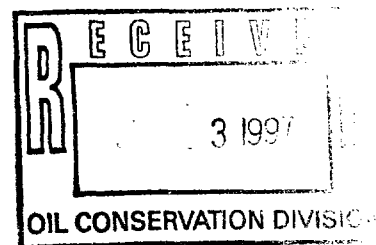


**BEFORE THE
OIL CONSERVATION DIVISION
NEW MEXICO DEPARTMENT OF ENERGY, MINERALS
AND NATURAL RESOURCES**

**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 BRIEF IN SUPPORT OF LEE WAYNE MOORE AND JOANN
MONTGOMERY MOORE, TRUSTEES AND TIMOTHY B. JOHNSON, TRUSTEE FOR
RALPH A. BARD, JR. TRUST U/A/D FEBRUARY 12, 1983 ET AL.'S MOTION TO
DISMISS THE APPLICATIONS OF BURLINGTON RESOURCES FOR COMPULSORY
POOLING AND A NON-STANDARD PRORATION AND SPACING UNIT, SECTIONS
8 AND 9, T31N-R10W, NMPM, SAN JUAN COUNTY, NEW MEXICO**

Lee Wayne Moore and Joann Montgomery Moore, Trustees and Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983 et al. (hereinafter sometimes collectively referred to as "Movants") by and through their attorneys, GALLEGOS LAW FIRM, P.C., hereby submit this brief in support of their Motion to Dismiss the referenced Applications of Burlington Resources Oil and Gas Company ("Burlington") for compulsory pooling and non-standard proration and spacing units, Sections 8 and 9, T31N-R10W, NMPM.

ARGUMENT

POINT ONE: BURLINGTON FAILED TO TAKE REASONABLE STEPS TO OBTAIN THE VOLUNTARY JOINDER OF THE MOVANTS IN ITS PROPOSED DEEP PENNSYLVANIAN TEST WELLS

A. BACKGROUND.

1. On April 22, 1997, James R. J. Strickler, Senior Staff Landman for Burlington submitted to Lee Wayne Moore and Joann Montgomery Moore, Trustees a proposed Well Cost Estimate, Authority for Expenditure, and Joint Operating Agreement for Burlington's proposed Marcotte Well No. 2. and Scott Well No. 24 wells (the "wells"). Burlington proposed to drill these wells in Sections 8 and 9 respectively, T31N-R10W San Juan County, New Mexico to a depth of approximately 14,000' and at an estimated total cost of \$2,316,973. Burlington has assigned only a 10% chance of success to these wells.

2. Immediately upon receiving the referenced documents from Burlington, Mr. Moore contacted Mr. Strickler at Burlington requesting an opportunity to review and/or discuss Burlington's technical data, studies and information that supported the drilling of these supposedly highly risky and expensive wells in which Burlington requested him to participate. Mr. Moore explained to Mr. Strickler that access to such information was absolutely necessary for Mr. Moore to make an informed decision on whether or not to participate in the wells. Burlington flatly refused to share any of its data or information supporting the drilling of the wells with Mr. Moore. Note that Burlington conducted its geological and geophysical operations on, and gained knowledge of, Mr. Moore's leasehold without permission from Mr. Moore.

3. The Joint Operating Agreement tendered by Meridian to Mr. Moore for the wells contained unreasonable and unacceptable terms, to include a non-consent penalty of

400% should a working interest owner chose not to participate in the drilling of the wells. By comparison, the New Mexico Compulsory Pooling Statute Section 70-2-17 (C) NMSA 1978 limits such penalty to not more than 200%.

4. Mr. Moore is an active oil and gas industry participant and owns interests in over 300 wells. However, due to the total lack of information from Burlington supporting the drilling of the wells upon which Mr. Moore could use to make an informed decision as well as the unreasonable terms of Burlington's tendered Joint Operating Agreement, Mr. Moore had no alternative but to decline to participate with Burlington in drilling the wells. See Moore Affidavit attached hereto as Exhibit "A".

5. On April 29, 1997 James R. J. Strickler, Senior Staff Landman for Burlington submitted to the group of owners consisting of Timothy B. Johnson, Trustee for Ralph A. Bard, Jr. Trust U/A/D February 12, 1983 et al. (hereafter "Section 9 Owners") a proposed Well Cost Estimate, Authority for Expenditure, and Joint Operating Agreement for Burlington's proposed Scott Well No. 24. Burlington proposed to drill this well in on 640 acre spacing in Section 9, T31N-R10W to a depth of 14,000' at an estimated total cost of \$2,316,973. Burlington assigned only a 10% chance of success to this well.

6. The Joint Operating Agreement tendered by Meridian to Section 9 Owners for the Scott Well No. 24 contained the same unreasonable and unacceptable terms discussed above.

7. Collectively, the Section 9 Owners hold over 64.4% of the working interest in Burlington's proposed Scott Well No. 24 and, as such, would contribute over 64.4% of the costs of drilling this well.

8. On May 9, 1997, J. E. Gallegos, on behalf of the Section 9 Owners sent a letter to Mr. Strickler requesting, inter alia, an opportunity to review and/or discuss Burlington's data and information that supported the drilling of the highly risky and expensive Scott Well No. 24 in which Burlington requested the Section 9 Owners to participate. See Letter attached hereto as Exhibit "A". Mr. Gallegos noted that the requested data was necessary to make an informed judgment concerning the proposed well and assured Mr. Strickler that the data would be treated with strict confidentiality. Id. However, as with Mr. Moore, Burlington flatly refused to share any of its data or information supporting the drilling of this well.

9. Due to the total lack of information from Burlington upon which to make an informed decision concerning the drilling of the Scott Well No. 24, as well as the unreasonable terms of Burlington's tendered Joint Operating Agreement, the Section 9 Owners chose not to voluntarily participate with Burlington in drilling this well.

10. On June 11, 1997, Burlington filed its application in NMOCD Case No. 11809 seeking, inter alia, an Order from the Division compulsory pooling all of Section 8, T31N, R10W, NMPM San Juan County, New Mexico, for the Marcotte Well No. 2. Movant Lee Wayne Moore and Joann Montgomery Moore, Trustees acreage contribution to this proposed well is 2.2517% and, as such, their estimated cost contribution would be approximately \$52,171.

11. On June 12, 1997, Burlington filed its application in NMOCD Case No. 11808 seeking, inter alia, an Order from the Division compulsory pooling all of Section 9, T31N, R10W, NMPM San Juan County, New Mexico, for the Scott Well No. 24. The Section 9 Owners' cumulative acreage contribution to this proposed well is approximately

64.4% and, as such, their estimated cost contribution would be approximately \$1,492,130. Movant Lee Wayne Moore and Joann Montgomery Moore, Trustees acreage contribution to this proposed well is .294805% and, as such, their estimated cost contribution would be approximately \$6,830.

B. BURLINGTON FAILED TO MAKE REASONABLE EFFORTS TO OBTAIN VOLUNTARY JOINDER OF THE MOVANTS PRIOR TO FILING ITS APPLICATIONS FOR COMPULSORY POOLING

Decisions concerning whether or not to participate in risky and expensive wells are not based upon whim. Correspondingly, they should not be based on coercion by a prospective operator. Rather, such decisions are normally based upon informed judgment only after a careful review and analysis of the data and information supporting the project. There is not doubt that Burlington's decision to drill the wells must be based upon and supported by, inter alia, geologic, geophysical and engineering information and data gathered and analyzed over an extended period, probably years.

It is reasonable and indeed very common in the oil and gas industry for a party proposing a well or other project to share its supporting data in order to allow the other parties to make an informed decision. Such cooperative efforts by a proposed operator are even more critical in high risk and high cost projects such as the wells. Not so with Burlington, however. As indicated above, all of the Movant's reasonable requests for information concerning the wells were rebuffed. By refusing to share any of its data, Burlington is in asking the Movants to blindly invest well over a million and one half dollars in its admittedly high-risk, expensive Deep Pennsylvanian wells, or lose their property rights.

The absolute inequity of this situation, and of Burlington's bad faith dealings with the Movants, is most obvious as concerns the Scott Well No. 24. If Burlington's compulsory pooling application were granted, movants cumulative acreage contribution to this proposed well would be approximately 64.7%. As such, their estimated cost contribution for this estimated \$2,316,973 well would be approximately \$1,492,130. In contrast, Burlington, the proposed operator of the well and the party with all the supporting data, will contribute only slightly over 10.3% of the acreage for an estimated cost contribution of \$238,648. Thus, if Burlington's Application for compulsory pooling is granted, the Movants will be forced to either bear the majority of Burlington's high-risk exploration program, or go non-consent and forfeit their ownership through the imposition of the statutory risk penalty, all without the benefit of having any technical data to support their decision.

Despite this total information stonewall and the unreasonable terms of its proffered Joint Operating agreements discussed above, Burlington has the audacity to proudly proclaim in its Applications to the Division that, "Despite its good faith efforts, Burlington has not been able to obtain the voluntary agreement of certain mineral owners as indicated on Exhibit "B". If Burlington considers its actions toward the Movants as constituting a "good faith effort", their hardball approach must be something to see.

As clearly shown above, Burlington's treatment of the Movants does not even come close to meeting its obligation as operator under the statutory mandate of NMSA 1878 § 70-2-17 (C) and custom and practice of the Division to have made reasonable efforts to adequately obtain voluntary joinder of all working interest owners for further development of the acreage at issue prior to filing an application for compulsory pooling. If anything,

Burlington's systematic bad faith in dealing with the Movants shines through. As such, Burlington's Applications in Cases 11808 and 11809 should be dismissed.

**POINT TWO: BURLINGTON DOES NOT HAVE A RIGHT TO REQUEST AND THE
DIVISION CANNOT GRANT BURLINGTON'S APPLICATION FOR
COMPULSORY POOLING BASED UPON 640 ACRE SPACING**

In its Order No. R-10815 entered on June 5, 1997, the Commission purported to modify NMOCD Rule 104 to provide for, inter alia, 640-acre "deep gas" spacing in certain areas of the San Juan Basin, to include San Juan County. NMOCD Rule 104 provides for, inter alia, 160 acre spacing for wildcat gas wells in San Juan County, New Mexico.

Burlington's Applications in its pending compulsory pooling cases, Cases 11808 and 11809, employ the increased 640-acre spacing requirements of Rule 104, as amended, in seeking an order from the Division for compulsory pooling of the entirety of Sections 8 and 9, T31N-R10W, San Juan County for its Marcotte Well No. 2 and Scott Well No. 24, discussed above. Burlington's reliance on the increased 640-acre spacing requirements of Rule 104, as amended, however, is premature and ineffective. The Commission's Order No. R-10815 expressly stated that "Rule 104 as amended shall be effective on the date of its publications in the New Mexico Register." On the dates that Burlington filed its applications in cases 11808 and 11809, June 12th and 11th, respectively, Rule 104 as amended had not been published in the New Mexico Register. Indeed, as of the date of filing this Motion, Rule 104 as amended has still not been published in the New Mexico Register. As such, pursuant to Commission's Order R-10815, Rule 104 as amended is not effective.

Compulsory pooling is available **only** for spacing units consistent with the well spacing adopted by the Division. Since the amended Rule 104 is not yet effective, the unamended Rule 104, which provides for **160** acre spacing for wildcat wells in San Juan county, is the controlling spacing rule governing Burlington's compulsory pooling applications in cases 11808 and 11809. Thus, Burlington has no right to request, and the Division has no authority to order, that the entirety of Sections 8 (639.78 acres) and/or 9 (636.01 acres), T31N, R10W, San Juan County, New Mexico be compulsory pooled. As such, Burlington's Applications in Division cases 11808 and 11809 should be dismissed.

CONCLUSION

Burlington failed to undertake reasonable efforts to obtain the voluntary joinder of the Movants in its proposals to drill its Marcotte Well No. 2 and Scott Well No. 24 wells. In addition, under the presently effective NMOCD Rule 104, Burlington has no right to request, and the Division has no authority to order, compulsory pooling of acreage in excess of 160 acres for the Marcotte Well No. 2 and Scott Well No. 24 wells. For the foregoing reasons as well as those contained in the Movants motion, Burlington's applications in Division cases 11808 and 11809 must be dismissed.

Respectfully submitted,



JASON E. DOUGHTY
J. E. GALLEGOS
GALLEGOS LAW FIRM, P.C
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Santa Fe, New Mexico 87505
(505) 983-6686

GALLEGOS LAW FIRM

A Professional Corporation

EXHIBIT A

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Santa Fe, New Mexico 87505
Telephone No. 505-983-6686
Telefax No. 505-986-1367
Telefax No. 505-986-0741

May 9, 1997
(Our File No. 92-170.00)

J.E. GALLEGOS *

James R. J. Strickler
Senior Staff Landman
Burlington Resources
San Juan Division
3535 East 30th Street
Farmington, New Mexico 87499-4289

Re: Scott #24 Well Pennsylvania Formation

Dear Mr. Strickler:

This is written in reference to your letter of April 29, 1997 to "Working Interest Owners." We represent all of those owners on your Exhibit "A" attached indicated by a check mark. As you know, those parties hold federal lease SF 078389 which includes the E/2 and SW/4 of Section 9, and so a G.W.I. in that section of almost 65%.

In order to make a informed judgment concerning Burlington's preferred AFE and Operating Agreement for an exploratory well having a dry hole cost of \$1.713 million considerable information is needed. Accordingly, it is requested that Burlington provide immediately its complete work-up on the proposed well, geological studies and seismic data and any other technical information relied on. Please also provide the technical basis for seeking to include the entire Section 9 under the Operating Agreement for the well when, under NMOCD spacing for wildcat wells, the Scott 24 can be drilled on the 160-acres of the NW/4.

We agree that the information provided will be treated with strict confidentiality. Of course, consultation by technical experts will be used by our clients but the consultants will also be subject to the customary confidentiality restrictions.

I will appreciate a response from you as soon as possible.

Sincerely,

GALLEGOS LAW FIRM, P.C.

By


J.E. GALLEGOS

JEG:sa

fxc: John Cooney
John Bemis
Steve Hunsicker

* New Mexico Board of Legal Specialization
Recognized Specialist in the area of
Natural Resources-Oil and Gas Law

ioc: Jason E. Doughty
Caroline C. Woods
bcc: Executive Committee

EXHIBIT "A"

Attached to and made a part of that certain Operating Agreement dated April 1, 1997, by and between BURLINGTON RESOURCES OIL & GAS COMPANY, as Operator, and as Non-Operators.

I. LANDS SUBJECT TO OPERATING AGREEMENT:

Township 31 North, Range 10 West
Section 9: Lots 1-12, N/2 N/2
San Juan County, New Mexico
containing 636.01 acres, more or less

II. RESTRICTIONS, IF ANY, AS TO DEPTHS OR FORMATIONS:

Limited to all depths below the Dakota formation.

III. ADDRESSES AND WORKING PERCENTAGE INTERESTS OF PARTIES TO THIS AGREEMENT:

Burlington Resources Oil & Gas Company
c/o Land Department
P.O. Box 4289
Farmington, New Mexico 87499
Main # 505-326-9700
Fax # 505-326-9781

OPERATOR
10.311905%

NON-OPERATORS

Working Interest Owners

GWI

CONOCO INC.
10 DESTA DRIVE , SUITE 100W
MIDLAND, TX 79705-4500

10.311905%

AMOCO PRODUCTION COMPANY
P.O. BOX 800
DENVER, CO 80201

10.175500%

TOTAL MINATOME CORP.
2 HOUSTON CENTER, SUITE 2000
909 FANNIN
P.O. BOX 4326
HOUSTON, TX 77210-4326

3.553900%

LEE WAYNE MOORE
AND JOANN MONTGOMERY MOORE, TRUSTEES
403 N. MARIENFIELD
MIDLAND, TX 79701

0.294805%

EXHIBIT "A" CONT.

GEORGE WILLIAM UMBACH .369518%
2620 S. MARYLAND PKWY. #496
LAS VEGAS, NV 89109

ROBERT WARREN UMBACH .369518%
P.O. BOX 5310
FARMINGTON, NM 87499

LOWELL WHITE FAMILY TRUST .037019%
C/O SUNWEST BANK OF ALBUQUERQUE, N.A.
ATTN: CATHERINE RUGEN
P.O. BOX 26900
ALBUQUERQUE, NM 87125-0500

WALTER A. STEELE .037019%
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ESTATE OF G. W. HANNETT .030850%
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MARY EMILY VOLLER .006170%
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A. T. HANNETT .006170%
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HOPE G. SIMPSON 0.651006% ✓
C/O SIMPSON ESTATES INC.
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CHICAGO, IL 60602-2504

EXHIBIT "A" CONT.

NANCY H. GERSON (FKA NANCY H. HASKENS)
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ROBERT T. ISHAM
335 HOT SPRINGS RD.
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1.205033% ✓

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4005 PINOLE VALLEY RD.
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7454 N. DESERT TREE DR.
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0.164464% ✓

WILLIAM P. SUTTER
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ROOM 4300
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0.685295% ✓

EXHIBIT "A" CONT.

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1070 N. ELM TREE RD
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1.525335% ✓

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C/O TRUST CO OF NEW YORK
ATTN: BARRY WALDORF
114 WEST 47TH STREET
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3.906037% ✓

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EXHIBIT "A" CONT.

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EXHIBIT "A" CONT.

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8.061201% ✓

GUY R. BRAINARD JR. TRUSTEE, OF
THE GUY R. BRAINARD JR TRUST
DATED 9/9/82
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RALPH U. FITTING JR, TRUST
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SABINE ROYALTY TRUST
C/O PACIFIC ENTERPRISES
ABC CORPORATION
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3131 TURTLE CREEK BLVD.
DALLAS, TX 75219

0.626723% ✓

JUDITH SHAW TRUST
U/A/D 4-14-66
THOMASVILLE RT. BOX 60-B
BIRCH TREE, MO 65438

1.021342% ✓

NANCY C. BARD LISA BARD FIELD
SHARON BARD WAILES & TRAVIS
BARD IND & COLLECTIVELY AS
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609 RICHARDS LAKE RD.
FT COLLINS, CO 80524

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ELIZABETH T. ISHAM TRUST
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WILLIAM W. SHAW TRUST
U/A/D 12-28-63
THOMASVILLE RT BOX 60-B
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EXHIBIT "A" CONT.

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F F WEBSTER IV TRUST ESTATE
(FKA WEBSTER PROPERTIES PARTN)
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U/A/D 1-2-57
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1.083016% ✓

SUSANNE SHAW TRUST
U/A/D 9/11/53
THOMASVILLE RT BOX 60-B
BIRCH TREE, MO 65438

1.083016% ✓

ARCH W. SHAW II TRUST
U/A/D 2/1/71
THOMASVILLE RT BOX 60-B
BIRCH TREE, MO 65438

1.083016% ✓

BRUCE P. SHAW TRUST
U/A/D 6/8/72
THOMASVILLE RT BOX 60-B
BIRCH TREE, MO 65438

1.083016% ✓

EXHIBIT "A" CONT.

NORMAN L. HAY JR., TRUSTEE OF THE
NORMAN L. HAY JR GS TRUST
3208 ELDON LN
WACO, TX 76710

0.832603%



EDWARD L. RYERSON JR TRUST
(FKA EDWARD L. RYERSON)
CAMBRIDGE TRUST CO TRUSTEE
ATTN: DAVID STRACHAN
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0.520755%



MARGARET STUART HART
NORTHERN TRUST BANK/LAKE FOREST
& MARGARET STUART HART CO-TRUSTEE
U/A ROBERT DOUGLAS STUART
PO BOX 226270
DALLAS, TX 75222

0.774329%



ROBERT DOUGLAS STUART JR
NORTHERN TRUST BANK/LAKE FOREST
& ROBERT DOUGLAS STUART JR
CO-TRUSTEE U/A ROBERT D. STUART
PO BOX 226270
DALLAS, TX 75222

0.774329%



ANNE STUART BATCHELDER, TRUST.
FIRST NATL BANK OF CHICAGO &
U/A ROBERT DOUGLAS STUART
ATTN: GAYLE COTTON
8150 N CENTRAL EXPY STE 1211
DALLAS, TX 75206

0.774329%



HARRIET STUART SPENCER
FIRST NATL BANK OF CHICAGO &
U/A ROBERT DOUGLAS STUART
ATTN: GAYLE COTTON
8150 N CENTRAL EXPY, STE 1211
DALLAS, TX 75206

0.774329%



TOTAL

100.000000%