BEFORE THE

OIL CONSERVATION DIVISION

NEW MEXICO DEPARTMENT OF ENERGY AND MINERALS

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, 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 8:15 a.m. 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 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 except as otherwise noted herein.

(2) 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.

(3) 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 No. 2 well at an unorthodox location 935 feet from the East line and, 1,540 feet from the south line of said Section 8.

(4) The Applicant also seeks to be designated the operator of the subject well and unit.

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

(6) 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.

(7) 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.

(8) Burlington's application in this matter was filed on June 17, 1997. At the time of the Burlington application, the effective spacing for deep gas wells in the area was 160 acres.

(9) At the time of Burlington's application, there were 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 pooling on a 640 acre basis.

(10) 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.

(11) 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 the overriding royalty interests and 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 it at the July 10, 1997 hearing explained how the issuance of an order under Section 70-2-17(C) is proposed to affect the overriding royalty interests. Burlington also failed to present any evidence demonstrating how the pooling and modification of those unspecified interests and leases is necessary to prevent waste.

(12) Burlington originally proposed a 160 acre spacing and proration unit for its Marcotte No. 2 well on the subject lands consisting of the SE/4 of Section 8. Burlington staked the location for the Marcotte No. 2 on February 16, 1997 and contemporaneously filed its C-102

and Notice of Staking and Application for Permit to Drill (NOS/APD) forms with the NMOCD and the BLM, respectively, reflecting a 160-acre spacing and proration unit.

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

(14) Burlington owns 9.31045 percent of the working interests in the proposed 639.78 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.

(15) Total-Minatome Corporation ("Total") owns a 4.6522 percent working interest in the proposed spacing and proration unit.

(16) Total's interests in the subject lands are subject to that Farmout Agreement and Operating Agreement dated November 27, 1951 between Brookhaven Oil Company and San Juan Production Company, predecessors in interest to Total and Burlington, respectively. (The "GLA-46" Agreement; Total-Minatome Corporation Exhibit 1.)

(17) Prior to the hearing, Total filed a Motion to Dismiss on the grounds that its acreage is currently subject to the 1951 Agreement and that Total had voluntarily committed its interests to the well under the terms of the GLA-46 Agreement. Total also argued in the alternative that the application should be dismissed for the reason that the apparent effort to have the Division modify the terms of the GLA-46 was not cognizable under Section 70-2-17(C).

(18) The evidence offered by Total at the hearing established that Total and its predecessors had voluntarily participated with Burlington and its predecessors in numerous wells over the past 45 years under the terms of the GLA-46 Agreement, including a number of wells both below the base of the Mesa Verde formation and above the base of the Pictured Cliffs formation. (Testimony of Norman Inman; Testimony of Deborah Gilchrist)

(19) Under the express terms of the GLA-46 Agreement, Total's operating rights to the subject acreage are effectively transferred to Burlington without restriction as to depth. The GLA-46 Agreement further contains a carried interest provision whereby Total's share of drilling costs are recouped out of one-half of Total's share of production. The carried interest provision is expressly made applicable to depths greater than the Mesa Verde formation.

(20) The testimonial evidence and exhibits presented by Total established that Burlington's predecessors expressly acknowledged and ratified the applicability and operation of GLA-46 Agreement to wells drilled below the base of the Mesa Verde formation. (Total-Minatome Corporation Exhibit 2) The operation and effect of the GLA-46 Agreement was also accepted and approved by the Bureau of Land Management. (Testimony of Norman Inman); (Total-Minatome Corporation Exhibit 3)

(21) The testimony of witnesses for both Total and Burlington established that neither Burlington nor its predecessors had at any time relinquished any acreage or operating rights under the provisions of the GLA-46 Agreement. (Testimony of Norman Inman; Testimony of James Strickler)

(22) By correspondence dated April 1, 1997, Burlington sought Total's agreement to the Basin-wide amendment of the GLA-46 to, *inter alia,* provide for a 400 percent non-consent penalty, add gas balancing provisions and updated COPAS accounting provisions. In addition, as a further condition, Burlington sought from Total a farmout of all of Total's interest in the San Juan Basin subject to the GLA-46 Agreement without restriction as to depth. (Total-Minatome Corporation Ex. 9)

(23) On April 22, 1997, Burlington sent its proposal letter and AFE for the Marcotte No. 2 well to Total seeking its voluntary participation in the 14,000-foot well to test the Pennsylvanian formation. (Total-Minatome Corporation Ex. 6)

(24) The testimony of Total's landman witness established that Total owns interests in approximately 1,800 wells in New Mexico and that it receives approximately 25 AFE's on well proposals in New Mexico each year. The landman's testimony further established that Total has never gone non-consent on the operation or drilling of a New Mexico well. Accordingly, on May 23, 1997, Total provided its consent to Burlington's proposal for the Marcotte No. 2 well, indicating, consistent with past practice, that it was participating under the terms of the GLA-46 Agreement. (Testimony of Deborah Gilchrist; Total Minatome Exhibit 6)

(25) Following the receipt by Burlington of Total's notice of its election to participate in the drilling of the Marcotte No. 2 well, Burlington, on May 22, 1997, responded to the effect that it regarded the GLA-46 as being inapplicable to depths below the Mesa Verde formation and that it regarded Total's response as indicating that it was not participating in the well. Burlington further indicated that Total's refusal to participate would "effectively bring down the project on the subject well." (Total Minatome Corporation Ex. 8)

(26) At the hearing, Burlington's landman witness gave inconsistent testimony with respect to the Applicant's position on the applicability of the GLA-46 to the subject lands and to depths below the base of the Mesa Verde formation. Burlington's landman also provided inconsistent and otherwise non-responsive testimony with respect to (1) Burlington's previous interpretation of GLA-46; (2) whether Burlington considered it owned the operating rights below the base of the Mesa Verde formation under the terms of the GLA-46; (3) the reasons for soliciting amendments to the GLA-46 if it was Burlington's interpretation that the terms of that agreement did not apply to the deep gas rights; and, (4) Burlington's interpretation of Total's agreement to voluntarily participate in the drilling of the Marcotte No. 2 well. (Testimony of James Strickler)

(27) The testimony also established that Burlington's landman had represented to Total that the Bureau of Land Management had conditioned the issuance of its NOS/APD on a limited "drilling window" time frame prior to the onset of the "rainy season" in the Four Corners area.

(Testimony of Deborah Gilchrist) Subsequent evidence introduced at the hearing established that Burlington's NOS/APD contained no such restriction. (Total-Minatome Corporation Exhibit No. 11).

(28) The Burlington landman testified that the drilling of the Marcotte No. 2 well was commenced in June of 1997 due to scheduling problems resulting from a rig shortage. (Testimony of James Strickler)

(29) The testimony of the Total landman witness established that during the course of Burlington's efforts to obtain Total's commitment to the Marcotte No. 2 well and its amendment to the GLA-46 Agreement, the Burlington landman threatened to create administrative obstacles and difficulties in other properties where Burlington and Total are joint interest owners, including certain offshore properties. Burlington's landman did not deny making such statements. (Testimony of Deborah Gilchrist; Testimony of James Strickler)

(30) Under Section 70-2-17(C) and 70-2-18(A), the operator of a well proposing to pool separately owned tracts or undivided interests within a spacing unit dedicated to the well is obliged to exercise good faith in obtaining the voluntary agreement pooling such interests as a condition precedent to the issuance of a compulsory pooling order by the Division.

(31) It is Total's position that pursuant to Section 70-2-17(C) of the New Mexico Oil & Gas Act of N.M.S.A. 1978, Total has a voluntary agreement in place and that the Division may not force pool its acreage.

(32) The testimony of Total's landman established that Burlington's conduct in this case fell below the commonly accepted industry standard with respect to negotiations to obtain voluntary participation in the drilling of wells.

(33) Burlington's application seeking an order pooling of Total-Minatome Corporation's interest is not cognizable in two respects:

(a) The interests of Total-Minatome Corporation were voluntarily committed to the drilling of the Marcotte No. 2 well under the terms of the GLA-46 Agreement; and,

(b) Burlington failed to establish that it exercised good faith when it attempted to obtain Total's participation by way of a proposed farmout and through its efforts to amend the terms of the GLA-46 Agreement.

(34) Burlington staked and began drilling the Marcotte Well No. 2 at an unorthodox gas well 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 on geologic and topographic considerations and, in another instance, stating that the location was selected for topographic reasons only. (Testimony of James Strickler)

(35) Burlington's senior drilling engineer for the drilling of the Marcotte No. 2 well testified that the location for the well was dictated by Burlington's geologist. (Testimony of Kurt Shipley) While Burlington did present evidence regarding existing topographic conditions, it presented no geologic or geophysical exhibits or testimony substantiating the unorthodox location for geologic reasons.

(36) During the course of efforts to obtain the voluntary participation of interest owners, Burlington's landman represented that the drilling of the deep gas well was a "high risk" venture and made selective offers to interest owners to review Burlington's 3-D seismic data and interpretation as justification for their participation. At the hearing, the testimony established that Burlington's offer to review its 3-D seismic information was conditioned on the reviewing parties' agreement to a number of terms which by industry customs and practice were considered to be onerous. (Testimony of Deborah Gilchrist; Testimony of Tom Moore; Testimony of Gail Cotton.) Among such terms were (1) the agreement to be bound by a joint operating agreement containing a 400 percent non-consent provision or (2) a basin-wide farmout of acreage as an alternative to the exposure to the risk resulting from an owner's working interest ownership in the proposed spacing and proration unit.

(37) The testimony further established that it is the custom and practice in the industry to allow joint interest owners to review an operator's geologic and geophysical data and interpretation when proposing a well. (Testimony of Deborah Gilchrist; Testimony of Tom Moore; Testimony of Gail Cotton) However, in the case of the Marcotte No. 2, Burlington's offer to review geologic and geophysical information was either (1) not extended on a uniform basis or (2) offered on conditions so onerous as to be unacceptable. The testimony further established that even after the drilling of the Marcotte No. 2 was commenced, Burlington refused to disclose daily drilling reports to those, including Total, whose voluntary participation it wished to obtain. (Testimony of Deborah Gilchrist)

(38) At the time of the hearing, Total again requested that this matter be dismissed on the grounds that its interests were voluntarily committed to the well under the terms of the GLA-46 Agreement and for the further reason that Burlington failed to undertake reasonable efforts to obtain Total's joinder in a good faith manner.

(39) Pursuant to 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 only sought relief under the compulsory pooling provisions of Section 70-2-17(C), the Division's jurisdiction 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 the application, or any other voluntary agreement was not invoked and the Division is therefore without jurisdiction over that particular subject matter.

Total established that its interest was voluntarily committed to the well under the terms of the GLA 46 Agreement and consequently, the Total interest cannot be the subject of a compulsory pooling proceeding pursuant to Section 70-2-17(C).

(40) Burlington further failed to make reasonable, good faith efforts to obtain the voluntary joinder of all working interests in the drilling of the subject well prior to filing its application. See Finding Paragraph 34, above.

(41) Burlington failed to offer any evidence establishing that the unorthodox well location 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

Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was mailed to counsel of record on the ___ day of July, 1997, as follows:

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