

**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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**Atty. Reg. #:** 13576

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**Case No.:** 94 CV 105

**Div:**                      **Ctrm:**

**MOTION TO RECONSIDER OCTOBER 6 AND  
OCTOBER 30, 2003 ORDERS CONCERNING  
APPLICABILITY OF C.R.C.P. 59**

Defendant, Amoco Production Company ("Amoco") moves the Court for an Order as follows:

A. Amending the October 6 Order on Marketability and Reasonableness of Costs to delete the paragraph 3, on page 41, under "X. FINDINGS AND ORDER," which reads:

"In view of the complexity of this case, the Court finds *sua sponte* that the time for filing of C.R.C.P. 59 motions should be extended to 60 days from the date of this Order."

B. Amending the October 6 Order on Marketability and Reasonableness of Costs, the October 6 Order on Effect of Division Orders, and the October 6 Order on Admission of Records Produced by Amoco, to include the following paragraph at the end of each Order:

“This Order is not a final judgment subject to appeal and C.R.C.P. 59 is not applicable to this Order.”;

C. Stating that the October 6, 2003 Orders are not final judgments subject to appeal, and that C.R.C.P. 59 is not applicable to the October 6, 2003 Orders; and

D. Amending the October 30, 2003 “Order Re Status Conference and Clarifying Omission in Order of October 6, 2003” to delete the words “and Clarifying Omission in Order of October 6, 2003” in the title of such Order and to delete the 2d paragraph of such Order.

As grounds for this Motion, Amoco states that confusion has arisen concerning whether the October 6 Orders are final judgments subject to appeal by inclusion of the reference to C.R.C.P. 59; such Orders are not final judgments subject to appeal; the Orders should be amended to so reflect; and the Court should determine that the October 6 Orders are not final judgments subject to appeal, and that C.R.C.P. 59 is inapplicable to such Orders.

This Motion is supported by a Memorandum Brief filed herewith.

Amoco has conferred in good faith with Counsel for Plaintiffs, who have provided the following statement of Plaintiffs’ position:

“Plaintiffs do not contest the motion to the extent it takes the position that none of the orders entered by the Court constitute a final judgment. Plaintiffs do take the position, however, that the 60-day period should apply to motions asking the Court to modify, clarify, amend or reconsider its findings or rulings, regardless of whether such motions are being filed under C.R.C.P. 59.”

Amoco does not agree that the Court intended, by the October 6 Order on Marketability and Reasonableness of Costs, to impose any time limit on motions asking the Court to modify, clarify, amend, or reconsider its findings or rulings. Rather, Amoco believes the Court was concerned with the 15 day time limit applicable to C.R.C.P. 59 motions, if C.R.C.P. were to apply. Amoco also notes that under C.R.C.P. 54(b), an interlocutory Order "is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of the parties."

A proposed Order is presented herewith.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of December, 2003.

**BP AMERICA INC.**  
Michael L. Homeyer, Esq.  
501 West Lake Park Boulevard  
Houston, TX 77079-2607  
(281) 366-3772

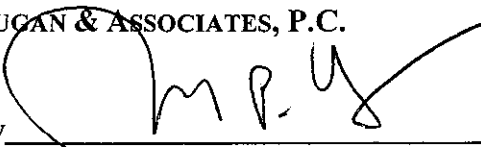
-and-

**MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A.**

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-and-

**DUGAN & ASSOCIATES, P.C.**

By   
Thomas P. Dugan, Reg. No. 13576

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 **MOTION TO RECONSIDER OCTOBER 6 AND OCTOBER 30, 2003 ORDERS CONCERNING APPLICABILITY OF C.R.C.P. 59** on the following parties this 5<sup>th</sup> 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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