

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:)	
)	
APPLICATION OF BURLINGTON RESOURCES)	CASE NOS. 11,808
OIL AND GAS COMPANY FOR COMPULSORY)	
POOLING AND A NONSTANDARD GAS PRORATION)	
AND SPACING UNIT, SAN JUAN COUNTY,)	
NEW MEXICO)	
)	
APPLICATION OF BURLINGTON RESOURCES OIL)	and 11,809
AND GAS COMPANY FOR COMPULSORY POOLING,)	
AN UNORTHODOX GAS WELL LOCATION AND A)	
NONSTANDARD PRORATION UNIT, SAN JUAN)	
COUNTY, NEW MEXICO)	
)	(Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS (Volume I)

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

July 10th, 1997

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday and Friday, July 10th and 11th, 1997, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
(505) 989-9317

Exhibit A

1 would have in Sections 8 and Section 9?

2 A. Yes, sir.

3 Q. As part of your duties, did they include efforts
4 to consolidate the interest owners in these two sections
5 for purposes of drilling the deep gas well tests we're
6 about to describe?

7 A. Yes, sir.

8 Q. And have you continued on to the present in those
9 efforts?

10 A. Continuing, yes, sir.

11 MR. KELLAHIN: We tender Mr. Strickler as an
12 expert petroleum landman.

13 EXAMINER CATANACH: Any objection?

14 MR. HALL: No objection.

15 EXAMINER CATANACH: Mr. Strickler is so
16 qualified.

17 MR. KELLAHIN: Mr. Examiner, we have presented to
18 you separate exhibit books for each case. There are some
19 exceptions with regard to the identify of parties, so that
20 you can be specific as to those interests per section. But
21 generally, the information is going to be applicable to
22 both cases.

23 And so Mr. Strickler and I will choose the
24 exhibit book that deals with the Marcotte well. It's the
25 exhibit book 11,809. We will start with that one, and then

1 A. Yes, sir.

2 Q. And you work jointly?

3 A. We work together, yes, sir.

4 Q. Okay. How long -- I realize you've only been on
5 the team since August of last year, but how long has the
6 team been assembled --

7 A. That I don't know.

8 Q. -- for Burlington?

9 A. That I don't know. I've been with the company
10 almost three years, and the Conoco-Burlington joint venture
11 started two and a half years ago. So...

12 Q. For what you'd call the call the deep
13 Pennsylvania --

14 A. Joint exploration program --

15 Q. Okay.

16 A. -- yes, sir.

17 Q. Well, just tell us -- We'll discuss changes, but
18 when you came on board in August of 1996, what was the
19 acreage target that you were given at that time?

20 A. That is confidential information. The geologists
21 and geophysicists came up with an outline. The asked me to
22 concentrate within that outline, and I'm not at liberty to
23 disclose that.

24 Q. Well, was it --

25 A. But it's centered around Section 8, I can tell

1 A. Oh, right.

2 Q. -- I'm simply asking -- That information was
3 furnished to Amoco, so it could make a decision on whether
4 or not to farm out; isn't that true?

5 A. I'm not at liberty to say. That information,
6 that agreement, is confidential between Amoco and
7 Burlington, and I'm not in a position or have the authority
8 to discuss the terms and conditions of that agreement.

9 Q. I didn't ask you that, sir.

10 A. Well --

11 Q. I just asked you, isn't it true that technical
12 data was furnished to Amoco --

13 MR. KELLAHIN: I'm going to object on relevance
14 grounds.

15 Q. (By Mr. Gallegos) -- surrounding the making of
16 the farmout agreement?

17 MR. KELLAHIN: It's confidential contracts
18 between these people, and I don't see it's relevant, Mr.
19 Examiner.

20 MR. GALLEGOS: I'm not asking for the terms of
21 the contract. It can just simply be answered yes or no,
22 the information was furnished; isn't that true?

23 EXAMINER CATANACH: I think it's relevant. I'm
24 going to direct the witness to answer that question.

25 THE WITNESS: The answer is yes.

1 Q. (By Mr. Gallegos) Okay. There's also a farmout
2 obtained from Cross Timbers on the Section 8 property,
3 correct?

4 A. Yes, sir.

5 Q. Okay, did you work on that?

6 A. I sure did.

7 Q. Okay. And about when did you accomplish
8 agreement with Cross Timbers?

9 A. That was in -- I'll have to refer to my book. I
10 don't have that with me. Late May, early June.

11 Q. Of this year?

12 A. Yes, sir.

13 Q. And isn't it true that Cross Timbers was provided
14 technical data and information concerning this project?

15 A. That is correct.

16 Q. Now, as to interest owners such as the Moores and
17 the GLA-66 owners, what instructions were you given in
18 regard to your efforts at obtaining their interest, either
19 by purchase or some other means?

20 A. Their acreage was important to our wells, and
21 naturally we attempted to purchase their interest or offer
22 them a farmout or offer them to participate. That's a
23 normal procedure in putting together a land area to support
24 a deep high-risk well.

25 Is that what you're referring to?

1 A. These are sample letters.

2 Q. Sample letters?

3 A. Yes.

4 Q. All right.

5 A. Right. They went to --

6 Q. It wasn't necessarily LaForce but it was one of
7 the --

8 A. Right --

9 Q. -- the GLA-66 group.

10 A. -- we didn't want to thicken up the book here.

11 Q. Okay. And doesn't the letter, first of all, tell
12 the recipient that it's a very high-risk well, ten-percent
13 chance of success?

14 A. Correct.

15 Q. You were discouraging voluntary participation?

16 A. No, sir, that's just our estimation of the risk
17 involved.

18 Q. Haven't you told various parties that you've
19 talked to personally that you wouldn't invest in this; it
20 would be better off putting their money in the stock
21 market?

22 A. That's my personal feeling.

23 Q. And that's what you told people?

24 A. That's right.

25 Q. All right. So that's discouraging them from

1 A. Yes, sir.

2 Q. And that's why it was placed outside of the
3 ordinary or standard window?

4 A. Well, let me clarify, because Section 8 -- the
5 Section 8 was a prime location. The location was chosen to
6 use an existing wellpad, and it was an acceptable location
7 to minimize surface disturbance.

8 So for topographic reasons and the using existing
9 wellpad and using existing roads, that location was picked.

10 Q. There are existing wellpads all over Section 8,
11 aren't there Mr. Strickler?

12 A. Oh, yes. This was, I guess, the best location.

13 Q. This specific location was selected by the
14 geologist and geophysicist, based on their evaluation and
15 decisions; isn't that right?

16 A. Based on their studies, yes.

17 Q. Okay. Now, what -- We can use any of these maps.
18 Let's just look at the first one in here, which is this
19 Scott 24. It's colored, and you were using it to show the
20 Section 9 spacing unit?

21 A. Correct.

22 Q. All right. What is the location distance from
23 the quarter-section line, for the Scott 24?

24 A. 210 feet.

25 Q. Do you have a plat or an APD plat or something

1 Q. What procedures do you usually follow? Let's
2 concentrate on a proposal that would involve commitment of
3 a working interest under your charge to participation in
4 drilling, rework or some proposal of that nature. What
5 steps do you typically follow?

6 A. When the AFE comes in we make sure we have
7 appropriate title, look at the amount of money involved.
8 If it's very small, like many of ours are, then sometimes
9 it only costs the trust about \$500 to participate, so we
10 don't do as much work in that event.

11 But if it's anything over \$1000 or \$2000 to
12 participate, I always call the operator, regardless of the
13 site, and find out what his plans are, find out all about
14 the information on the surrounding production. And if it's
15 of any size we hire an engineer to look at all the data.

16 Q. Do you request things such as logs, seismic
17 data --

18 A. Yes.

19 Q. -- that type of thing?

20 A. Yes, we do.

21 Q. And what has been your experience as to the
22 response that you typically received to those requests?

23 A. They're usually cooperative with supplying
24 information.

25 Q. If the matter does involve sizeable expenditures

1 Q. Have you frequently been a participant as a
2 nonoperator in wells that are proposed by other parties?

3 A. Oh, yes, yes.

4 Q. Have those included wells that are proposed and
5 operated by Burlington Resources?

6 A. That's correct.

7 Q. Conoco?

8 A. Burlington, Conoco, Texaco, Amoco, Tenneco when
9 they were there, Cross Timbers, Crown Central.

10 Q. Would it be fair to say that generally your
11 approach is to be a consent participant, paying your share
12 in wells that are being drilled?

13 A. I cannot remember a time in the San Juan Basin
14 that we have not been a working interest operator -- I mean
15 a working interest owner -- that we have not taken a part
16 in the well.

17 Q. Okay. And about how many wells do the Moore
18 interests have interest in in the San Juan Basin, just the
19 San Juan Basin?

20 A. Oh, including overriding royalties and royalties,
21 probably close to 300 wells, scattered throughout.

22 Q. Okay. Now, what has been the common practice
23 that you have followed, and what has been your experience
24 in following that practice, in regard to being able to
25 obtain information from the proponent of the well in order

1 for you to make a decision whether or not to participate?

2 A. Well, normally we receive structural maps, cross-
3 sections, seismic information, this sort of thing, prior,
4 so we'll know what we're doing. This is the industry norm,
5 whether it be in New Mexico or whether it be in Oklahoma or
6 Texas.

7 And I've been on both sides of this fence,
8 selling units and taking part in them, and wells, so I know
9 what the norm is on both sides on it. If we put together a
10 drilling block and try to sell it, we furnish all the
11 information we have on it.

12 Q. All right. Does the Wayne Moore ownership
13 include interest in both Section 8 and Section 9?

14 A. That's correct.

15 Q. Okay, and is that interest the extent that was
16 previously represented by Mr. Strickler in his testimony,
17 presented --

18 A. Yes, that's correct.

19 Q. Okay. Let me just quickly ask you about a few of
20 the exhibits you have here. Is Exhibit P a title takeoff
21 that illustrates the ownership in what's called the Arch
22 Rock prospect?

23 A. Yes.

24 Q. It would be the two sections in question?

25 A. I have Section 8 here; is this the one --

1 said, We can't send you the seismic.

2 And I said, Wait a minute, we own the property,
3 number one. I'm not sure we -- that it isn't seismic
4 trespass. We were never told that there was a 3-D shooting
5 going on through there, and this very well could represent
6 seismic trespass. It would in Texas.

7 And he said it was proprietary and we could not
8 have that information.

9 And I felt like it was a necessity to have it.

10 Q. Okay. And have you received seismic before from
11 others --

12 A. Oh, sure.

13 Q. -- who have drilled wells?

14 A. That's the industry norm, is -- Other wells,
15 sure, when you're going to -- when there's, you know, we
16 see some reason for drilling the well.

17 This well was just stuck out there and said,
18 We're going to drill it. The information we received was
19 not really pertinent when you look at something 20 or 30 or
20 80 miles away.

21 Q. Exhibit R is also dated April 22, 1997, and it's
22 referenced as a farmout letter of intent.

23 A. Okay.

24 Q. Did this farmout proposal involve only the
25 property in Section 8 and Section 9?

1 didn't have enough geology to support or oppose -- We did
2 nothing in that case.

3 The geologist on the February proposal requested
4 me to try and obtain for Mr. Strickler, as is customary
5 with any exploratory proposed well, to get some seismic
6 geology, anything that we could.

7 After many conversations during the month of
8 March, then we did receive a 4-1 proposal which did allow
9 Total Minatome to review the geology, only if we amended
10 the GLA-46 as to all depths, which was unacceptable at that
11 time.

12 Q. Let me ask you about that particular matter.
13 I'll provide you with what's been marked as Exhibit 9.

14 A. Right.

15 Q. Would you identify that for the record, please?

16 A. Exhibit 9 is the April 1st proposal whereby Total
17 Minatome would be allowed to see the 2-D and 3-D seismic by
18 amending the November 27, 1951, operating agreement and
19 that they would set out a mutually agreeable time to show
20 us the Arch Rock project.

21 Q. So Burlington did acknowledge the applicability
22 of GLA-46 to the deep rights; is that correct?

23 A. Yes. I mean, that's -- That's what this was
24 saying to us.

25 The second page also talks about Total agreeing

1 geologist, Brad Watts, could not make a determination to
2 farm out at that time without seeing any geology, which is
3 customary.

4 But on the 4-1-97 letter, we were offered to see
5 the geology if we amended the GLA-46 agreement as to all
6 depths, and that was unacceptable to my management.

7 Q. Why did you cease negotiations when you got the
8 news of the compulsory pooling application?

9 A. Because in our position, we were participating in
10 the well. That is our position. And we were shown as not
11 participating for this force-pooling hearing.

12 Q. So you chose just to discontinue negotiations?

13 A. On June 23rd. We then contacted Mr. Hall and
14 decided we needed some legal representation for this
15 hearing.

16 Q. You testified something to the effect about a
17 threat that Mr. Strickler -- something about -- I'm sorry,
18 could you go into that?

19 A. The first threat in a conversation was that if we
20 did not farm out, amend the agreement or participate under
21 the new agreement, this would impact the negotiations.
22 Someone at his office had talked to corporate -- I don't
23 know who that would be -- and that this was -- we were just
24 doing this to get more money for a deal we were working on
25 to sell all our San Juan Basin properties to Burlington.

1 evidence.

2 Mr. Kellahin?

3 MR. KELLAHIN: I have no questions for this
4 witness Mr. Examiner.

5 MR. HALL: That concludes our case, Mr. Examiner.

6 EXAMINER CATANACH: I've got a couple questions.

7 EXAMINATION

8 BY EXAMINER CATANACH:

9 Q. Ms. Gilchrist, under -- As I understand it, the
10 sequence of events, you elected to participate in the
11 drilling of the wells under the terms of the GLA-46
12 agreement?

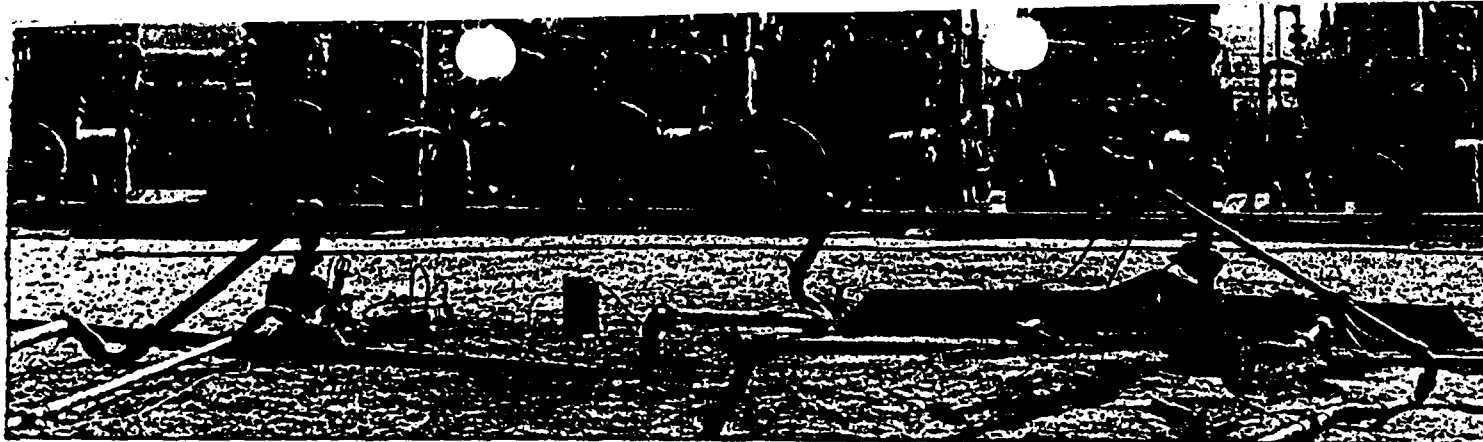
13 A. That is correct.

14 Q. Was it afterwards that you entered into further
15 negotiations with Burlington?

16 A. After Bobby Kennedy talked to our vice president,
17 he asked that -- Burlington asked, could they, you know,
18 revise the terms of the farmout proposal? And our vice
19 president said yes, and that's what precipitated the June
20 16th, 1997 --

21 Q. Okay, so you were willing to change some of the
22 terms of the operating agreement?

23 A. Yes, I actually prepared memos, as I testified a
24 while ago, to amend certain portions of it, not as to the
25 carried interest, but without the geology, our senior



Burlington's earnings on the rise

HOUSTON — Burlington Resources reported second quarter 1997 operating income of \$73 million and net income of \$79 million or \$.64 per share. Included in net income is \$31 million or \$.25 per share from profits on the sale of assets related to the company's divestiture program. For the same period last year, the company reported operating income of \$96 million and net income of \$48 million or \$.38 per share. Operating cash flow for the first half increased 50% to \$407 million as compared to \$272 million for the first half of 1996. Bobby Shackouls, president and chief executive officer of BR, stated, "Both earnings and cash flow remain strong and with the completion of the company's divestiture program, we have approximately \$500 million in cash and short-term investments. 1997 is shaping up as another strong year for BR."

Natural gas sales averaged 1,249 million cubic feet per day (mmcf/d) during the second quarter compared to 1,193 mmcf/d in the second quarter of 1996. Second quarter oil sales volumes were 45,800 barrels per day (bo/d) versus 50,400 bo/d a year ago. These volumes reflect the sale of about 100 mmcf/d of natural gas and 11,000 bo/d associated with the company's previously announced divestiture program. Realized natural gas prices decreased slightly to 1.70 per thousand cubic feet (mcf) from \$1.75 per mcf in 1996. Oil prices also decreased from \$20.29 per barrel to \$19.16 per barrel.

During the quarter, BR acquired 785,000 shares of its common stock. Since it began acquiring stock in 1988, the company has purchased approximately 31 million shares or 21 percent of its original common

stock capitalization.

During the second quarter, BR spent \$211 million on internal oil and gas capital projects including \$84 million of exploration capital. The company acquired nearly 1,300 square miles of 3-D seismic, primarily in the Gulf of Mexico, bringing BR's year-to-date seismic acquisition to nearly 3,000 square miles.

In the second quarter, BR drilled five gross exploratory

'We have approximately \$500 million in cash and short term investments. 1997 is shaping up as another strong year for BR.'

—Bobby Shackouls,
President

wells in the Permian Basin, four in the Williston Basin, and four in the Gulf Coast Basin. Five additional exploration wells were active at the end of the quarter. BR experienced a success rate of over 50% on the 24 completed exploration wells drilled so far in 1997. The company plans to initiate over 20 exploration wells in the third quarter as it continues its heightened focus on exploration. The third quarter's program remains balanced between the Williston Basin, the Permian Basin, and the Gulf Coast Basin. In total BR will drill about 80

exploratory wells in 1997.

During the quarter, BR tested a second exploratory well in its Galveston 303 field. With this well and a follow-up development well, the company has increased production in the Galveston 303 field to nearly 20 mmcf/d. BR had another significant exploration discovery at West Delta 65. The West Delta 65 No. 1 well encountered significant pay in the Ang B sand and initial production rates of over 20 mmcf/d are expected once the platform is installed. Additional pay was also encountered uphole in the Trim A & B sands and the company has scheduled a second well later this year to accelerate recovery. BR's Eugene Island 205 field had two exploratory successes in the quarter. The recently completed No. G-2ST is producing over 30 mmcf/d from the Bul 1-4 and Bul 1-5 sands. The second exploratory well, the No. G-4, is currently being completed and is anticipated to produce over 30 mmcf/d bringing the field's production to approximately 80 mmcf/d, up from less than 10 mmcf/d at the time this property was acquired in 1996.

The company also had a potentially promising exploratory success in west Texas, the Bambino No. 1. This 21,000 feet exploratory Ellenburger test encountered approximately 800 feet of exposed gas column. The well is currently being completed and should have production test results later this month. Recently, BR spudded an exploratory well in the San Juan Basin, the Marcotte No. 2. This exploratory well is the first of several wells that will test the Deep Pennsylvanian formations which the company believes may hold significant exploration potential.

Four oil companies billion to form o

By Victoria Cunningham
c.1997 Bloomberg News

Atlantic Richfield Co., Phillips Petroleum Co., Texaco Inc. and Venezuela's Corpoven SA agreed to invest \$3.5 billion to form a heavy oil joint venture.

Officials said the venture, which will be called Petrofina Hamaca, will have revenue of \$33.5 billion over its 35-year lifetime.

Arco and Corpoven, a unit of state oil company Petroleos de Venezuela SA, each own 30 percent of the venture, with Phillips and Texaco holding 20 percent each.

"We see this as a key stone for participating in many opportunities in

NAMEDROPPINGS

Shackouls elected to c

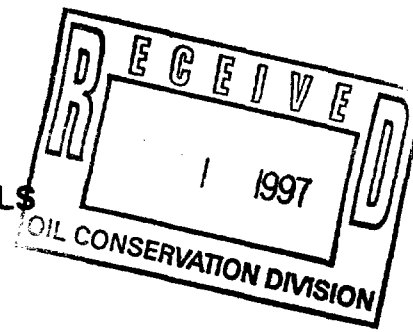
Burlington Resources Inc. Shackouls, the company's president, has been elected to the additional board. He succeeds Thomas H. O'Neil, who retired after serving as the company's president.

Shackouls, 46, joined BR in 1991 and chief operating officer. In 1993, he was elected to the board. Before joining BR, Shackouls served in senior positions at Torch Energy Advisors, Plains Minerals, and Schlumberger. He holds a BS degree from Mississippi State University.

Schneeflock to pursue

Nuevo Energy Co. announced that it has resigned as vice president of the company in order to pursue other opportunities. Schneeflock's career with Nuevo Energy Co. began in 1994 when he was chairman of the acquisition of Paramount F.

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. 11808
CASE NO. 11809

RE: APPLICATION 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

MEMORANDUM OF LEE WAYNE MOORE AND JOANN MONTGOMERY MOORE,
TRUSTEES AND TIMOTHY B. JOHNSON, TRUSTEE FOR RALPH A. BARD, JR.
TRUST CONCERNING THE OBLIGATION OF DISCLOSURE AND THE GROUNDS
UPON WHICH BURLINGTON SHOULD BE REQUIRED MAKE TECHNICAL
INFORMATION AVAILABLE

At the hearing held in the referenced cases on July 10-11, 1997, Mr. Carroll, Legal Counsel for the New Mexico Oil Conservation Division ("Division"), requested a legal memorandum concerning certain issues which arose in this proceeding. Lee Wayne Moore and JoAnn Montgomery Moore, Trustees ("Moore"), and Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983 et al. ("GLA-66 Owners") submit the following.

I. VOLUNTARY PARTIAL DISCLOSURE OF INFORMATION CREATES A
DUTY OF FULL DISCLOSURE

It is universally recognized that one who assumes to speak when under no duty to do so cannot suppress pertinent facts or state less than the whole truth. MSA

Tubular Products, Inc. v. First Bank & Trust Co., 869 F.2d 1422 (10th Cir. 1989)(citing Deardort v. Rosenbusch, 206 P.2d 996, 998 (1949)); see also Everett v. Gilliland, 47 N.M. 269, 141 P.2d 326 (1943); Swanson v. Schlumberger Technology Corp., 895 S.W.2d 719, 732 (Tex.Ct.App. 1994, reh. overruled)(duty to disclose arises if the defendant makes a partial disclosure which is not the whole truth); Ragland v. Shattuck National Bank, 36 F.3d 983 (10th Cir. 1994)(“Although a party may keep absolute silence and violate no rule of equity, yet if he volunteers to speak and to convey information which may influence the conduct of the other party, he is bound to disclose the whole truth.”)(quoting Uptegraft v. Dome Petroleum Corp., 764 P.2d 1350, 1353-54 (Okla. 1988)); Peterson v. Koch Industries, 684 F.2d 667, 671 (10th Cir. 1982)(quoting 4 Summers Oil and Gas § 662 at pp. 148-149 If a lessee is asked if he has tested the land, or knows of the existence of oil and gas structure, he may remain silent, but if he undertakes to answer, he must tell the truth.)

To reveal some information on a subject triggers the duty to reveal all known material facts. Wirth v. Commercial Resources, Inc., 96 N.M. 340, 630 P.2d 292, cert. denied, 96 N.M. 543, 632 P.2d 1181 (Ct. App. 1981); see also R.A. Peck, Inc. v. Liberty Fed. Sav. Bk., 108 N.M. 84 (Ct. App.1988). Indeed, when a party undertakes to speak and conceals or suppresses the truth, such partial disclosure and concealment which induces the other party to part with his property may constitute fraud or deceit. Consolidated Oil & Gas, Inc. v. Ryan, 250 F.Supp 600, 607 (N.D. Ark. 1966).

The legal and ethical aspects of negotiations and a party's duty of disclosure and the right to maintain confidentiality in natural resource transactions was addressed head-on in the recent Rocky Mountain Mineral Law Institute article, Moye and McNeil,

Legal and Ethical Aspects of Negotiations--Duties of Disclosure and the Right to Maintain Confidentiality in Natural Resources Transactions, 42 Rocky Mtn. Min. L. Inst. 1 (1996). The authors note that while an outright lie is not welcome in negotiations, negotiators are seemingly less inclined to view selective disclosure as deceitful. Id. p. 1-24. While "telling all" seems counter-intuitive in negotiations, once disclosure begins, a misleading half-truth is often as deceiving as an outright lie. Id. Voluntary disclosure of information thus creates a duty to disclose the whole truth necessary to avoid misleading the other party, even if no duty between the parties previously existed. Id. Similarly, disclosure of some information in response to an inquiry by the other party creates a duty to be certain that the information provided is not misleading. Id. (citing Consolidated Oil & Gas, Inc. v. Ryan, 250 F.Supp 600 (N.D. Ark. 1966)).

In discussing the duties of a potential buyer's disclosure obligations to a potential seller, as would govern Burlington's disclosure obligations to the GLA-66 Owners and Moore as part of its offers to purchase their deep working interest rights, Moye and McNeil state as follows:

The more difficult question is whether a buyer who has independently investigated the value of an asset through the buyer's own resources and without violating any rights of the seller should be required to disclose fully the buyer's results or respond to the seller's inquiries about them. The cases and authorities appear to require that the buyer, like a seller, must make full disclosure if the buyer undertakes to disclose any of its findings either voluntarily or in response to an inquiry.

Moye and McNeil, supra 42 Rocky Mtn. Min. L. Inst. 1, 1-24 (emphasis added).

James R. J. Strickler, Senior Staff Landman for Burlington was the Burlington employee tasked with consolidating the working interests and operating rights interests in Sections 8 and 9, T31N, R10W, San Juan County New Mexico for the wells. See

Hearing Transcript attached hereto as Exhibit "A" at p. 27. In various of his correspondence and conversations with the GLA-66 Owners, Moore, and/or their representatives, Mr. Strickler volunteered some information concerning the risk Burlington associated with the wells. Particularly, Mr. Strickler informed certain of the GLA-66 Owners at various times that the wells were "very high-risk, ten-percent chance of success", that he personally would not invest in the well, and that they would be "better off putting their money in the stock market." See Hearing Transcript attached hereto as Exhibit "A" at p. 77.

Burlington's "Deep Penn" Team, along with a cohort team from its joint venture partner, Conoco, has been actively studying the prospect of a Deep Pennsylvanian play in the San Juan Basin for at least two and one-half years. See Hearing Transcript attached hereto as Exhibit "A" at p. 65. Burlington has undertaken an extensive geological and geophysical study of the Deep Pennsylvanian formation employing, among other resources, three-dimensional ("3-D") seismic studies. Indeed, as an end result of this effort, Burlington and Conoco's geologists and geophysicists chose the precise location for the wells based on their "studies". Hearing Transcript attached hereto as Exhibit "A" at p. 91. Burlington and Conoco obviously bring highly skilled personnel to this project.

The 3-D seismic data obtained by Burlington and Conoco has undoubtedly yielded valuable information concerning the drilling targets which in effect decrease the level of technical risk associated with drilling the particular geologic structures Burlington is targeting. As noted in another recent Rocky Mountain Mineral Law Institute article:

If 3D seismic data are properly gathered, properly processed, and properly interpreted, much can be learned about the subsurface. Resulting images, measurements, and calculations are substantially improved over 2D seismic. As with 2D seismic data, geologic structures can be identified. However, with 3D seismic data under appropriate conditions, subsurface structures can be imaged in much greater detail with far greater accuracy. That is, we can image a structure, measure its depth and thickness, and, as never before, calculate its volume directly from the seismic data. Under appropriate conditions, the specific type of rock can be identified and its variability across the structure can be determined and mapped. Porosity and its variations may also be determined throughout the rock. From porosity, permeability may be inferred. Moreover, the contents of the pores (e.g., oil vs. gas vs. water) can be identified. Finally, if seismic data are gathered through time (i.e. 4D seismic data), the drainage pattern of a reservoir can be traced and lenses of by-passed hydrocarbons can be identified, resulting in greater hydrocarbon recovery.

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Second, such a duplicative effort by the GLA-66 Owners and Moore would necessarily result in needless expense and economic waste to these individuals in order for them to protect their correlative rights. Pursuant to NMSA 1978 Section 70-2-11, the New Mexico legislature mandated that **it is its duty** of the Division to prevent waste and to protect correlative rights. Id. (emphasis added.) Further, the legislature, pursuant to NMSA 1978 Section 70-2-17, mandated that Division pooling orders "**shall** be upon such terms and conditions as are **just and reasonable** and will afford to the

owner or owners of each tract or interest in the unit the opportunity to recover or receive **without unnecessary expense** his just and fair share of the oil or gas, or both." Id. (emphasis added.)

Respectfully submitted,



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CERTIFICATE OF SERVICE

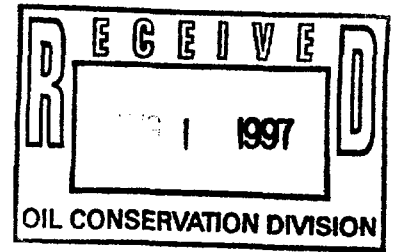
I certify that I have caused a true and correct copy of the foregoing to be transmitted by facsimile to counsel of record on this 1ST day of July, 1997



JASON E. DOUGHTY

**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. 11808
CASE NO. 11809**

**RE: APPLICATION 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**

**MEMORANDUM OF LEE WAYNE MOORE AND JOANN MONTGOMERY MOORE,
TRUSTEES AND TIMOTHY B. JOHNSON, TRUSTEE FOR RALPH A. BARD, JR.
TRUST CONCERNING THE OBLIGATION OF DISCLOSURE AND THE GROUNDS
UPON WHICH BURLINGTON SHOULD BE REQUIRED MAKE TECHNICAL
INFORMATION AVAILABLE**

At the hearing held in the referenced cases on July 10-11, 1997, Mr. Carroll, Legal Counsel for the New Mexico Oil Conservation Division ("Division"), requested a legal memorandum concerning certain issues which arose in this proceeding. Lee Wayne Moore and JoAnn Montgomery Moore, Trustees ("Moore"), and Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983 et al. ("GLA-66 Owners") submit the following.

**I. VOLUNTARY PARTIAL DISCLOSURE OF INFORMATION CREATES A
DUTY OF FULL DISCLOSURE**

It is universally recognized that one who assumes to speak when under no duty to do so cannot suppress pertinent facts or state less than the whole truth. MSA

Tubular Products, Inc. v. First Bank & Trust Co., 869 F.2d 1422 (10th Cir. 1989)(citing Deardort v. Rosenbusch, 206 P.2d 996, 998 (1949)); see also Everett v. Gilliland, 47 N.M. 269, 141 P.2d 326 (1943); Swanson v. Schlumberger Technology Corp., 895 S.W.2d 719, 732 (Tex.Ct.App. 1994, reh. overruled)(duty to disclose arises if the defendant makes a partial disclosure which is not the whole truth); Ragland v. Shattuck National Bank, 36 F.3d 983 (10th Cir. 1994)(“Although a party may keep absolute silence and violate no rule of equity, yet if he volunteers to speak and to convey information which may influence the conduct of the other party, he is bound to disclose the whole truth.”)(quoting Uptegraft v. Dome Petroleum Corp., 764 P.2d 1350, 1353-54 (Okla. 1988)); Peterson v. Koch Industries, 684 F.2d 667, 671 (10th Cir. 1982)(quoting 4 Summers Oil and Gas § 662 at pp. 148-149 If a lessee is asked if he has tested the land, or knows of the existence of oil and gas structure, he may remain silent, but if he undertakes to answer, he must tell the truth.)

To reveal some information on a subject triggers the duty to reveal all known material facts. Wirth v. Commercial Resources, Inc., 96 N.M. 340, 630 P.2d 292, cert. denied, 96 N.M. 543, 632 P.2d 1181 (Ct. App. 1981); see also R.A. Peck, Inc. v. Liberty Fed. Sav. Bk., 108 N.M. 84 (Ct. App.1988). Indeed, when a party undertakes to speak and conceals or suppresses the truth, such partial disclosure and concealment which induces the other party to part with his property may constitute fraud or deceit. Consolidated Oil & Gas, Inc. v. Ryan, 250 F.Supp 600, 607 (N.D. Ark. 1966).

The legal and ethical aspects of negotiations and a party's duty of disclosure and the right to maintain confidentiality in natural resource transactions was addressed head-on in the recent Rocky Mountain Mineral Law Institute article, Moye and McNeil,

Legal and Ethical Aspects of Negotiations--Duties of Disclosure and the Right to Maintain Confidentiality in Natural Resources Transactions, 42 Rocky Mtn. Min. L. Inst. 1 (1996). The authors note that while an outright lie is not welcome in negotiations, negotiators are seemingly less inclined to view selective disclosure as deceitful. Id. p. 1-24. While "telling all" seems counter-intuitive in negotiations, once disclosure begins, a misleading half-truth is often as deceiving as an outright lie. Id. Voluntary disclosure of information thus creates a duty to disclose the whole truth necessary to avoid misleading the other party, even if no duty between the parties previously existed. Id. Similarly, disclosure of some information in response to an inquiry by the other party creates a duty to be certain that the information provided is not misleading. Id. (citing Consolidated Oil & Gas, Inc. v. Ryan, 250 F.Supp 600 (N.D. Ark. 1966)).

In discussing the duties of a potential buyer's disclosure obligations to a potential seller, as would govern Burlington's disclosure obligations to the GLA-66 Owners and Moore as part of its offers to purchase their deep working interest rights, Moye and McNeil state as follows:

The more difficult question is whether a buyer who has independently investigated the value of an asset through the buyer's own resources and without violating any rights of the seller should be required to disclose fully the buyer's results or respond to the seller's inquiries about them. **The cases and authorities appear to require that the buyer, like a seller, must make full disclosure if the buyer undertakes to disclose any of its findings either voluntarily or in response to an inquiry.**

Moye and McNeil, supra 42 Rocky Mtn. Min. L. Inst. 1, 1-24 (emphasis added).

James R. J. Strickler, Senior Staff Landman for Burlington was the Burlington employee tasked with consolidating the working interests and operating rights interests in Sections 8 and 9, T31N, R10W, San Juan County New Mexico for the wells. See

Hearing Transcript attached hereto as Exhibit "A" at p. 27. In various of his correspondence and conversations with the GLA-66 Owners, Moore, and/or their representatives, Mr. Strickler volunteered some information concerning the risk Burlington associated with the wells. Particularly, Mr. Strickler informed certain of the GLA-66 Owners at various times that the wells were "very high-risk, ten-percent chance of success", that he personally would not invest in the well, and that they would be "better off putting their money in the stock market." See Hearing Transcript attached hereto as Exhibit "A" at p. 77.

Burlington's "Deep Penn" Team, along with a cohort team from its joint venture partner, Conoco, has been actively studying the prospect of a Deep Pennsylvanian play in the San Juan Basin for at least two and one-half years. See Hearing Transcript attached hereto as Exhibit "A" at p. 65. Burlington has undertaken an extensive geological and geophysical study of the Deep Pennsylvanian formation employing, among other resources, three-dimensional ("3-D") seismic studies. Indeed, as an end result of this effort, Burlington and Conoco's geologists and geophysicists chose the precise location for the wells based on their "studies". Hearing Transcript attached hereto as Exhibit "A" at p. 91. Burlington and Conoco obviously bring highly skilled personnel to this project.

The 3-D seismic data obtained by Burlington and Conoco has undoubtedly yielded valuable information concerning the drilling targets which in effect decrease the level of technical risk associated with drilling the particular geologic structures Burlington is targeting. As noted in another recent Rocky Mountain Mineral Law Institute article:

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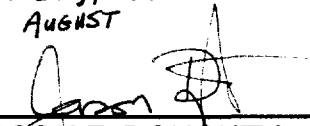
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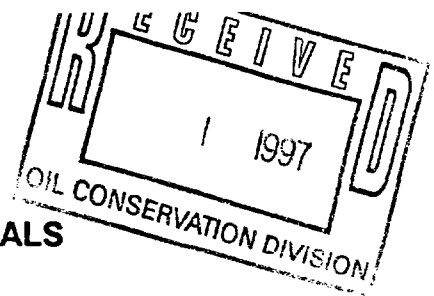
CERTIFICATE OF SERVICE

I certify that I have caused a true and correct copy of the foregoing to be transmitted by facsimile to counsel of record on this 1st day of July, 1997

AUGUST


JASON E. DOUGHTY

BEFORE THE
OIL CONSERVATION DIVISION
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IN THE MATTER OF THE HEARING
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CASE NO. 11808

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