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

October ~~30~~ 31, 1997

PLEASE REPLY TO SANTA FE

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

HAND DELIVERED

Re: NMOCD Case No.s 11808 and 11809; 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 consideration by the Oil Conservation Commission is the original and two copies of Total Minatome Corporation's Second Motion For Stay of the compulsory pooling orders in the referenced consolidated *de novo* proceedings.

As explained in the motion, interim relief is requested and we accordingly ask that this Second Motion For Stay be considered on an expedited basis just as soon as a quorum of the Oil Conservation Commission may be reasonably and practicably assembled.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall

JSH:CMB

cc: Norman Inman, Esq. (w/enclos.)
W. Thomas Kellahin, Esq. (w/enclos.)
J.E. Gallegos, Esq. (w/enclos.)
Lynn Hebert, Esq. (w/enclos.)
Rand Carroll, 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 MINATOME'S SECOND MOTION FOR STAY OF ORDERS R-10877 and R-10878

Total Minatome Corporation ("Total") by and through its undersigned counsel moves that the Commission enter its order staying Division Orders No.s R-10877 and R-10878 entered on September 12, 1997. The grounds for staying the Division's compulsory pooling orders are as follow:

The parties are in fundamental disagreement over the operation of the participation election provisions of the Division's compulsory pooling orders. Recently, Total tendered its share of estimated well costs to Burlington Resources Oil and Gas Company ("Burlington") for the specific purpose, among others, of exercising its rights under the terms of the Division's pooling orders to avoid the statutory risk penalty assessment. This week, Burlington improperly rejected Total's payment without justification and seeks to impose the 200% penalty against Total's share of pooled production. As a consequence, Burlington has contravened the express terms of the Division's pooling orders in derogation of Total's rights.

On October 28, 1997, counsel for the compulsory pooling applicant, Burlington Resources Oil and Gas Company advised that Burlington was refusing to accept Total's tender of its

proportionate share of estimated well costs under Order R-10878 which pooled Total's interests for Burlington's Marcotte's No. 2 well in Section 8, T-31-N, R-10-W. (See copy of W. Thomas Kellahin's correspondence dated October 28, 1997, Exhibit A). Total tendered its share of estimated well costs pursuant to the terms of decretal paragraph 4 of Order No. R-10878 on a timely basis in order to avoid the assessment of the risk penalty charge. (See the undersigned's October 16, 1997 transmittal correspondence to W. Thomas Kellahin and Alan Alexander, Exhibits B and C, attached.) Total's election to participate pursuant to the terms of the compulsory pooling order was done in both a timely and proper manner. Burlington has taken a contrary position, contending that Total's election was conditional. By rejecting Total's payment and disregarding Total's election under the terms of the compulsory pooling order, it is clear that Burlington seeks the imposition of the statutory risk penalty assessment against Total's share of production.

Burlington's rejection is inappropriate and contrary to both the custom and practices of the industry and the New Mexico Oil Conservation Division's administration of its compulsory pooling orders. Accordingly, the Commission should enter its interim order staying Order No.s R-10877 and R-10878 pending the Commission's resolution of the *de novo* proceeding on Burlington's compulsory pooling applications.

BACKGROUND

Burlington's October 28, 1997 rejection of Total's election to participate is preceded by a previous rejection of an earlier effort by Total to voluntarily participate in Burlington's proposed well:

On April 22, 1997, Burlington made its proposal to drill the Marcotte No. 2 well to Total and a number of other interest owners in Section 8. Accordingly, on May 23, 1997, Total provided its consent to participate in the Marcotte No. 2 well under the terms of a pre-existing land contract (the GLA-46 Agreement) between Total's predecessor and Burlington's predecessor. Total's May 23, 1997 consent under the GLA-47 Agreement, was done is a manner consistent with a number of earlier well proposals made by Burlington and its predecessors in which Total elected to participate under the GLA-46. Surprisingly, Burlington subsequently advised that it regarded Total's consent to voluntarily participate in the well under the GLA-46 Agreement as being ineffective. Burlington, disavowing the GLA-46 Agreement, then proceeded to force pool Total's interests. In view of Total's election to participate under the terms of its pre-existing land contract with Burlington, Total quite naturally resisted Burlington's compulsory pooling applications. The consolidated applications in Case No.s 11808 for the Scott No. 24 well in Section 9 and Case No. 11809 for the Marcotte No. 2 well in Section 8 proceeded to hearing before the Division's examiner on July 10, 1997. On September 12, 1997, the Division entered its Orders No.s R-10877 (Scott No. 24) and R-10878 (Marcotte No. 2).

Soon thereafter, on September 15, 1997 the Eleventh Judicial District Court hearing the appeal of Order R-10815 promulgating 640-acre spacing for sub-Dakota formation wells in the San Juan Basin issued a bench ruling staying the effect of the 640-acre spacing order to those interest owners who had not received notice of the spacing proceeding.[1] Because the 640-acre spacing order was stayed as to some but not all interest owners, it was correctly perceived that significant

---

[1]Timothy Johnson, Trustee for Ralph A. Bard, Jr., et al. vs. Burlington Resources Oil and Gas Company, 11th Judicial District Case No. CV-97-57-3.

practical and legal difficulties would arise in the administration of the compulsory pooling orders for the Scott No. 24 and the Marcotte No. 2 wells. Accordingly, Total and a number of other interest owners made separate applications to the Division Director to stay the effect of Orders No.s R-10877 and R-10878 until the differences between the pooling orders and the Court's ruling on the spacing order were reconciled.[2]

On the same day the District Court issued its bench ruling in the 640-acre spacing case, Burlington sent its transmittal advising of the Division's issuance of Order R-10878 and enclosing a copy of Burlington's itemized estimated well costs schedule and AFE. (See Exhibit D, attached). In its September 15 transmittal, however, Burlington advised that in order to participate in the well "under the terms of the compulsory pooling order," Total should pre-pay its share of the $2,316,973.00 estimated completed well costs, execute the enclosed AFE and also execute Burlington's April 1, 1997 operating agreement. Total and a number of other interest owners had earlier found Burlington's customized operating agreement objectionable for a number of reasons, and consequently refused to execute the same.[3] Because Burlington's September 15th transmittal attempted to impose conditions on the ability of non-consenting interest owners to elect to participate in the well, Total pointed out to the Division Director in its first Motion For Stay that these new conditions exceeded the terms of the compulsory pooling order and negated the ability of the owner of the previously uncommitted interest to consent to the drilling of the well and avoid

---

[2]Total Minatome Corporation's Motion For Stay of Orders R-10877 and R-10878, October 3, 1997; Lee Wayne Moore and JoAnn Montgomery Moore, Trustees, Motion For Stay, October 6, 1997; Timothy B. Johnson, Trustee, et al., Motion for Stay, October 6, 1997.

[3]Among other things, Burlington's operating agreement contained a 400% non-consent penalty, well data access restrictions and unreasonable gas balancing provisions.

the risk penalty by tendering its share of estimated well costs. The election period under Order R-10878 was scheduled to terminate automatically on October 19, 1997, and Total accordingly requested an expedited ruling on its Motion For Stay. Burlington subsequently responded to Total's Motion For Stay. On October 15, 1997, the Division Director issued a letter ruling declining to grant the Total request. Subsequently, on October 7, 1997, Total filed its Application for Hearing De Novo in these consolidated cases and on October 16, 1997, tendered its share of estimated well costs in order to avoid triggering the assessment of risk penalty charges under the compulsory pooling order for the Marcotte No. 2. (Exhibit B) As indicated by our October 16th transmittal, because of the pendency of the *de novo* proceeding before the Commission, it was noted that payment was made under protest and without prejudice to any of Total's rights.

At the same time it tendered its share of wells costs, Total requested that it be provided with certain well data reflected on Total's standard well information requirements form. (Exhibit E, attached.) The form Total provided with its tender is the same form it uses for each and every well in which it participates. To now, no operator has refused to provide such information.

Burlington rejected Total's proper and timely tender of its share of estimated well costs claiming that Total placed conditions on its payment. In this regard, the October 16, 1997 transmittal for Total's payment more accurately and correctly speaks for itself. Burlington's rejection is a mischaracterization and a contrivance intended to justify its recoupment of the 200 percent risk penalty assessment from Total's proportionate share of production. At the same time, Burlington, on its own, attempts to condition the furnishing of well data on the execution of vague and undefined confidentiality agreements.

BURLINGTON'S REJECTION CONTRAVENES THE TERMS OF ORDER R-10878 AND ABROGATES TOTAL'S RIGHT UNDER THE ORDER

The terms of Order R-10878 are generic in form and follow the pattern the New Mexico Oil Conservation Division established decades ago for compulsory pooling orders. Industry has come to rely on the consistent phrasing and construction of the Division's pooling orders in the course of practice. In this particular case, the respective rights and obligations of the operator and the pooled interest owner are set forth in decretal paragraphs 3 and 4:

> (3) After the effective date of this order, the operator shall furnish the Division and each known interest owner in the subject unit an itemized schedule of estimated well costs.
>
> (4) Within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting interest owner **shall have the right** to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(Page 10, Order R-10878; emphasis added.)

The procedure for a non-consenting interest owner to exercise the rights accruing to it under the administrative order are clear, simple and straightforward. That Total followed the procedure fully and in a timely manner are not at issue in this case. To the contrary, Burlington has chosen to mischaracterize Total's payment as justification for its attempt to recoup the risk penalty from Total's share of production, thus depriving Total of the rights it was accorded by the Division under its Order. This Burlington may not do. Absent its mischaracterization, Burlington can point to no authority under the Oil and Gas Act or to any the provision of the Order which authorize its rejection of Total's tender and the imposition of the risk penalty. Similarly,

Burlington is unable to cite to any similar practice on the part of the industry where a timely and proper tender of a pooled party's share of well costs is made.

If allowed to be given effect, Burlington's unauthorized rejection of the tender will negate the express terms of Order R-10878 and will abrogate Total's right to avoid the risk penalty assessment in direct disregard for the Division's order. As a further consequence to the industry overall, the predictability and reliability of the Division's pooling orders will be rendered uncertain and open to question.

It is a sporting use of the Division's orders and procedures by which Burlington seeks to obtain a competitive advantage and leverage its bargaining position over a non-consenting party in the course of this administrative proceeding. Such conduct is an openly improper abuse of the administrative process which cannot be countenanced. The Commission must not allow this precedent to be established.

BURLINGTON WILL NOT BE PREJUDICED BY THE STAY

The drilling of the Marcotte No. 2 well under Order No. R-10878 is complete and the commencement of the Scott No. 24 under Order No. R-10877 is imminent. Total's working interest ownership in the Marcotte No. 2 is 4.65 percent. Total owns 3.5 percent of the acreage dedicated to the Scott No. 24. In the overall context of the prosecution of drilling activities of both wells, Total's proportionate shares are relatively small. Conversely, Burlington owns or controls significantly larger interests. Accordingly, the economic consequences to Burlington of staying the pooling orders for Total's interests are likewise insignificant and will not prejudice the operator in any way.

Earlier, Burlington itself acknowledged as much when it proposed that Total's election be held in abeyance and that Burlington would be willing to "carry" the interests of Total and other non-consenting working interest owners pending the resolution of the 640 acre spacing issue in the courts. (See excerpts from Burlington's October 10, 1997 Response to Total Minatome Corporation, et al.'s Motions To Stay, Exhibit F, attached.)

Given that Burlington's initial plans were to drill these two wells on 160 acre spacing units and the fact that Burlington commenced the Marcotte No. 2 before both (1) the effective date of the 640 acre spacing order and (2) the filing of its compulsory pooling applications, it is apparent that the full-time commitment of 100 percent of the working interests has never been a matter of paramount importance to Burlington's drilling program. Accordingly, Burlington's earlier proposal that the elections and payments be held in abeyance suggest an appropriate basis for the Commission to provide similar interim relief here.

CONCLUSION

For the above reasons, the Commission should immediately order the interim stay of Orders R-10877 and R-10878 pending the Commission's full disposition of the de novo proceeding. Further, in view of the immediate uncertainty created by Burlington's disavowal of Total's tender of its share of well costs for the Marcotte No. 2 and the likelihood that this scenario will be repeated for the Scott No. 24 well, the Commission is requested to issue an expedited ruling on this Second Motion For Stay.

Counsel for Timothy B. Johnson, Trustee, et al., and Lee Wayne Moore and JoAnn Montgomery Moore, Trustees, concurs with Total's request for stay. Counsel for Burlington has not responded to our communications seeking concurrence to the request. (Exhibit F).

MILLER, STRATVERT & TORGERSON, P.A.

By_____

J. Scott Hall
P.O. Box 1986
Santa Fe, New Mexico 87501
(505) 989-9614
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 31 day of October, 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

Rand L. Carroll, Esq.
New Mexico Oil Conservation Division
2040 S. Pacheco St.
Santa Fe, NM 87505-5472

Lynn Hebert, Esq.
New Mexico Oil Conservation Division
2040 S. Pacheco St.
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J. E. Gallegos, Esq.
Gallegos Law Firm, P.C.
460 St. Michaels Drive #300
Santa Fe, New Mexico 87505-7602

J. Scott Hall

KELLAHIN AND KELLAHIN
ATTORNEYS AT LAW
EL PATIO BUILDING
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SANTA FE, NEW MEXICO 87504-2265

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

JASON KELLAHIN (RETIRED 1991)

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

October 28, 1997

VIA FACSIMILE
(505) 989-9857

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

Re: NMOCD Case 11809 (Order R-10878)
Marcotte Well No. 2

Dear Mr. Hall:

I am responding to your letter dated October 16, 1997 in which you advised that Total Minatome Corporation ("Minatome") was tendering to Burlington Resources Oil & Gas Company ("Burlington") its check in the amount of $107,791.00 "pursuant to the terms of decretal paragraph 4 of Order R-10878", **but** doing so "under protest and without prejudice to any rights, claims or defenses which it may assert" at the denovo hearing of this matter or before any court, **and** "once Burlington receives Total's payment...Total requests it be provided with all well data...." on the Marcotte Well No. 2.

These conditions which Minatome placed upon its attempted tender of payment create serious doubts about whether Minatome has properly and timely elected to participate pursuant to the compulsory pooling order.

Please be advised that while Order R-10878 does not require that Burlington provide Minatome with the requested data, I will recommend to Burlington that it furnish certain of the data provided Minatome participates in this well under the proper confidentiality agreements and without conditional joinder.

Therefore, I have directed Burlington to not accept this payment and to not provide Minatome with Burlington's proprietary and confidential data until such time as these and all other issues involved in this case have been resolved. Burlington will return Minatome's check to them pending final resolution of this matter.

Very truly yours,

W. Thomas Kellahin

cc: Burlington Resources
Attn: Alan Alexander

EXHIBIT 1 A

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

October 16, 1997

PLEASE REPLY TO SANTA FE

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

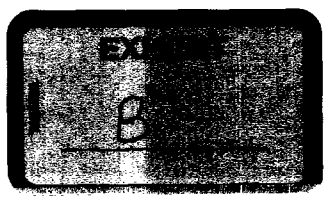
BY HAND DELIVERY

Re: NMOCD Case No. 11809 **(De Novo)**; Application of Burlington Resources Oil and Gas Company for Compulsory Pooling, San Juan County, New Mexico; NMOCD Order No. R-10878 (Marcotte No. 2; Sec. 8, T-31-N, R-10-W, NMPM)

Dear Mr. Kellahin:

By separate correspondence dated today, Total Minatome Corporation's check No. 0152220 in the amount of $107,791.00 is being sent by express courier to Alan Alexander at Burlington's Farmington area office. Total's check for its share of estimated well costs for Burlington's Marcotte No. 2 well is tendered pursuant to the terms of decretal paragraph 4 of Order R-10878. Total tenders payment for its share of well costs under protest and without prejudice to any rights, claims or defenses which it may assert in the **de novo** proceeding pending before the New Mexico Oil Conservation or any court of competent jurisdiction.

Once Burlington receives Total's payment for its share of estimated well costs, Total requests it be provided with all well data at the earliest opportunity, including drilling data, regulatory, completion and production data, geological/engineering data and other access and information referenced on the attached Well Information Requirements form. In addition, Total would like to obtain copies of the suite of open-hole logs which we understand Burlington has on the Marcotte No. 2. Please advise when Total may expect to receive the requested information and materials.



Thank you for your cooperation.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall, Esq.

JSH:CMB

cc: Alan Alexander
Norman Inman, Esq.
Deborah Gilchrist

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

October 16, 1997

PLEASE REPLY TO SANTA FE

Mr. Alan Alexander
Burlington Resources Oil and Gas Company
3535 East 30th Street
Farmington, NM 87402

FEDERAL EXPRESS

Re: Burlington Marcotte No. 2; Sec. 8, T-31-N, R-10-W, NMPM
San Juan County, New Mexico

Dear Mr. Alexander:

Enclosed is Total Minatome Corporation's check No. 0152220 for $107,791.00 for its share of estimated well costs for the Marcotte No. 2 well. This payment is tendered pursuant to New Mexico Oil Conservation Division Order R-10878 entered on September 12, 1997 in Case No. 11809. Also enclosed is a copy of my letter to Tom Kellahin dated today.

Thank you for your cooperation.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall

J. Scott Hall, Esq.

JSH:CMB

RECEIVED

SEP 19 1997

LAND ADMINISTRATION

BURLINGTON RESOURCES

SAN JUAN DIVISION

September 15, 1997

CERTIFIED-RETURN RECEIPT REQUESTED

Total Minatome Corp.
Attn: Ms. Deborah Gilchrist
2 Houston Center, Suite 2000
909 Fannin
Houston, TX 77210-4326

RE: Compulsory Pooling Order R-10878
Marcotte #2 Well
All of Sec. 8, T31N, R10W
639.78 Acre Unit
San Juan County, New Mexico

Dear Ms. Gilchrist:

Please reference our past correspondence on the captioned well. As you are aware Burlington Resources Oil & Gas Company (Burlington) filed with the New Mexico Oil Conservation Division for compulsory pooling of the drilling unit for said well. After hearing the matter, the Oil Conservation Division has now issued order R-10878 (dated September 12, 1997) a copy of which is enclosed, pooling the acreage and interests necessary for drilling.

Burlington, pursuant to the terms of the enclosed order, is hereby notifying Loyal Moore Trust / Total Minatome Corp. of its right to participate in the well pursuant to this order. For your review, I am enclosing a copy of the itemized estimated well and facility costs, and the Authority for Expenditure.

Burlington does however realize that Loyal Moore Trust / Total Minatome Corp. is now working towards voluntary joinder pursuant to the terms of a mutually acceptable Operating Agreement. Since this is the most desirable method of joinder for all parties involved, we will continue, during the thirty (30) day decision period imposed on you by the order, to work toward that end. If such an agreement is timely reached, we will either make application to vacate the Order or dismiss you from the Order.

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

3535 East 30th St., 87402-8801. P.O. Box 4289, Farmington, New Mexico 87499-4289, Telephone 505-326-9700, Fax 505-326-9833

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

2. Execute the previously forwarded Operating Agreement dated April 1, 1997, and forward the signature pages to the undersigned.

3. Prepay your 4.6522% share of the $107,791.00 total estimated completed well costs. The prepayment should be in the form of a cashiers check or certified bank check.

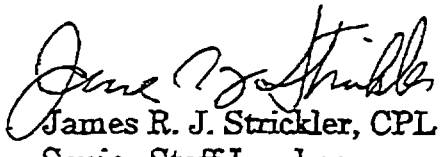
4. Or execute the previously forwarded Farmout Agreement dated June 16, 1997, and forward the signature pages to the undersigned.

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

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

I look forward to hearing from you on this matter. If you have any questions or require further information, please advise.

Sincerely,



James R. J. Strickler, CPL
Senior Staff Landman
(505) 326-9756

JRS:dg
s:\dawn\james\marhearing.doc

D. Gilchrist

TOTAL

TOTAL MINATOME CORPORATION

May30, 1997

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

Re: Scott #24
Pennsylvanian formation
Section 9, 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 29, 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 762493

EX

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

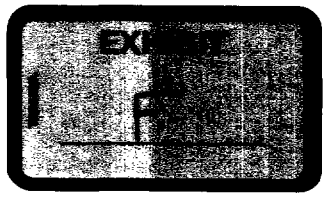
CASE NO. 11808
Order R-10877

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
Order R-10878

BURLINGTON RESOURCES OIL & GAS COMPANY'S RESPONSE IN OPPOSITION TO TOTAL MINATOME CORPORATION, TIMOTHY B. JOHNSON, TRUSTEE, ET AL AND LEE WAYNE MOORE & JOANN MONTGOMERY MOORE TRUSTEES' MOTIONS TO STAY

BURLINGTON RESOURCES OIL & GAS COMPANY ("Burlington") by its attorneys, Kellahin & Kellahin, hereby replies to Total Minatome Corporation's ("Minatome") motion for a stay filed on October 3, 1997, replies to Timothy B. Johnson, Trustee, et al ("the GLA-66 Group") motion to stay filed on October 6, 1997, and replies to Lee Wayne Moore and Joann Montgomery Moore,



In addition, there is no conflict as to the other compulsory pooling order (Order R-10877). That order pooled a 640-acre spacing unit in Section 9 where only the GLA-66 Group has preserved a right to complain about spacing. GLA-66 Group has no interest in the NW/4 of Section 9 where Burlington intends to drill the Scott Well No 24.[5] Minatome and Moore's only interest in Section 9 is in the NW/4 of that section.[6] When Burlington proceeds with the Scott Well No. 24, the well will be physically located on a 160-acre tract (NW/4). Minatome-Moore should want to make their elections under this order because their share of the costs is significantly less under 640-acre well spacing than under 160-acre well spacing.

Burlington will be proceeding on the basis of 640-acre well spacing as to Minatome-Moore and will be "carrying" the uncommitted interests of the GLA-66 Group. The GLA-66 Group would be required to make their election under the subject compulsory pooling order. Such instances require "dual accounting" and, while sometimes cumbersome, are not unmanageable and certainly are equitable. In the unlikely event that the GLA-66 Group prevails and Section 9 is ultimately spaced on 160-acres and not 640-acres, then the GLA-66 Group

[5] the GLA-66 Group has approximately 82.5% working interest in the E/2 and SW/4 of Section 9.

[6] Minatome's interest in the NW/4 of Section 9 is 14.2% which means it has 3.55% interest in a 640-acre spacing unit. Moore's interest in the NW/4 is 1.18% which means it has a 0.295% interest in a 640-acre spacing unit.

RECOMMENDATIONS

A: Order R-10878: The Marcotte Well No. 2 (Section 8)

Burlington recommends that the Minatome and Moore's motions to stay this order be denied so that Moore and Minatome will have to make their elections to pay their share and avoid the 200% risk factor penalty under the pooling order by October 18 and October 19, 1997, respectively.

Minatome and Moore have stood on the side lines and have waived their opportunity to complain about the Commission's change in spacing. Their only remedy at this point is to ask the Commission to conduct a DeNovo hearing of the compulsory pooling cases. Minatome and Moore have failed to demonstrate that they will be irreparably harmed unless the order is stayed. To the contrary, the party to be harmed will be Burlington who is testing the Marcotte well and for which Minatome and Moore want to know the results before it must make an election. Minatome and Moore have failed to justify their request for a stay which leaves the Commission with no alternative but to deny their requests.

B: Order R-10877: The Scott Well No. 24 (Section 9)

An alternative for the owners in Section 9, is to temporarily stay part of Order R-10877 (Scott Well No. 24) until the 640-acre spacing of Section 9 is resolved. Moore, Minatome and the GLA-66 Group would still be required to make their elections under that pooling order within thirty (30) days of receiving the estimated well cost as provided for in paragraph (4) of this order. The

estimated well costs would be furnished to Moore, Minatome and the GLA-66 Group on or after the date order R-10877 is temporarily stayed by the Commission. The elections made by Moore, Minatome and the GLA-66 Group would be held in abeyance until the spacing matter is resolved at which time the election would be binding upon the parties, assuming that 640-acre spacing in Section 9 is upheld by the court as to the GLA-66 Group. Minatome-Moore should want to make their elections under this order because their share of the costs is significantly less under 640-acre well spacing than under 160-acre well spacing. In the unlikely event that 640-acre spacing in Section 9 is not upheld and spacing reverts to 160-acres as to the GLA-66 Group, then the pooling order would be invalid and the appropriate parties would then either join in the Scott Well No. 24 or be compulsory pooled based upon 160-acre well spacing. In the event that Burlington elects to proceed with the drilling of the Scott Well No. 24 during the pendency of this spacing matter, all costs would be carried by Burlington and the revenues attributable to Moore, Minatome and the GLA-66 Group would be placed in escrow.

Respectfully submitted,

W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504