

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE APPLICATION OF SOUTH
PACIFIC PETROLEUM
CORPORATION, A GUAM
CORPORATION, PURSUANT TO
28 U.S.C. §1782 FOR THE
TAKING OF DISCOVERY FOR
USE IN FOREIGN PROCEEDING,

Applicant.

Case No. CV 2:17-MC-100

JOINT STIPULATED PROTECTIVE
ORDER

IT IS HEREBY STIPULATED by Applicant South Pacific Petroleum Corporation and third party Richard B.C. Lee, by and through their respective attorneys of record, that discovery of confidential, proprietary, or private information will be had on the following terms and conditions:

1. A. PURPOSES AND LIMITATIONS

As the parties have represented that discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted, this Court enters the following Protective Order. This Order does not confer blanket protections on all disclosures

1 or responses to discovery. The protection it affords from public disclosure and use
2 extends only to the limited information or items that are entitled to confidential
3 treatment under the applicable legal principles. Further, as set forth in Section 12.3,
4 below, this Protective Order does not entitle the parties to file confidential
5 information under seal. Rather, when the parties seek permission from the court to
6 file material under seal, the parties must comply with Civil Local Rule 79-5 and
7 with any pertinent orders of the assigned District Judge and Magistrate Judge.

8 **B. GOOD CAUSE STATEMENT**

9 In light of the nature of the claims and allegations in this case and the
10 parties' representations that discovery in this case will involve the production of
11 confidential records, and in order to expedite the flow of information, to facilitate
12 the prompt resolution of disputes over confidentiality of discovery materials, to
13 adequately protect information the parties are entitled to keep confidential, to
14 ensure that the parties are permitted reasonable necessary uses of such material in
15 connection with this action, to address their handling of such material at the end of
16 the litigation, and to serve the ends of justice, a protective order for such
17 information is justified in this matter. The parties shall not designate any
18 information/documents as confidential without a good faith belief that such
19 information/documents have been maintained in a confidential, non-public manner,
20 and that there is good cause or a compelling reason why it should not be part of the
21 public record of this case.

22 **2. DEFINITIONS**

23 2.1 Action: The instant action: In re Application of South Pacific
24 Petroleum Corporation, a Guam corporation, pursuant to 28 U.S.C. §1782 for the
25 taking of discovery for use in foreign proceeding, Case No. 2:17-MC-100 in the
26 Central District of California.

27
28

1 2.2 Foreign Action: The foreign proceeding for which discovery is
2 sought: Case No. 2015 Gahap 514235, Claim for Redemption of Convertible
3 Bonds in Seoul High Court in the Republic of Korea.

4 2.3 Challenging Party: a Party or Non-Party that challenges the
5 designation of information or items under this Order.

6 2.4 “CONFIDENTIAL” Information or Items: information (regardless of
7 how it is generated, stored or maintained) or tangible things that qualify for
8 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
9 the Good Cause Statement.

10 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
11 their support staff).

12 2.6 Designating Party: a Party or Non-Party that designates information or
13 items that it produces in disclosures or in responses to discovery as
14 “CONFIDENTIAL.”

15 2.7 Disclosure or Discovery Material: all items or information, regardless
16 of the medium or manner in which it is generated, stored, or maintained (including,
17 among other things, testimony, transcripts, and tangible things), that are produced
18 or generated in disclosures or responses to discovery in this matter.

19 2.8 Expert: a person with specialized knowledge or experience in a matter
20 pertinent to the litigation who has been retained by a Party or its counsel to serve
21 as an expert witness or as a consultant in this Action.

22 2.9 House Counsel: attorneys who are employees of a party to this Action.
23 House Counsel does not include Outside Counsel of Record or any other outside
24 counsel.

25 2.10 Non-Party: any natural person, partnership, corporation, association,
26 or other legal entity not named as a Party to this action.

27 2.11 Outside Counsel of Record: attorneys who are not employees of a
28 party to this Action but are retained to represent or advise a party to this Action

1 and have appeared in this Action on behalf of that party or are affiliated with a law
2 firm which has appeared on behalf of that party, and includes support staff.

3 2.12 Party: any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their
5 support staffs).

6 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 2.14 Professional Vendors: persons or entities that provide litigation
9 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)
11 and their employees and subcontractors.

12 2.15 Protected Material: any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL.”

14 2.16 Receiving Party: a Party that receives Disclosure or Discovery
15 Material from a Producing Party.

16 3. SCOPE

17 The protections conferred by this Order cover not only Protected Material
18 (as defined above), but also (1) any information copied or extracted from Protected
19 Material; (2) all copies, excerpts, summaries, or compilations of Protected
20 Material; and (3) any deposition testimony, conversations, or presentations by
21 Parties or their Counsel that might reveal Protected Material, other than during a
22 court hearing or at trial.

23 Any use of Protected Material during a court hearing or at trial shall be
24 governed by the orders of the presiding judge. This Order does not govern the use
25 of Protected Material during a court hearing or at trial.

26 4. DURATION

27 Even after final disposition of this litigation, the confidentiality obligations
28 imposed by this Order shall remain in effect until a Designating Party agrees

1 otherwise in writing or a court order otherwise directs. Final disposition shall be
2 deemed to be the later of (1) dismissal of all claims and defenses in the Action or
3 Foreign Action, with or without prejudice; and (2) final judgment herein after the
4 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of
5 this Action or the Foreign Action, including the time limits for filing any motions
6 or applications for extension of time pursuant to applicable law.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

9 Each Party or Non-Party that designates information or items for protection under
10 this Order must take care to limit any such designation to specific material that
11 qualifies under the appropriate standards. The Designating Party must designate for
12 protection only those parts of material, documents, items, or oral or written
13 communications that qualify so that other portions of the material, documents,
14 items, or communications for which protection is not warranted are not swept
15 unjustifiably within the ambit of this Order.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations
17 that are shown to be clearly unjustified or that have been made for an improper
18 purpose (e.g., to unnecessarily encumber the case development process or to
19 impose unnecessary expenses and burdens on other parties) may expose the
20 Designating Party to sanctions.

21 If it comes to a Designating Party's attention that information or items that it
22 designated for protection do not qualify for protection, that Designating Party must
23 promptly notify all other Parties that it is withdrawing the inapplicable designation.

24 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
25 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
26 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
27 under this Order must be clearly so designated before the material is disclosed or
28 produced.

1 Designation in conformity with this Order requires:

2 a. (a) for information in documentary form (e.g., paper or electronic
3 documents, but excluding transcripts of depositions), that the Producing Party affix
4 at a minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL
5 legend”), to each page that contains protected material. If only a portion or portions
6 of the material on a page qualifies for protection, the Producing Party also must
7 clearly identify the protected portion(s) (e.g., by making appropriate markings in
8 the margins).

9 A Party or Non-Party that makes original documents available for inspection
10 need not designate them for protection until after the inspecting Party has indicated
11 which documents it would like copied and produced. During the inspection and
12 before the designation, all of the material made available for inspection shall be
13 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
14 documents it wants copied and produced, the Producing Party must determine
15 which documents, or portions thereof, qualify for protection under this Order.
16 Then, before producing the specified documents, the Producing Party must affix
17 the “CONFIDENTIAL legend” to each page that contains Protected Material. If
18 only a portion or portions of the material on a page qualifies for protection, the
19 Producing Party also must clearly identify the protected portion(s) (e.g., by making
20 appropriate markings in the margins).

21 b. (b) for testimony given in depositions in this Action, that the
22 Designating Party designate protected testimony in a timely manner. The
23 Designating Party may designate the testimony as a whole or identify specific
24 portions of the testimony during the deposition as “CONFIDENTIAL.” If the
25 Designating Party that sponsors, offers, or gives testimony does not identify
26 portions of the testimony that qualify as “CONFIDENTIAL” or incorrectly
27 identifies portions of the testimony as “CONFIDENTIAL” during the deposition, it
28 may, within 30 days of receiving a transcript of the deposition, designate or change

1 the confidentiality designation of the transcript or portions thereof to identify the
2 specific portions of the testimony as to which protection is sought.

3 c. (c) for information produced in some form other than documentary
4 and for any other tangible items, that the Producing Party affix in a prominent
5 place on the exterior of the container or containers in which the information is
6 stored the legend "CONFIDENTIAL." If only a portion or portions of the
7 information warrants protection, the Producing Party, to the extent practicable,
8 shall identify the protected portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
10 failure to designate qualified information or items does not, standing alone, waive
11 the Designating Party's right to secure protection under this Order for such
12 material. Upon timely correction of a designation, the Receiving Party must make
13 reasonable efforts to assure that the material is treated in accordance with the
14 provisions of this Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
17 designation of confidentiality at any time that is consistent with the Court's
18 Scheduling Order.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
20 resolution process under Local Rule 37-1 et seq.

21 6.3 The burden of persuasion in any such challenge proceeding shall be
22 on the Designating Party. Frivolous challenges, and those made for an improper
23 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
24 parties) may expose the Challenging Party to sanctions. Unless the Designating
25 Party has waived or withdrawn the confidentiality designation, all parties shall
26 continue to afford the material in question the level of protection to which it is
27 entitled under the Producing Party's designation until the Court rules on the
28 challenge.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this
4 Action only for prosecuting, defending, or attempting to settle this Action or the
5 Foreign Action. Such Protected Material may be disclosed only to the categories of
6 persons and under the conditions described in this Order. When the Action has
7 been terminated, a Receiving Party must comply with the provisions of Section 13
8 below.

9 Protected Material must be stored and maintained by a Receiving Party at a
10 location and in a secure manner that ensures that access is limited to the persons
11 authorized under this Order.

12 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
13 otherwise ordered by the court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated
15 “CONFIDENTIAL” only to:

16 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
17 well as employees of said Outside Counsel of Record to whom it is reasonably
18 necessary to disclose the information for this Action;

19 (b) the officers, directors, and employees (including House Counsel)
20 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

21 (c) Experts (as defined in this Order) of the Receiving Party to whom
22 disclosure is reasonably necessary for this Action and who have signed the
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (d) the court and its personnel;

25 (e) court reporters and their staff;

26 (f) professional jury or trial consultants, mock jurors, and Professional
27 Vendors to whom disclosure is reasonably necessary for this Action and who have
28 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

1 (g) the author or recipient of a document containing the information or
2 a custodian or other person who otherwise possessed or knew the information;

3 (h) during their depositions, witnesses, and attorneys for witnesses, in
4 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
5 party requests that the witness sign the “Acknowledgment and Agreement to Be
6 Bound” form attached as Exhibit A hereto; and (2) they will not be permitted to
7 keep any confidential information unless they sign the “Acknowledgment and
8 Agreement to Be Bound” attached as Exhibit A, unless otherwise agreed by the
9 Designating Party or ordered by the court. Pages of transcribed deposition
10 testimony or exhibits to depositions that reveal Protected Material may be
11 separately bound by the court reporter and may not be disclosed to anyone except
12 as permitted under this Protective Order; and

13 (i) any mediator or settlement officer, and their supporting personnel,
14 mutually agreed upon by any of the parties engaged in settlement discussions.

15 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
16 IN OTHER LITIGATION

17 If a Party is served with a subpoena or a court order issued in other litigation
18 that compels disclosure of any information or items designated in this Action as
19 “CONFIDENTIAL,” that Party must:

20 (a) promptly notify in writing the Designating Party. Such notification
21 shall include a copy of the subpoena or court order unless prohibited by law;

22 (b) promptly notify in writing the party who caused the subpoena or
23 order to issue in the other litigation that some or all of the material covered by the
24 subpoena or order is subject to this Protective Order. Such notification shall
25 include a copy of this Protective Order; and

26 (c) cooperate with respect to all reasonable procedures sought to be
27 pursued by the Designating Party whose Protected Material may be affected.
28

1 If the Designating Party timely seeks a protective order, the Party served
2 with the subpoena or court order shall not produce any information designated in
3 this action as “CONFIDENTIAL” before a determination by the court from which
4 the subpoena or order issued, unless the Party has obtained the Designating Party’s
5 permission, or unless otherwise required by the law or court order. The
6 Designating Party shall bear the burden and expense of seeking protection in that
7 court of its confidential material and nothing in these provisions should be
8 construed as authorizing or encouraging a Receiving Party in this Action to
9 disobey a lawful directive from another court.

10 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
11 PRODUCED IN THIS LITIGATION

12 (a) The terms of this Order are applicable to information produced by
13 a Non-Party in this Action and designated as “CONFIDENTIAL.” Such
14 information produced by Non-Parties in connection with this litigation is protected
15 by the remedies and relief provided by this Order. Nothing in these provisions
16 should be construed as prohibiting a Non-Party from seeking additional
17 protections.

18 (b) In the event that a Party is required, by a valid discovery request,
19 to produce a Non-Party’s confidential information in its possession, and the Party
20 is subject to an agreement with the Non-Party not to produce the Non-Party’s
21 confidential information, then the Party shall:

22 (1) promptly notify in writing the Requesting Party and the Non-
23 Party that some or all of the information requested is subject to a confidentiality
24 agreement with a Non-Party;

25 (2) promptly provide the Non-Party with a copy of the Protective
26 Order in this Action, the relevant discovery request(s), and a reasonably specific
27 description of the information requested; and
28

1 (3) make the information requested available for inspection by the
2 Non-Party, if requested.

3 (c) If a Non-Party represented by counsel fails to commence the
4 process called for by Local Rules 45-1 and 37-1, et seq. within 14 days of
5 receiving the notice and accompanying information or fails contemporaneously to
6 notify the Receiving Party that it has done so, the Receiving Party may produce the
7 Non-Party's confidential information responsive to the discovery request. If an
8 unrepresented Non-Party fails to seek a protective order from this court within 14
9 days of receiving the notice and accompanying information, the Receiving Party
10 may produce the Non-Party's confidential information responsive to the discovery
11 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
12 not produce any information in its possession or control that is subject to the
13 confidentiality agreement with the Non-Party before a determination by the court
14 unless otherwise required by the law or court order. Absent a court order to the
15 contrary, the Non-Party shall bear the burden and expense of seeking protection in
16 this court of its Protected Material.

17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

18 If a Receiving Party learns that, by inadvertence or otherwise, it has
19 disclosed Protected Material to any person or in any circumstance not authorized
20 under this Protective Order, the Receiving Party must immediately (a) notify in
21 writing the Designating Party of the unauthorized disclosures, (b) use its best
22 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
23 person or persons to whom unauthorized disclosures were made of all the terms of
24 this Order, and (d) request such person or persons to execute the
25 "Acknowledgment and Agreement to Be Bound" that is attached hereto as
26 Exhibit A.

27
28

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced material is subject to a claim of privilege or other
5 protection, the obligations of the Receiving Parties are those set forth in Federal
6 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
7 whatever procedure may be established in an e-discovery order that provides for
8 production without prior privilege review. Pursuant to Federal Rule of Evidence
9 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
10 of a communication or information covered by the attorney-client privilege or
11 work product protection, the parties may incorporate their agreement into this
12 Protective Order.

13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
15 person to seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections. No Party waives any right it
17 otherwise would have to object to disclosing or producing any information or item
18 on any ground not addressed in this Protective Order. Similarly, no Party waives
19 any right to object on any ground to use in evidence of any of the material covered
20 by this Protective Order.

21 12.3 Filing Protected Material. A Party that seeks to file under seal any
22 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent
23 orders of the assigned District Judge and Magistrate Judge. If a Party's request to
24 file Protected Material under seal is denied by the court, then the Receiving Party
25 may file the information in the public record unless otherwise instructed by the
26 court.

1 13. FINAL DISPOSITION

2 After the final disposition of this Action, as defined in Section 4, within 60
3 days of a written request by the Designating Party, each Receiving Party must
4 return all Protected Material to the Producing Party or destroy such material. As
5 used in this subdivision, "all Protected Material" includes all copies, abstracts,
6 compilations, summaries, and any other format reproducing or capturing any of the
7 Protected Material. Whether the Protected Material is returned or destroyed, the
8 Receiving Party must submit a written certification to the Producing Party (and, if
9 not the same person or entity, to the Designating Party) by the 60 day deadline that
10 (1) identifies (by category, where appropriate) all the Protected Material that was
11 returned or destroyed and (2) affirms that the Receiving Party has not retained any
12 copies, abstracts, compilations, summaries or any other format reproducing or
13 capturing any of the Protected Material. Notwithstanding this provision, Counsel
14 are entitled to retain an archival copy of all pleadings, motion papers, trial,
15 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
16 and trial exhibits, expert reports, attorney work product, and consultant and expert
17 work product, even if such materials contain Protected Material. Any such archival
18 copies that contain or constitute Protected Material remain subject to this
19 Protective Order as set forth in Section 4.

20 14. Any violation of this Order may be punished by any and all appropriate
21 measures including, without limitation, contempt proceedings and/or monetary
22 sanctions.

23 STIPULATED and AGREED to as of the dates indicated below.

24 Dated: November 29, 2017

Daar & Newman PC

25
26 By: _____ /s/

Jeffery Daar

27 Attorneys for Applicant, South Pacific
28 Petroleum Corporation

1 Dated: November 29, 2017

CROWELL & MORING LLP

2

By: _____ /s/ _____

3

Raija J. Horstman

4

Attorneys for Third Party, Richard B.C. Lee

5

6

ORDER

7

PURSUANT TO STIPULATION OF THE PARTIES AND GOOD CAUSE

8

THEREFOR, IT IS SO ORDERED.

9

10 DATED: November 30, 2017

11

12

_____/s/_____

13

Honorable Jacqueline Chooljian
United States Magistrate Judge

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury
6 that I have read in its entirety and understand the Protective Order that was issued
7 by the United States District Court for the Central District of California on
8 November 30, 2017 in the case of In re Application of South Pacific Petroleum
9 Corporation, a Guam corporation, pursuant to 28 U.S.C. §1782 for the taking of
10 discovery for use in foreign proceeding, Case No. 2:17-MC-100. I agree to comply
11 with and to be bound by all the terms of this Protective Order and I understand and
12 acknowledge that failure to so comply could expose me to sanctions and
13 punishment in the nature of contempt. I solemnly promise that I will not disclose in
14 any manner any information or item that is subject to this Protective Order to any
15 person or entity except in strict compliance with the provisions of this Order.

16 I further agree to submit to the jurisdiction of the United States District Court
17 for the Central District of California for the purpose of enforcing the terms of this
18 Protective Order, even if such enforcement proceedings occur after termination of
19 this action. I hereby appoint _____ [print or type full
20 name] of _____ [print or type full
21 address and telephone number] as my California agent for service of process in
22 connection with this action or any proceedings related to enforcement of this
23 Protective Order.

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____

28