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JASON KELLAHIN (RETIRED 1991)

November 10, 1997

**HAND DELIVERED**

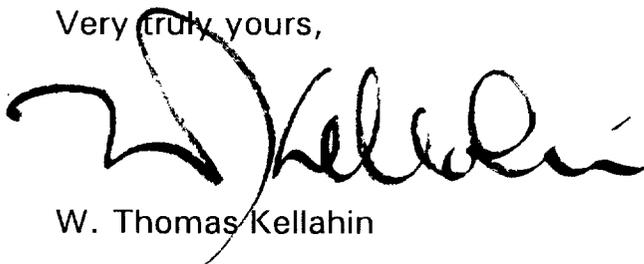
Mr. William J. LeMay, Director  
Oil Conservation Division  
2040 South Pacheco  
Santa Fe, New Mexico 87504

Re: **Motion to Quash Total Minatome Corporation Subpoena  
ORDER R-10877 Case 11808-DeNovo (Scott Well No. 24) and  
ORDER R-10878 Case 11809-DeNovo (Marcotte Well No. 2)**

Dear Mr. LeMay:

On behalf of Burlington Resources Oil & Gas Company, please find enclosed our motion to quash Minatome's subpoena which was served on November 4, 1997. Once again, Minatome's subpoena seeks the same data which was denied by the Division when it previously granted Burlington's motion to quash Minatome's first subpoena.

Very truly yours,



W. Thomas Kellahin

cc: Lyn Hebert, Commission attorney  
Rand Carroll, Division attorney  
Scott Hall, Esq.  
Gene Gallegos, Esq.  
John Bemis, Esq.

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

**IN THE MATTER OF THE APPLICATION  
OF BURLINGTON RESOURCES OIL & GAS  
COMPANY FOR COMPULSORY POOLING  
AND A NON-STANDARD GAS PRORATION  
AND SPACING UNIT FOR ITS  
SCOTT WELL NO. 24 (SECTION 9, T31N, R10W)  
SAN JUAN COUNTY, NEW MEXICO**

**CASE NO. 11808**

**IN THE MATTER OF THE APPLICATION  
OF BURLINGTON RESOURCES OIL & GAS  
COMPANY FOR COMPULSORY POOLING,  
AN UNORTHODOX GAS WELL LOCATION AND  
NON-STANDARD GAS PRORATION AND  
SPACING UNIT FOR ITS MARCOTTE WELL NO. 2  
(SECTION 8, T31N, R10W)  
SAN JUAN COUNTY, NEW MEXICO**

**CASE NO. 11809**

**BURLINGTON RESOURCES OIL & GAS COMPANY'S  
MOTION TO QUASH  
SUBPOENA ISSUED AT THE REQUEST OF  
"MINATOME"**

BURLINGTON RESOURCES OIL & GAS COMPANY ("Burlington") by its attorneys, Kellahin & Kellahin, hereby moves the Division to Quash the Subpoena Duces Tecum issued October 31, 1997 at the request of Scott Hall, attorney for Total Minatome Corporation ("Minatome") in Division case 11808 and Division Case 11809 which subpoena was served on November 4, 1997 commands Burlington to appear at 3:00 AM (sic) Wednesday, November 12, 1997 before the Division and to produce documents set forth in the Subpoena Duces Tecum which is attached to this Motion as Exhibit C.

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

## BACKGROUND

1. Burlington has proposed two deep gas well tests which are estimated to cost as follows:

(a) dry hole costs	\$1,713,800.
(b) completion	603,173.
Total:	\$2,316,973.

2. These two compulsory pooling cases request the pooling of certain working interest owners:

(A) In Section 8, (Marcotte Well No. 2) Burlington with approximately 46% working interest has obtained the voluntary agreement of some 13 owners and now has approximately 93% voluntary participation. The only non-participating parties are as follows:

(a) Moore	2.25 %	(\$52,171.)
(b) Minatome (GLA-46)	4.65 %	(\$107,790.)

Bard-LaForce (GLA-66) has no interest in this Section

(B) In Section 9, (Scott Well No. 24), Burlington has been joined by some 15 owners who collectively control approximately 35% of the working interest. The non-participating parties are as follows:

(a) Moore:	0.295 %	(\$6,831.)
(b) Minatome (GLA-46)	3.55 %	(\$82,343.)
(c) GLA-66 Group		
58 owners with 61% which includes:		
LaForce	1.11 %	(25,745.)
Bard	1.23 %	(\$28,580.)

3. In addition, these compulsory pooling cases seek to pool certain royalty owner interests.

4. On June 5, 1997, the New Mexico Oil Conservation Commission as a result of a rule making proceeding entered Order R-10815 and adopted a provision in the Division's General Rule 104 to establish gas spacing units consisting of 640-acres for gas production below the base of the Dakota formation (deep gas") for the San Juan Basin. (OCD Case 11645).

## NMOCD Cases 11808 and 11809

Burlington's Motion to Quash

Page 3

5. Burlington seeks pooling of Section 9 for the drilling of the Scott 24 Well (OCD Case 11808) and of Section 8 for the Marcotte Well No. 2 (OCD Case 11809). **Location plats are attached as Exhibits A and B.**

6. Burlington's pooling cases are set for hearing on July 10, 1997

7. On July 2, 1997, Minatome obtained a Division subpoena in this case which it delivered to Burlington's attorney on Thursday, July 2, 1997 directing the production of documents at 9:00 am Monday, July 8, 1997.

8. On July 8, 1997, the Division granted Burlington's motion to quash this subpoena.

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

10. By October 18, 1997, Minatome has to make an election to participate in the Marcotte Well.

11. By November 22, 1997, Minatome has to make an election to participate in the Scott Well.

12. Now Minatome's subpoena seeks the following:

(1) for Burlington's "Arch Rock Prospect" covering but not limited to 9 sections including Section 8 and 9, T31N R10W:

(a) all management reports from 1990 to date;

(b) personal files of Alan Alexander, David Poague, Kurt Schipley (sic), Chip Land (sic), Rick Dawson, David Schoderbek and James R. J. Strickler concerning Arch Rock Prospect,

(2) for Burlington's contractual dispute with Minatome over November 27, 1951 contracts (collectively the "GLA-46 Agreements") originally between Brookhaven Oil Company and San Juan Production Company:

- (a) any documents pertaining to course of conduct concerning this contractual dispute,
  - (c) any and all public documents relating to proceedings concerning the GLA-46 agreements
- (3) all title documents and opinions for the Scott Well No. 24 and the Marcotte Well No. 2 and the GLA-46 Agreements.
- (4) all documents relating to Minatome's interest in Arch Rock or the GLA-46 Agreements.
- (5) all documents relating to unitization of Arch Rock or forming new exploratory units in this area:
- (a) all documents concerning any plans/proposals
  - (b) any communications with the BLM or State Land Office concerning unitization of Arch Rock Prospect
- (6) For the Scott No. 24 Well and the Marcotte Well No. 2:
- (a) any seismic, geophysical, or geological data and interpretations disclosed to any interest owner, partner or joint venturer.
  - (b) correspondence concerning efforts to obtain voluntary agreement
  - (c) documents concerning compulsory pooling
  - (d) drilling contracts
  - (f) drilling rig schedules.
  - (g) all drilling, completion and casing plans for the Marcotte Well No. 2.

- (4) information concerning dates each well was proposed are a matter of record already known to Minatome.
- (5) overhead rates for supervision are not resolved by a search of Burlington's files but by Minatome doing its own homework and using widely known information in the industry and available to Minatome.
- (6) proposed risk penalty (discussed below)
- (7) significant differences in AFE (discussed below)

**THE MINATOME SUBPOENA IS AN ABUSE OF THE  
DIVISION'S SUBPOENA POWERS**

This Subpoena constitutes an abuse of the Division's subpoena powers because it requires the production of a substantial portion of Burlington's documents in the entire San Juan Basin which are not relevant to the issues in this pooling application.

The subpoena seeks to use the Division's subpoena powers to obtain documents concerning contractual disputes or to advance potential claims outside of the jurisdiction of the Division.

**SUBPOENAS SEEK PRODUCTION OF  
IRRELEVANT DOCUMENTS**

Minatome seeks massive and extensive production of geologic and engineering data for the San Juan Basin which is irrelevant to the issues in the pooling cases.

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

(b) The Division is authorized to approve a maximum 200% risk factor penalty in pooling cases. Burlington seeks the adoption of the maximum penalty.

(c) publicly available geologic data conclusively demonstrates at this time that the "deep gas" in the San Juan Basin is, with few exceptions, unexplored, untested, and not yet proven to be commercially productive.

(d) The nearest commercial Pennsylvanian gas production is more than twenty (20) miles from Sections 8 and 9.

(e) Burlington does not dispute and Minatome cannot dispute the undisputed fact that these are very risky exploratory wells entitled to the maximum penalty.

(f) Subpoena is burdensome and oppressive and seeks to obtain Burlington confidential, proprietary geologic and engineering data none of which is relevant to the risk factor penalty issue.

(g) Burlington contends and Minatome must concede that the 200% risk factor penalty is appropriate based upon the simple fact that there is no proven production in the Pennsylvanian formation which could be used to lower the risk factor penalty.

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

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

Because Minatome owns other mineral interests in the immediate vicinity of Section 8 and 9 the disclosure of Burlington's confidential data to Minatome will in fact provide the Minatome with Burlington's confidential data and give Minatome either (a)

a competitive advantage in other tracts in which it owns an interest and/or (b) establish a commercial value for purposes of selling or trading their interest to others.

**MINATOME SEEKS DOCUMENTS  
AVAILABLE IN PUBLIC RECORDS**

Minatome wants data which is currently available to Moore-Bard in the public record, including but not limited to Division case files and records.

Minatome is asking Burlington to prepare Minatome's case and to do Minatome's research. All relevant data has already been provided to Minatome or are available either in public records or in Minatome's possession.

Burlington has no obligation or duty to do homework for Minatome.

**MINATOME SEEKS BURLINGTON'S  
CONFIDENTIAL BUSINESS RECORDS**

Minatome seeks production of Burlington's internal economic/engineering documents concerning estimates of costs analysis which are not relevant.

Burlington has no obligation to make or provide documents to assist Minatome in deciding if it desires to participate in this wells or to be involuntarily pooled.

It seeks documents to help them make that decision or to market their interest neither of which is relevant to any decision the Division must make in this case.

**SUBPOENA IS BURDENSOME AND OPPRESSIVE**

The subpoena is oppressive and burdensome and would require months of preparation before Burlington could assemble and produce. The subpoena is sought in order to cause delay so that Minatome can "ride the Marcotte well down" and learn the results before Minatome must make an election to participate in the Scott Well

**AUTHORITY FOR EXPENDITURE  
"AFE's"**

Minatome, in a guise to obtain valuable confidential data from Burlington pretends to misunderstand how the Division addresses the issue of approving an AFE in pooling cases. Because of that ignorance has sought irrelevant documents.

The Division's determination of the reasonableness of an AFE is based upon a the Division's determination that the Minatome can show the AFE is excessive. That determination is not made from searching Burlington's files but rather by Minatome going out into the industry, obtaining its own estimates, quotes and preparing its own AFE.

If Minatome is concerned about its share of actual costs, then it has prematurely raised this issue. The Division's pooling orders provide an opportunity "after the well is drilled and completed" for any pooled party to request a reasonable well cost determination hearing.

The AFE issue is not how Burlington prepared the AFE but whether the AFE is reasonable. That test is examined and met not by looking at Burlington's financial records but by comparison with the actual costs of other like kind wells.

The fact that Minatome is upset that Burlington selected Section 8 and 9 to located high risk deep gas well tests is not relevant to a compulsory pooling case. The Division has never denied an application the right to chose which spacing unit to drill and in what order to drill them.

**SUBPOENAS FAIL TO COMPLY WITH RULE 1211**

Section 70-2-8 NMSA 1978 describes the Division's subpoena powers which the Commission, by the adoption of General Rule 1211, has limited to "a subpoena will be issued for attendance at a hearing upon the written request of any person interest in the subject matter of the hearing."

Minatome has requested and obtained from the Division subpoena which fails to comply with Division General Rule 1211 and which exceeds the OCD authority by demanding that Burlington produce confidential documents which are not contemplated by Rule 1211.

### CONCLUSION

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

- (1) give itself a competitive advantage in other tracts in which it owns an interest;
- (2) establish a commercial value for what up until now has been "rank wildcat" property.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W. Thomas Kellahin". The signature is written in a cursive style with a horizontal line underneath it.

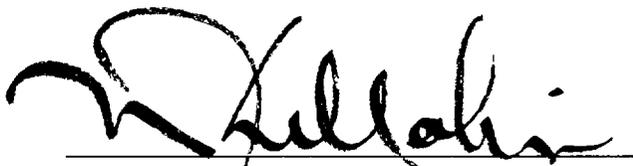
W. Thomas Kellahin  
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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing pleading was mailed to opposing counsel this 10th day of November, 1997 as follows:

Jason E. Doughty, Esq.  
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