OIL CONSERVATION DIVISION

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

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

CASE NO. 11809
ORDER NO. R_____

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

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 10:46 on July 10 and 11, 1997 at Santa Fe, New Mexico before Examiner David R. Catanach.

Now on this ____ day of _____, 1997, the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and having been 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 hereof.

2. Division cases 11808 and 11809 were consolidated for purposes of the taking of evidence.

3. The Applicant, Burlington Resources Oil and Gas Company ("Burlington") seeks an order pooling all mineral owners including working interests, royalty interests and overriding royalty interests from the base of the Dakota formation to the base of the Pre-Cambrian aged formation underlying all of irregular Section 8, Township 31 North, Range 10 West, N.M.P.M., San Juan County, New Mexico.

4. Applicant also seeks the formation of a non-standard 639.78 acre gas spacing and proration unit (the "subject lands") for the drilling and completion of its

proposed Marcotte Well No. 2 at an unorthodox location 935 feet from the East line, and 1,540 feet from the south line of said Section 8.

5. The Applicant also seeks to be designated the operator of the subject well and unit.

6. The Applicant has the right to drill on a portion of the acreage proposed to be dedicated to the said unit.

7. On June 5, 1997, the New Mexico Oil Conservation Commission entered Order No. R-10815 which established gas spacing units consisting of 640 acres for gas production below the base of the Dakota formation and further provided for standard well locations not closer than 1,200 feet to the outer boundary, 130 feet to any quarter section line, nor closer than ten feet to any quarter/quarter section line within the surface outcrop of the Pictured Cliffs formation in the San Juan Basin.

8. By its terms, the effective date of Order No. R-10815 was June 30, 1997, the day of its publication in the New Mexico Register.

9. Burlington's application in this matter was filed on June 12, 1997. At the time of the filing of Burlington's application, the effective spacing for deep gas wells in the area was 160 acres.

10. At the time of Burlington's application, there were working and operating rights interest owners in the proposed spacing unit who had not agreed to pool their interests. In addition, Burlington had not been able to obtain the voluntary agreement of certain mineral interest owners to amend the terms of their oil and gas leases to provide for the pooling of said leasehold acreage on a 640 acre basis.

11. Burlington sought and successfully obtained a farmout of certain acreage leased to Amoco Production Company for the subject well and other lands. According to the Applicant, the Amoco Farmout 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. Consequently, the Applicant seeks to invoke the Division's authority under Section 70-2-17(C) of the New Mexico Oil and Gas Act to have the Division issue an order pooling the mineral interests and otherwise amending the express terms of the pooling provisions in those oil and gas leases of those mineral interest owners identified in Exhibit C to Burlington's application.

12. At the hearing, the Applicant presented no information with respect to the terms of the Amoco/Burlington farmout, the agreements creating the mineral interests, the related oil and gas leases, and/or the overriding royalty interests. Therefore the specific nature and terms of the interests which the Applicant proposes to be affected by the Division's order are unknown. Neither Burlington's application nor the evidence presented

by Burlington at the hearing of this matter explained how the issuance of an order under Section 70-2-17(C) is proposed to affect the royalty and overriding royalty interests.

13. Burlington failed to present any evidence demonstrating how the pooling modification of those unspecified interests and leases is necessary to prevent waste and protect correlative rights, or to avoid the drilling of unnecessary wells.

14. Burlington originally proposed a 160 acre spacing and proration unit for its Marcotte Well No. 2 on the subject lands. Burlington staked the location for the Marcotte Well No. 2 on February 16, 1997 and contemporaneously filed its C-102 and Notice of Staking and Application for Permit to Drill forms with the NMOCD and the Bureau of Land Management, respectively, reflecting a 160-acre spacing and proration unit.

15. Burlington commenced the drilling of the Marcotte Well No. 2 on June 25, 1997, eight days following its application in this case and five days before the effective date of Commission Order No. R-10815.

16. Burlington owns 9.31045% of the working interest in the proposed 636.01 acre spacing and proration unit and purports to have obtained the voluntary joinder of 87.5995% of the total working interest in the spacing and proration unit, in said Section 8..

17. Lee Wayne Moore and JoAnn Montgomery Moore, Trustees ("Moore"), own 2.2517% of the working interest in the proposed spacing and proration unit. Total-Minatome Corporation ("Total") owns a 4.6522% working interest in the proposed spacing and proration unit. Both Moore and Total made appearances through counsel at the hearing of this matter and opposed Burlington's application in this matter.

18. Bert Harris made an appearance Pro se on behalf of Mary Maude Harris, a lessor of Amoco in said Section 8. Mr. Harris requested a continuance of the hearing until such time as his legal counsel could be available. Mr. Harris' request for a continuance was denied by the Examiner.

19. Prior to the hearing both Moore and Total filed separate Motions to Dismiss on, inter alia, the grounds that Burlington failed to make a reasonable, good faith effort to adequately obtain voluntary joinder in the drilling of the subject well prior to filing its application for compulsory pooling. Moore and Total also filed separate Motions for Continuance of this case. Moore's and Total's Motions to Dismiss and Motions for Continuance were denied telephonically by the Examiner on July 8, 1997 and this matter remained on the Division's docket for the immediate hearing.

20. Moore and Total sought discovery of Burlington in order to fully prepare their case. Both Moore's and Total's Subpoena Duces Tecum were quashed by the assigned hearing Examiner on July 9, 1997.

21. Both at the commencement and closing of the hearing of this matter, Moore and Total again requested that this matter be dismissed or at least continued on the grounds that Burlington failed to undertake reasonable efforts to obtain Moore's voluntary joinder in a good faith manner. Moore's and Total's renewed motions were denied by the Examiner.

22. On April 22, 1997, Burlington sent its proposal letter agreement, well cost estimate, joint operating agreement, and authority for expenditure for its proposed Marcotte Well No. 2 to Moore seeking Moore's voluntary participation in the 14,000-foot, $2,316,973 "high risk" well to test the deep Pennsylvanian Formation. Burlington's proposed Joint Operating Agreement contained provisions for a 400% non-consent penalty as well as a provision prohibiting participating parties who agreed to pay their proportionate share of costs for the Marcotte Well No. 2 from having access to either the well site and/or to valuable drilling information such as well logs etc. during drilling, completion and workover operations. Testimony from industry professionals at the hearing established that a 400% nonconsent penalty is unreasonable and in excess of the industry standard, and that denial of access to drilling information for participating joint owners is contraty to standard terms of Joint Operating Agreements and common industry practice.

23. Burlington also submitted a proposal to farmout Moore's deep gas working interest rights. The farmout agreement tendered by Burlington to Moore covered not only Moore's interest in Section 8 needed for the Marcotte Well No. 2, but encompassed substantial additional acreage, to include Moore's working interests in Sections 3-10 and 15-18 of T31N,R10W, and Sections 1-3, 10-15 and 23 of T31N, R11W. (Moore Exhibit "R") In addition, testimony by Tom Moore established that the minimal overriding royalty offered by Burlington was not worthy of consideration.

24. The testimony of a landman witness for Total established that during the course of Burlington's efforts to obtain Total's commitment to the Marcotte Well No. 2, the Burlington landman threatened to create administrative obstacles and difficulties with other projects in which Burlington and Total are joint interest owners. Burlington's landman did not deny making such statements.

25. After receiving the April 22, 1997 proposal letter, well cost estimate, JOA and AFE for the Marcotte Well No. 2 from Burlington, in order to make an informed decision, Moore contacted Burlington on numerous occasions to seek additional information and data concerning this proposed well. Moore was informed by Burlington personnel that this information was proprietary and confidential and would not be provided to Moore. Moore's counterproposals to Burlington for participation in the well were ignored by Burlington.

26. The testimony of Tom Moore established that Moore owns interests in over 300 wells in the San Juan Basin, and that Moore has never gone nonconsent in a well in the San Juan Basin. However, without information from Burlington, Moore could not make a reasoned decision on whether or not to participate in the Marcotte Well No. 2.

27. Pursuant to Section 70-2-17(C) and 70-2-18(A) as well as established custom and practice before the Division, the operator of a proposed well seeking to pool separately owned tracts within an established spacing unit to be dedicated to the well is obliged to exercise good faith in obtaining the voluntary agreement of affected interest owners as a condition precedent to the issuance of a compulsory pooling order by the Division.

28. Burlington's conduct fell below the commonly accepted industry standard with respect to negotiations to obtain voluntary participation in the drilling of wells.

29. During the course of its efforts to obtain the voluntary participation of interests owners, Burlington's landman represented that the drilling of the Marcotte Well No. 2 was a "high risk" venture that had only a 10% chance of success. Burlington made selective offers to interest owners to review Burlington's 3-D seismic data and interpretation in order to decide whether or not to participate in the Marcotte Well No. 2. No such offer was made to Moore, despite Moore's request and stated need to have this data.

30. Burlington staked and on June 25, 1997 began drilling the Marcotte Well No. 2 at an unorthodox location 935 feet from the east line and 1,540 feet from the south line (Unit I) in said Section 8. At the hearing, Burlington's landman gave inconsistent and conflicting testimony with respect to the reasons for the unorthodox location, indicating in one instance that the location was based upon geologic and topographic considerations and, in another instance, that the location was selected for topographic reasons only. (Testimony of James Strickler).

31. Burlington's senior drilling engineer testified unequivocally that the location for the well was dictated by Burlington's geologist. While Burlington did present some evidence regarding existing topographic conditions concerning the unorthodox location for the Marcotte Well No. 2, it presented no geologic nor geophysical evidence substantiating that the unorthodox location was for geologic reasons as required pursuant to Division Rule 104 (F)(3).

32. Pursuant to NMSA 1978 Section 70-2-17(E) of the New Mexico Oil and Gas Act, the Division may modify voluntary agreements to the extent necessary to prevent waste. However, as Burlington's application and notice of its application only sought relief under the compulsory pooling provisions of Section 70-2-17(C), the Division's authority to modify the oil and gas leases, or the agreements creating the mineral interests and overriding royalty interests of those owners identified in Exhibit C to Burlington's application was not invoked nor was such action noticed. The Division is therefore without jurisdiction over that particular subject.

33. Burlington failed to make reasonable, good faith efforts to adequately obtain voluntary joinder of all working interest owners in the drilling of the Marcotte Well No. 2 prior to filing its application for compulsory pooling.

34. Burlington failed to offer any evidence establishing that the unorthodox well location is justified upon geological considerations and/or is necessary to prevent waste.

THEREFORE, the relief sought by the Applicant should be denied.

IT IS THEREFORE ORDERED THAT:

(1) The relief sought by Burlington Resources Oil and Gas Company is denied.

(2) Case No. 11809 is hereby dismissed.

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

WILLIAM J. LEMAY
DIRECTOR