GALLEGOS LAW FIRM

A Professional Corporation

460 St. Michael's Drive
Building 300
Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

October 7, 1997
(Our File 97-248)

JASON E. DOUGHTY*

1997

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

RE: NMOCD Cases 11808 and 11809, Orders No. R-10877 and R-10878
Applications of Burlington Resources Oil & Gas Co. for compulsory pooling,
Sections 8 and 9, T31N-R10W, NMPM San Juan County, New Mexico

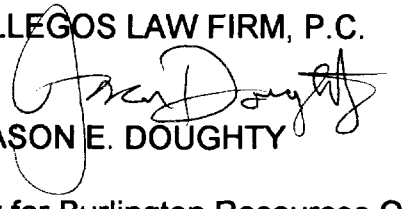
Dear Mr. LeMay:

On behalf of Lee Wayne Moore and Joann Montgomery Moore, Trustees, affected working interest owners in the referenced cases, please find enclosed our **revised** Motion for Stay of Division Orders No. R-10877 and R-10878 and proposed Orders. There are no substantive changes from the Motion and Order we filed yesterday, only corrections of certain errors and omissions. Counsel for Burlington has concurred in our filing of these revised pleadings.

Should you have questions or comments concerning the foregoing, please give me a call.

Very truly yours,

GALLEGOS LAW FIRM, P.C.

By: 
JASON E. DOUGHTY

cc: W. Thomas Kellahin, Attorney for Burlington Resources Oil & Gas Co
J. Scott Hall, Attorney for Total-Minatome Corporation
Rand Carroll/ Division Counsel

*Admitted to practice in Colorado,
New Mexico and Texas

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

RE: APPLICATIONS OF BURLINGTON RESOURCES OIL AND GAS COMPANY FOR COMPULSORY POOLING AND A NON-STANDARD PRORATION AND SPACING UNIT, SECTIONS 8 AND 9, T31N-R10W, NMPM, SAN JUAN COUNTY, NEW MEXICO

CASE NO. 11808
CASE NO. 11809
(Consolidated)

LEE WAYNE MOORE AND JOANN MONTGOMERY MOORE, TRUSTEES MOTION FOR STAY OF DIVISION ORDERS R-10877 AND R-10878

Lee Wayne Moore and Joann Montgomery Moore, Trustees ("Moore") by and through their undersigned counsel and in conformance with Division Memorandum 3-85, moves that the Division enter its order staying Division Orders No's R-10877 and R-10878 entered on September 12, 1997, and for their reasons state as follows:

POINT ONE: ORDERS NO. R-10877 AND R-10878 MUST BE STAYED PENDING THE GLA-66 OWNERS JUDICIAL APPEAL OF COMMISSION ORDER NO. R-10815

1. On June 11th and 12th 1997, Burlington filed applications with the Division seeking, inter alia, orders compulsory pooling all mineral owners in formations below the base of the Dakota formation to the Pre-Cambrian aged formation underlying all of Section 8 and 9, T31N-R10W, NMPM, San Juan County, New Mexico. These cases were numbered Case No.'s 11808 and 11809.

2. Among the mineral interests sought to be pooled by Burlington in Cases 11808 and 11809 were the working interest rights held by Moore in, inter alia, formations below the base of the Dakota formation in Sections 8 and 9, T31N, R10W,

San Juan County, New Mexico. Moore appeared in opposition to Burlington's Application in Cases 11808 and 11809 at the public hearing held before the Division on July 10-11, 1997.

3. On September 12, 1997, the Division issued its Orders No. R-10877 and R-10878, effectively pooling Moore's deep formation working interests rights in Sections 8 and 9, T31N, R10W, San Juan County, New Mexico (hereinafter "Sections 8 and 9"). See Orders No. R-10877 and R-10878, attached hereto as Exhibits "A" and "B" respectively, at page 10.

4. The legal basis for Burlington's application in Division Cases 11808 and 11809 seeking compulsory pooling on 640-acre spacing is grounded upon Commission Order No. R-10815, dated June 5, 1997 which, upon application by Burlington, amended Division Rules 104.B(2)(a) and 104.C(3)(a) and adopted new Division Rules 104.B(2)(b) and 104.C(3)(b). The amended Rule 104, inter alia, increased wildcat gas well spacing or proration units in San Juan County, New Mexico from 160 acres to 640 acres. But for the change in wildcat gas well spacing pursuant to Order No. R-10815, Burlington would have had no legal basis upon which to seek compulsory pooling of Moore's leasehold acreage in in Sections 8 and 9 on 640 acre spacing.

5. On June 24, 1997, a group of 61 working interest owners in Section 9 T31N, R10W, San Juan County, New Mexico (hereinafter "GLA-66 Owners") timely filed their Application for Rehearing of Commission Order No-10815 with the Commission pursuant to NMSA 1978 §70-2-25 (A) and NMOCD Rule 1222 on the grounds that: (A) the GLA-66 Owners' constitutional right to procedural due process

were violated by Burlington's failure to give the GLA-66 Owners actual notice of its application and/or of the Commission proceedings in Commission Case No. 11745 pursuant to Uhden v. New Mexico Oil Conservation Comm'n, 112 N.M. 528, 917 P.2d 721 (1991); and (B) Commission Order No. R-10815 is arbitrary, capricious and constitutes an abuse of discretion in that the change in Division Rule 104 is not supported by substantial evidence. Pursuant to NMSA 1978 §70-2-25 (A), the GLA-66 Owners' Application for Rehearing was considered denied on July 4, 1997 when the Commission did not act on the Appellants' Application within 10 days.

6. On July 18, 1997, GLA-66 Owners perfected a timely appeal of the spacing order pursuant to NMSA 1978 §70-2-25 (B) by filing their Verified Petition for Review of Commission Order No. R-10815 with the Eleventh Judicial District Court, San Juan County, New Mexico, Cause No. CV-97-572-3. The GLA-66 Owners filed simultaneously therewith a Motion to Stay Commission Order No. R-10815 pending appeal thereof pursuant to NMSA 1978 § 70-2-25(C).

7. At a hearing on all pending motions held on September 15, 1997, the Honorable Byron Caton, District Court Judge, Division III, Eleventh Judicial District, denied motions to dismiss filed by the Commission and Burlington and a motion to strike filed by Burlington, and **granted** GLA-66 Owners' Motion to Stay the effect of Commission Rule No-10815 as to the Appellants pending appeal thereof. A copy of said Order is attached hereto as Exhibit "C".

8. Pursuant to said court order, Commission Order No. R-10815 is stayed as to the GLA-66 Owners pending their judicial appeal. As such, the Division has no

authority to compulsory pool the GLA-66 Owners' leasehold operating rights acreage in Section 9-T31N, R10W, San Juan County, New Mexico for Burlington's proposed Scott Well No. 24 on 640-acre spacing.

9. The District Court's ruling staying the effect of Order No. R-10815 creates substantial uncertainty as to the application of 640-acre deep wildcat gas well spacing in the San Juan Basin, and its concomitant effect on both of the Division's two compulsory pooling orders at issue herein. On the one hand, Order No. R-10877 ostensibly pools both Moore's and the GLA-66 Owners' working interest in Section 9 for Burlington's Scott Well No. 24 on a 640 acre spacing and proration unit. Because of the District Court's ruling, the interests of the GLA-66 Owners are not pooled, but the interests of Moore's are pooled.

10. In addition to the immediate effect of the stay of the spacing order, Order No. 10815, as to the GLA-66 Owners in Section 9, the GLA-66 Owners judicial appeal questions whether Order No. 10815 was supported by substantial evidence. If the GLA-66 Owners prevail on this issue, then 640-acre wildcat gas well spacing will no longer be the rule. Rather, 160 acres, under the former Division Rule 104 will apply to all deep wildcat gas wells in the entire San Juan Basin. Thus, the authority of the Division to pool, inter alia, Section 8 for Burlington's Marcotte Well No. 2 is also under question pending the outcome of the GLA-66 Owner's appeal..

11. The practical consequences created by the conflicting judicial and administrative orders are readily apparent. Until the underlying issue of the propriety of 640-acre spacing versus 160-acre spacing is resolved by the Court, the respective

correlative rights of all the working and royalty interest owners in, inter alia Sections 8 and 9 are necessarily affected, and treated unequally.

11. Until the spacing for wells completed below the base of the Dakota is determined and applied to all interest owners on a uniform basis, such matters as the determination of participation factors, the allocation of costs and entitlement to production of pooled hydrocarbons cannot be reconciled. Burlington will have no sound basis for the allocation of costs when it issues its joint interest billings or for the allocation of production proceeds when it attempts to issue Division orders for its existing Marcotte Well No. 2 and its prospective Scott Well No. 24. Similarly, the unequal application of spacing rules will necessarily result in disproportionate takes among the affected working interest owners when Burlington actually produces these wells.

12. The irreconcilable conflict between the administrative Orders No. R-10877 and R-10878 and the judicial order places both Burlington and Moore in an impossible situation. Consequently, these circumstances mandate the entry of an order staying the effect of the Division's Orders No. R-10877 and R-10878 until the San Juan Basin deep gas spacing rules is settled on a uniform basis, or Burlington demonstrates an equitable and reasonable manner for the allocation of pooled and non-pooled interests in deep wells.

POINT TWO: ORDERS NO R-10877 AND R-10877 SHOULD BE STAYED PENDING MOORE'S DE NOVO APPEAL TO THE COMMISSION

14. As noted above, on September 12, 1997, the Division issued its Orders No. R-10877 and R-10878 effectively pooling Moore's working interest rights in Sections 8 and 9. Pursuant to the express terms of said Orders No. R-10877 and R-10878:

> (3) After the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division and each known working 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 working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his 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.
>
> * * *
>
> (7) The operator is hereby authorized to withhold the following costs and charges from production:
>
> (B) As a charge for the risk involved in the drilling of the well, **200 percent of the pro rata** share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him. (emphasis added).

See Orders No. R-10877 and R-10878 attached hereto as Exhibits A and B, at pp. 11-12 (emphasis added). In addition the New Mexico Compulsory Pooling Statute Section 70-2-17 (C) NMSA 1978 limits risk penalty provisions to not more than 200%.

15. On September 19, 1997, Moore received Burlington's September 15, 1997 transmittal advising of the Division's issuance of Order No. R-10878 and

enclosing a copy of Burlington's itemized estimated well and facility costs and AFE. In said transmittal, Burlington advised Moore that in order to participate in the well under the terms of the compulsory pooling order, Moore should pre-pay its share of the $2,316,973.00 estimated completed well costs[1], execute the enclosed AFE and also execute Burlington's April 1, 1997 Operating Agreement(with attached gas balancing agreement). Under Order No. R-10878, Moore must make a decision to either participate in the Marcotte Well or go nonconsent by **October 19, 1997**.

16. Burlington's requirements that Moore execute its extremely one-sided "customized" April 1, 1997 Operating Agreement and AFE are new conditions to Moore's election to participate in the Marcotte Well that are directly contrary to both the express terms of Order No. R-10878 as well as the the Oil and Gas Act and Division Rules.[2]

17. As noted above, both the express terms of Order No. R-10878 and 70-2-17 (C) NMSA 1978 allow a maximum 200% non-consent penalty. In direct violation, Burlington's April 1, 1997 Operating Agreement provides for a **300%** non-consent penalty both on the initial Marcotte Well No.2 as well as all subsequent wells thereunder.

---

[1] Burlington's estimated well costs are optimistically based upon a 60-day drilling program; from June 25, 1997 to August 25, 1997. Moore is informed and believes that Burlington's Marcotte Well No. 2 was still driling on September 15, 1997, the day that Burlington sent out its AFE to Moore. As such, with a rig cost of $7,000/day , the completed well costs will substantially exceed the estimated $2,316,973 on Burlington's tendered AFE.

[2] While Burlington has not yet tendered such a letter for its proposed Scott Well No. 24 pursuant to Division Order No. R-10877, Moore believes that such a letter is imminent. The Joint Operating Agreement and AFE tendered by Burlington for its Marcotte Well No. 2 and its Scott Well No. 24 were identical in all material respects, to include Burlington's alterations to same. As such, the same basis for staying said Order No. R-10877 pending appeal thereof applies.

18. Burlington's described demands on Moore amounts to an improper use of the administrative process to seek to compel an involuntarily pooled interest owner to contractually bind himself to the terms of an unacceptable private contract that exceeds the scope of the compulsory pooling statutes and this Division's Order. Indeed, it was Burlington's insistence on cram down tactics with provisions imposing a 400% non-consent penalty and prohibiting consenting working interest owners access to the drilling location and to drilling and completion data, unreasonable confidentiality restrictions and unacceptable gas balancing terms that had much to do with the unwillingness of Moore to commit to the well in the first place.

19. Burlington's stated requirement that Moore must execute and be bound by its prior tendered Joint Operating Agreement, with the attached Gas Balancing Agreement, contravenes the terms of the Orders No. R-10878, 70-2-17 (C) NMSA 1978, and the procedures of the Division. In effect, Burlington has eliminated the ability of the previously uncommitted interest owners, such as Moore, to consent to the operation and avoid the risk penalty by tending its share of estimated well costs except by executing Burlington's unreasonable Joint Operating Agreement. Consequently, the rights of the pooled interest owners under the Orders No. R-10877 and R-10878 are negated by the unreasonable and unfavorable terms imposed by Burlington.

20. Moore intends to pursue a timely appeal of Division Orders No. R-10877 and R-10878 pursuant to Division Rule 1220 and within the time limits provided therefore.

For the foregoing reasons, Movant Lee Wayne Moore and Joann Montgomery Moore, Trustees respectfully move the Division for its Order immediately staying Orders No. R-10877 and R-10878 pending (A) the GLA-66 Owners' judicial appeal of Commission Order No. R-10815 in the Eleventh Judicial District Court, San Juan County, New Mexico, Cause No. CV-97-572-3, and (B) Moore's *de novo* appeal of Division Orders No. R-10877 and R-10878 to the Commission, which will be filed later. Further, in consideration of the fact that the election period under R-10878 automatically terminates on October 19, 1997, an expedited ruling on this Motion for Stay is requested.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was transmitted via hand delivery to counsel of record this seventh day of October, 1997

JASON E. DOUGHTY

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

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

CASE NO. 11808
Order No. R-10877

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

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on July 10, 1997, at Santa Fe, New Mexico, before Examiner David R. Catanach.

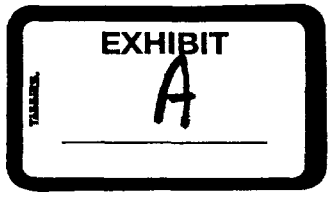
NOW, on this 12th day of September, 1997, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

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

(2) Division Case Nos. 11808 and 11809 were consolidated at the time of the hearing for the purpose of testimony.

(3) The applicant, Burlington Resources Oil & Gas Company (Burlington), seeks an order pooling all mineral owners, including working, royalty and overriding royalty interest owners in all formations which occur below the base of the Cretaceous Age to the top of the Pre-Cambrian Age underlying all of Irregular Section 9, Township 31 North, Range 10 West, NMPM, San Juan County, New Mexico, thereby forming a non-standard 636.01-acre gas spacing and proration unit for any and all formations and/or pools spaced on 640 acres within said vertical extent. Said unit is to be dedicated to the applicant's proposed Scott Well No. 24 to be drilled at a standard well location 1535 feet from the North line and 2500 feet from the West line (Unit F) of Section 9.



(4) By Order No. R-10815 dated June 5, 1997, the Division, upon application of Burlington Resources Oil & Gas Company, amended Rule No. 104 of the Division General Rules and Regulations to provide for 640-acre well spacing within the San Juan Basin for wells projected to be drilled to a formation older than the Dakota (below the base of the Cretaceous). In addition, Rule No. 104 was further amended to require that wells be located no closer than 1200 feet from the outer boundary of the 640-acre proration unit nor closer than 130 feet from any quarter section line nor closer than 10 feet from any quarter-quarter section line or subdivision inner boundary.

(5) Pursuant to the provisions of Division Order No. R-10815, the effective date of amended Rule No. 104 was June 30, 1997, the day of its publication in the New Mexico Register.

(6) The applicant has attempted to consolidate, on a voluntary basis, all of the interests within Irregular Section 9, but has been unable to do so.

(7) Lee Wayne Moore and JoAnn Montgomery Moore, Trustees (Moore), Total Minatome Corporation (Total), and Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. (hereinafter referred to as the GLA-66 Group), who respectively own approximately 0.294805%, 3.55390% and 61.0% of the working interest in the proposed spacing unit appeared at the hearing in opposition to the application.

(8) The evidence presented indicates that the aforesaid GLA-66 Group is a group of fifty-eight (58) uncommitted working interest owners within the subject proration unit which includes, among other, the interest of Ralph A. Bard, Jr., and W. Watson LaForce, Jr. Testimony on behalf of the GLA-66 Group was provided by Ms. Gail Cotton, landman for the First National Bank of Chicago.

(9) Prior to the hearing, the Division considered and ruled upon several motions filed by various parties in this case. The following described motions were denied by the Division on July 8, 1997:

Motion to Continue--Filed on behalf of Lee Wayne Moore and JoAnn Montgomery Moore, Trustees, and Timothy B. Johnson, Trustee for Ralph A. Bard, Jr.Trust (Moore-Bard-GLA-66 Group);

Motion to Dismiss--Filed on behalf of Moore-Bard-GLA-66 Group ;

Motion to Dismiss--Filed on behalf of Total Minatome Corporation

(10) The Motions to Dismiss on behalf of Moore-Bard-GLA-66 Group and Total Minatome Corporation and the Motion to Continue on behalf of Moore-Bard-GLA-66 Group were renewed by legal counsel subsequent to the presentation of evidence and testimony in this case. These motions were denied by the Division at the conclusion of proceedings.

(11) In addition, Moore-Bard-GLA-66 Group and Total both obtained from the Division a Subpoena Duces Tecum which directed Burlington to produce extensive geologic and seismic data and other documentation with regards to the pooling of Irregular Section 9 for the Scott Well No. 24 by 9:00 a.m. on July 8, 1997.

(12) On July 8, 1997, the Division granted Burlington's Motion to Quash both the Moore-Bard-GLA-66 Group and Total Subpoena Duces Tecum.

(13) Land testimony presented by all parties in this case is generally in agreement that:

a) Burlington, who owns approximately 10.311905% of the subject spacing unit, has the right to drill and proposes to drill its Scott Well No. 24 to test the Pennsylvanian formation;

b) Burlington has voluntarily consolidated approximately 35% of the working interest within the proposed spacing unit owned by fifteen different working interest owners;

c) Moore, Total and the GLA-66 Group are the only uncommitted working interest owners within the proposed spacing unit; and,

d) Burlington has determined that certain leases in Section 9 contain pooling provisions limiting the size of the of spacing units to less than 640 acres. Among the parties Burlington seeks to pool in this case are royalty and/or overriding royalty interest owners subject to the aforesaid lease agreements.

(14) At issue with regards to Total's interest in this case are the following:

a) Total asserts that its interest in the proposed spacing unit is subject to a Farmout Agreement (hereinafter referred to as the GLA-46 Agreement) dated November 27, 1951, between Brookhaven Oil Company and San Juan Production Company, predecessors in interest to Total and Burlington, respectively. Total further asserts that under the provisions of the GLA-46 Agreement, its operating rights to the subject acreage are already effectively transferred to Burlington without restriction as to well depth (i.e., Total has already agreed to

participate) and that a carried interest provision provides that Total's share of drilling costs are to be recovered out of one-half of Total's share of production;

b) on July 29, 1996, Burlington wrote to Total offering to purchase its deep gas rights within the area which included Section 9;

c) on February 7, April 1 and June 16, 1997, Burlington again wrote Total requesting its participation, farmout or purchase of its interest in Section 9;

d) On April 29, 1997, Burlington sent a proposal letter and AFE for the Scott Well No. 24 to Total seeking its voluntary participation in the drilling of the 14,000 foot Pennsylvanian test;

e) Total responded to Burlington's well proposal and AFE by informing Burlington that it elects to participate in the drilling of the Scott Well No. 24 under the terms of the GLA-46 Agreement; and,

f) Burlington responded to Total by stating that it regarded the GLA-46 Agreement as being inapplicable to depths below the Mesaverde formation and that it regarded Total's response as indicating that it was not participating in the drilling of the Scott Well No. 24.

(15) Total presented evidence and testimony to support its position that the GLA-46 Agreement should apply to the Scott Well No. 24 and that it has voluntarily agreed to participate in the drilling of the well pursuant to its execution of Burlington's well proposal under the terms of the GLA-46 Agreement.

(16) Total further testified that in its opinion, Burlington has not negotiated in "good faith", and that Burlington's landman threatened to create administrative obstacles and difficulties in other properties where Burlington and Total are joint interest owners, including certain offshore properties.

(17) Burlington presented no evidence or testimony with regards to the GLA-46 Agreement, but reiterated its position that this agreement does not apply to "deep gas wells" within the San Juan Basin. Burlington did testify however, that of the six GLA-46 owners, only Total has taken the position that the GLA-46 Agreement covers the "deep gas" while all of the other owners have agreed to either sign a new operating agreement or to farmout their interest for the "deep gas".

(18) Burlington further takes the following position with regards to the GLA-46 Agreement and the compulsory pooling issues:

a) whether or not the GLA-46 Agreement applies to "deep gas" is a matter of contract interpretation, and there is a dispute between Burlington and Total with regards to such interpretation;

b) Total's interest in the Scott Well No. 24 should be pooled for the following reasons:

i) if the Division does not pool the interest of Total, and subsequent litigation determines that Total's interpretation of the GLA-46 Agreement is incorrect, Burlington will be forced to consolidate the interest of Total once again, either by voluntary agreement or by forced-pooling. The Scott Well No. 24 will have been drilled by that time, and Total, in deciding whether or not to voluntarily participate in the well will have knowledge as to the success of the Pennsylvanian test, giving it an unfair advantage over Burlington;

ii) if Burlington's interpretation of the GLA-46 Agreement is subsequently determined to be incorrect, Total will have been voluntarily committed under the terms of the GLA-46 Agreement, and will simply be dropped from the pooling order.

(19) It is the Division's position that the interpretation of the GLA-46 Agreement should be deferred to the courts.

(20) Burlington's compulsory pooling case against Total is appropriate, and in order to consolidate all of the interest within the proposed spacing unit, the interest of Total should be pooled by this order.

(21) At issue with regards to the Moore and GLA-66 Group interest in this case are the following:

a) both Moore and the GLA-66 Group contend that Burlington's proposed Joint Operating Agreement (JOA) for the Scott Well No. 24 contains certain provisions which are unreasonable and which are contrary to terms contained within most JOA's, among them a 400 percent non-consent risk penalty and a provision prohibiting participating interest owners from having access to either the well site and/or drilling information such as well logs;

b) both Moore and the GLA-66 Group contend that Burlington has not negotiated in "good faith" for the following reasons:

i) Burlington is in possession of certain 3-D seismic data which it has generated and utilized in developing this prospect. Both Moore and the GLA-66 Group have requested from Burlington that it be allowed to review this seismic data in order to make a decision on whether or not to voluntarily participate in the drilling of the Scott Well No. 24. Burlington maintains that its 3-D seismic data is proprietary and confidential information and has thus far refused Moore's and the GLA-66 Group's request for access to this data;

ii) Burlington has made offers to select interest owners (Amoco Production Company and Cross Timbers Oil Company, L.P. within Section 8, being the subject of companion Case No. 11809) to review the aforesaid 3-D seismic data while it has consistently denied Moore's and the GLA-66 Group's request to view such data;

iii) Burlington's farmout proposal of Moore's interest in Sections 8 and 9, and additional acreage in Sections 3-10 and 15-18, Township 31 North, Range 10 West, and Sections 1-3, 10-15 and 23 of Township 31 North, Range 11 West, contains an overriding royalty "not worthy of consideration";

iv) Burlington's farmout proposal of the GLA-66 Group's interest in Section 9 was considered by Ms. Gail Cotton as being unreasonable;

v) during the course of its efforts to obtain Moore's and the GLA-66 Group's voluntary participation, Burlington's landman represented that the drilling of the Scott Well No 24 was a "high risk" venture that only had a 10% chance of success.

(22) The evidence and testimony presented by all parties in this case indicates that:

a) Burlington is proposing to drill a 14,000 foot Pennsylvanian test which, if completed, will cost approximately $2.3 million dollars;

b) to date there have been approximately twenty-eight "deep gas" Pennsylvanian tests drilled in the San Juan Basin. None of the "deep gas" tests thus far have resulted in commercial hydrocarbon production. The Scott Well No. 24 is located approximately 20 miles from the nearest Pennsylvanian production, being the Barker Dome Field which produces from the Pennsylvanian formation at a much shallower depth (approximately 9,000-10,000 feet);

c) Burlington's characterization of the drilling of the Scott Well No. 24 as being a "high risk" venture is not inappropriate;

d) Burlington has attempted to expedite negotiations and forced-pooling proceedings in this case due to a nationwide drilling rig shortage and due to the availability of a suitable drilling rig for the proposed 14,000 foot Pennsylvanian test. This drilling rig was transported a distance of approximately 700 miles from Ozona, Texas;

e) the Marcotte Well No. 2, (being the subject of companion Case No. 11809), being the first well in a two-well drilling package, was spudded on June 25, 1997;

f) on July 29, 1996, Burlington wrote to Moore offering to purchase its deep gas rights within the area which included Sections 8 and 9. On April 22, 1997, Burlington sent Moore a letter including an AFE and JOA which sought, among other things, Moore's participation in the drilling of the Scott Well No. 24. Negotiations between Burlington and Moore continued during May 5-9, 1997;

g) on June 18, 1996, Burlington wrote the GLA-66 Group offering to purchase its deep gas rights within the area which includes Section 9. Burlington continued their attempt to consolidate the interest of the GLA-66 Group during September and November, 1996. On April 29, 1997, Burlington sent each of the interest owners within the GLA-66 Group a letter including an AFE and JOA which sought, among other things, its participation in the drilling of the Scott Well No. 24. On June 6, 1997, Burlington again wrote the GLA-66 Group owners and offered options of farmout, sale or participation in the Scott Well No. 24;

h) on June 11, 1997, Burlington filed a compulsory pooling application for the proposed Scott Well No. 24;

i) in companion Case No. 11809 in which Burlington seeks to compulsory pool all interests in Section 8 for the drilling of its Marcotte Well No. 2, it made a technical presentation to Amoco Production Company (Amoco) and Cross Timbers Oil Company, L.P. (Cross Timbers), both interest owners within Section 8, regarding its geologic interpretation of its 3-D seismic data obtained for the drilling of the Marcotte Well No. 2 and Scott Well No. 24. This presentation of technical data was made by Burlington after these interest owners had agreed that after reviewing such data they would either (a) farmout their interest (b) participate in the drilling of the well, or (c) sell their interest on pre-arranged terms;

j) at the time of the hearing, Burlington testified that it is willing to make the same technical presentation to Moore and the GLA-66 Group as was made to Amoco and Cross Timbers, provided however, such presentation would be made under the same terms and conditions as were offered to these parties;

k) because Moore owns other mineral interests in the immediate vicinity of Section 9, the disclosure of Burlington's proprietary 3-D seismic data would either (a) give Moore a competitive advantage in other tracts in which they own an interest and/or (b) establish a commercial value for the Moore interest for purposes of selling or trading their interests to others;

l) the facts and circumstances of this case justify the denial of the requests that the Division require Burlington to furnish its 3-D seismic data to potential well participants prior to any agreement or election being made;

m) there is one royalty interest owner within the proposed proration unit which is subject to leases limiting the size of the spacing units to less than 640 acres. This royalty interest owner has voluntarily committed its interest to the proposed spacing unit, therefore, such committed royalty interest owner should be dismissed from this pooling;

n) all working, royalty and overriding royalty interest owners were provided notice of the hearing by Burlington in conformance with Division Rule No. 1207.A.(1).

(23) Burlington has made a good faith effort to secure the voluntary participation of the Moore and GLA-66 Group interest for the drilling of the Scott Well No. 24, but has been unable to do so.

(24) The interest of Moore and the interest of the GLA-66 Group should be pooled by this order.

(25) Pursuant to the authority granted to the Division by the Oil and Gas Act, the Division has the authority to pool all interests in a spacing unit, including royalty interests. Such authority supersedes any contractual agreements of the parties, therefore, lease agreements with pooling clauses limiting pooling to spacing units less than 640 acres will be superseded and amended by this order.

(26) The proposed non-standard proration unit is necessitated by a variation in the legal subdivision of the United States Public Lands Survey.

(27) No offset operator appeared at the hearing in opposition to the proposed non-standard proration unit.

(28) To avoid the drilling of unnecessary wells, to protect correlative rights, to avoid waste, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the production in any pool completion resulting from this order, the subject application should be approved by pooling all mineral interests, whatever they may be, within said unit.

(29) The applicant should be designated the operator of the subject well and unit.

(30) Any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(31) Any non-consenting working interest owner who does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(32) Any non-consenting working interest owner should be afforded the opportunity to object to the actual well costs but actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(33) Following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(34) $5100.00 per month while drilling and $510.00 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(35) All proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(36) Upon the failure of the operator of said pooled unit to commence the drilling of the well to which said unit is dedicated on or before December 15 , 1997, the order pooling said unit should become null and void and of no effect whatsoever.

(37) Should all the parties to this forced pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(38) The operator of the well and unit shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

IT IS THEREFORE ORDERED THAT:

(1) All mineral interests, including working, royalty and overriding royalty interest, whatever they may be, in all formations which occur below the base of the Cretaceous Age to the top of the Pre-Cambrian Age underlying all of Irregular Section 9, Township 31 North, Range 10 West, NMPM, San Juan County, New Mexico, are hereby pooled thereby forming a non-standard 636.01-acre spacing and proration unit for any and all formations and/or pools spaced on 640 acres within said vertical extent. Said unit shall be dedicated to the applicant's Scott Well No. 24 to be drilled at a standard well location 1535 feet from the North line and 2500 feet from the West line (Unit F) of Section 9

PROVIDED HOWEVER THAT, the operator of said unit shall commence the drilling of said well on or before the 15th day of December, 1997, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Pennsylvanian formation.

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the 15th day of December, 1997, Ordering Paragraph No. (1) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division Director for good cause shown.

PROVIDED FURTHER THAT, should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Division Director and show cause why Ordering Paragraph No. (1) of this order should not be rescinded.

(2) Burlington Resources Oil & Gas Company is hereby designated the operator of the subject well and unit.

(3) After the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division and each known working 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 working 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.

(5) The operator shall furnish the Division and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; if no objection to the actual well costs is received by the Division and the Division has not objected within 45 days following receipt of said schedule, the actual well costs shall be the reasonable well costs; provided however, if there is objection to actual well costs within said 45-day period the Division will determine reasonable well costs after public notice and hearing.

(6) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated well costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(7) The operator is hereby authorized to withhold the following costs and charges from production:

(A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(B) As a charge for the risk involved in the drilling of the well, 200 percent of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(8) The operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(9) $5100.00 per month while drilling and $510.00 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(10) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

(11) Any well costs or charges which are to be paid out of production shall be withheld only from the working interest's share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(12) All proceeds from production from the subject well which are not disbursed for any reason shall immediately be placed in escrow in San Juan County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; the operator shall notify the Division of the name and address of said escrow agent within 30 days from the date of first deposit with said escrow agent.

(13) Should all the parties to this forced pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(14) The operator of the well and unit shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(15) Jurisdiction is hereby retained for the entry of such further orders as the Division may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

WILLIAM J. LEMAY
Director

S E A L

SEP 15 '97 PM 1:58

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

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

CASE NO. 11809
Order No. R-10878

APPLICATION OF BURLINGTON RESOURCES OIL & GAS COMPANY FOR COMPULSORY POOLING, AN UNORTHODOX GAS WELL LOCATION AND A NON-STANDARD PRORATION UNIT, SAN JUAN COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on July 10, 1997, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 12th day of September, 1997, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

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

(2) Division Case Nos. 11808 and 11809 were consolidated at the time of the hearing for the purpose of testimony.

(3) The applicant, Burlington Resources Oil & Gas Company (Burlington), seeks an order pooling all mineral owners, including working, royalty and overriding royalty interest owners in all formations which occur below the base of the Cretaceous Age to the top of the Pre-Cambrian Age underlying all of Irregular Section 8, Township 31 North, Range 10 West, NMPM, San Juan County, New Mexico, thereby forming a non-standard 639.78-acre spacing and proration unit for any and all formations and/or pools spaced on 640 acres within said vertical extent. Said unit is to be dedicated to the applicant's Marcotte Well No. 2 (API No. 30-015-29660) to be drilled at an unorthodox gas well location 1540 feet from the South line and 935 feet from the East line (Unit I) of Section 8.

EXHIBIT
3

(4) By Order No. R-10815 dated June 5, 1997, the Division, upon application of Burlington Resources Oil & Gas Company, amended Rule No. 104 of the Division General Rules and Regulations to provide for 640-acre well spacing within the San Juan Basin for wells projected to be drilled to a formation older than the Dakota (below the base of the Cretaceous). In addition, Rule No. 104 was further amended to require that wells be located no closer than 1200 feet from the outer boundary of the 640-acre proration unit nor closer than 130 feet from any quarter section line nor closer than 10 feet from any quarter-quarter section line or subdivision inner boundary.

(5) Pursuant to the provisions of Division Order No. R-10815, the effective date of amended Rule No. 104 was June 30, 1997, the day of its publication in the New Mexico Register.

(6) The applicant has attempted to consolidate, on a voluntary basis, all of the interests within Irregular Section 8, but has been unable to do so.

(7) Lee Wayne Moore and JoAnn Montgomery Moore, Trustees (Moore) and Total Minatome Corporation (Total) who respectively own 2.2517% and 4.6522% of the working interest in the proposed spacing unit, appeared at the hearing in opposition to the application.

(8) In addition, Bert Harris, representing the interest of Mary Maude Harris, a lessor of a certain Amoco Production Company lease within Irregular Section 8, appeared at the hearing and requested a continuance of Case No. 11809 until such time as his legal counsel could be available.

(9) Prior to the hearing, the Division considered and ruled upon several motions filed by various parties in this case. The following described motions were denied by the Division on July 8, 1997:

Motion to Continue--Filed on behalf of Lee Wayne Moore and JoAnn Montgomery Moore, Trustees and Timothy B. Johnson, Trustee for Ralph A. Bard, Jr.Trust (Moore-Bard);

Motion to Dismiss--Filed on behalf of Moore-Bard;

Motion to Dismiss--Filed on behalf of Total Minatome Corporation

(10) The Motions to Dismiss on behalf of Moore-Bard and Total Minatome Corporation and the Motion to Continue on behalf of Moore-Bard were renewed by legal counsel subsequent to the presentation of evidence and testimony in this case. These motions, as well as Bert Harris' request for continuance, were denied by the Division at the conclusion of proceedings.

(11) In addition, Moore-Bard and Total both obtained from the Division a Subpoena Duces Tecum which directed Burlington to produce extensive geologic and seismic data and other documentation with regards to the pooling of Irregular Section 8 for the Marcotte Well No. 2 by 9:00 a.m. on July 8, 1997.

(12) On July 8, 1997, the Division granted Burlington's Motion to Quash both the Moore-Bard and Total Subpoena Duces Tecum.

(13) Land testimony presented by all parties in this case is generally in agreement that:

a) Burlington, who owns approximately 9.31045% of the subject spacing unit, has the right to drill and is currently drilling its Marcotte Well No. 2;

b) Burlington has voluntarily consolidated approximately 93% of the working interest within the proposed spacing unit owned by thirteen different working interest owners;

c) Moore and Total are the only two uncommitted working interest owners within the proposed spacing unit; and,

d) Burlington sought and successfully obtained a farmout of certain acreage within the proposed spacing unit from Amoco Production Company. This acreage is subject to oil and gas leases containing pooling provisions which call into question the lessee/operator's ability to commit the lease acreage to spacing units larger than 320 acres. Among the parties Burlington seeks to pool in this case are royalty and/or overriding royalty interest owners subject to the aforesaid lease agreement with Amoco.

(14) At issue with regards to Total's interest in this case are the following:

a) Total asserts that its interest in the proposed spacing unit is subject to a Farmout Agreement (hereinafter referred to as the GLA-46 Agreement) dated November 27, 1951, between Brookhaven Oil Company and San Juan Production Company, predecessors in interest to Total and Burlington, respectively. Total further asserts that under the provisions of the GLA-46 Agreement, its operating rights to the subject acreage are already effectively transferred to Burlington without restriction as to well depth (i.e. Total has already agreed to participate) and that a carried interest provision provides that Total's share of drilling costs are to be recovered out of one-half of Total's share of production;

b) On April 22, 1997, Burlington sent a proposal letter and AFE for the Marcotte Well No. 2 to Total seeking its voluntary participation in the drilling of the 14,000 foot Pennsylvanian test;

c) Total responded to Burlington's well proposal and AFE by informing Burlington that it elects to participate in the drilling of the Marcotte Well No. 2 under the terms of the GLA-46 Agreement; and,

d) Burlington responded to Total by stating that it regarded the GLA-46 Agreement as being inapplicable to depths below the Mesaverde formation and that it regarded Total's response as indicating that it was not participating in the drilling of the Marcotte Well No. 2.

(15) Total presented evidence and testimony to support its position that the GLA-46 Agreement should apply to the Marcotte Well No. 2 and that it has voluntarily agreed to participate in the drilling of the well pursuant to its execution of Burlington's well proposal under the terms of the GLA-46 Agreement.

(16) Total further testified that in its opinion, Burlington has not negotiated in "good faith", and that Burlington's landman threatened to create administrative obstacles and difficulties in other properties where Burlington and Total are joint interest owners, including certain offshore properties.

(17) Burlington presented no evidence or testimony with regards to the GLA-46 Agreement, but reiterated its position that this agreement does not apply to "deep gas wells" within the San Juan Basin. Burlington did testify however, that of the six GLA-46 owners, only Total has taken the position that the GLA-46 Agreement covers the "deep gas" while all of the other owners have agreed to either sign a new operating agreement or to farmout their interest for the "deep gas".

(18) Burlington further takes the following position with regards to the GLA-46 Agreement and the compulsory pooling issues:

a) whether or not the GLA-46 Agreement applies to "deep gas" is a matter of contract interpretation, and there is a dispute between Burlington and Total with regards to such interpretation;

b) Total's interest in the Marcotte Well No. 2 should be pooled for the following reasons:

i) if the Division does not pool the interest of Total, and subsequent litigation determines that Total's interpretation of the GLA-46 Agreement is incorrect, Burlington will be forced to consolidate the interest of Total once again, either by voluntary agreement or by forced-pooling. The Marcotte Well No. 2 will have been drilled by that time, and Total, in deciding whether or not to voluntarily participate in the well will have knowledge as to the success of the Pennsylvanian test, giving it an unfair advantage over Burlington;

ii) if Burlington's interpretation of the GLA-46 Agreement is subsequently determined to be incorrect, Total will have been voluntarily committed under the terms of the GLA-46 Agreement, and will simply be dropped from the pooling order.

(19) It is the Division's position that the interpretation of the GLA-46 Agreement should be deferred to the courts.

(20) Burlington's compulsory pooling case against Total is appropriate, and in order to consolidate all of the interest within the proposed spacing unit, the interest of Total should be pooled by this order.

(21) At issue with regards to Moore's interest in this case are the following:

a) Moore contends that Burlington's proposed Joint Operating Agreement (JOA) for the Marcotte Well No. 2 contains certain provisions which are unreasonable and which are contrary to terms contained within most JOA's, among them a 400 percent non-consent risk penalty and a provision prohibiting participating interest owners from having access to either the well site and/or drilling information such as well logs;

b) Moore contends that Burlington has not negotiated in "good faith" for the following reasons:

i) Burlington is in possession of certain 3-D seismic data which it has generated and utilized in developing this prospect. Moore has requested from Burlington that it be allowed to review this seismic data in order to make a decision on whether or not to voluntarily participate in the drilling of the Marcotte Well No. 2. Burlington maintains that its 3-D seismic data is proprietary and confidential information and has thus far refused Moore's request for access to this data;

ii) Burlington has made offers to select interest owners within the proposed proration unit to review the aforesaid 3-D seismic data while it has consistently denied Moore's request to view such data;

iii) Burlington's farmout proposal of Moore's interest in Sections 8 and 9, and additional acreage in Sections 3-10 and 15-18, Township 31 North, Range 10 West, and Sections 1-3, 10-15 and 23 of Township 31 North, Range 11 West, contains an overriding royalty "not worthy of consideration";

iv) during the course of its efforts to obtain Moore's voluntary participation, Burlington's landman represented that the drilling of the Marcotte Well No 2 was a "high risk" venture that only had a 10% chance of success.

(22) The evidence and testimony presented by all parties in this case indicates that:

a) Burlington is proposing to drill a 14,000 foot Pennsylvanian test which, if completed, will cost approximately $2.3 million dollars;

b) to date there have been approximately twenty-eight "deep gas" Pennsylvanian tests drilled in the San Juan Basin. None of the "deep gas" tests thus far have resulted in commercial hydrocarbon production. The Marcotte Well No. 2 is located approximately 20 miles from the nearest Pennsylvanian production, being the Barker Dome Field which produces from the Pennsylvanian formation at a much shallower depth (approximately 9,000-10,000 feet);

c) Burlington's characterization of the drilling of the Marcotte Well No. 2 as being a "high risk" venture is not inappropriate;

d) Burlington has attempted to expedite negotiations and forced-pooling proceedings in this case due to a nationwide drilling rig shortage and due to the availability of a suitable drilling rig for the proposed 14,000 foot Pennsylvanian test. This drilling rig was transported a distance of approximately 700 miles from Ozona, Texas;

e) the Marcotte Well No. 2 was spudded on June 25, 1997;

f) on July 29, 1996, Burlington wrote to Moore offering to purchase its deep gas rights within the area which included Sections 8 and 9. On April 22, 1997, Burlington sent Moore a letter including an AFE and JOA which sought, among other things, Moore's participation in the drilling of the Marcotte Well No. 2. Negotiations between Burlington and Moore continued during May 5-9, 1997;

g) on June 11, 1997, Burlington filed a compulsory pooling application for the proposed Marcotte Well No. 2;

h) on July 1, 1997, Moore proposed to Burlington that he retain a 27.5% overriding royalty and would deliver to Burlington a 60% net revenue interest in Section 8 which Burlington rejected as being unreasonable;

i) during the course of its negotiations to obtain the voluntary agreement of working interest owners in Section 8, Burlington made a technical presentation to Amoco Production Company (Amoco) and Cross Timbers Oil Company, L.P. (Cross Timbers), both interest owners within the proposed proration unit, regarding its geologic interpretation of its 3-D seismic data obtained for the drilling of the Marcotte Well No. 2. This presentation of technical data was made by Burlington after these interest owners had agreed that after reviewing such data they would either (a) farmout their interest (b) participate in the drilling of the well, or (c) sell their interest on pre-arranged terms;

j) at the time of the hearing, Burlington testified that it is willing to make the same technical presentation to Moore as was made to Amoco and Cross Timbers, provided however, such presentation would be made under the same terms and conditions as were offered to these parties;

k) subsequent to reviewing Burlington's data, both Amoco and Cross Timbers elected to farmout their interest to Burlington within the proposed proration unit;

l) because Moore owns other mineral interests in the immediate vicinity of Section 8, the disclosure of Burlington's proprietary 3-D seismic data would either (a) give Moore a competitive advantage in other tracts in which they own an interest and/or (b) establish a commercial value for the Moore interest for purposes of selling or trading their interests to others;

m) the facts and circumstances of this case justify the denial of the requests that the Division require Burlington to furnish its 3-D seismic data to potential well participants prior to any agreement or election being made;

n) there are thirty-three (33) royalty and/or overriding royalty interest owners within the proposed proration unit which are subject to leases limiting the size of the spacing units to less than 640 acres. Of the thirty-three royalty and/or overriding royalty interest owners, twenty-two (22) have voluntarily agreed to amend their lease agreement and join in the Marcotte Well No. 2.

o) all working, royalty and overriding royalty interest owners were provided notice of the hearing by Burlington in conformance with Division Rule No. 1207.A.(1)

(23) Burlington has made a good faith effort to secure the voluntary participation of the Moore interest for the drilling of the Marcotte Well No. 2, but has been unable to do so.

(24) The interest of Moore should be pooled by this order.

(25) Pursuant to the authority granted to the Division by the Oil and Gas Act, the Division has the authority to pool all interests in a spacing unit, including royalty interests. Such authority supersedes any contractual agreements of the parties, therefore, lease agreements with pooling clauses limiting pooling to spacing units less than 640 acres will be superseded and amended by this order.

(26) The evidence and testimony presented by Burlington in this case further indicates that the proposed unorthodox location for the Marcotte Well No. 2 is necessitated by Burlington's desire to utilize as existing well pad so as to minimize surface damage and by other topographic considerations.

(27) The proposed non-standard proration unit is necessitated by a variation in the legal subdivision of the United States Public Lands Survey.

(28) No offset operator appeared at the hearing in opposition to the proposed unorthodox well location or non-standard proration unit.

(29) To avoid the drilling of unnecessary wells, to protect correlative rights, to avoid waste, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the production in any pool completion resulting from this order, the subject application should be approved by pooling all mineral interests, whatever they may be, within said unit.

(30) The applicant should be designated the operator of the subject well and unit.

(31) Any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(32) Any non-consenting working interest owner who does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(33) Any non-consenting working interest owner should be afforded the opportunity to object to the actual well costs but actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(34) Following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(35) $5100.00 per month while drilling and $510.00 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(36) All proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(37) Should all the parties to this forced pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(38) The operator of the well and unit shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

IT IS THEREFORE ORDERED THAT:

(1) All mineral interests, including working, royalty and overriding royalty interest, whatever they may be, in all formations which occur below the base of the Cretaceous Age to the top of the Pre-Cambrian Age underlying all of Irregular Section 8, Township 31 North, Range 10 West, NMPM, San Juan County, New Mexico, are hereby pooled thereby forming a non-standard 639.78-acre spacing and proration unit for any and all formations and/or pools spaced on 640 acres within said vertical extent. Said unit shall be dedicated to the applicant's Marcotte Well No. 2 (API No. 30-015-29660) to be drilled at an unorthodox gas well location (also hereby approved) 1540 feet from the South line and 935 feet from the East line (Unit I) of Section 8.

PROVIDED HOWEVER THAT, the operator of said unit shall continue the drilling of said well with due diligence to a depth sufficient to test the Pennsylvanian formation.

PROVIDED FURTHER THAT, should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Division Director and show cause why Ordering Paragraph No. (1) of this order should not be rescinded.

(2) Burlington Resources Oil & Gas Company is hereby designated the operator of the subject well and unit.

(3) After the effective date of this order, the operator shall furnish the Division and each known working 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 working 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.

(5) The operator shall furnish the Division and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; if no objection to the actual well costs is received by the Division and the Division has not objected within 45 days following receipt of said schedule, the actual well costs shall be the reasonable well costs; provided however, if there is objection to actual well costs within said 45-day period the Division will determine reasonable well costs after public notice and hearing.

(6) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated well costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(7) The operator is hereby authorized to withhold the following costs and charges from production:

(A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(B) As a charge for the risk involved in the drilling of the well, 200 percent of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(8) The operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(9) $5100.00 per month while drilling and $510.00 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(10) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

(11) Any well costs or charges which are to be paid out of production shall be withheld only from the working interest's share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(12) All proceeds from production from the subject well which are not disbursed for any reason shall immediately be placed in escrow in San Juan County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; the operator shall notify the Division of the name and address of said escrow agent within 30 days from the date of first deposit with said escrow agent.

(13) Should all the parties to this forced pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(14) The operator of the well and unit shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(15) Jurisdiction is hereby retained for the entry of such further orders as the Division may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

WILLIAM J. LEMAY
Director

S E A L

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

OCT 2 2 03 PM '97

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.

EXHIBIT C

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
2040 South Pacheco
Santa Fe, New Mexico 87505

Attorney for New Mexico Oil Conservation Commission

W. Thomas Kellahin
Kellahin & Kellahin
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