

**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 CASE NO. 11808
AND SPACING UNIT FOR ITS
SCOTT WELL NO. 24 (SECTION 9, T31N, R10W)
SAN JUAN COUNTY, NEW MEXICO**

**IN THE MATTER OF THE APPLICATION
OF BURLINGTON RESOURCES OIL & GAS
COMPANY FOR COMPULSORY POOLING, CASE NO. 11809
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**

**BURLINGTON RESOURCES OIL & GAS COMPANY'S
REPLY TO
MINATOME'S
MOTION TO DISMISS**

BURLINGTON RESOURCES OIL & GAS COMPANY ("Burlington") by its attorneys, Kellahin & Kellahin, hereby replies to the Motion to Dismiss filed on July 8, 1997 by Total Minatome Corporation in Case Nos. 11808 and 11809 (hereafter "Minatome") and asks the Division to deny the Motion to Dismiss

As grounds for its reply, Burlington states the following:

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BACKGROUND

Burlington has proposed two deep gas well tests: the Marcotte Well No. 2 in Section 8 in which Minatome has a 4.65% working interest and the Scott Well No. 24 in Section 9 in which Minatome has a 3.55% working interest. More than ten (10) weeks ago, Burlington sent well proposals to Minatome on these two wells. On May 23 and 29 1997, Minatome attempted to qualify it was participating in these wells by asserting it was participating pursuant to a November 27, 1951 farmout/operating agreement known as GLA-46.

THE "DEEP GAS" RIGHTS ARE EXCLUDED FROM THE GLA-46 NOVEMBER 27, 1951 FARMOUT/OPERATING AGREEMENT

Minatome's Motion to Dismiss contends that GLA-46 applies to these "deep gas" wells and that Minatome has elected to participate pursuant to this voluntary agreement. Because of this voluntary agreement, Minatome argues that Burlington cannot resort to compulsory pooling because Minatome has elected to participate under the terms of GLA-46 and any pooling order would improperly "re-write" this 1951 contract.

Minatome wants to participate under the terms of GLA-46 because certain of its provisions are very favorable to Minatome and include the right for Minatome to be a "carried interest" so that Minatome keeps 50% of its production and Burlington (San Juan) recovers 100% of Minatome's (Brookhaven) share of costs only out of 50% of

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Minatome's share of production and without any penalty. See pages 7 and 8 from GLA-46 Attached as Exhibit B.

Contrary to Minatome's contentions, GLA-46, upon which it attempts to rely, does not yet include the "deep gas" formations in the San Juan Basin. GLA-46 was an agreement to drill 18 Mesaverde wells (four per year). See Sections 4 and 12 of GLA-46 attached as Exhibit B. Burlington's predecessor long ago satisfied this obligation. By letter dated May 22, 1997, Burlington advised Minatome that GLA-46 originally covered only the Mesaverde formations with certain other formations/wells added later only upon the mutual agreement of the parties none of which included the "deep gas". The GLA-46 agreement does not apply to any well drilled after the 18-well obligation was satisfied, unless an amendment was mutually agreed upon by the parties to this agreement. Thus far, there has been no agreement by Minatome and Burlington to modify or amend GLA-46 to include any formations below the base of the Dakota formations - "the deep gas". (See Exhibit A attached).

**BURLINGTON COMPLIED WITH
SECTION 70-2-17(C) NMSA (1978)**

Burlington has in the past and continues to provide Minatome with reasonable opportunities to farmout, sell or participate. On July 29, 1996, more than a year ago, Burlington wrote to Minatome offering to purchase deep gas rights within the area which included Sections 8 and 9, T31N, R10W. Since July, 1996, Burlington has continued its

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efforts to consolidated Section 8 and 9 into voluntary agreements for the drilling of deep gas well tests which are now known at the Marcotte Well No. 2 and the Scott Well No. 24.

**SECTION 70-2-7(F) NMSA (1978)
DOES NOT APPLY**

Minatome is attempting to induce the Division into reading into this pooling hearing a contractual dispute which does not exist and which is outside of its jurisdiction to resolve.

Minatome's argument that Section 70-2-7(F) applies in this case incorrectly assumes that the GLA-46 contract covers the "deep gas" formations. Only if the Division chooses to adjudicate the terms of this private contract and concludes GAL-46 does include the "deep gas" can the Division then consider if Section 70-2-7(F) is applicable.

The Division need not attempt to engage in such an adjudication. Burlington's compulsory pooling case against Minatome is appropriate and the Division can decide this pooling case despite this contractual dispute because:

- (a) If Burlington is correct about GLA-46, and if Minatome is dismissed from the pooling case, then Minatome's interest will not have been voluntarily or involuntarily pooled and Minatome will have induced the Division into making a mistake. Burlington will then have to file another pooling case after the fact and certainly after the results of the Marcotte Well No 2 are known.

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(b) If Burlington is wrong about GLA-46, then Minatome will have been voluntarily committed by GLA-46 and will simply be dropped from the pooling order and is not prejudiced by being pooled. (Division pooling orders always contained such a provision, For Example; "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."). Burlington is seeking a compulsory pooling order pursuant to Section 70-7-17(C) NMSA (1978) against Minatome because GLA-46 does not include the "deep gas" in the San Juan Basin. Because there is no voluntarily agreement, Burlington is not seeking to modify an agreement pursuant to Section 70-2-7(F).

Contrary to Minatome's argument, Burlington believes GLA-46 does not apply to the "deep gas" and thus any discussion concerning the applicability of Section 70-2-7(F) is premature and must be disregarded.

CONCLUSION

Burlington requests that the Division deny Minatome's Motion to Dismiss.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading was delivered to opposing counsel by facsimile this 8th day of July, 1997 as follows:

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