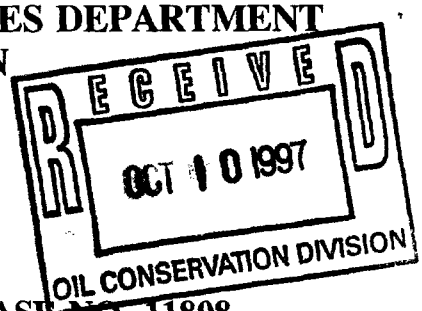
STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION



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,

Trustees, ("Moore") motion for a stay filed on October 6, 1997 and revised on October 7, 1997 both of whom seek a stay of Order R-10877 (Case 11808) and Order R-10878 Case 11809) and requests that the Division deny said motions and in support states:

Minatome and Moore contend that these compulsory pooling orders must be stayed for three reasons:

(1) Minatome and Moore claim to be affected by a temporary stay granted to certain owners (GLA-66 Group) in Section 9, T31N, R10W, NMPM (Scott Well No. 24) whom the District Court held had timely appealed the Commission's Order R-10815 which modified Rule 104 and adopted 640-acre well spacing for the "deep gas" in the San Juan Basin.

(2) Minatome and Moore claim that there is an irreconcilable conflict between the Division's two compulsory pooling orders (R-10877 and R-10878) and the judicial order which stayed the 640-acre spacing order (R-10815) only as to the GLA-66 Group.

(3) Minatome and Moore claim to have been denied the right to make an election pursuant to compulsory pooling Order R-10878.

Minatome and Moore are wrong on all three counts.

The GLA-66 Group's motion to stay is confusing: on page 4 it requests the Commission to stay the 640-acre spacing rule (Order R-10815) which is the rule they have appealed to District Court. This appears to be an unintended

error, because the rest of the motion addresses a request to stay the compulsory pooling order R-10877 which pooled the GLA-66 Group's interest in Section 9 for the Scott Well No 2. The GLA-66 Group claims the Commission should stay this compulsory pooling order because the District Court has entered a temporary stay of the 640-acre spacing rule only as to the GLA-66 Group. They are wrong.

BACKGROUND

(1) Burlington proposed deep gas wells in Section 8 and Section 9, each of which are estimated to cost as follows:

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

(2) In Section 8, (Marcotte Well No. 2) **(See Exhibit A, attached)** Burlington, with approximately 46% working interest, has obtained the voluntary agreement of some 13 owners and now has approximately 94% voluntary participation. The only non-participating parties are as follows:

(a) Moore	1.77%
(b) Minatome (GLA-46)	4.65%

(GLA-66 has no interest in this Section)

(3) In Section 9, (Scott Well No. 24), **(See Exhibit B, attached)** 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%
(b) Minatome (GLA-46)	3.55%
(c) GLA-66 Group	
58 owners with	61%

(4) On February 25, 1997, Burlington filed an application with the Commission (Case 11745) requesting the Commission modified General Rule 104 to established 640-acre well spacing for the deep gas in the San Juan Basin.

(5) On March 19, 1997, the Commission held a public hearing in Case 11745.

(6) On June 5, 1997, the Commission issued Order R-10815 (Case 11745) modifying Division General Rule 104 establishing 640-acre deep gas spacing in the San Juan Basin.

(7) On April 22, 1997, Burlington sent Moore and Minatome each a letter including an AFE and proposed joint operating agreement proposing, among other things, their voluntarily participation in the Marcotte Well No. 2, a deep gas test to be located within Section 8, T31N, R10W. GLA-66 Group has no interest in Section 8.

(8) On April 29, 1997, Burlington sent Moore, GLA-66 Group and Minatome each a letter including an AFE and proposed joint operating agreement proposing among other things their voluntary participation in the Scott Well No. 24 a deep gas test well to be located within Section 9, T31N, R10W.

(9) From May 5-9, Burlington had telephone conversations with Moore concerning the Marcotte and Scott wells.

(10) About May 5-9, Burlington sent Moore a copy of Burlington's hearing exhibits introduced in Commission Case 11745 on March 19, 1997.

(11) On May 16, Burlington sent LaForce representing the GLA-66 Group a copy of Burlington's hearing exhibits introduced in Commission Case 11745 on March 19, 1997.

(12) On May 22, 1997, Burlington set a follow-up letter to Minatome

(14) On June 16, 1997, Burlington sent a letter to Minatome offering revised Farmout terms.

(15) On June 11, 1997, Burlington filed a compulsory pooling application with the Division for pooling Section 8 as a spacing unit for the Marcotte Well No. 2.

(16) On June 12, 1997, Burlington filed a application with the Division for compulsory pooling Section 9 as a spacing unit for the Scott Well No. 24.

(17) On June 24, 1997, the GLA-66 Group filed an application for rehearing of Commission Case 11745 (Order R-10815).

(18) Burlington's drilling department could not find a suitable deep drilling rig in the San Juan Basin. A search was initiated to locate a rig capable of drilling a 14,250 foot deep gas well. The best rig available and on a timely basis was located 700 miles away in Ozona, Texas. This rig was contracted with a two-well commitment in order to drill the Marcotte Well No. 2 and a subsequent well during good weather months and drilling windows allowed by the BLM and to avoid any bad winter weather delays.

(19) On June 25, 1997, Burlington commenced the Marcotte Well No. 2

(20) On July 10, 1997, the Division held an evidentiary hearing in Cases 11808 and 11809 at which Minatome, Moore, GLA-66 Group and others appeared.

(21) On July 18, 1997, the GLA-66 Group[1] filed an appeal of Commission Order R-10815 to the District Court in San Juan County, New Mexico. (Judge Caton)

(22) On September 12, 1997, the Division issued Order R-10878 (Case 11809) pooling all mineral interests in Section 9 for the Scott Well No. 24 **(See Exhibit C, attached)**

(23) On September 12, 1997, the Division issued Order R-10877 (Case 11808) pooling all mineral interests in Section 8 for the Marcotte Well No 2.

(24) On September 15, 1997, Judge Caton granted the GLA-66 Group's motion to stay Order R-10815 as to them.

(25) On September 18, 1997, Minatome signed a receipt accepting notice of its post order election under Order R-10878. **(See Exhibit D, attached)**

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[1] Minatome and Moore are not part of the GLA-66 Group. Minatome and Moore are not parties to the GLA-66 Group appeal of Commission Order R-10185.

(26) On September 19, 1997, Moore signed a receipt accepting notice of its post order election under Order R-10878 **(See Exhibit E, attached)**

(27) On October 2, 1997, Judge Caton signed an order "Staying Commission Order R-10815 as to Plaintiffs" who are the GLA-66 Group.

(28) On October 3, 1997. Minatome requested the Division to stay the two pooling orders.

(29) On October 6 and 7 1997, Moore and GLA-66 Group requested the Division to stay the two pooling orders.

POINT I: MINATOME-MOORE HAVE FAILED TO TIMELY APPEAL COMMISSION ORDER R-10815 AND ARE NOW SUBJECT TO 640-ACRE DEEP GAS SPACING AS SET FORTH IN DIVISION GENERAL RULE 104

Minatome-Moore claim to be affected by a District Court temporary stay order granted to certain owners (GLA-66 Group) in Section 9, T31N, R10W, NMPM (Scott Well No. 24) whom the District Court decided had properly and timely appealed Commission Order R-10815 which modified Rule 104 and adopted 640-acre deep gas spacing for the San Juan Basin.

Contrary to Minatome-Moore's allegation, the District Court stayed Order R-10815 only as to the GLA-66 Group and arguably only as to their interest in Section 9. **See District Court Order attached.** At the District Court hearing held on September 15, 1997, Judge Caton stated:

> I will order a stay of the spacing rule as it applies only to these 61 parties in question. I consider any other parties in this case to have been adequately informed by the general rules of the Oil & Gas Commission by the general publication. That is sufficient.

What Minatome-Moore could have done and failed to do was to pursue any of the remedies pursued by the GLA-66 Group. It is now too late for Minatome-Moore. They have waived any opportunity to participate in any appeal of Order R-10185 and are now bound by that order.

Minatome must make an election for the Marcotte Well No. 2 on or before October 18, 1997.[2] Moore must make an election for the Marcotte Well No. 2 on or before October 19, 1997.[3] In order to prolong that election period and in order to learn the results of the Marcotte well, Minatome-Moore want both Order R-10878 and Order R-10877 stayed. Contrary to their argument, the District Court's order staying Order R-10815 has nothing to do with Minatome-Moore's interest in the Marcotte Well No. 2. The District Court has granted temporary relief to the GLA-66 Group only because they timely filed an appeal of Order R-10815 and thereby are in the unique position of being the only owners in the San Juan Basin who can pursue a challenge of this order as to their interest in Section 9.

Uhden v. Oil Conservation Commission, 112 N.M. 528, 817 P.2d 712 (1991) is of no help to Minatome-Moore. They are in the same position as the other interest owners in Cedar Hills-Fruitland Coal Gas Pool who, **unlike** Mrs.

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[2] Minatome has miscalculated the election deadline. See copy of return receipt card attached as Exhibit D showing receipt on September 18, 1997.

[3] See copy of return receipt card attached as Exhibit E showing receipt on September 19, 1997.

Uhden, failed to timely challenge the Commission order. Out of all of the property owners in the Cedar Hills Pool who could have challenged the change in spacing from 160-acres to 320-acres, only Mrs. Uhden was afforded the opportunity to be heard before the Commission. In **Uhden,** only Mrs. Uhden timely filed her objection and was allowed to challenge the change in spacing. And after all was said and done, her interest too was eventually subject to 320-acre spacing.[4]

POINT II: THERE IS NO IRRECONCILABLE CONFLICT BETWEEN THE DIVISION'S POOLING ORDERS AND THE JUDICIAL STAY AS TO MINATOME AND MOORE

Minatome and Moore claim that there is an irreconcilable conflict between the Division's two compulsory pooling orders (R-10877 and R-10878) and the judicial order which stayed the 640-acre spacing order (R-10815) as to the GLA-66 Group. Upon that hypothesis, Minatome-Moore contend Burlington will not be able to issue joint interest billing or allocate production proceeds when it attempts to do so for the Marcotte Well No 2. That claim is nonsense.

There is no conflict as to Order R-10878 because that order pooled a 640-acre spacing unit in Section 8 where the GLA-66 Group has no interest. If Burlington is able to complete its Marcotte Well No. 2 for production, then Minatome-Moore will be treated as everybody else will be treated in that section.

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[4] See Oil Conservation Commission Order R-8653-A, attached as Exhibit F.

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

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[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.

will have shared in production under 640-acre spacing to which they were not entitled and they can re-imburse the appropriate owners in this section.[7]

POINT III: MINATOME AND MOORE WERE PROPERLY NOTIFIED OF THEIR RIGHT TO ELECT PAY THEIR SHARE OF WELL COSTS AND THEREBY AVOID THE RISK FACTOR PENALTY SET FORTH IN THE SUBJECT POOLING ORDERS

Minatome-Moore claim they have been denied the right to make an election pursuant to the pooling order entered for the Marcotte Well No. 2. Minatome-Moore claim that Burlington is requiring them to do "extra" in order to avoid being a involuntarily committed working interest owner under the terms of Order R-10878. This is an empty claim devoid of logic. Nothing precludes Minatome-Moore from simply ignoring Burlington. All Minatome-Moore need to do is decide for themselves what the order requires and to do it or not.

Minatome-Moore's argument that Burlington is eliminating their ability be a "consenting working interest owner" pursuant to the compulsory pooling order is nonsense.

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[7] Such accounting arrangements are set forth in unit operating agreements in the San Juan Basin dealing with the qualification of drill blocks for inclusion in participating areas. For example see the Huerfano Unit Agreement and Unit Operating Agreement.

Both Burlington and Minatome-Moore are subject to the terms and conditions of the pooling order. It is up to Minatome-Moore to decide if and how they will make a proper and timely election to participate under the pooling order. If they do so, then they will not be subject to the risk factor penalty in that order. Pursuant to the pooling order for the Marcotte Well No. 2, Burlington provided both Minatome and Moore with the required notice and AFE. Anything else is extraneous. While Minatome has miscalculated the correct date on which its election period terminates, Minatome admits that its election period is running.

The fact that Burlington also offered Minatome-Moore an opportunity to farmout (an option not required in the pooling order) or another opportunity to signed Burlington's proposed joint operating agreement (another option not required in the pooling order) does not negate the fact that the clock is ticking on Minatome and Moore's election. Minatome-Moore want to stop the clock for no other purpose than to "ride the well down".

The true purpose of the motions to stay is an attempt to afford Minatome and Moore:

> (a) the opportunity to "ride down" the Marcotte Well No. 2 which as been drilled and is currently being tested; and
>
> (b) to learn the results from the Marcotte Well No. 2 before they have to make an election concerning committing their interests to the drilling of the Scott Well No 24 in Section 9 for which no post order election notices have been sent.

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.

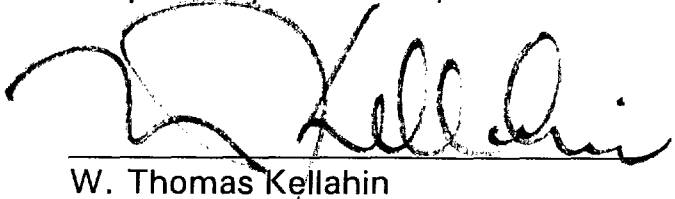
Minatome and Moore have stood on the side lines and have waived their opportunity to complain about the Commission's change in spacing. Their only remedy at this point is to ask the Commission to conduct a DeNovo hearing of the compulsory pooling cases. Minatome and Moore have failed to demonstrate that 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,



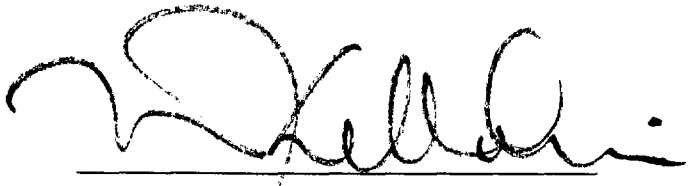
W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504

CERTIFICATE OF SERVICE

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

Jason E. Doughty, Esq.
Gallegos Law Firm
460 St. Michaels Drive Bldg 300
Santa Fe, New Mexico 87505

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

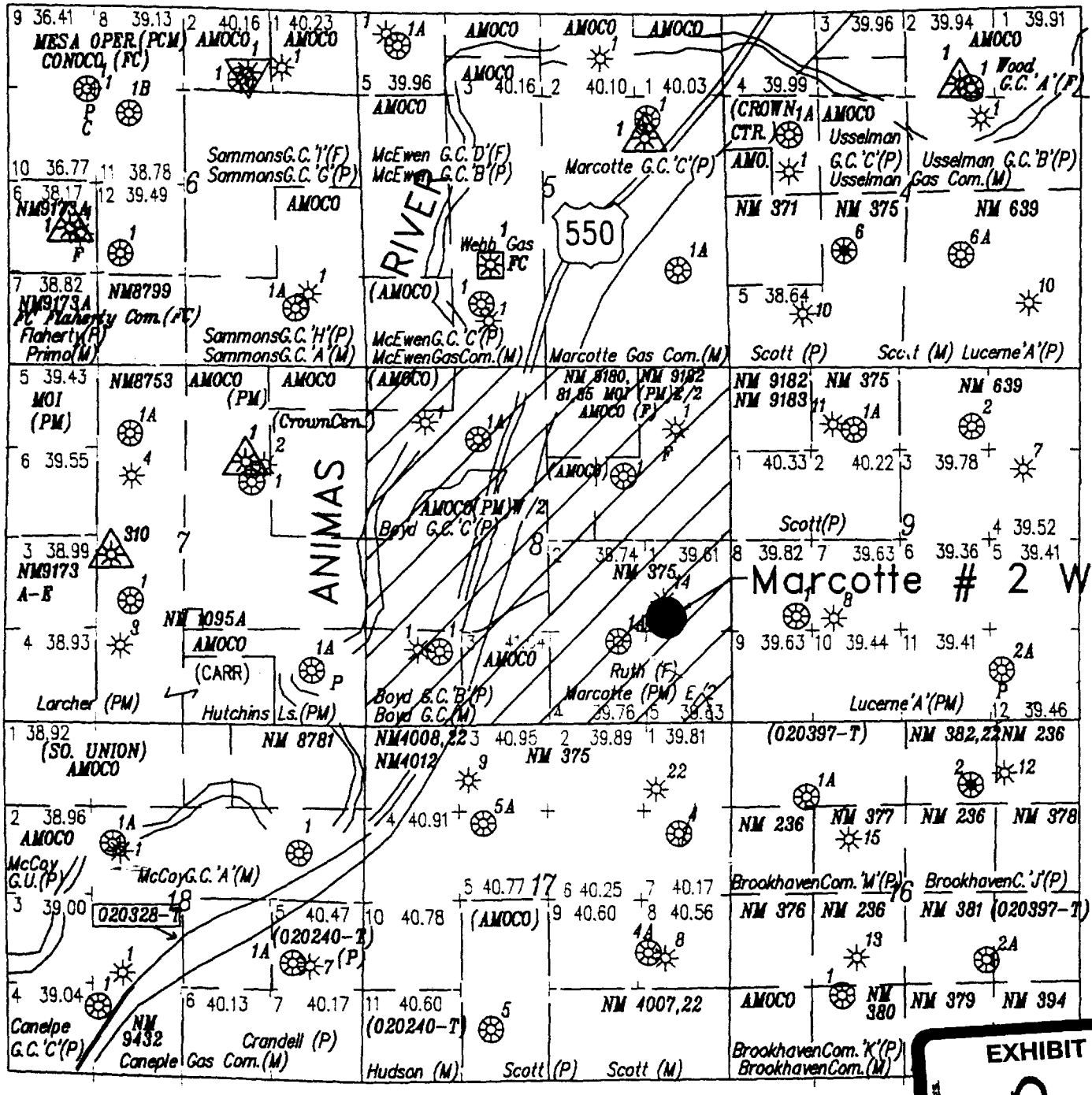


W. Thomas Kellahin

BURLINGTON RESOURCES

Marcotte # 2 Well

935' FEL, 1540' FSL Sec. 8, T31N, R10W



FRUITLAND SAND
FRUITLAND COAL
PICTURED CLIFFS
MESAVERDE
DAKOTA
GALLUP

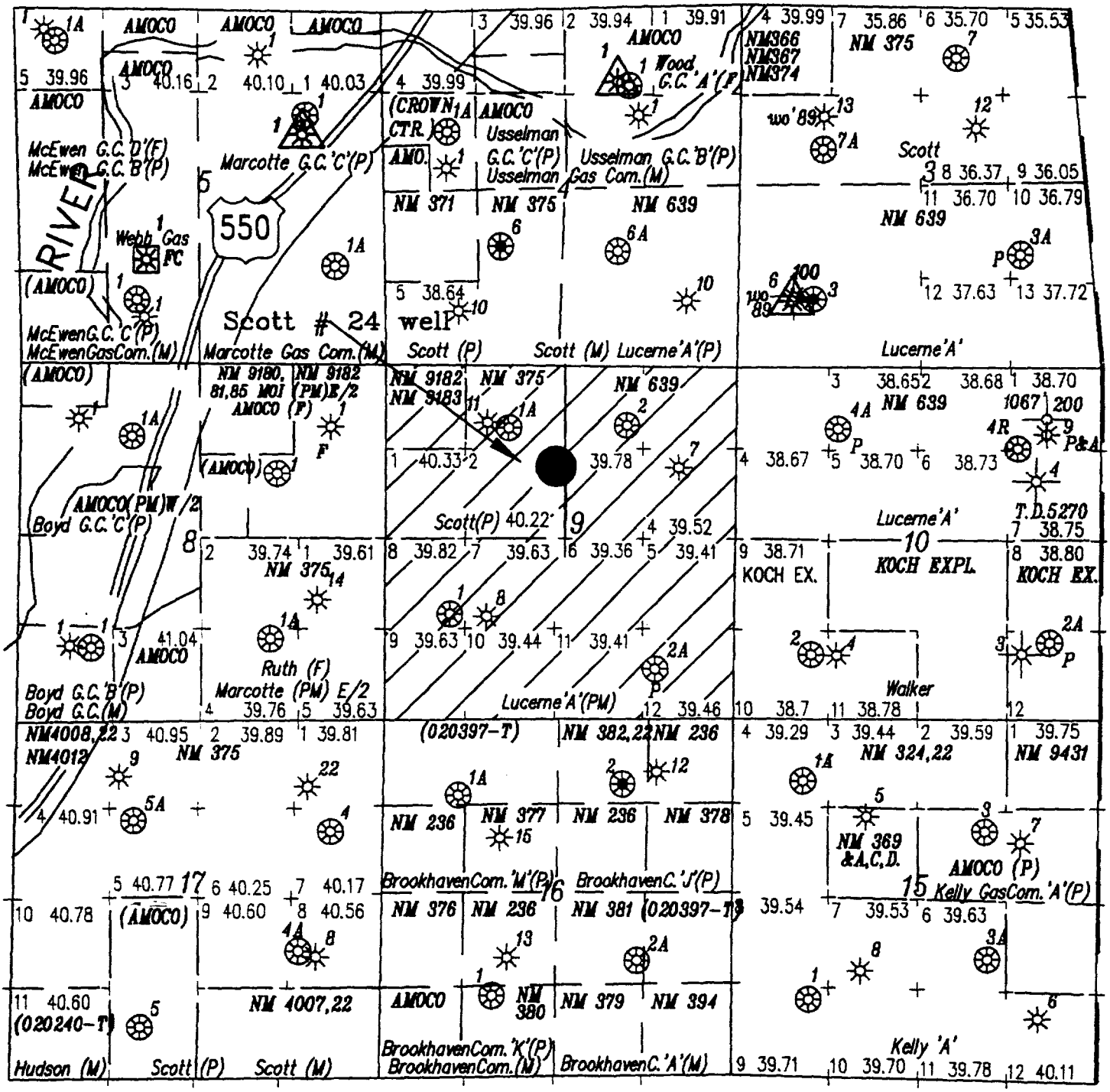
Spacing Unit

BURLINGTON RESOURCES OIL & GAS COMPANY

Scott # 24 Well

SENW Sec. 9–31N–10W

2500' FWL, 1535' FNL



FRUITLAND SAND
FRUITLAND COAL
PICTURED CLIFFS
MESAVERDE
DAKOTA
GALLUP

EXHIBIT B

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983; et. al.,	
Plaintiffs,	
vs.	Cause No. CV-97-572-3
Burlington Resources Oil & Gas Company, a corporation, and The New Mexico Oil Conservation Commission,	
Defendants.	

ORDER DENYING MOTIONS TO DISMISS AND TO STRIKE AND STAYING COMMISSION ORDER 4-10815 AS TO PLAINTIFFS

THIS MATTER came before the Court on September 15, 1997 for hearing on all pending motions with the plaintiffs appearing by their attorney, J.E. Gallegos, the defendant New Mexico Oil Conservation Commission ("Commission") by its attorney Marilyn S. Hebert and defendant Burlington Resources Oil and Gas Company ("Burlington") appearing by its attorney W. Thomas Kellahin. The Court has considered the pleadings, briefs and legal authorities and received arguments of counsel and is fully advised. The Court concludes as follows and IT IS SO ORDERED.

1. Plaintiffs have correctly followed the provisions of Section 70-7-25B. NMSA 1978 in bringing this case from the executive branch of government to the Courts for judicial review. Once the case is within the jurisdiction of the Court, NMRA 1997 Rule 1-074 provides meritorious procedures for the disposition of the appeal.

Under the circumstances there is little, if any, difference between what the Court has been provided by plaintiffs through its Verified Petition for Review and what would be filed as a Notice of Appeal. Should there be anything further to be provided the Court under the Rule 1-074 procedures, the plaintiffs shall make such filing. Accordingly, the defendants' motions to dismiss and Burlington's motion to strike are denied.

2. The decision in Uhden v. New Mexico Oil Conservation Commission, 112 N.M. 528, 817 P.2d 721 (1991) is controlling regarding plaintiffs' motion to stay Commission Order R-10815 pending appeal. Knowing of its plan to pool the interests of the plaintiffs for a wildcat well on 640-acre spacing and knowing the identities and whereabouts of the plaintiffs, Burlington's failure to provide notice to them of the spacing case proceeding underlying Order R-10815 was a denial of due process under the United States and New Mexico constitution. That spacing change case was not an exercise of general rule making by the Commission but rather resulted from an application by Burlington seeking a particular decision and order of the Commission and Burlington had the burden to notify the plaintiffs of its application as parties whose property could be affected. The plaintiffs' motion to stay is granted.

3. This Order staying Commission Order R-10815 applies only to the plaintiffs in this proceeding and is granted without requirement of bond. The Court expedites hearing of the appeal in this matter setting trial on October 7, 1997. The stay of Commission Order R-10815 shall remain in effect through that date, until further order of the Court.

ORIGINAL SIGNED BY
BYRON CATON

Honorable Byron Caton, District Judge

SUBMITTED:

J.E. GALLEGOS
JASON E. DOUGHTY
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

Attorney for Plaintiffs

APPROVED:

Telephonically approved on September 22, 1997

Marilyn Hebert
New Mexico Oil Conservation Commission
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Attorney for New Mexico Oil Conservation Commission

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P.O. Box 2265
Santa Fe, New Mexico 87504

Attorney for Burlington Resources Oil and Gas Company

COPIES MAILED TO COUNSEL OF RECORD 10-2-97 Gallegos Hebert Kellahin

SENDER: Pooling Order - Marcotte #2

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

TOTAL MINATOME CORP.
Attn: DEBORAH GILCHRIST
2 HOUSTON CENTER, SUITE 2000
909 FANNIN
HOUSTON, TX 77210-4326

4a. Article Number
P 414 789 912

4b. Service Type
☐ Registered ☑ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery SEP 18 1997

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*
X

PS Form 3811, December 1994 Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

EXHIBIT
D

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

Is your RETURN ADDRESS completed on the reverse side?

3. Article Addressed to:
Loyal Moore Trust
Attn Tom Moore
403 N. Marienfield
Midland TX 79701

4a. Article Number P 416 789 913

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery 9-16-97

5. Received By: (Print Name) P. Bane

6. Signature: (Addressee or Agent)
X 9-19-97

8. Addressee's Address (Only if requested and fee is paid)

Thank you for using Return Receipt Service.

PS Form 3811, December 1994 Domestic Return Receipt

P 416 789 913

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Sent to Loyal Moore Trust	
Street & Number	
Post Office, State, & ZIP Code	
Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$
Postmark or Date 9-15-97	

PS Form 3800, April 1995

EXHIBIT E

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

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

CASE 9129 (DE NOVO)
Order No. R-8653-A

APPLICATION OF VIRGINIA P. UHDEN, HELEN ORBESEN, AND CARROLL O. HOLMBERG TO VACATE DIVISION ORDER NOS. R-7588 AND R-7588-A, AND/OR FOR THE FORMATION OF SIX 160-ACRE GAS PRORATION UNITS, SAN JUAN COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m. on July 14, 1988, before the New Mexico Oil Conservation Commission, hereinafter referred to as the "Commission".

NOW, on this 19th day of September, 1988, the Commission, a quorum being present, having considered the testimony presented and the exhibits and briefs received, and being fully advised in the premises,

FINDS THAT:

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

(2) By Order No. R-7588, entered in Case No. 8014 on July 9, 1984, the Oil Conservation Division ("Division") created, defined and promulgated the temporary special pool rules and regulations for the Cedar Hill-Fruitland Basal Coal Gas Pool, San Juan County, New Mexico, including a provision for 320-acre gas spacing and proration units, with an effective date of February 1, 1984.

(3) By Order No. R-7588-A entered in Case No. 8014 (reopened) on March 7, 1986, the Division made permanent the temporary special rules and regulations promulgated by said Order No. R-7588.

(4) The applicants, Virginia P. Uhden, Helen Orbesen, and Carroll O. Holmberg, applied to the Division for an order vacating the 320-acre spacing provisions of Orders No. R-7588

and R-7588-A as to the applicants and establishing 160-acre spacing and proration units consisting of the NW/4 and the SW/4 of Section 33, and the NW/4, NE/4, SW/4, and the SE/4 of Section 28, all in Township 32 North, Range 10 West, NMPM, San Juan County, New Mexico; or in the alternative to make those spacing orders effective as to the applicants as of the date notice was provided to the applicants, that being May, 1986.

(5) Amoco Production Company; C & E Operators, Inc., et. al. ("C & E"); and Meridian Oil Inc. ("Meridian") have appeared in this matter in opposition to the application.

(6) Record in this case shows that the applicants are the fee owners and lessors of certain mineral interests in the W/2 of said Section 33 and in all of said Section 28, and that Amoco Production Company is lessee and owner of the working interest operating rights in the leases.

(7) C & E and Meridian are lessees and working interest owners in 160-acre tracts which have been pooled into 320-acre spacing units and have paid their proportionate share of the costs. If the application is granted, their interests will be excluded from the existing proration units and they will not receive their share of production from the wells drilled thereon.

(8) The parties in this case before the Commission have stipulated to incorporate the record made in the hearing before the Division, which record includes the record in Case 8014 and 8014 (reopened), and the Commission permitted the parties to file written briefs subsequent to the hearing.

(9) Each of the parties identified above has submitted a Brief in support of their respective positions.

(10) The Oil Conservation Division and the Oil Conservation Commission are charged with the responsibility of preventing waste and protecting correlative rights, and to that end are given broad authority to regulate oil and gas operations, including the authority to space wells. Division Rule 104 L authorizes the Division, after notice and hearing and in order to prevent waste, to fix different spacing requirements and require greater acreage for drilling tracts any defined gas pool than is provided for in the statewide rules.

(11) In order to establish spacing requirements different from statewide standard spacing, it must be affirmatively demonstrated at hearing that a well is capable of draining the

acreage proposed to be established as a standard size spacing unit for the pool.

(12) In Case 8014, the record of which is incorporated into this case by agreement of the parties, the Division found that one well in the subject pool should be capable of effectively and efficiently draining 320 acres and that in order to prevent the economic loss caused by the drilling of unnecessary wells and to prevent waste and protect correlative rights, the Cedar Hill-Fruitland Basal Coal Pool should be created with provisions for 320-acre spacing units.

(13) Pursuant to Order R-7588 in Case 8014, the case was reopened by the Division in February, 1986, and in that reopened hearing the Division found that one well in the Cedar Hill-Fruitland Basal Coal Pool can efficiently and economically drain and develop 320 acres and economic waste caused by the drilling of unnecessary wells can be prevented by continuing in effect the special pool rules promulgated by Order R-7588 providing for 320-acre spacing in the Cedar Hill-Fruitland Basal Coal Pool.

(14) The applicants filed their application in the instant case before the Division and on hearing presented geological evidence for the purpose of showing that one well could not effectively drain 320 acres in the Cedar Hill-Fruitland Basal Coal Pool.

(15) The Division found in the instant case that the applicants presented no evidence showing that the areas in Sections 28 and 33 are geologically distinct from the remaining acreage within the Cedar Hill-Fruitland Basal Coal Pool nor did they present any engineering data which would indicate that 160-acre spacing is appropriate for the described area, Sections 28 and 33. The applicants further testify that 320-acre spacing may ultimately be the appropriate spacing for the Cedar Hill-Fruitland Basal Coal Pool.

(16) Applicants argue that their property interest has been taken by State action without due process of law, and that as royalty owners they are entitled to actual personal notice of any hearing which would establish pooling or spacing units which would affect the lands from which their royalty interest is derived.

(17) In Case No. 9134, a case concerned with notice required to be given to royalty owners in cases before the Commission, the Commission took evidence regarding the contractual relationship between lessors and lessees and the

nature of the lessor, royalty owner's property interest in oil and gas covered by the lease.

(18) The record in Case 9134 and in the instant case shows that an oil and gas lease creates a contractural relationship between lessors and lessees and their mutual rights and obligations are defined therein. Lessors in granting the oil and gas leases transfer to lessees the exclusive right to investigate, explore, drill and develop the hydrocarbons within the leasehold estate. The transferor conveys all operating rights and working interest including the exclusive right to make all operational decisions regarding the timing and location of drilling, together with the obligation to pay all costs incurred therein.

(19) Oil and gas lessors retain the right to receive fr of cost a fractional share of hydrocarbons produced from the leased premises or a fractional share of the proceeds from the sale of said production, and so long as they receive their proportionate share of production based upon their interest in the spacing unit, they have not been deprived of property.

(20) Oil and gas leases commonly contain provisions whereby the lessee is granted the authority to pool the leased lands with other lands to form spacing or proration units. The specific contractual provisions of a lease may define the power granted to the lessee and may further define the manner in which the production is to be allocated.

(21) By virtue of the lease terms stated above, applicants have no right to enter the leasehold premises for the purpose of exploration or drilling for oil, gas or other hydrocarbons. They may receive their share of production from the same well as other interest owners.

(22) If the applicants request is granted, the owners of interests in the offsetting tracts to be excluded from the 320-acre proration units which were established pursuant to Order No. R-7588, including C and E Operators and Meridian Oil Inc., and the lessor royalty owners under their leases, may have their correlative rights impaired and not be able to recover their fair share of the oil and gas underlying the 320-acre tract unless the owner of the working interest operating rights drills an additional well on the excluded tract in order to produce the hydrocarbons underlying that tract. It has been demonstrated that said additional well would not be necessary to produce the hydrocarbons underlying said tract and that an additional well would not significantly increase the cumulative production of oil, gas and other

hydrocarbons underlying the 320 acres committed to the two wells.

(23) If the applicants request is granted, and if the offsetting working interest owners elect to drill a well on their 160-acre tract, the total recovery from the well on the applicant's tract is likely to be substantially reduced because a portion of the production underlying the 320-acre proration unit will be produced by the well drilled on the offsetting 160-acre tract, and therefore the applicants total share of production from the 320 acres will be substantially the same, whether there is one well or two wells producing on that 320 acres.

(24) If it is later determined that an additional well could recover additional oil, gas or other hydrocarbons from under the 320-acre tract, the special pool rules for the Cedar Hill-Fruitland Basal Coal Pool could be amended to allow an additional well to be drilled on a 320-acre proration unit and applicants would be entitled to their fair share of production of that additional well.

(25) The New Mexico Oil & Gas Act, specifically Section 70-2-18 N.M.S.A. 1978, requires the operator of a well to obtain voluntary pooling or a forced pooling order from the Division when separately owned tracts are embraced within a spacing unit. The Division may also establish non-standard units. When lands are force-pooled or a non-standard unit is formed, Division rules require notice to all affected interest owners, including royalty owners who have not given the lessees the right to pool the lands, and in the case of non-standard units notice must be given to offset operators.

(26) The record in this case shows that the lessors (applicants) have in addition granted to the lessees the right to pool the leased lands with other lands to create spacing and proration units of not greater than 640 acres. The language of the lease specifically provides that the royalties shall be prorated to the lessors in the same proportion that their acreage bears to the total acreage of the production unit.

(27) The applicants have not presented any evidence to show that they are not receiving their royalty share in accordance with the terms of their lease.

(28) The special pool rules entered for the Cedar Hill-Fruitland Basal Coal Pool establishing 320-acre spacing units will not deprive the applicants in this case of any property in which they have interest. They will be entitled to receive their royalty share of the oil and gas and other hydrocarbons

produced from the lands which are covered by their lease with Amoco.

(29) The correlative rights of owners of oil and gas production, including royalty and overriding royalty owners, can be protected by voluntary pooling of interests within a drilling tract or spacing unit, or by exercising remedies available under the New Mexico forced pooling statutes and rules of the Division.

(30) Royalty owners are proper but not necessary parties to the case before the Division or the Commission which involved the establishment or modification of Statewide or Special Pool Rules establishing spacing and proration units.

(31) The evidence adduced in the instant case indicate that Division Order No. R-8653 entered May 11, 1988, should be affirmed.

IT IS THEREFORE ORDERED THAT:

(1) Division Order No. R-8653, entered May 11, 1988, is hereby affirmed.

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

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

WILLIAM R. HUMPHRIES, Member

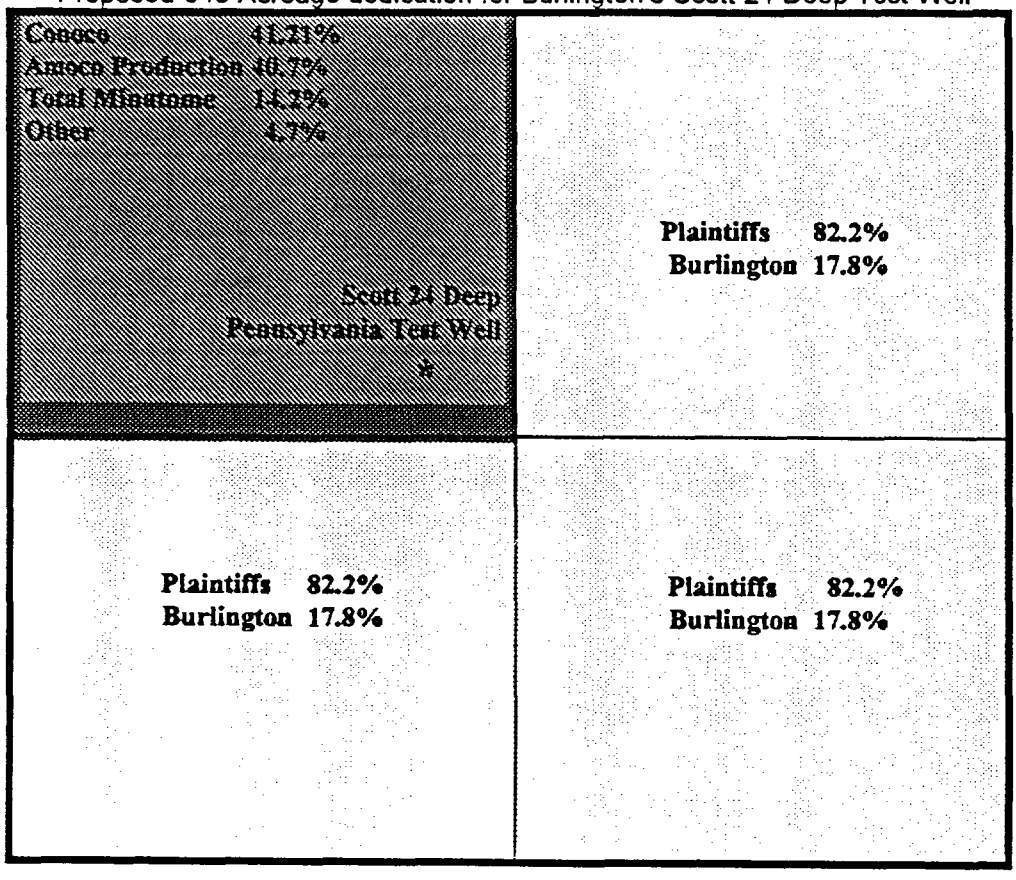
ERLING A. BROSTUEN, Member

WILLIAM J. LEMAY, Chairman and Secretary

S E A L

dr/

Working Interest Ownership in Section 9-T31N-R10W, San Juan County, New Mexico
Proposed 640 Acreage dedication for Burlington's Scott 24 Deep Test Well



EXHIBIT
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