

DISTRICT COURT, LA PLATA COUNTY, COLORADO

Court Address: 1060 E. Second Ave., Durango, CO 81301

Phone Number: (970) 247-2304

Plaintiff(s):

RICHARD PARRY, LINDA PARRY, EVELYN L. PAYNE, and
DAVID G. GROBLEBE, individually and as representative
Plaintiffs on behalf of persons similarly situated, (94 CV 111)

(Consolidated with other cases as 94 CV 105)

v.

Defendant(s):

AMOCO PRODUCTION COMPANY, a
Delaware corporation, n/k/a BP America Production Company.

Attorney or Party Without Attorney:

Thomas P. Dugan, Esq.

DUGAN & ASSOCIATES, P.C.

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Case No.: 94 CV 105

Div: Ctrm:

**MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION
TO CLARIFY ORDER ON EFFECT OF DIVISION ORDERS,
AND ALTERNATIVE C.R.C.P. 59 MOTION TO AMEND FINDINGS**

Defendant Amoco Production Company, n/k/a BP America Production Company, respectfully submits this memorandum in support of its motion to clarify the Order on Effect of Division Orders ("the Order") entered October 6, 2003, and alternative C.R.C.P. 59 motion to amend findings.

I. INTRODUCTION

During the liability trial in August 2002, Amoco offered into evidence both testimony and exhibits concerning division orders in this case. The testimony was by Brenda Dickey, an Amoco division order analyst, and Professor Patrick Martin, an expert on oil and gas matters. The division order exhibits consisted of Exhibits 2005 (summary of division orders and transfer orders in this case), 2006 (backup for summary), 2916-2924 (exemplar division orders executed by members of the class), 2926 (letter by class member regarding division order), and 2927 (same).

The plaintiffs objected to the admission of any evidence concerning division orders. *See, e.g.*, Plaintiffs' Trial Memorandum Regarding Division Orders; Transcript 8/22/02 (Dickey); and Transcript 8/28/02 (Martin); *compare, e.g.*, Amoco Production Company's Response to Plaintiffs' Trial Memorandum Regarding Division Orders.

The Court allowed the witnesses to testify and received the exhibits, subject to resolution of plaintiffs' objections. Transcript 8/22/02 (Dickey); Transcript 8/28/02 (Martin); and Transcript 8/29/02 (exhibits).

II. DISCUSSION

According to page 3 of the Order, "royalty instruments which are 'silent' as to allocation of costs are not modified by any cost allocation language found in the division orders." Thus, the division orders do not "supply the specific cost allocations where the royalty clause has been construed as 'silent' as to the allocation of costs." Order, page 2.

The Order does not make specific reference to plaintiffs' trial objections to Amoco's division order evidence. It appears the logical effect of the Order, however, is to declare inadmissible the

division order evidence offered by Amoco during trial. If, as the Court determined in the Order, the division orders do not “supply” information useful in defining the royalty agreements reached by Amoco and members of the class, the division orders themselves as well as testimony and documents relating to them would not be admissible for purposes of the liability determination. Although Amoco respectfully disagrees with the Order and hereby preserves and does not waive its position that division order evidence is admissible and determinative of the liability issue, or at the very least probative of it, Amoco requests that the Court enter an order clarifying whether the following are inadmissible by operation of the Order: (i) testimony by Brenda Dickey concerning division and transfer orders, (ii) testimony by Professor Martin concerning division and transfer orders, and (iii) defendant’s Exhibits 2005, 2006, 2916-2924, 2926, and 2927. Without waiver of its position concerning the admissibility and effect of the division and transfer orders, Amoco submits herewith a proposed Order based on the assumption that the logical effect of the Order is to sustain plaintiffs’ objections to such evidence.

III. ALTERNATIVE C.R.C.P. 59 MOTION

In the event the Orders entered October 6, 2003, as amended by the Order entered October 30, 2003, are deemed to constitute final judgments subject to appeal, Amoco moves in the alternative under C.R.C.P. 59(a) to amend and/or clarify the Order for the reasons set forth above.

RESPECTFULLY SUBMITTED this 5th day of December, 2003.

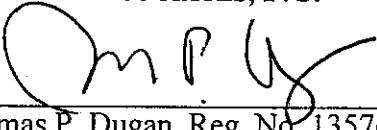
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By 

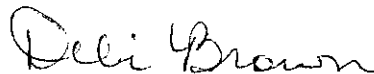
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ATTORNEYS FOR AMOCO PRODUCTION COMPANY

CERTIFICATE OF SERVICE

I do hereby certify that I have served a true and correct copy of the above and foregoing **MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO CLARIFY ORDER ON EFFECT OF DIVISION ORDERS, AND ALTERNATIVE C.R.C.P. 59 MOTION TO AMEND FINDINGS** on the following parties this 5th day of December, 2003, by (*) hand delivery; (**) delivery of same to their respective Court pick-up box; (***) depositing the same in the United States mail, postage prepaid, or (****) via facsimile transmission to the number listed below:

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