operating Agreement. Said Operating Agreement provides among other things with the following:

1. 400% Non-Consent Penalty
2. $25,000 Limitation of Expenditure
3. 1984 COPAS Accounting Procedure
4. The Preferential Right to Purchase Provision deleted
5. Gas Balancing Agreement.
6. Effective Date, April 1, 1997

Please evidence your acceptance of the foregoing by signing and returning a copy of this letter to the undersigned within fifteen (15) days of your receipt.

Yours very truly,

Burlington Resources Oil & Gas Company

By: _____

James R.J. Strickler
Senior Staff Landman

JRS/dg
amend_27

Agreed to and Accepted this _____day of _____, 1997.

TOTAL MINATOME CORPORATION

By: _____

Title: _____

EXHIBIT "A"

TOTAL MINATOME CORPORATION
ARCH ROCK PROSPECT

	GROSS ACRES	NET ACRES
Township 31 North, Range 10 West, N.M.P.M.		
Section 3: Lot 4 North and West of River	1.00	0.429
Lot 4 South and East of River	39.00	6.673
Lots 5 thru 9, S/2 NW/4	259.51	48.658
Section 4: Lot 5, E/2 SW/4,	118.64	22.245
NW/4 SW/4 and Part SW/4 NW/4	50.00	8.856
Section 8: Lots 1,2,4 and 5	158.74	29.764
Section 9: Lots 1,2, NE/4 NW/4	120.55	22.603
Section 13: Lots 3 and 4	69.21	11.537
Section 14: Lot 10,	40.51	6.753
SW/4 NW/4, NW/4 SW/4, E/2SW/4	160.00	30.000
Section 15: SE/4 NW/4	40.00	7.500
Section 16: NW/4 NE/4, SE/4 NE/4, SE/4 NW/4 NW/4 SW/4, SE/4 SW/4, NW/4 SE/4, SE/4 SE/4, SW/4 SE/4, SW/4 SE/4	280.00	47.836
	40.00	40.00
Section 17: Lots 1 thru 10	404.63	75.868
Section 23: NW/4 NE/4,	40.00	14.835
NE/4 NW/4,	40.00	6.834
NE/4 SE/4	40.00	7.500
Section 24: NW/4 SW/4	40.00	7.500
Township 31 North, Range 11 West, N.M.P.M.		
Section 2: SE/4 SW/4	40.00	10.000
Township 32 North, Range 10 West, N.M.P.M.		
Section 31: Lots 5,6,11,12,13,14,19 and 20 San Juan County, New Mexico	318.46	59.711
Total Gross Acres	2,300.25 Gross Acres, More or Less	
Total Net Acres	429.102 Net Acres, More or Less	

*Insofar and only insofar as said lands and leases covers depths below the base of the Mesaverde Formation.

*It is the intent of Total Minatome Corporation (Total) to Farmout all their Leasehold, Right, Title and interest of Total's in the described Lands and Leases in this Exhibit "A", whether such Exhibit "A" fails to include or inaccurately sets forth the description of Lands or interest under the subject Lands and Leases.

TOTAL

TOTAL MINATOME CORPORATION

May 23, 1997

Burlington Resources, Inc.
3535 East 30th St.
P.O. Box 4289
Farmington, New Mexico 87499-4289
Attention: James J. Strickler

MAY 3 0 1997

PRODUCTION ACCTG.

Re: Marcotte #2
Pennsylvanian formation
Section 8, T31N-R10W
San Juan County, New Mexico

Gentlemen:

Total Minatome Corporation (TMC) agrees to participate in the above referenced well per the terms and conditions of the Farmout and Operating Agreement dated November 27, 1951, between Brookhaven Oil Company and San Juan Production Company, as amended and supplemented.

Enclosed is one fully executed copy of your participation letter dated April 22, 1997 on behalf of TMC.

Sincerely,

Deborah J. Gilchrist
Landman

EXHIBIT B

MILLER, STRATVERT & TORGERSON, P.A.
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November 5, 1997

PLEASE REPLY TO SANTA FE

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

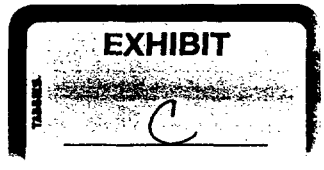
BY HAND DELIVERY

Re: NMOCD Case No.s 11808 and 11809 (De Novo); Application of Burlington Resources Oil and Gas Company For Compulsory Pooling, San Juan County, New Mexico

Dear Tom:

I have received the Burlington Response to Total Minatome Corporation's Second Motion For Stay. In this regard, I believe it is incumbent on counsel and the parties to make a good faith effort to compromise their differences on a particular matter rather than ask the Division or Commission to settle each and every dispute that may arise during the course of a proceeding. Accordingly, please regard this as Total's invitation to Burlington to effect an interim compromise of the election participation/well data confidentiality issue.

The present dispute may be briefly summarized as thus: On the one hand, Total wishes to exercise its right under the compulsory pooling orders to avoid the statutory risk penalty. At the same time, Total wishes to have access to the requested well data. On the other hand, Burlington wishes to preserve the confidentiality of certain well data and this particular concern constituted the basis for Burlington's rejection of Total's payment of its share of estimated well costs. If I correctly understand Burlington's position, as represented in the Response, particularly at page 5, the only reason Burlington rejected Total's payment is because Total is not a signatory to a confidentiality agreement. In this regard, it should be noted that until now, we have never been



asked to execute a confidentiality agreement.

A common-sense solution to this particular dispute is obvious: Total will agree to execute an agreement protecting the confidentiality of the data it has requested from Burlington. By so doing, Burlington's concerns over the data are obviated and Total's payment of well costs under the pooling order should be rendered a non-issue. Accordingly, if Burlington will stipulate that Total's payment of its share of estimated well costs was both proper and timely and is not an issue in contention in this proceeding, then Total will agree to be bound by the terms of an acceptable confidentiality agreement approved by an order entered by the Commission or the Division Director.

To facilitate the prompt resolution of this particular matter, I have prepared the enclosed original of a proposed Stipulation And Agreement Governing the Confidentiality Certain Information for your review.

Thank you for your consideration of this proposal. Please let me hear from you before the end of business tomorrow.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall, Esq.

cc: Wm. J. LeMay, Director, NMOCD
Lynn Hebert, Esq. NMOCC Counsel
Rand Carroll, Esq. NMOCD Counsel
Norman Inman, Esq. Total Minatome Corporation
J.E. Gallegos, Esq.

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

W. THOMAS KELLAHIN*
*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

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

November 10, 1997

Scott Hall, Esq.
Miller Law Firm
P. O. Box 1986
Santa Fe, New Mexico 87501

Re: NMOCD Case 11809 (Order R-10878)
Application of Burlington Resources
Oil & Gas Company for Compulsory Pooling
Marcotte Well No. 2

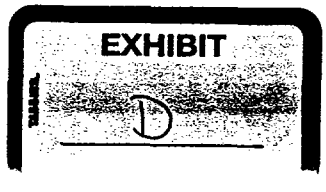
Dear Mr. Hall:

I have been involved in hearing at the Division and have not been able to respond until now to your letter dated November 5, 1997 in which you propose a Stipulation and Confidentiality Agreement which your client will sign provided Burlington agrees that:

(a) Minatome's qualified tender of payment was **both timely and properly** made and

(b) is not an issue in contention in this proceedings.

You have attempted to link the resolution of one disputed issue with another disputed issue while your client still attacks the compulsory pooling order and is doing so "under protest and without prejudice to any rights, claims or defenses which it may assert..." This is not acceptable to Burlington who still maintains that Minatome failed to properly and timely elect to participate pursuant to the compulsory pooling order.



Once again, in an effort to settle this matter, Burlington offers Minatome an opportunity to commit its interest in the Marcotte well and resolve its dispute with Burlington by signing Burlington's Joint Operating Agreement.

Minatome's refusal to sign Burlington's proposed Joint Operating Agreement gave Burlington no other choice but to apply to the Division for a compulsory pooling order. Now that the Marcotte well has been drilled, Minatome says it desires to participate in the well, but at the same time has appealed the compulsory pooling order and, among other things, has asked the Division to issue a subpoena for Burlington's confidential data.

As I understand it, Total Minatome's only reason for refusing to sign Burlington's Joint Operating Agreement is because that agreement contains a 400% non-consent penalty for any **subsequent** operations after drilling the Marcotte well. As you should know, such a subsequent operations percentage penalty is know very common and a search of the Division compulsory pooling case files will disclose to you dozens of examples of joint operating agreement with such penalties. However, the 200% risk factor penalty in a compulsory pooling order has nothing to do with the 400% subsequent operations penalty in a joint operating agreement. A compulsory pooling order fails to address subsequent operations, gas balancing, confidentiality and numerous other items.

By its qualified election, Total Minatome asserts it wanted to participate pursuant to the compulsory pooling order in order to avoid the 200% risk factor penalty imposed in that order for failure to participate in the Marcotte Well.

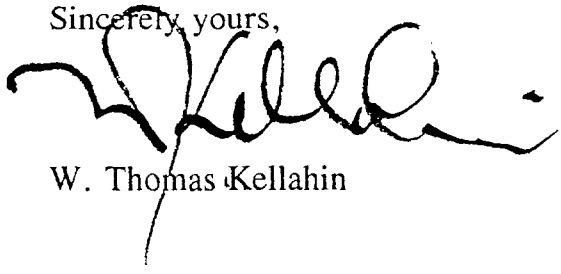
By signing the Joint Operating Agreement, including its confidential agreement, Total Minatome would be doing the same thing it says it wanted to do with the compulsory pooling order--that is to participate in the Marcotte well without being penalized. If Total Minatome will sign the Burlington's Joint Operating Agreement, Burlington would be agreeable to reducing the 400% subsequent operations penalty to 300% which is the equivalent of the Division's penalty of costs plus 200%.

Contrary to your contention, Total Minatome has been asked to sign a confidentiality agreement. As you should know, such a confidentiality provision is found at page 14(b) of the Joint Operating Agreement

Your reference to page 5 of Burlington's Response in opposition to Minatome's Stay Motion--"Minatome was asked to do only what all of the consenting working interest owners have already done--to sign a confidential agreement." is not an indication that Burlington will be satisfied with "any confidentiality agreement". I direct your attention to the fact that those interest owners, including Burlington, signed a joint operating agreement and in doing so agreed to be bound by the confidentiality agreement contained in that joint operating agreement.

We again offer your client the same opportunity--to voluntarily participate in the Marcotte well by signing Burlington's Joint Operating Agreement which will resolve this and all other disputed issues.

Sincerely yours,



W. Thomas Kellahin

cc: William J. LeMay, Director OCD
Lyn Hebert, Esq. Counsel OCC
Rand Carroll, Esq. Counsel OCD
Gene Gallegos, Esq.

cc: Burlington Resources
Attn: John Bemis, Esq.
Attn: Alan Alexander

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WILLIAM K. STRATVERT, COUNSEL
PAUL W. ROBINSON, COUNSEL

November 11, 1997

PLEASE REPLY TO SANTA FE

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

Re: NMOCD Case No.s 11808 and 11809 (De Novo); Application of Burlington Resources Oil and Gas Company For Compulsory Pooling, San Juan County, New Mexico (De Novo)

Dear Tom:

Thank you for your November 10, 1997 letter regarding our offer to execute a confidentiality agreement. While your letter is neither fully nor directly responsive to my November 10th letter, it is my understanding that Burlington refuses to enter into a confidentiality agreement unless Total executes Burlington's customized Join Operating Agreement. By so doing, Burlington asks Total to waive its rights in the **de novo** proceeding as well as the long-standing property rights it owns with Burlington under the GLA-46 Agreement. This, Total cannot do.

As you know, it is Total's position that it had voluntarily committed its acreage to the Marcotte No. 2 and Scott No. 24 wells under the terms of the GLA-46 Agreement. The GLA-46 Agreement is binding on both Total and Burlington and has been followed by both parties on numerous other wells without restriction as to depth. As a consequence, Total's acreage, having been previously committed, may not be the subject of a pooling proceeding. Similarly, Burlington may not utilize the Division's authority under §70-2-17(C) as a tool to abrogate a pre-existing land contract between the parties. These are the reasons Total has resisted Burlington's inappropriate pooling applications and has refused to execute the JOA's.

Given the foregoing, it should be clear that the 400% risk penalty provision is not the only reason Total is unable to execute Burlington's customized JOA, as your letter incorrectly concludes. Moreover, in this context, your reference to the subsequent operations provisions of the JOA is off-base: In this regard, you should refer to Article XV(C) on page 14 of the proposed

EXHIBIT 5

JOA which makes the non-consent provisions of Article VI(B) specifically applicable to the drilling of the initial well, including the 400% risk penalty rate. There should be no debate about the meaning of this particular provision of Burlington's JOA, and consequently, the offer of a 300% risk penalty for subsequent operations seems rather pointless.

Again, for the record, Total cannot sign Burlington's JOA and waive its rights. However, our offer to enter into a mutually acceptable confidentiality agreement governing discovery during the pendency of the **de novo** proceeding still stands.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall, Esq.

cc: Wm. J. LeMay
Lynn Hebert, Esq
J.E. Gallegos, Esq.
Norman Inman, Esq.

BEFORE THE

OIL CONSERVATION DIVISION

NEW MEXICO DEPARTMENT OF ENERGY AND MINERALS

IN THE MATTER OF THE APPLICATION OF BURLINGTON RESOURCES OIL & GAS COMPANY FOR COMPULSORY POOLING AND A NON-STANDARD GAS PRORATION AND SPACING UNIT, SAN JUAN COUNTY, NEW MEXICO	CASE NO. 11808 CASE NO. 11809 (Consolidated) **DE NOVO**

STIPULATION AND AGREEMENT GOVERNING THE PROTECTION OF CONFIDENTIAL INFORMATION

Total Minatome Corporation, ("Total"), and Burlington Resources Oil and Gas Company ("Burlington"), by and through their undersigned counsel of record, desire to formulate a mechanism for resolution of claims of confidential information with respect to certain documents requested by the parties in connection with the above referenced proceedings, and for this purpose agree and stipulate:

1. When used in this Stipulation, the word "documents" means all written, recorded, electronic or graphic matter whatsoever, including, but not limited to hearing and deposition transcripts and exhibits, interrogatory answers, demands to admit and responses thereto, documents and data produced by any party or non-party in this action whether pursuant to subpoena or by agreement. "Division" means The New Mexico Oil Conservation Division. "Commission" means the New Mexico Oil Conservation Commission.

2. Any party producing documents in this action which contain, disclose, or pertain to trade secrets, unpublished financial data, technological developments, pricing or cost information, production or sales forecasts or strategy, well data, geological data, geophysical

EXHIBIT F

data, engineering data, reserve information, land title information, the terms of executory contracts, or other similar commercially sensitive information of a non-public nature may designate such documents as "CONFIDENTIAL", which documents shall be so marked. Documents which any party deems to be confidential will be so designated at the time of production by stamping the documents. Stamped identification may be made either on the original document or on a duplicate copy produced to any party.

3. Any party or non-party giving deposition testimony in connection with these proceedings may designate that portion of his testimony deemed to be confidential by advising counsel for all other parties of the pages of the deposition transcript to be so treated.

4. Confidential documents may be referred to in proceedings before The New Mexico Oil Conservation Division, The New Mexico Oil Conservation Commission and related Court proceedings, interrogatory answers, motions and briefs, and may be used in depositions and marked as deposition exhibits and hearing exhibits. However, no such document shall be used for any of these purposes unless it, or the portion of that paper where it is revealed, is appropriately marked and separately filed under seal with the Division, Commission or court.

5. Except with prior written consent of the party asserting confidential treatment, no document designated as confidential and no information contained therein may be disclosed to any person other than:

a) Attorneys of record in these proceedings and employees of such counsel to whom it is necessary that the material be shown for purposes of these proceedings; or

b) Inside counsel of a party working directly on these proceedings, including staff and support personnel who are working directly on these proceedings under the direction of

counsel and to whom it is necessary that the material be shown for purposes of these proceedings; or

c) Bona fide outside experts (and their employees not employed or retained by either party or by competitor of either party) consulted by such attorneys in the preparation or presentation of the case; or

d) The parties to these proceedings, witnesses and a reasonable number of staff personnel of the parties necessary to aid counsel in the preparation and presentation of the case; or

e) Employees of parties involved solely in one or more aspects of organizing, filing, coding, converting, storing or retrieving data and/or designing programs for handling data connected with these proceedings.

6. Except for those persons identified in subparagraphs 5(a) through 5(e) respectively, no person authorized under the terms hereof to receive access to confidential documents shall be granted access to them until such person has read this Stipulation and agrees in writing to be bound by same and to have submitted to the continuing jurisdiction of the Division, Commission or Court. Counsel shall be responsible for maintaining a list of all persons to whom such documents are disclosed as well as copies of agreements signed by them. Copies of such lists and agreements shall be furnished to counsel for other parties on request.

7. Whenever a party objects to the designation of a document as confidential, it may apply to the Division, Commission or court for a ruling that the document shall not be so treated, giving notice to the party or non-party producing the document. Until the Division, Commission or court enters an order changing the designation, the document shall be given the restricted

treatment initially assigned to it. In ruling on any such motions the burden or proof for purposes of establishing whether or not a document is confidential shall be upon the party asserting the claim of confidentiality as provided by Rule 1-026(c)(7) of the Rules of Civil Procedure for the District Courts.

8. The provisions of this Stipulation shall not terminate at the conclusion of this action and the Division, Commission or Court then having jurisdiction shall retain continuing jurisdiction to enforce it. Documents designated confidential and all copies of the same (other than exhibits of record) shall be returned to the party or person producing such documents within 30 days after the conclusion of this action, upon and within 30 days of request.

9. No confidential information or documents produced in these proceedings may be used for any purpose except in connection with these proceedings. It is expressly recognized that since, to accommodate a prompt resolution of the issues raised in these proceedings, the parties will be providing documents on an expedited basis and without lengthy discovery proceedings, such production expressly does not constitute a waiver, inadvertent or express, of any objections which might be made in other proceedings and under other circumstances to the production or disclosure of any document or information produced or disclosed in these proceedings.

10. If, at any time, when confidential information is in the possession of any party, such information is subpoenaed by any court, administrative or legislative body, or any other person purporting to have authority to subpoena such information, the party to whom the subpoena is directed will not produce such information without first giving written notice of the subpoena (including the delivery of a copy thereof) to the attorneys for the producing party, on the earlier of the 24 hours after receipt of the subpoena, or four (4) days prior to the time when production

of the information is requested by the subpoena. In the even that a subpoena purports to require production of such confidential information on less than four (4) days notice, the party to whom the subpoena is directed shall give immediate telephonic notice of the receipt of such subpoena, and forthwith hand deliver a copy thereof, to the attorneys for the producing party.

11. Nothing in this Stipulation shall operate as an admission by any party that any particular document is, or is not, admissible in evidence at the final hearing of this action, nor shall it preclude any party from raising any other objection to produce.

12. Insofar as the provisions of any protective orders entered in this action restrict the communication and use of the documents produced thereunder, such orders shall continue to be binding after the conclusion of this action.

13. This Stipulation shall be submitted to the Division, Commission or Court then having jurisdiction for its approval, adoption and continuing jurisdiction.

Dated: _____

BURLINGTON RESOURCES OIL AND GAS COMPANY

By_____
W. Thomas Kellahin, Esq.
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, NM 87504-2265
(505) 982-4285

TOTAL MINATOME CORPORATION

By_____
J. Scott Hall, Esq.
Miller,Stratvert & Torgerson, P.A.
Post Office Box 1986
Santa Fe, NM 87504-1986
(505) 989-9614

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WILLIAM K. STRATVERT, COUNSEL
PAUL W. ROBINSON, COUNSEL

November 18, 1997

PLEASE REPLY TO SANTA FE

William F. Carr, Esq.
Campbell, Carr, Berge & Sheridan
P.O. Box 2208
Santa Fe, NM 87504

BY FACSIMILE

Re: NMOCD Case No.s 11808 and 11809; Application of Burlington Resources Oil and Gas Company for Compulsory Pooling, San Juan County, New Mexico (**De Novo**)

Dear Bill:

I understand you are representing Burlington Resources in the referenced consolidated *de novo* cases while Tom Kellahin is on vacation.

As you may know, a subpoena duces tecum was issued on October 31, 1997 directing Burlington to produce certain materials on November 12th. Tom filed a Motion To Quash on behalf of Burlington on November 10th and although the Burlington motion was not ruled on, the November 12, 1997 production of documents did not go forward.

We intend to seek Burlington's compliance with the subpoena duces tecum prior to the Commission hearing. However, I first wish to make a good faith effort to compromise this discovery dispute. Accordingly, you are requested to ascertain Burlington's position with respect to production of the itemized documents and materials identified in the subpoena and advise at your earliest convenience.

Our offer to enter into the Confidentiality Agreement proposed earlier still stands.

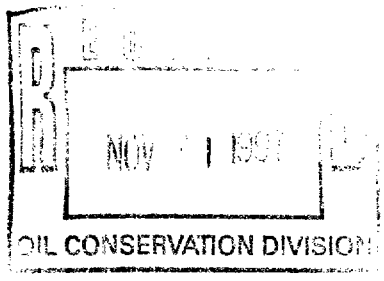
Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall, Esq.

JSH:CMB
Enclosures

cc: Wm. J. LeMay, NMOCC
Lynn Hebert, Esq., Commission Counsel
W. Thomas Kellahin, Esq.
J.E. Gallegos, Esq.
Norman Inman, Esq., Total Minatome Corporation



BEFORE THE

OIL CONSERVATION DIVISION

NEW MEXICO DEPARTMENT OF ENERGY AND MINERALS

IN THE MATTER OF THE APPLICATION OF
BURLINGTON RESOURCES OIL & GAS COMPANY
FOR COMPULSORY POOLING AND A NON-STANDARD
GAS PRORATION AND SPACING UNIT, SAN JUAN
COUNTY, NEW MEXICO

CASE NO. 11808
CASE NO. 11809
(Consolidated)
De Novo

TOTAL'S RESPONSE TO BURLINGTON'S
MOTION TO QUASH SUBPOENA

Total Minatome Corporation, ("Total"), for its response to the Burlington Resources Motion To Quash, states:

BACKGROUND FACTS

For decades, Total and Burlington, and their respective predecessors in interest, have been joint participants in the drilling of numerous wells in all the predominant formations in the San Juan Basin pursuant to a pre-existing land agreement. That agreement, the GLA-46 Agreement, establishes the voluntary commitment of Total's acreage to those various well proposals and at no point in the history of the agreement was the compulsory pooling of Total's interests ever contemplated or necessary. For every well proposed by El Paso/Meridian/Burlington, Total has each time indicated its willingness to participate under the GLA-46 Agreement and each time, El Paso/Meridian/Burlington, too, abided by the terms of the pre-existing agreement.

During the course of the proceedings before the Division, Burlington acknowledged the continued applicability of the GLA-46 Agreement to various depths, including the sub-Dakota completion depths proposed for its Marcotte No. 2 and Scott No. 24 wells. It is undisputed that Burlington sought the amendment of the GLA-46 Agreement preparatory to the drilling and

development of Burlington's Arch Rock Deep Penn prospect. (See, inter alia, Burlington's April 1, 1997 correspondence, Exhibit A, attached.) Total did not amend the GLA-46 land agreement; Instead, Total indicated it was voluntarily participating in Burlington's Marcotte 2 and Scott 24 wells by committing Total's acreage under the GLA-46, consistent with past practice. (See, Total's May 23, 1997 correspondence, Exhibit B, attached.)

Total's acreage is committed to the two wells. Burlington, on the other hand, no longer wishes to honor the GLA-46 land agreement. This is the larger context framing the dispute presently before the Commission.

THE TOTAL SUBPOENA AND THE MOTION TO QUASH

Burlington has attempted to trivialize these proceedings by its claims that Total is merely using the administrative process to "ride-down" the wells to obtain well data in order to gain a "competitive advantage". In other words, Burlington wishes the Commission to draw the inference that ulterior motives are behind Total's resistance to the pooling of its interest. Burlington ignores the true issues in this proceeding and its Motion To Quash is accordingly off-point.

More accurately, the salient issues before the Commission are these:

(1) Total's acreage interests are voluntarily committed to Burlington's proposed wells by contract and within the meaning of § 70-2-18. Consequently, Total's acreage is not subject to pooling by the Commission. Nevertheless, disregarding the pre-existing GLA-46 land agreement, Burlington initiated the administrative process to pool Total's otherwise committed acreage. Consequently, the availability of Total's acreage, Total's voluntary commitment under the GLA-46, Burlington's past and present interpretation and application of the GLA-46 are issues implicated here.

(2) Evidence elicited during the course of the compulsory pooling process reflects that Burlington violated the implied standard of good faith that applies to the operator's efforts to obtain voluntary participation as a pre-condition to bringing a pooling application under Section 70-2-18. It is also clear that Burlington has violated acceptable customs and practices of the industry in proposing its wells, a further indication of Burlington's disregard of the good faith standard. These violations began last spring and have continued throughout these proceedings. For instance, Burlington has recently tendered an AFE to the pooled interest owners that does not accurately reflect estimated drilling and completion costs for the Scott No. 24 well in the face of knowledge that the actual costs for the recently completed Marcotte No. 2 were several magnitudes greater than the estimates reflected in its AFE.

(3) The issue of risk is always a part of any compulsory pooling proceeding. Indeed, by its refusal to accept Total's election and tender of its share of estimated well costs, Burlington has sought to use the statutory risk penalty provision as tool to gain leverage in this case. Both the election and risk issues are directly pertinent to this case. See Viking Petroleum, Inc. v. Oil Conservation Com'n., 100 N.M. 451, 672 P.2d 280 (1983).

These are among the issues Total will raise before the Commission. Consequently, all the materials sought by Total are clearly "pertinent" within the meaning of Section 70-2-8 and Total is entitled to their production.

Burlington's Confidentiality/Proprietary Data Objection

Burlington's assertion that the subpoenaed materials include proprietary business data is not a proper basis for objecting to the subpoena. Indeed, it has become clear that Burlington's primary concern is that confidentiality be maintained for such data, not that the data be withheld.

This is a concern that can be accommodated by both the Commission and Total: Burlington has previously indicated its willingness to produce the data under confidentiality restrictions, although on the condition that Total also execute Burlington's Joint Operating Agreement. While Total cannot execute Burlington's JOA and release its property interests under the GLA-46 land agreement, it is agreeable to entering into a Commission-approved Confidentiality Agreement. Such an arrangement has been proposed to Burlington, but Burlington persists in its demand that Total waive its rights under the GLA-46 and in this *de novo* proceeding. (See correspondence between counsel dated November 5, 1997, November 10, 1997 and November 11, 1997, along with a proposed form of confidentiality agreement, Exhibits C, D, E and F.)

The reasonable course of action for the Commission is to require Burlington to obey the subpoena and to further require Total to abide by a Confidentiality Agreement. With that, Burlington's concerns over the release of proprietary data are obviated.

Burlington's Disregard For the Administrative Process

In cases before the Commission, it is incumbent on both counsel and the parties to work together to resolve their procedural and discovery disputes so that the Commission receives a full and complete presentation of the evidence. Burlington has exhibited a wholesale disregard for the principle throughout: Total's efforts to work a compromise of this discovery dispute have gone without response from Burlington (See, Exhibit G, attached.)

Again, it should be remembered that this situation is of Burlington's making; not the Commission's or Total's. Burlington commenced its drilling program without having its land issues resolved, before the issuance of pooling orders and before the resolution of the spacing issue. Throughout, it has been obvious that adherence to the applicable provisions of the Oil and

Gas Act and the administrative process has been low on Burlington's list of priorities. The Commission should not countenance such conduct in this case.

Total's Right To A Full And Fair Hearing

The law favors liberal discovery in any proceeding. Carter v. Burns Constr. Co., Inc., 85 N.M. 27, 31, 508 P.2d 1324, 1328 (Ct. App. 1973); cert. denied, 85 N.M. 5, 508 P.2d 1302 (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 Commission is obliged to make findings of ultimate facts materials to the issues before it. Further, the Commission's findings are required to have substantial support in the record and must also disclose the reasoning of the Commission. See Fasken v. Oil Conservation Com'n., 87 N.M. 292, 532 P.2d 588 (1975). This the Commission cannot do without receiving evidence from the materials to be produced pursuant to the subpoenas. This *de novo* proceeding under Section 70-2-13 is the final opportunity afforded the parties to establish a record in the event of further appeals. 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 the Commission and due process will be dis-served as a result.

The Commission should enforce the subpoena to accord due process.

CONCLUSION

Burlington's relevance objections are disproved as baseless. Moreover, Burlington's concerns about the uncontrolled release of proprietary information are eliminated by the confidentiality agreement. Accordingly, the Commission should end Burlington's disobedience

to the subpoena and order production of the requested materials under the terms of the confidentiality agreement.

MILLER, STRATVERT & TORGERSON, P.A.

By J. Scott Hall

J. Scott Hall
Post Office Box 1986
Santa Fe, New Mexico 87501
Attorneys for Total Minatome Corporation

Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was mailed to counsel of record on the 21 day of November, 1997, as follows:

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Kellahin & Kellahin
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Santa Fe, New Mexico 87504-2265
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Campbell, Carr, Berge & Sheridan
P.O. Box 2208
Santa Fe, NM 87504

J. Scott Hall

BURLINGTON RESOURCES

SAN JUAN DIVISION

April 1, 1997

RECEIVED

APR 04 1997

LAND ADMINISTRATION

Total Minatome Corporation
Attn: Ms. Deborah Gilchrist, Land Manager
2 Houston Center, Suite 2000
P.O. Box 4326
Houston, TX 77210-4326

RE: GLA-46
Amendment
San Juan County, New Mexico

Dear Ms. Gilchrist:

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 cost of drilling such wells subject to the limitations and in accordance with the provisions of said Agreement.

Total Minatome Corporation (Total) in consideration for Burlington Resources Oil & Gas Company (Burlington) showing Total proprietary geology, 2D and 3D seismic for the purpose of exploring and drilling for a deep gas Pennsylvanian well located in the SE/4 of Section 8, T31N, R10W, (Arch Rock Prospect) San Juan County, New Mexico, agrees to amend the November 27, 1951 Operating Agreement. Total and Burlington shall set a mutually agreeable time and place to show Total management the Arch Rock prospect geology and seismic which will include a data and well package, on or before April 19, 1997. Total, after said prospect review shall have a fifteen (15) day election period to either 1) participate in the drilling and completion of a Pennsylvanian well in Section 8, T31N, R10W, San Juan County, New Mexico, or 2) Farmout its interest in the Arch Rock Prospect on those certain terms and conditions outlined on Exhibit "A" to this Letter Agreement.

By this Letter Total Minatome Corporation as successors in interest to Lear Petroleum Partners Operating Company, L.P. (formerly Brookhaven Oil Company) and Burlington Resources Oil & Gas Company (formerly El Paso Gas Company) as successor in interest to San Juan Production Company, do hereby evidence the Amendment to the Operating Agreement dated November 27, 1951 as amended to provide for the following:

EXHIBIT A

NMOCD Case No. 11808
NMOCD Case No. 11809
Exhibit No. 9
Submitted by: Total Minatome Corp.

Total agrees to amend the Operating Agreement dated November 27, 1951, by deleting paragraphs 5-14, Exhibit "C" (Accounting Procedure) and the August 8, 1986 Letter Agreement (Gas Balancing Agreement) in its entirety, and replacing with the attached Exhibit "B", AAPL Model Form 610 1982 Operating Agreement. Said Operating Agreement provides among other things with the following:

1. 400% Non-Consent Penalty
2. $25,000 Limitation of Expenditure
3. 1984 COPAS Accounting Procedure
4. The Preferential Right to Purchase Provision deleted
5. Gas Balancing Agreement.
6. Effective Date, April 1, 1997

Please evidence your acceptance of the foregoing by signing and returning a copy of this letter to the undersigned within fifteen (15) days of your receipt.

Yours very truly,

Burlington Resources Oil & Gas Company

By: _____

James R.J. Strickler
Senior Staff Landman

JRS/dg
amend_27

Agreed to and Accepted this _____day of _____, 1997.

TOTAL MINATOME CORPORATION

By: _____

Title: _____

EXHIBIT "A"

TOTAL MINATOME CORPORATION
ARCH ROCK PROSPECT

	GROSS ACRES	NET ACRES
Township 31 North, Range 10 West, N.M.P.M.		
Section 3: Lot 4 North and West of River	1.00	0.429
Lot 4 South and East of River	39.00	6.673
Lots 5 thru 9, S/2 NW/4	259.51	48.658
Section 4: Lot 5, E/2 SW/4,	118.64	22.245
NW/4 SW/4 and Part SW/4 NW/4	50.00	8.856
Section 8: Lots 1,2,4 and 5	158.74	29.764
Section 9: Lots 1,2, NE/4 NW/4	120.55	22.603
Section 13: Lots 3 and 4	69.21	11.537
Section 14: Lot 10,	40.51	6.753
SW/4 NW/4, NW/4 SW/4, E/2SW/4	160.00	30.000
Section 15: SE/4 NW/4	40.00	7.500
Section 16: NW/4 NE/4, SE/4 NE/4, SE/4 NW/4	280.00	47.836
NW/4 SW/4, SE/4 SW/4, NW/4 SE/4,		
SE/4 SE/4,		
SW/4 SE/4,		
SW/4 SE/4	40.00	40.00
Section 17: Lots 1 thru 10	404.63	75.868
Section 23: NW/4 NE/4,	40.00	14.835
NE/4 NW/4,	40.00	6.834
NE/4 SE/4	40.00	7.500
Section 24: NW/4 SW/4	40.00	7.500
Township 31 North, Range 11 West, N.M.P.M.		
Section 2: SE/4 SW/4	40.00	10.000
Township 32 North, Range 10 West, N.M.P.M.		
Section 31: Lots 5,6,11,12,13,14,19 and 20	318.46	59.711
San Juan County, New Mexico		
Total Gross Acres	2,300.25 Gross Acres, More or Less	
Total Net Acres	429.102 Net Acres, More or Less	

*Insofar and only insofar as said lands and leases covers depths below the base of the Mesaverde Formation.

*It is the intent of Total Minatome Corporation (Total) to Farmout all their Leasehold, Right, Title and interest of Total's in the described Lands and Leases in this Exhibit "A", whether such Exhibit "A" fails to include or inaccurately sets forth the description of Lands or interest under the subject Lands and Leases.