DISTRICT COURT, LA PLATA COUNTY, COLORADO Court address: 1060 E. 2nd Ave., Durango, CO 81301 Phone Number : (970) 247-2304 Fax: (970) 259-0258	
RICHARD PARRY, et al. **Plaintiff(s)** **v.** **AMOCO PRODUCTION CO., a Delaware Corporation, n/k/a BP AMERICA PRODUCTION COMPANY** **Defendant(s)**	**▲COURT USE ONLY▲**
David L. Dickinson District Court Judge 1060 E. 2nd Ave. Durango, CO 81302 david.dickinson@judicial.state.co.us	Case Number: 94CV105 Division: II Courtroom:

ORDER ON EFFECT OF DIVISION ORDERS

THIS MATTER comes before the Court regarding an issue raised in Defendant's trial brief. Defendant, Amoco, contends that the language in division orders entered into between leaseholders and Defendant should be used to provide the terms in the royalty instrument where the instrument is silent as to allocation of costs. Defendant argues that prior Colorado cases have not addressed the possibility of division orders providing the parties' express intentions concerning allocation of post-production costs. The Court, having reviewed the parties' trial briefs, the response, and reply thereto, and the cases and authorities cited therein, finds as follows:

One group of the leases at issue in this action is considered "silent" as to allocation of costs as a matter of law pursuant to *Rogers v. Westerman*, 29 P.3d 887 (Colo. 2001). It is those leases that Defendant suggests may be defined by the language of the division orders. Amoco argues that the division orders should logically supply the specific cost allocations where the royalty clause has been construed as "silent" as to the allocation of costs. While this may be a logical argument, the Court finds that it has no legal basis.

A division order is a contract separate from the royalty leasehold agreement, usually written and sent by the lessee to be signed by the leaseholder at a later time. It serves a specific purpose for the lessee that is widely recognized: "A division order is an instrument required by the producer of oil or gas in order that it may have a record showing to whom and in what proportions the purchase price is to be paid." *Maddox v. Gulf Oil Corp.*, 567 P.2d 1326 at 1328. Even though the issue has never been directly addressed by Colorado courts, generally the use of a division order to modify the terms of a leasehold instrument is in disfavor. "In Texas, division and transfer orders do not convey royalty interests; they do not rewrite or supplant leases or deeds...The weight of authority clearly supports this rule." (Citations omitted.) *Gavenda v. Strata Energy*, 705 S.W.2d 690, at 691.

This Court cannot expand the use of division orders the way Defendant proposes. In addition to the reasons given above, division orders are usually entered into without consideration.

> The insertion in the orders of matters contrary to the oil and gas leases, or contrary to the law, cannot be unilaterally imposed upon the lessor by the lessee or the purchaser Here the unilateral attempt by [the oil company] in the division orders to amend the oil and gas leases, and thereby deprive the royalty owners of interest to which they were otherwise entitled, was without consideration.

Maddox, supra.

THE COURT THEREFORE FINDS that the royalty instruments which are "silent" as to allocation of costs are not modified by any cost allocation language found in the division orders.

Done in Chambers this 6th day of October, 2003