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RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

July 7, 1997

HAND DELIVERED

Mr. David R. Catanach, Hearing Examiner
Rand Carroll, Esq., Division Attorney
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87504

RECORDED

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Oil Conservation Division

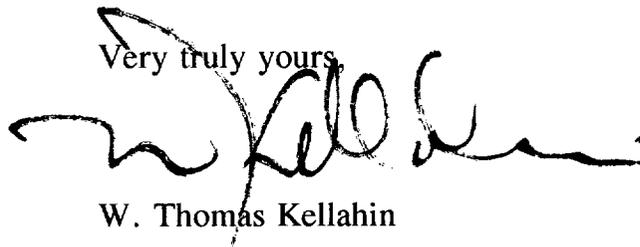
*Re: NMOCD Case 11808 and NMOCD Case 11809
Applications of Burlington Resources Oil & Gas Company
San Juan County, New Mexico*

Gentlemen:

On behalf of Burlington Resources Oil & Gas Company, please find enclosed the following concerning the referenced cases now pending hearing on July 10, 1997:

- (1) Burlington's Motion to Quash Subpoenas of Moore-Bard and of Minatome served on July 1 and 2nd for production on Tuesday, July 8, 1997
- (2) Burlington's Reply to Moore-Bard Motion to Dismiss filed on July 3, 1997
- (3) Burlington's Objection to Moore-Bard Motion for Continuance which was filed on June 30, 1997.
- (4) Burlington's pre-hearing statements in Case Nos 11808 and 11809.

Very truly yours,



W. Thomas Kellahin

cc: Hand Delivered:

Jason Doughty, Esq.
attorney for Moore and for Bard
Scott Hall, Esq.
attorney for Minatome

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

**IN THE MATTER OF THE APPLICATION
OF BURLINGTON RESOURCES OIL & GAS
COMPANY FOR COMPULSORY POOLING
AND A NON-STANDARD GAS PRORATION
AND SPACING UNIT FOR ITS
SCOTT WELL NO. 24 (SECTION 9, T31N, R10W)
SAN JUAN COUNTY, NEW MEXICO**

CASE NO. 11808

**IN THE MATTER OF THE APPLICATION
OF BURLINGTON RESOURCES OIL & GAS
COMPANY FOR COMPULSORY POOLING,
AN UNORTHODOX GAS WELL LOCATION AND
NON-STANDARD GAS PRORATION AND
SPACING UNIT FOR ITS MARCOTTE WELL NO. 2
(SECTION 8, T31N, R10W)
SAN JUAN COUNTY, NEW MEXICO**

CASE NO. 11809

**BURLINGTON RESOURCES OIL & GAS COMPANY'S
MOTION TO QUASH
SUBPOENAS ISSUED AT THE REQUEST OF
"MOORE-BARD" AND "MINATOME"**

BURLINGTON RESOURCES OIL & GAS COMPANY ("Burlington") by its attorneys, Kellahin & Kellahin, hereby moves the Division to Quash the Subpoena Duces Tecum issued July 1, 1997 at the request of Jason Doughty, attorney for the "Moore-Bard" and the Subpoena Duces Tecum issued July 2, 1997 at the request of Scott Hall, attorney for Total Minatome Corporation ("Minatome") in Division case 11808 and Division Case 11809 which subpoenas commands Burlington to appear at 9:00 AM Monday, July 8, 1997 before the Division and to produce documents set forth in the Subpoena Duces Tecum which is attached to this Motion as Exhibit C (Moore-Bard subpoena) and Exhibit D (Minatome subpoena).

As grounds for its Motion to Quash Subpoenas Duces Tecum, Burlington states the following:

BACKGROUND

1. Burlington has proposed two deep gas well tests which are estimated to cost as follows:

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

2. These two compulsory pooling cases request the pooling of certain working interest owners:

(A) In Section 8, (Marcotte Well No. 2) Burlington with approximately 46% working interest has obtained the voluntary agreement of some 13 owners and now has approximately 93% voluntary participation. The only non-participating parties are as follows:

(a) Moore	2.25 %	(\$52,171.)
(b) Minatome (GLA-46)	4.65 %	(\$107,790.)

Bard-LaForce (GLA-66) has no interest in this Section

(B) In Section 9, (Scott Well No. 24), Burlington has been joined by some 15 owners who collectively control approximately 35% of the working interest. The non-participating parties are as follows:

(a) Moore:	0.295 %	(\$6,831.)
(b) Minatome (GLA-46)	3.55 %	(\$82,343.)
(c) GLA-66 Group		
58 owners with 61 % which includes:		
LaForce	1.11 %	(25,745.)
Bard	1.23 %	(\$28,580.)

3. In addition, these compulsory pooling cases seek to pool certain royalty owner interests.

4. On June 5, 1997, the New Mexico Oil Conservation Commission as a result of a rule making proceeding entered Order R-10815 and adopted a provision in the Division's General Rule 104 to establish gas spacing units consisting of 640-acres for gas production below the base of the Dakota formation (deep gas") for the San Juan Basin. (OCD Case 11645).

5. Burlington seeks pooling of Section 9 for the drilling of the Scott 24 Well (OCD Case 11808) and of Section 8 for the Marcotte Well No. 2 (OCD Case 11809). **Location plats are attached as Exhibits A and B.**

6. Burlington's pooling cases are set for hearing on July 10, 1997

7. On July 1, 1997, Moore-Bard obtained a Division subpoena in this case which it delivered to Burlington's attorney on Wednesday, July 2, 1997 directing the production of documents at 9:00 am Monday, July 8, 1997.

8. On July 2, 1997, Minatome obtained a Division subpoena in this case which it delivered to Burlington's attorney on Thursday, July 2, 1997 directing the production of documents at 9:00 am Monday, July 8, 1997.

9. The Moore-Bard subpoena seeks the following:

(1) For the Marcotte Well No. 2:

(a) all documents concerning Burlington's reasons for choosing Section 8 for this well

(b) all geologic data, including interpretations, concerning Burlington's reasons for choosing Section 8 for this well

(c) all seismic data, including interpretations, concerning Burlington's reasons for choosing Section 8 for this well

(d) all topographic/archeological data concerning Burlington's reasons for choosing Section 8 for this well

(e) all documents concerning Burlington's working interest in Section 8

(f) all contracts concerning the preparation of Burlington's AFE

(g) all petroleum engineering studies/data concerning porosity and/or permeability of formations underlying Section 8

(h) all well data/test data from North San Juan Basin and/or Four Corners Platform, including but not limited to Barker Dome, Ute Dome and Alkali Gulch pools

(2) For the Scott Well No. 24, Burlington's reasons for choosing to locate this well in the NW/4 of Section 9, including:

(a) engineering studies

(b) geologic studies including all interpretations and maps

(c) seismic data, studies and interpretations

(d) topographical data

(e) all documents concerning Burlington's working interest in Section 8

(f) all contracts concerning the preparation of Burlington's AFE

(g) all petroleum engineering studies/data concerning porosity and/or permeability of formations underlying Section 8

(h) all well data/test data from North San Juan Basin and/or Four Corners Platform, including but not limited to Barker Dome, Ute Dome and Alkali Gulch pools

(3) all geophysical survey contracts, permits, agreements, rights of way for Sections 8 and 9

10. The Minatome subpoena seeks the following:

(1) for Burlington's "Arch Rock Prospect" covering but not limited to 9 sections including Section 8 and 9, T31N R10W:

(a) all management reports form 1990 to date

(b) personal files of Alan Alexander, David Poague and James R. J. Strickler and others concerning Arch Rock Prospect,

(2) for Burlington's contractual dispute with Minatome over November 27, 1951 contracts (collectively the "GLA-46 Agreements") original between Brookhaven Oil Company and San Juan Production Company:

(a) personal files of Alan Alexander, David Poague and James R. J. Strickler and others

(b) any documents pertaining to course of conduct concerning this contractual dispute

(c) any and all public documents relating to proceedings concerning the GLA-46 agreements

(3) all title documents and opinions for the Scott 24 Well and the Marcotte Well No 2 and the GLA-46 Agreements.

(4) all documents relating to Minatome's interest in Arch Rock or the GLA-46 Agreements.

(5) all documents relating to Lear Petroleum Exploration Inc. in the Arch Rock Prospect or the GLA-46 Agreements.

(6) all documents relating to unitization of Arch Rock or forming new exploratory units in this area:

- (a) all documents concerning any plans/proposals
- (b) any communications with the BLM or State Land Office concerning unitization of Arch Rock Prospect
- (c) any "area and depth" meetings with BLM

(7) For the Scott No. 24 Well and the Marcotte Well No. 2:

- (a) personal files of Alan Alexander, David Poague and James R. J. Strickler and others
- (b) correspondence concerning efforts to obtain voluntary agreement
- (c) documents reflecting Amoco's decision to voluntarily participate in these wells
- (d) drilling contracts
- (e) APDs and C-101 and C-102 forms filed with OCD/BLM
- (f) drilling rig schedules.

11. For convenience purposes of this Motion the Moore-Bard and Minatome are collectively hereafter referred to as "Moore-Bard".

ISSUES RELEVANT TO THESE COMPULSORY POOLING CASES

The relevant issues before the Division in these two compulsory pooling cases are:

- (1) pre-hearing negotiations between Burlington and Moore-Bard
- (2) interest ownership in spacing unit
- (3) geologic data if Moore-Bard has proposed a well at a different location-not relevant here.
- (4) information concerning dates wells proposed.
- (5) overhead rates for supervision (discussed below)
- (6) proposed risk penalty (discussed below)
- (7) significant differences in AFE (discussed below)

EVIDENCE RELEVANT TO THESE ISSUES

The evidence relevant to these issues before the Division in these two compulsory pooling cases are:

- (1) Moore-Bard has in its own possession and control, communications with Burlington which demonstrate Burlington's willingness to negotiate a voluntary agreement
- (2) ownership records for the Moore-Bard are within their own control or are matters of public record.
- (3) geologic data if Moore-Bard has proposed a well at a different location which is not an issue in this case because Moore-Bard does not want to participate or operate.

- (4) information concerning dates each well was proposed are a matter of record already known to Moore-Bard.
- (5) overhead rates for supervision are not resolved by a search of Burlington's files but by Moore-Bard doing its own homework and using widely known information in the industry and available to Moore-Bard
- (6) proposed risk penalty (discussed below)
- (7) significant differences in AFE (discussed below)

**THE MOORE-BARD AND THE MINATOME
SUBPOENAS ARE AN ABUSE OF THE DIVISION'S
SUBPOENA POWERS**

The Subpoenas constitute an abuse of the Commission's subpoena powers because it requires the production of a substantial portion of Burlington's documents in the entire San Juan Basin which are not relevant to the issues in this pooling application.

Both subpoena's seek to use the Division's subpoena powers to obtain documents concerning contractual disputes or to advance potential claims outside of the jurisdiction of the Division.

**SUBPOENAS SEEK PRODUCTION OF
IRRELEVANT DOCUMENTS**

Moore-Bard seeks massive and extensive production of geologic and engineering data for the San Juan Basin which is irrelevant to the issues in the pooling cases.

- (a) Burlington seeks a pooling order providing options to participate or to be a carried interest subject to a non-consent penalty.

(b) The Division is authorized to approve a maximum 200 % risk factor penalty in pooling cases. Burlington seeks the adoption of the maximum penalty.

(c) publicly available geologic data conclusively demonstrates at this time that the "deep gas" in the San Juan Basin is, with few exceptions, unexplored, untested, and not yet proven to be commercially productive.

(d) The nearest commercial Pennsylvanian gas production is more than twenty (20) miles from Sections 8 and 9.

(d) Burlington does not dispute and Moore-Bard cannot dispute the undisputed fact that these are very risky exploratory wells entitled to the maximum penalty.

(e) Subpoenas are burdensome and oppressive and seek to obtain Burlington confidential, proprietary geologic and engineering data none of which is relevant to the risk factor penalty issue.

(f) Burlington contends and Moore-Bard must concede that the 200 % risk factor penalty is appropriate based upon the simple fact that there is no proven production in the Pennsylvanian formation which could be used to lower the risk factor penalty.

**SUBPOENAS SEEK PRODUCTION OF
BURLINGTON'S CONFIDENTIAL AND
PROPRIETARY SEISMIC DATA**

Burlington is the owner of seismic data which is the confidential business information and the trade secrets of Burlington.

Because Moore-Bard owns other mineral interests in the immediate vicinity of Section 8 and 9 the disclosure of Burlington's confidential data to Moore-Bard will in fact provide the Moore-Bard with Burlington's confidential data and give Moore-Bard either

(a) a competitive advantage in other tracts in which it owns an interest and/or (b) establish a commercial value for purposes of selling or trading their interest to others.

**MOORE-BARD WANTS PRODUCTION IN ORDER
TO ATTACK COMMISSION ORDER R-10815**

Moore-Bard want production of Burlington's documents irrelevant to these two pooling cases in order to advance a collateral attack on the Commission's 640-acre case spacing decision made in Case 11745.

**MOORE-BARD SEEK DOCUMENTS
AVAILABLE IN PUBLIC RECORDS**

Moore-Bard want data which is currently available to Moore-Bard in the public record, including but not limited to Division case files and records.

Moore-Bard is asking Burlington to prepare Moore-Bard's case and to do Moore-Bard's research. All relevant data has already been provided to Moore-Bard or are available either in public records or in Moore-Bard's possession.

Burlington has no obligation or duty to do homework for Moore-Bard.

**MOORE-BARD SEEK BURLINGTON'S
CONFIDENTIAL BUSINESS RECORDS**

Moore-Bard seek production of Burlington's internal economic/engineering documents concerning estimates of costs analysis which are not relevant.

Burlington has no obligation to make or provide documents to assist Moore-Bard in deciding if they desire to participate in this wells or to be involuntarily pooled.

They seek documents to help them make that decision or to market their interest neither of which is relevant to any decision the Division must make in this case.

SUBPOENAS ARE BURDENSOME AND OPPRESSIVE

The subpoenas are oppressive and burdensome and would require months of preparation before Burlington could assemble and produce. The subpoenas are sought in order to cause delay so that Moore-Bard can "ride the Marcotte well down" and learn the results before Moore-Bard must make an election to participate.

AUTHORITY FOR EXPENDITURE "AFEs"

Moore-Bard, in a guise to obtain valuable confidential data from Burlington pretends to misunderstand how the Division addresses the issue of approving an AFE in pooling cases. Because of that ignorance has sought irrelevant documents.

The Division's determination of the reasonableness of an AFE is based upon a the Division's determination that the Moore-Bard can show the AFE is excessive. That determination is not made from searching Burlington's files but rather by Moore-Bard going out into the industry, obtaining its own estimates, quotes and preparing its own AFE.

If Moore-Bard] is concerned about its share of actual costs, then it has prematurely raised this issue. The Division's pooling orders provide an opportunity "after the well is drilled and completed" for any pooled party to request a reasonable well cost determination hearing.

The AFE issue is not how Burlington prepared the AFE but whether the AFE is reasonable. That test is examined and met not by looking at Burlington's financial records but by comparison with the actual costs of other like kind wells.

The fact that Moore-Bard is upset that Burlington selected Section 8 and 9 to located high risk deep gas well tests is not relevant to a compulsory pooling case. The Division has never denied an application the right to chose which spacing unit to drill and in what order to drill them.

SUBPOENAS FAIL TO COMPLY WITH RULE 1211

Section 70-2-8 NMSA 1978 describes the Division's subpoena powers which the Commission, by the adoption of General Rule 1211, has limited to "a subpoena will be issued for attendance at a hearing upon the written request of any person interest in the subject matter of the hearing."

Moore-Bard and Minatome have requested and obtained by the Division subpoena ("the Moore-Bard Subpoena") which fails to comply with Division General Rule 1211 and which exceeds the OCD authority by demanding that Burlington produce confidential documents which are not contemplated by Rule 1211.

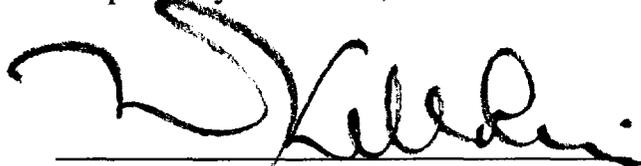
CONCLUSION

This is a plain vanilla compulsory pooling case which Moore-Bard is seeking to unnecessarily complicate in order to create confusion so that Moore-Bard can:

- (1) advance a collateral attack on the Commission's rule making decision to apply 640-acre gas spacing for the deep gas exploration in some 9,000 square miles of the San Juan Basin;
- (2) give itself a competitive advantage in other tracts in which it owns an interest;
- (3) for to establish a commercial value for what up until now has been "rank wildcat" property.

Regardless of their motives, both Subpoena should be quashed in their entirety.

Respectfully submitted,



W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504
(505) 982-4285

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading was hand delivered to opposing counsel this 2 day of July, 1997 as follows:

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

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

A handwritten signature in black ink, appearing to read "W. Thomas Kellahin", written over a horizontal line.

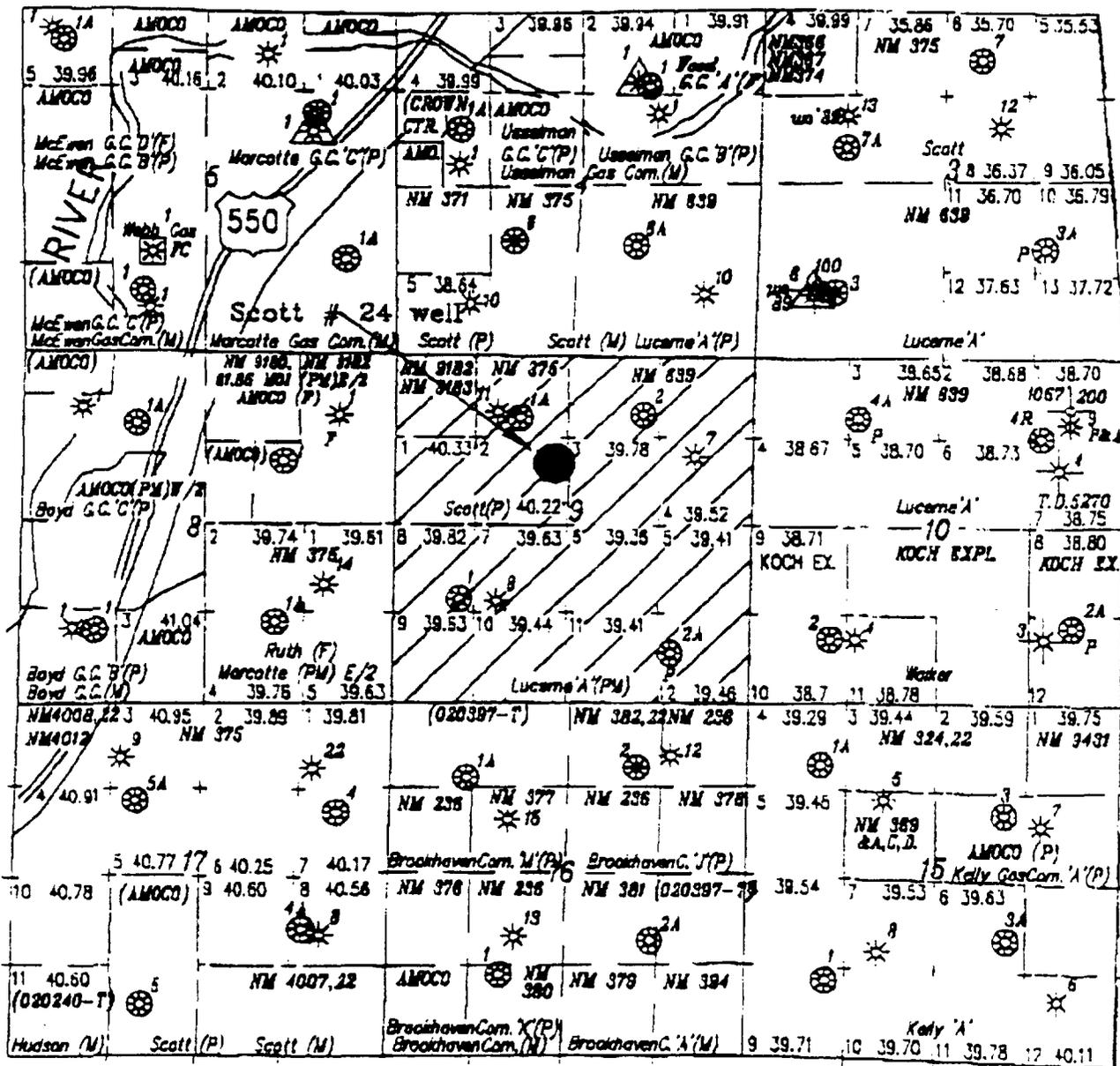
W. Thomas Kellahin

BURLINGTON RESOURCES OIL & GAS COMPANY

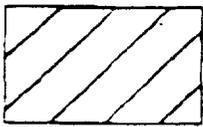
Scott # 24 Well

SENW Sec. 9-31N-10W

2500' FWL, 1535' FNL



- FRUITLAND SAND
- MESAVERDE
- FRUITLAND COAL
- DAKOTA
- PICTURED CLIFFS
- GALLUP



Spacing Unit

EXHIBIT
A

**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
MOORE-BARD'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 3, 1997 by the Gallegos Law Firm on behalf of Lee Wayne Moore and Joann Montgomery Moore and filed by Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/AD February 12, 1983 in Case 11808 and 11809 (hereafter "Moore-Bard") and asks the Division to deny the Motion to Dismiss

As grounds for its reply, Burlington states the following:

BACKGROUND

C. The following is a partial factual summary¹ of Burlington's efforts to consolidate the Moore, the Bard and the Minatome interests on a voluntarily basis for Burlington's proposed deep gas well tests.²

(1) Burlington has proposed two deep gas well tests³ which are estimated to cost as follows:

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

(2) In Section 8, (Marcotte Well No. 2) Burlington with approximately 46% working interest has obtained the voluntary agreement of some 13 owners and now has approximately 93% voluntary participation. The only non-participating parties are as follows:

(a) Moore	2.25%	(\$52,171.)
(b) Minatome (GLA-46)	4.65%	(\$107,790.)

Bard-LaForce (GLA-66) has no interest in this Section

(3) In Section 9, (Scott Well No. 24), Burlington has been joined by some 15 owners who collectively control approximately 35% of the working interest. The non-participating parties are as follows:

¹ See Affidavit of James R. J. Strickler, attached as Exhibit C.

² communications with owners other than the Moore/Bard/Minatome interests have been omitted.

³ See plats attached as Exhibit A for the Scott Well No. 24 and Exhibit B for the Marcotte Well NO. 2

- (a) Moore: 0.295 % (\$6,831.)
- (b) Minatome (GLA-46) 3.55 % (\$82,343.)
- (c) GLA-66 Group
 - 58 owners with 61 % which includes:
 - LaForce 1.11 % (25,745.)
 - Bard 1.23 % (\$28,580.)

(4) On June 18, 1996, more than a year ago, Burlington wrote the GLA-66 Group which includes Bard and included Section 9 and on July 29, 1996, Burlington wrote to Moore and Minatome offering to purchase deep gas rights within the area which included Sections 8 and 9, T31N, R10W. Since June, 1996, Burlington has continued its 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.

(5) On November 20, 1996, Burlington advised that it intended to drill a deep gas test in 1997 and requested the voluntarily consolidation of acreage to form a 640-acre unit for such a well which would include lands owned by Bard.

(6) On February 7, 1997, Burlington again wrote Minatome requesting participation, farmout or purchase of its interest in Sections 8 and 9.

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

(8) On April 29, 1997, Burlington sent Moore/Bard/Minatome a letter including an AFE and proposed joint operating agreement proposing among other things

participation for the Scott Well No. 24 a deep gas test well to be located within Section 9, T31N, R10W.

(9) From May 5-9, 1997, I had telephone conversation with Tom Moore representing Wayne & JoAnn Moore (Moore Loyal Trust) concerning the Marcotte and Scott wells.

(10) About May 5-9, 1997, on behalf of Burlington, I sent to Tom Moore representing Moore a copy of Burlington's hearing exhibits in Commission Case 11745 which dealt with 640-acre deep gas spacing in the San Juan Basin. On May 16, 1997, I sent a similar set to LaForce representing GLA-66 including Bard.

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

(12) On June 3, 1997, Burlington advised the mineral owners/lessors of its intention to establish 640 acre spacing units in Sections 8 and 9.

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

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

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

(16) Both cases have been set for hearing before the Division on July 10, 1997.

(17) Moore/Bard/Minatome have thus far rejected all of Burlington's proposals.

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

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

Burlington has in the past and continues to provide Moore-Bard with reasonable opportunities to farmout, sell or participate.

On June 18, 1996 Burlington wrote the GLA-66 Group which includes Bard and included Section 9 and on July 29, 1996, more than a year ago, Burlington wrote to Moore and 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 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.

Moore-Bard has the opportunity to "ride down" the Marcotte Well No. 2 which is currently drilling at approximately 3,200 feet towards an ultimate total depth of approximately 14,250 feet. Estimates are that the well may be at total depth on approximately August 25, 1997; and to learn the results from the Marcotte Well No. 2

before Moore-Bard has to make an election concerning committing its interest to the drilling of the Scott 24 well in Section 9.

In addition, Bard has no interest in Section 8 where the Marcotte Well No. 2 is now drilling and can simply sit back and wait for Burlington to prove up Bard's acreage in Section 9 and other lands.

Even if the cases are heard on July 10, 1997, Moore-Bard will still have ample opportunity to either elect to participate, farmout or sell their interests. In addition and despite Burlington's best efforts to keep the results confidential, Moore-Bard could "ride the well down" and probably learn the results before any compulsory pooling election period expires. For example, after the hearing, it is likely that a pooling order would not be issued into August 1, 1997. Thereafter, Burlington must provide Moore-Bard with a post order 30-day election to participate. In all probability Moore-Bard's election period under the pooling order would not expire until sometime in October, 1997 more than a month after the Marcotte well is expected to be at total depth. In addition, Moore-Bard can request a Commission hearing could extend the Moore-Bard election period still further.

Thus, Moore-Bard may have the opportunity to know the results of the Marcotte Well No. 2 before it must make any election concerning participation under either compulsory pooling orders entered in either case.

**BURLINGTON HAS NO DUTY OR RESPONSIBILITY
TO DISCLOSE IT PROPRIETARY
CONFIDENTIAL GEOLOGIC AND ENGINEER DATA
IN A COMPULSORY POOLING CASE OF THIS TYPE**

In this Motion to Dismiss, Moore-Bard admit that "Mr. Moore is an active oil and gas industry participant and owns interest in over 300 wells."

Yet, Moore-Bard argue that Burlington must surrender its confidential and proprietary business records and disclose its exploration strategy to Moore so that they can analyze whether they farmout, sell or otherwise participate in these wells. Moore-Bard, under its claim of good faith, is asking:

- (1) for production of Burlington's internal economic/engineering documents concerning estimates of costs analysis which are not relevant.
- (2) for data which is currently available to Moore-Bard in the public record, including but not limited to Division case files and records.
- (3) for Burlington to prepare Moore-Bard's case and to do Moore-Bard's research. In fact, all relevant data has already been provided to Moore-Bard or is available either in public records or in records in Moore-Bard's possession.

Moore-Bard argue that Burlington's refusal to surrender its proprietary and confidential data is an act of bad faith. Moore-Bard have obtained a subpoena seeks production of Burlington's documents which are irrelevant to the issues involved in these compulsory pooling cases. Despite the lack of relevancy, Moore-Bard contends that Burlington must demonstrate good faith by surrendering its data to one of Burlington's competitors.

Neither the Division nor Section 70-2-17.C NMSA (1978) require such an outrageous result. To do so would effectively discourage any applicant from utilizing compulsory pooling and would preclude the Division its opportunity to exercise its authority to pool acreage in order to prevent the drilling of unnecessary wells.

Burlington's refusal to surrender its data to Moore-Bard is reasonable. Burlington is the owner of proprietary data, including seismic data, which are the confidential business information and the trade secrets of Burlington. Because Moore-Bard own other mineral interests in the immediate vicinity of Section 8 and 9, the disclosure of Burlington's confidential data to Moore will simply mean that Burlington is giving away free of cost to Moore-Bard Burlington's confidential data and business secrets which were acquired at considerable expense.

Burlington has no obligation to make or provide documents to assist Moore-Bard in deciding if they desire to participate in this wells or to be involuntarily pooled.

Moore-Bard misunderstand how the Division addresses the issue of approving an AFE in pooling cases. The AFE issue is not how Burlington prepared the AFE but whether the AFE is reasonable. That test is examined and met not by looking at Burlington's financial records but by comparison with the actual costs of other like kind wells. That determination is not made from searching Burlington's files but rather by Moore-Bard going out into the industry, obtaining its own estimates, quotes and preparing its own AFE.

If Moore-Bard is concerned about its share of actual costs, then it has prematurely raised this issue. The Division's pooling orders provide an opportunity "after the well is drilled and completed" for any pooled party to request a reasonable well cost determination hearing.

The fact that Moore-Bard is upset that Burlington selected Section 8 and 9 in which to locate high risk deep gas well tests is not relevant to a compulsory pooling case. The Division has never denied an application the right to chose which spacing unit to drill and in what order to drill them.

Burlington's refusal to surrender its data to Moore-Bard is reasonable. It is not the custom and practice in the industry for an operator to show potential working interest owners or competitors proprietary data, including seismic data, which are confidential business information and the trade secrets. Burlington has no obligation or duty to do homework for Moore-Bard. Burlington has acted in good faith.

**BURLINGTON'S POOLING APPLICATIONS COMPLY
WITH SECTION 70-2-17.C NMSA (1978)**

Moore-Bard contends that Commission Order R-10815 entered June 5, 1997 is not effective until the date of its publication in the New Mexico Register and therefore incorrectly assumes that Burlington is precluded from filing its pooling applications until such time as that publication takes place because to do so would violate Section 70-2-17.C NMSA (1978) which provides, among other things, that:

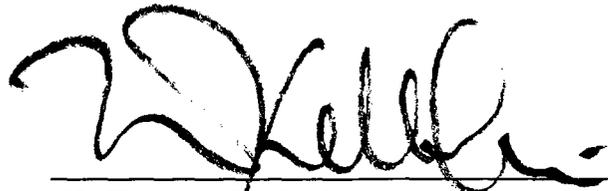
"Where, however, such owner or owners, have not agreed to pool their interest....,the Division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interest or both in the spacing or proration unit"

Moore-Bard is wrong. The critical time is not the date of the filing of the application but the date the Division enters its pooling order. So long as the pooling order is issued after the date on which Commission Order R-11808 is published in the New Mexico Register then both the Division and Burlington have complied with Section 70-2-17.C NMSA (1978).

CONCLUSION

Moore-Bard's correlatives rights in this case are adequately protected. It is Burlington's correlative rights which may be impaired if Moore-Bard are afforded the opportunity prior to the expiration of their election period to know the results of the Marcotte Well No. 2. Burlington requests that the Division deny the Motion to Dismiss.

Respectfully submitted,



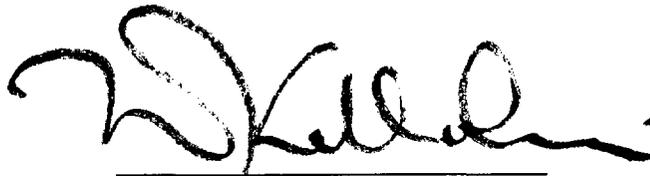
W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading was hand delivered to opposing counsel this 7 day of July, 1997 as follows:

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

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



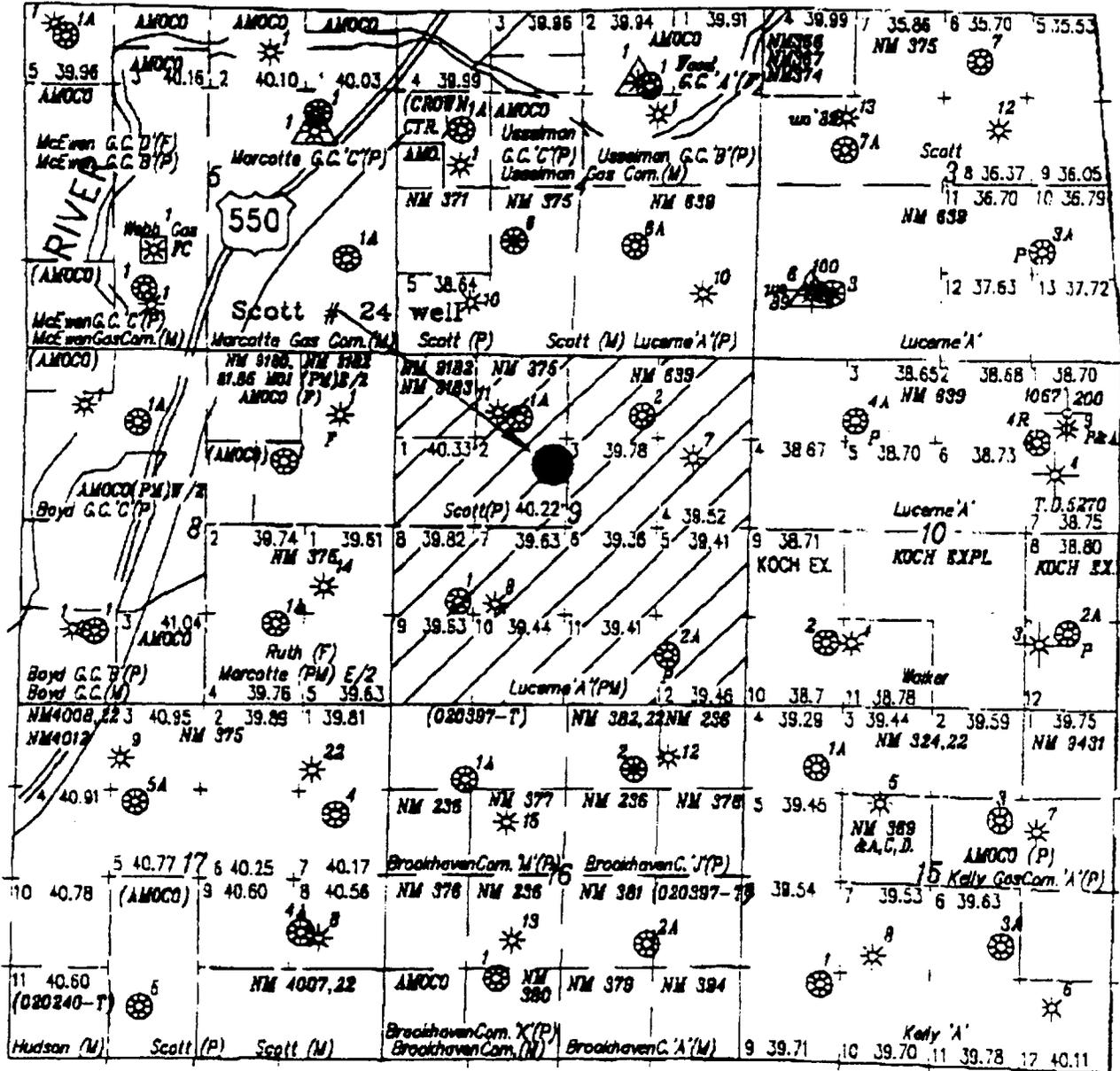
W. Thomas Kellahin

BURLINGTON RESOURCES OIL & GAS COMPANY

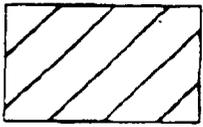
Scott # 24 Well

SENW Sec. 9-31N-10W

2500' FWL, 1535' FNL



- FRUITLAND SAND
- MESAVERDE
- FRUITLAND COAL
- DAKOTA
- PICTURED CLIFFS
- GALLUP



Spacing Unit

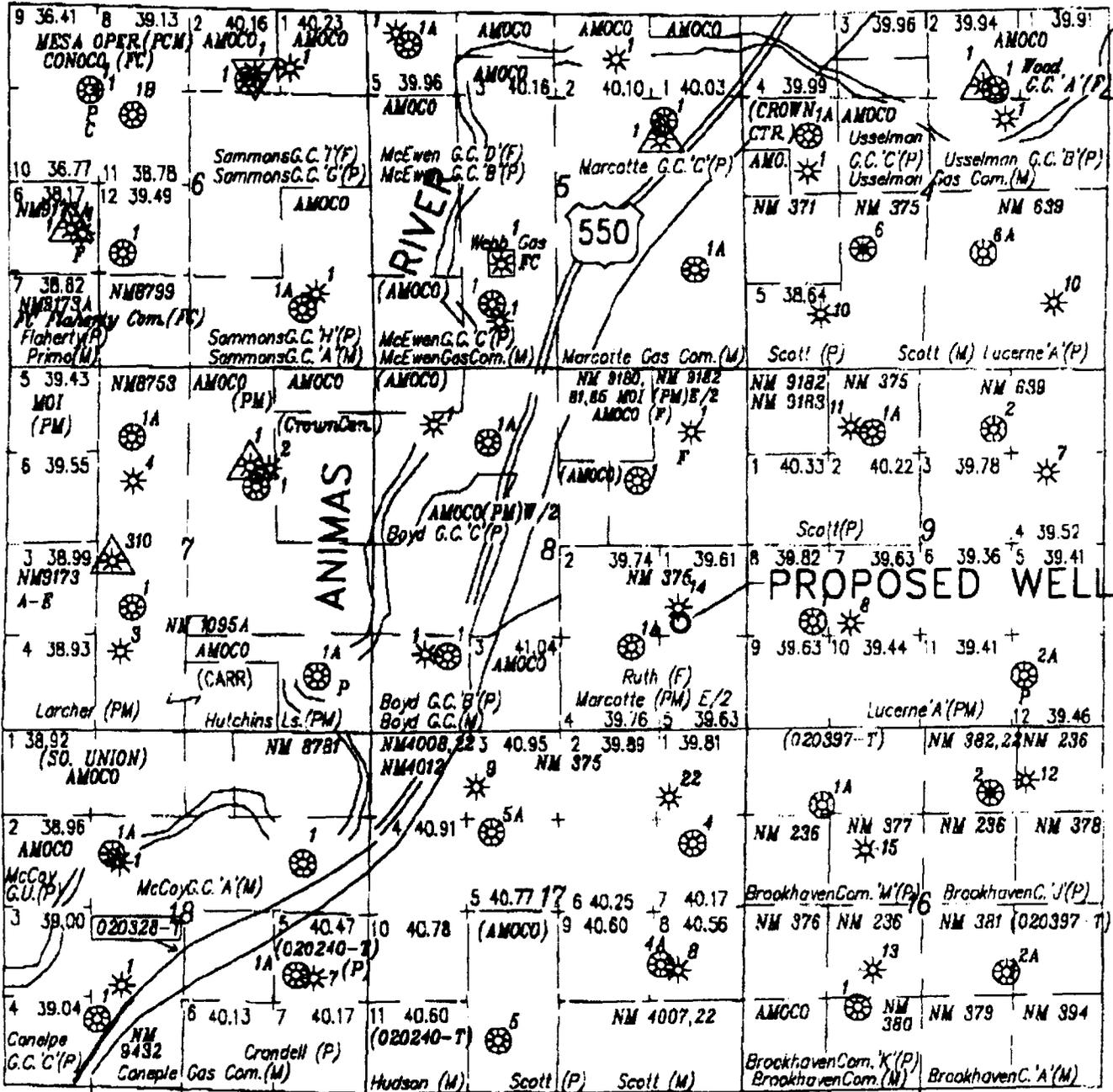
EXHIBIT

A

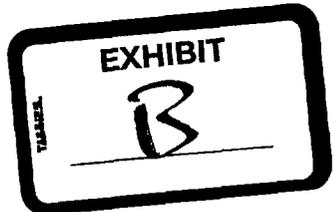
BURLINGTON RESOURCES

Marcotte # 2 Well

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



- FRUITLAND SAND
- MESAVERDE
- FRUITLAND COAL
- DAKOTA
- PICTURED CLIFFS
- GALLUP



C. The following is a partial factual summary of my efforts on behalf of Burlington to consolidate the Moore, the Bard and the Minatome interests on a voluntarily basis for Burlington's proposed deep gas well tests.¹

(1) Burlington has proposed two deep gas well tests which are estimated to cost as follows:

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

(2) In Section 8, (Marcotte Well No. 2) Burlington with approximately 46% working interest has obtained the voluntary agreement of some 13 owners and now has approximately 93% voluntary participation. The only non-participating parties are as follows:

(a) Moore	2.25 %	(\$52,171.)
(b) Minatome (GLA-46)	4.65 %	(\$107,790.)

Bard-LaForce (GLA-66) has no interest in this Section

(3) In Section 9, (Scott Well No. 24), Burlington has been joined by some 15 owners who collectively control approximately 35% of the working interest. The non-participating parties are as follows:

(a) Moore:	0.295 %	(\$6,831.)
(b) Minatome (GLA-46)	3.55 %	(\$82,343.)
(c) GLA-66 Group		
58 owners with 61 % which includes:		
LaForce	1.11 %	(25,745.)
Bard	1.23 %	(\$28,580.)

(4) On June 18, 1996, more than a year ago, Burlington wrote the GLA-66 Group which includes Bard and included Section 9 and on July 29, 1996, Burlington wrote to Moore and Minatome offering to purchase deep gas rights within the area which included Sections 8 and 9, T31N, R10W. Since June, 1996, Burlington has continued its 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.

¹ communications with owners other than the Moore/Bard/Minatome interests have been omitted.

(5) On November 20, 1996, Burlington advised that it intended to drill a deep gas test in 1997 and requested the voluntarily consolidation of acreage to form a 640-acre unit for such a well which would include lands owned by Bard.

(6) On February 7, 1997, Burlington again wrote Minatome requesting participation, farmout or purchase of its interest in Sections 8 and 9.

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

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

(9) From May 5-9, 1997, I had telephone conversation with Tom Moore representing Wayne & JoAnn Moore (Moore Loyal Trust) concerning the Marcotte and Scott wells.

(10) About May 5-9, 1997, on behalf of Burlington, I sent to Tom Moore representing Moore a copy of Burlington's hearing exhibits in Commission Case 11745 which dealt with 640-acre deep gas spacing in the San Juan Basin. On May 16, 1997, I sent a similar set to LaForce representing GLA-66 including Bard.

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

(12) On June 3, 1997, Burlington advised the mineral owners/lessors of its intention to establish 640 acre spacing units in Sections 8 and 9.

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

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

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

(16) Both cases have been set for hearing before the Division on July 10, 1997.

(17) Moore/Bard/Minatome have thus far rejected all of Burlington's proposals.

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

D. In my opinion:

Burlington has provided these parties with an adequate period in which to make their own analysis and reach their own independent decision concerning whether they wanted to sell, farmout, or participate in these wells.

FURTHER AFFIANT SAYETH NOT:


James R. J. Strickler

STATE OF NEW MEXICO)
)SS
COUNTY OF SAN JUAN)

SUBSCRIBED AND SWORN to before me this 7th day of July, 1997, by James R. J. Strickler.



Notary Public

My Commission Expires:

(SEAL)



OFFICIAL SEAL
DAWN GARRETSON
NOTARY PUBLIC - STATE OF NEW MEXICO
My commission expires: 6-17-2000

**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
OBJECTION TO
MOTION FOR CONTINUANCE**

BURLINGTON RESOURCES OIL & GAS COMPANY ("Burlington") by its attorneys, Kellahin & Kellahin, hereby OBJECTS to the Motion for an indefinite continuance of the hearings current set for July 10, 1997 in Cases 11808 and 11809 said continuance having been filed by Lee Wayne Moore and Joann Montgomery Moore in Case 11809 and filed by Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/AD February 12, 1983 in Case 11808 (hereafter "Moore-Bard")

As grounds for its objection, Burlington states the following:

BACKGROUND

C. The following is a partial factual summary of Burlington's efforts to consolidate the Moore and the Bard interests on a voluntarily basis for Burlington's proposed deep gas well tests.¹

(1) Burlington has proposed two deep gas well tests which are estimated to cost as follows:

(a) dry hole costs	\$1,713,800.
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Total:	\$2,316,973.

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¹ communications with owners other than the Moore/Bard/Minatome interests have been omitted. See Affidavit of James R. J. Strickler attached as Exhibit A.

Since June, 1996, Burlington has continued its 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.

(5) On November 20, 1996, Burlington advised that it intended to drill a deep gas test in 1997 and requested the voluntarily consolidation of acreage to form a 640-acre unit for such a well which would include lands owned by Bard.

(6) On February 7, 1997, Burlington again wrote Minatome requesting participation, farmout or purchase of its interest in Sections 8 and 9.

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OBJECTION TO REQUESTED CONTINUANCE

Moore-Bard seek a continuance purportedly for the purpose of have time to review a massive amount of Burlington's technical data which it has subpoenaed and which Burlington contends is irrelevant and to which Burlington has filed a Motion to Quash said Subpoena.

It is not Burlington's fault that Moore-Bard chose to have a subpoena issued for production of documents by Burlington on July 8, 1997 just two days before the hearing on July 10, 1997. Moore-Bard should not be allowed to complain that they do not have enough time to review the

Burlington documents even if the Division, over Burlington's objection, requires any to be produced.

The true purpose of the motion to continue is an attempt to afford Moore-Bard:

(a) the opportunity to "ride down" the Marcotte Well No. 2 which is currently drilling at approximately 3,200 feet towards an ultimate total depth of approximately 14,250 feet. Estimates are that the well may be at total depth on approximately August 25, 1997; and

(b) to learn the results from the Marcotte Well No. 2 before Moore-Bard has to make an election concerning committing its interest to the drilling of the Scott 24 well in Section 8.

It should be noted that Bard has no interest in Section 8 and despite Burlington's best effort to keep the results confidential, Bard may have the opportunity to learn the results of the Marcotte Well No. 2 before he has to make an election concerning the Scott Well No. 24.

Even if the cases are heard on July 10, 1997, Moore-Bard will still have ample opportunity to either elect to participate or attempt to "ride the well" down and gain without expense to them valuable and confidential information which they can use to their benefit and at the expense of Burlington. For example, after the hearing it is likely that a pooling order would not be issued into August 1, 1997. Thereafter, Burlington must provide Moore-Bard with a post order 30-day election to participate. In all probability Moore-Bard's election period under a pooling order would not expire until sometime in October, 1997, more than a month after the well

is expected to be at total depth. In addition Moore-Bard can request a Commission hearing which could extend the Moore-Bard election period.

Thus, Moore-Bard may have the opportunity to know the results of the well before it must make any election concerning participation under either compulsory pooling orders entered in either case.

CONCLUSION

Accordingly, in order to protect Burlington's correlative rights, Burlington requests that the Division deny the Motion for a Continuance.

Respectfully submitted,



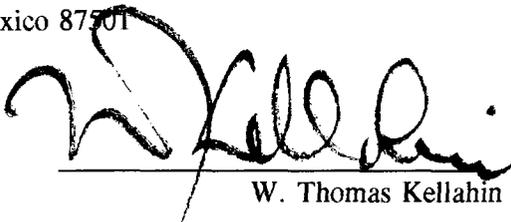
W. Thomas Kellahin
Kellahin & Kellahin
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Santa Fe, New Mexico 87504
(505) 982-4285

CERTIFICATE OF SERVICE

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Santa Fe, New Mexico 87505

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



W. Thomas Kellahin

**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)
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**IN THE MATTER OF THE APPLICATION
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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**

AFFIDAVIT OF JAMES R. J. STRICKLER

STATE OF NEW MEXICO)
) SS
COUNTY OF SAN JUAN)

Before me, the undersigned authority, personally appeared James Strickler, who being first duly sworn, stated:

A. My name is James R. J. Strickler. I am over the age of majority and am competent to make this Affidavit.

B. I am a senior staff landman for Burlington Resources Oil & Gas, Inc. who has been responsible for contacting the interest owners involved in these two cases.



C. The following is a partial factual summary of my efforts on behalf of Burlington to consolidate the Moore, the Bard and the Minatome interests on a voluntarily basis for Burlington's proposed deep gas well tests.¹

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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:

111 1897

APPLICATION OF BURLINGTON RESOURCES OIL & GAS COMPANY FOR COMPULSORY POOLING, AN UNORTHODOX GAS WELL LOCATION AND A NON-STANDARD GAS PRORATION AND SPACING UNIT, (Marcotte Well 2) SAN JUAN COUNTY, NEW MEXICO. CASE NO. 11809

PRE-HEARING STATEMENT

This pre-hearing statement is submitted by Burlington Resources Oil & Gas Company, as required by the Oil Conservation Division.

APPEARANCE OF PARTIES

APPLICANT

Burlington Resources Oil & Gas Company
P. O. Box 4289
Farmington, NM 87499
(505) 326-9757
attn: Alan Alexander

ATTORNEY

W. Thomas Kellahin
KELLAHIN & KELLAHIN
P.O. Box 2265
Santa Fe, NM 87504
(505) 982-4285

STATEMENT OF CASE

Pursuant to Section 70-2-17(c) NMSA (1978) and in order to obtain its just and equitable share of potential production underlying Section 8, T31N, R10W, Burlington Resources Oil & Gas Company ("Burlington") requests an order of the Division pooling the identified and described mineral interests involved in order to protect correlative rights and prevent waste.

Burlington requests an order pooling the mineral interest of described in this 639.78 acre gas spacing unit for the drilling of its Marcotte Well No. 2 at an unorthodox gas well location (Unit I) for potential production from the below the base of the Dakota formation upon terms and conditions which include:

- (1) Burlington be named operator;
- (2) The order make provisions for all uncommitted interest owners to participate in the costs of drilling, completing, equipping and operating the well;
- (3) In the event an uncommitted working interest owner fails to elect to participate he becomes a "compulsory pooled party" and then provisions should be made to recover out of production, the costs of the drilling, completing, equipping and operating the well, including a risk factor penalty of 200 %;
- (4) A provision for overhead rates and a method for adjusting those rates in accordance with COPAS accounting procedures;
- (5) For such other and further relief as may be proper.

PROPOSED EVIDENCE

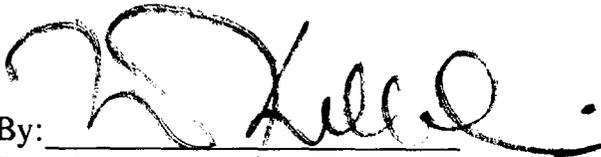
APPLICANT:

WITNESSES	EST. TIME	EXHIBITS
James Strickler (landman)	60 Min.	@ 16 exhibits
Mike Dawson (geologist)	30 Min.	@ 4 exhibits
Kurt Shipley (engineer)	30 Min.	@ 4 exhibits

PROCEDURAL MATTERS

None anticipated at this time.

KELLAHIN AND KELLAHIN

By: 
W. Thomas Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504
(505) 982-4285