

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED BY )  
THE OIL CONSERVATION DIVISION FOR THE )  
PURPOSE OF CONSIDERING: ) CASE NO. 12,731  
)  
APPLICATION OF TMBR/SHARP DRILLING, )  
INC., FOR AN ORDER STAYING DIVISION )  
APPROVAL OF TWO APPLICATIONS FOR ) ORIGINAL  
PERMIT TO DRILL OBTAINED BY DAVID )  
H. ARRINGTON OIL AND GAS, INC., )  
LEA COUNTY, NEW MEXICO )  
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

September 20th, 2001

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, September 20th, 2001, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

OCT 1 10 10 AM '01  
OIL CONSERVATION DIVISION

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September 20th, 2001  
 Examiner Hearing  
 CASE NO. 12,731

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## A P P E A R A N C E S

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By: W. THOMAS KELLAHIN

## FOR DAVID H. ARRINGTON OIL AND GAS, INC.:

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Artesia, New Mexico 88211-1720  
By: ERNEST L. CARROLL

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2           2:48 p.m.:

3           EXAMINER STOGNER: Call next case, Number 12,731,  
4           which is the Application of TMBR/Sharp Drilling, Inc., for  
5           an order staying Division approval of two applications for  
6           permit to drill obtained by David H. Arrington Oil and Gas,  
7           Inc., Lea County, New Mexico.

8           At this time call for appearances.

9           MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of  
10          the Santa Fe law firm of Kellahin and Kellahin, appearing  
11          on behalf of the Applicant.

12          MR. CARROLL: Mr. Examiner, I'm Ernest Carroll of  
13          the Artesia law firm of Losee, Carson, Haas and Carroll,  
14          and I'm appearing today on behalf of David Arrington Oil  
15          and Gas, Inc.

16          EXAMINER STOGNER: Are there any witnesses in  
17          this matter?

18          MR. KELLAHIN: Mr. Examiner, I propose to proceed  
19          in this case with the submittal of documents and that it is  
20          not my intention to call witnesses, although I do have the  
21          president of TMBR/Sharp available. I believe that -- Mr.  
22          Carroll and I have talked about this, and we believe that  
23          we can make our arguments to you gentlemen based upon the  
24          documents that were submitted.

25          As a preliminary matter, I have taken the

1 documents that were filed with the various pleadings and  
2 applications that I've submitted. I've reorganized them  
3 into an exhibit book in a fashion that I think might make  
4 it easier for us to find those documents, to get the basic  
5 facts before you, and then Mr. Carroll and I will argue our  
6 various positions.

7 EXAMINER STOGNER: Okay, is there any opening  
8 statements at this point?

9 MR. KELLAHIN: No, sir, I propose not to. I want  
10 to give you the exhibits and with your permission give you  
11 an outline of what those exhibits are about, and then we  
12 can talk about setting aside time for each of us to argue  
13 our positions?

14 EXAMINER STOGNER: Mr. Carroll, is that okay with  
15 you?

16 MR. CARROLL: Mr. Examiner, I have no problem  
17 with that. I do concur with Mr. Kellahin. I think that  
18 while I do likewise have representatives here from David  
19 Arrington Oil and Gas, this matter is not one that I think  
20 testimony is going to make it any clearer. This is a legal  
21 issue in a sense, and the documents pretty much speak for  
22 themselves, and I think we can both make our arguments or  
23 pitches to you on the basis of that.

24 EXAMINER STOGNER: Okay. Mr. Kellahin, you may  
25 proceed then.

1 MR. KELLAHIN: Thank you, sir.

2 TMBR/Sharp's exhibit book, Mr. Examiner, is  
3 arranged 1 through 10. The documents behind each tab will  
4 identify a different area and topic. There will be some of  
5 these documents that may have an exhibit number that  
6 doesn't relate to the tab, but I will refer to them by tab  
7 number.

8 In addition, I have provided an index at the  
9 beginning where I've attempted to give you a preview of the  
10 documents, and that's where I'd like to start.

11 If you'll look at Exhibit 1 and turn behind  
12 Exhibit Tab Number 1, there's a colored locator map, and  
13 you might want to take it out of the book and perhaps set  
14 it aside as a reference point, and it may provide an  
15 opportunity to keep clear the relationship of the various  
16 applications for permits to drill and the status of the  
17 property.

18 EXAMINER STOGNER: Okay, where -- While we're  
19 looking at this map, where are we looking at in particular  
20 from Lovington? It's near Lovington, you said?

21 MR. KELLAHIN: I must apologize, it is near  
22 Lovington, but I'm not sure where it is.

23 EXAMINER STOGNER: Okay.

24 MR. KELLAHIN: I have not bothered to look at the  
25 topo map.

1           If you'll take the next four documents, there are  
2 four C-102s, and it may help you to take those out of the  
3 book as well, and we'll make some comparisons.

4           There are four applications for permits to drill  
5 that are in issue. There are the two Arrington APDs that  
6 include the C-102s, and there were two filed by TMBR/Sharp.  
7 And they're paired. So if you find the pair that shows  
8 Arrington's Triple-Hackle Dragon 25 well, the C-102 will  
9 show a west-half orientation for a proposed spacing unit,  
10 and the well to be located in the northwest quarter.

11           If you'll look at the TMBR/Sharp C-102 for the  
12 Blue Fin 25 well, that will show you a north-half  
13 dedication and a well within the same 40 acre tract as the  
14 Arrington well.

15           The sequence of events are such that on July 17th  
16 the Artesia District Office approved TMBR/Sharp's APD. On  
17 August 8th -- Excuse me, I said that wrong. Let me start  
18 over.

19           The Blue Fin 25 was the application filed by  
20 TMBR/Sharp for the north half which was filed on August 8th  
21 and denied on August 8th.

22           The companion application, the one that was filed  
23 by Arrington, is the one that was filed and approved on  
24 July 17th.

25           So Arrington for this section got to the District

1 Office first, and the District Office approved their APD.

2 So that's the first pair.

3 The second pair is Arrington's Blue Drake 23.

4 The APD shows an east-half dedication with a well located  
5 down in the southeast quarter.

6 The companion TMBR/Sharp APD and its C-102 showed  
7 the same acreage dedication, but the well was to be located  
8 in the northeast quarter.

9 Arrington's application was filed and approved on  
10 July 30th, and TMBR/Sharp's application was filed and  
11 denied on August 8th.

12 That sets up the basic problem. And the problem  
13 is that Arrington, for no other reason than the fact that  
14 he has filed his applications first, has received approval  
15 from the District. TMBR/Sharp's complaint is, they have  
16 followed the same process and procedure as Arrington, and  
17 for no other reason had their applications denied only  
18 because Arrington got there first. So that's the problem.

19 The dispute between the parties over the various  
20 title is in district court now. Exhibit 10 is the  
21 complaint filed by TMBR/Sharp on August 21st. That's the  
22 complaint in district court. And we're asking the district  
23 court judge in Lovington to handle the title problem.

24 What TMBR/Sharp is seeking from you this  
25 afternoon is a stay of Arrington's orders, and frankly a

1 stay of ours, if you will, to maintain the status quo. And  
2 we take the position that the regulators in Artesia for the  
3 Division should either approve them all or deny them all,  
4 to maintain that status quo until the parties can take  
5 their title problem to the district judge for resolution.

6 Our position is that if you allow Arrington's  
7 APDs to stand, he gains an unfair advantage over the status  
8 quo, and he is now in a position to go forward and drill,  
9 despite the disagreement between the parties over title.  
10 And that in essence is where we started.

11 The documentation that gives you the sequence of  
12 events is as follows:

13 If you turn past Exhibit 1 and go to Exhibit 2,  
14 you'll see the documents relating to Arrington's Triple-  
15 Hackle Dragon 25 well. It has the first page of the APD.  
16 There was a second APD filed. The only difference I can  
17 perceive in the two is that one's filed on the --  
18 apparently filed and approved on July 17th, the next one's  
19 filed and approved on the 19th of July. There's a  
20 handwritten notation. Perhaps you can see a difference  
21 other than that, but I couldn't find one.

22 Following that are two C-102s. They appear to be  
23 identical in each instance.

24 And so based upon this filing, the District  
25 Office has approved the application for a permit to drill.

1 And that's Arrington's first one, and this is -- I used his  
2 first date of approval, which was July 17th.

3 If you go behind that and look at Exhibit 3,  
4 Exhibit 3 is Mr. Arrington's second APD, and it's the one  
5 that deals with the Blue Drake 23 well, and that one was  
6 approved on July 30th. Again, you can see that there's a  
7 C-102 attached, and he's completed the form.

8 The next thing that happens, if you'll turn to  
9 Tab 4 and behind that, you're going to see that on August  
10 8th, TMBR/Sharp files their application for the Blue Fin  
11 25. Their application, in terms of the manner in which it  
12 has been completed, has no material difference between  
13 those filed by Arrington.

14 However, their application is rejected by the  
15 cover letter that you see, and it's a letter dated August  
16 8th. It's over Chris Williams' name, but it appears to me  
17 that it has been signed by Paul Kautz in the absence of Mr.  
18 Williams.

19 And when you read the letter you find out that  
20 TMBR/Sharp's application for a permit to drill was denied  
21 not because it was not in compliance with filling out the  
22 form -- it had currently everything complete -- and the  
23 only reason it was rejected is that the Division District  
24 Office had found that Arrington already had an APD that  
25 conflicted with this one.

1           And the conflict is a change in orientation of  
2 the spacing unit.

3           The reason we are here before you and not the  
4 district judge, it is my opinion that you have primary  
5 jurisdiction over your applications for permit to drill and  
6 that when circumstances come to your attention, as they do  
7 in all matters like this, you need to take action on all  
8 those APDs.

9           The problem I have with how the District has  
10 handled this is that there is no rule, there is no order,  
11 there's no regulation, there's no written policy, there's  
12 no written procedure, there's absolutely nothing that I can  
13 find that tells the District Supervisor in Artesia what the  
14 criteria is for approval or rejection of an APD.

15           Our point is that it's arbitrary and capricious  
16 for the District Office to deny an APD for no other reason  
17 than it was filed after another, and we're trying to take a  
18 course of action that maintains the status quo. We do not  
19 believe that Arrington is harmed in any way, we believe we  
20 will not be further harmed, if there is a status quo  
21 standstill executed by this agency until the land issue is  
22 resolved.

23           What makes this even more serious is that the  
24 Division Artesia Office has no system in place to monitor,  
25 to catch or to otherwise discover that an application for

1 permit to drill is in conflict with one that's previously  
2 issued.

3 EXAMINER BROOKS: Okay, now this is the Hobbs  
4 District Office, right?

5 MR. KELLAHIN: I'm sorry, I keep saying Artesia.  
6 I apologize. It's the Hobbs District, it's Mr. Williams'  
7 district in Hobbs.

8 EXAMINER BROOKS: Okay.

9 MR. KELLAHIN: So apart from having any real  
10 regulation, the District Office in Hobbs has no system in  
11 place to spend the time, effort to at least look if a  
12 pending application before you -- or before them, is in  
13 conflict with one they've already approved.

14 In addition, there is nothing in place to the  
15 best that I can find that has them search to see if there's  
16 an existing producing well with a spacing unit that's in  
17 conflict.

18 And so that's our concern. We believe you've got  
19 a serious problem in the District with regards to how this  
20 is done. There's no rule, regulation, guideline from the  
21 Director to the District, nothing within the District that  
22 keeps these conflicts from happening, and there is no  
23 remedy for me other than to file an Application for you and  
24 ask that these applications be stayed. And as you go  
25 through, we'll begin to see why we're here.

1           So that's the first one. Mr. Williams in Hobbs  
2 has denied the TMBR/Sharp application on the Blue Fin.

3           And if you'll turn to Tab 5 you'll see on the  
4 same date TMBR/Sharp filed an application for the Leavelle  
5 well in the east half of Section 23. The application is  
6 prepared in the same manner as the Arrington applications,  
7 there is no material difference, they've chosen to do it in  
8 what appears to be the same manner, and the only reason  
9 that TMBR/Sharp's application is denied is that Arrington's  
10 was approved for a different location but with the same  
11 spacing unit. And it appears that's simply by  
12 happenstance. Someone in the district remembered the prior  
13 APD and rejected it. And so we're asking you to take  
14 action.

15           Now, let's turn to a little different topic,  
16 which is the next series of documentations in the exhibit  
17 book, and they deal with the title dispute, and it's -- I'm  
18 not here to ask you to try title, but I want you to  
19 understand the claims being made by the two companies.

20           And so when you turn behind Exhibit 6 you're  
21 going to find what TMBR/Sharp calls the Stokes and the  
22 Hamilton leases.

23           The chain of titles is such that in December of  
24 1997, Stokes and Hamilton, by separate leases into  
25 Ameristate Oil and Gas, executed leases among other

1 properties that included portions of Section 24.

2           There is a typo in the summary that I gave you on  
3 page 2, the description is incomplete. I have said the  
4 northwest quarter for, in fact, it's the northwest quarter  
5 of the northeast quarter. But be that as it may, these  
6 date from 1997, they went to Ameristate, Ameristate's  
7 successor is TMBR/Sharp.

8           What then happened is Exhibit 7. TMBR/Sharp has  
9 an operating agreement with others, and that operating  
10 agreement included lands that involve Hamilton and Stokes.  
11 And so if you come back to the locator map, I'll show you  
12 how this fits together.

13           We've got an operating agreement now in 1998, and  
14 the next thing that happens is, pursuant to that operating,  
15 Exhibit 8, TMBR/Sharp on March 29th of this year commences  
16 the Blue Fin 24 well. And the Blue Fin 24 well is the blue  
17 dot. Its spacing unit is the standup west half of Section  
18 24. The shaded yellow acreage is the Stokes Hamilton lease  
19 acreage.

20           And so under operation of the agreements, then by  
21 including the Hamilton Stokes acreage in the spacing unit,  
22 it provided further opportunity to TMBR/Sharp to earn the  
23 rest of the acreage in the lease. So that was the well  
24 that was initially drilled under the operating agreement.

25           And behind Exhibit 8, then, you're going to see

1 documentation to show that TMBR/Sharp completed the well on  
2 June 29th for production out of the North Townsend-  
3 Mississippian Gas Pool, 320 gas spacing.

4 It's TMBR/Sharp's contention in the litigation  
5 that the action they've taken in drilling and completing  
6 the Blue Fin 24 well is sufficient to extend the Hamilton  
7 and Stokes leases.

8 So the next thing that you see is a -- behind  
9 Exhibit Tab Number 9 is a change of circumstances whereby  
10 on March 27th of this year, Hamilton and Stokes, by  
11 separate leases, issued top leases to a fellow named Huff.  
12 And so TMBR/Sharp contends their leases are still the base  
13 leases in the extended period by their drilling and they  
14 are primary leases still in effect.

15 Arrington is taking the position that the Huff  
16 leases, which they claim to now control, has given them a  
17 top lease, and based upon the top lease, then, they have  
18 filed their applications for permits to drill.

19 As a consequence of that conflict over who's got  
20 the valid leases, TMBR/Sharp commenced litigation. And  
21 what we're asking you is to exercise your jurisdiction to  
22 maintain the status quo, because time is of the essence.

23 And here's the time.

24 The Blue Fin 24 well was completed for first  
25 production on June 29th, the Hamilton and Stokes leases

1 have a continuous development provision that's 180 days,  
2 give or take a few days. It's approximately December 25th  
3 or 26th that the TMBR/Sharp leases will expire if they  
4 don't commence drilling. And yet we can't get our permits  
5 because Arrington's ahead of us, and there's no rule that  
6 allows them to stay ahead of us in these circumstances, and  
7 we're asking you to take action.

8 We have not sought relief before the district  
9 court. We thought our primary obligation, because we  
10 thought this was your primary jurisdiction, these are your  
11 permits, we wanted to bring our case to you, we knew we  
12 could do so quickly, and we would hope that you could act  
13 promptly to make a decision that maintains the status quo  
14 so that neither party is damaged, and we then go to the  
15 district court for resolution.

16 So that in summary, gentlemen, is our position.

17 EXAMINER BROOKS: Okay. Of course I know a lot  
18 more about Texas law, I guess, than I do about New Mexico  
19 law; I've lived there 50 years. But I thought there was a  
20 fairly well established legal doctrine that if the lessor  
21 disputed the validity of the lease, that the lessee was  
22 excused from performing his obligations under the lease.

23 MR. KELLAHIN: That is certainly one of our  
24 arguments in district court, but I'm incredibly nervous,  
25 having argued uncontested cases sometimes and losing, that

1 you never know. And what I do know is that I can see no  
2 possible harm occurring by you taking action. And I'm not  
3 saying you have to approve them all, but make no one gets  
4 an unfair fair start. Let's just deny them all, maintain  
5 the status quo, and let's go figure out the title.

6 EXAMINER STOGNER: Do you have anything further,  
7 Mr. Kellahin? Mr. Kellahin, do you have anything further?

8 MR. KELLAHIN: Yes, sir, were you going to -- I'd  
9 like to move the introduction of Exhibits 1 through 10.

10 EXAMINER STOGNER: Any objection.

11 MR. CARROLL: No objection.

12 MR. KELLAHIN: And I'd like to respond to Mr.  
13 Carroll when he makes his argument.

14 EXAMINER STOGNER: Exhibits 1 through 10 will be  
15 admitted into evidence at this time.

16 Mr. Carroll?

17 MR. CARROLL: Thank you.

18 Mr. Kellahin has painted some of the facts. One  
19 of the important issues that he has failed to tell the  
20 Examiner is that not only do -- or does, Arrington Oil and  
21 Gas claim ownership rights in the proration units with  
22 respect to the Huff top leases, as he calls them, but we  
23 also have other ownership leases, of leases or mineral  
24 rights within the proposed proration units. We have full  
25 right to drill the wells which we have proposed.

1           Now, there is no doubt that there is a contest  
2 with respect to the leases that are, I think, Exhibits 8 or  
3 9, whatever it was, the 1997 leases from the Stokes and  
4 Hamilton interest.

5           What the problem there is, is that it's very  
6 simple. And quite frankly I'm going to tell you and I'm  
7 going to take the position, the reason they're here is  
8 because they wouldn't be listened to in the district court.

9           What they failed to do was comply with the lease  
10 terms. They drilled across a lease -- an expiration date,  
11 by drilling upon acreage that was supposedly pooled with  
12 the acreage upon which the well was drilled. Well, the  
13 lease would have allowed that, if you had filed a proper  
14 pooling designation.

15           Now, that's a real tried and simple proposition  
16 in the State of New Mexico. Every oil and gas company in  
17 this state does it all the time. And they comply with the  
18 state statute with respect to -- and that statute is  
19 Section 14-9-1. And it says there is only one place where  
20 you can file a document which affects the title to real  
21 property -- we all know that oil and gas interests are real  
22 property -- and that one place is in the county clerk's  
23 office. That's the problem. They didn't file a  
24 designation of a pooled unit anywhere.

25           But now at a late date, at the time they have

1 filed a court case in Lea County, they are now trying to  
2 claim that the dedication plat where we show our proration  
3 unit in our OCD application, by some stretch of the  
4 imagination now, they are calling that their designation of  
5 pooled unit.

6 I'm going to tell you, the reason we're here is  
7 not to preserve the status quo but it's because they know  
8 that that kind of argument would fall upon a deaf ear with  
9 respect to the district court.

10 Now, if we're worried about the status quo and  
11 worried about damages, now, one, my first question to you,  
12 what is the -- Where are we trying to preserve the status  
13 quo? Is that in your mandate, in the statutory provisions  
14 that created the Oil Conservation Division and the  
15 Commission? I dare say you're not going to find the status  
16 quo mentioned in any of those provisions.

17 But what you are going to find out is that the  
18 District Courts of the State of New Mexico -- and Mr.  
19 Brooks, I think that this kind of procedure did occur in  
20 Texas too -- you can make an application for a temporary  
21 restraining order, if you can show harm, irreparable harm.  
22 Well, they have, in other words, a method under the  
23 statutes of the State of New Mexico for redress.

24 But for some reason -- and you can look at this  
25 complaint, and it's the one on file, and I can tell you I'm

1 filing an answer to it tomorrow in the Lea County District  
2 Court Clerk's Office -- but there's no application here, no  
3 pleading for a temporary restraining order to protect them.

4 They're complaining that they are going to lose  
5 their leases or their rights if they don't have -- aren't  
6 able to comply with the continuous drilling requirements  
7 within the 1997 leases.

8 Well, if they're going to lose their leases, that  
9 most certainly would interest a district court judge if, in  
10 fact, they did own those leases and those leases were still  
11 in effect as an irreparable harm. And yet they failed to  
12 file that.

13 What I'm telling -- and my argument to you is, is  
14 that this argument about status quo, maintaining it, is  
15 just -- I'm not sure what term to put on. It's something  
16 that has been conjured up and has no application to  
17 anything before the OCD.

18 The next thing, we hear a complaint about the  
19 Hobbs OCD office has no procedure for determining if  
20 there's prior APDs in place. My god, this is great, but  
21 isn't that a red herring? What does that have to do with  
22 anything? First of all, Mr. Williams was on his toes, he  
23 found it. So I guess it really isn't a problem, because it  
24 didn't occur as a problem.

25 The next thing is, we're talking about -- we

1 don't have any way to see if there's a way to determine if  
2 there's a producing well. Well now, wait a minute. I  
3 think the OCD would know if there's a producing well,  
4 because every producing well is filed, the applications are  
5 there, we know what's there. We haven't had that problem.  
6 That's why we have a computer system, ONGARD. We know  
7 where the production is. You know every time when I try to  
8 put another well in a proration unit. Now wait a minute,  
9 what are we doing here? We're stretching our imagination  
10 to come up with some made-up reason to tell you or make you  
11 believe that there's harm.

12 Well, wait a minute. Now you get back to my  
13 argument just a minute ago. If there is harm, there is a  
14 proper place. You raise it in the district court action.  
15 That court has the power to stay the continuous drilling  
16 obligations, it can stay us from drilling.

17 But you know what? The problem is, where's a  
18 valid lease out there? And TMBR/Sharp doesn't have a valid  
19 lease. And that's the real problem.

20 And you want to know the other reason we had this  
21 -- a temporary restraining order? Because what that would  
22 do would throw this immediately into a summary judgment  
23 hearing. Under our rules of procedure, that's what would  
24 be called upon. And you know what's going to happen,  
25 because the statute that I just called to your attention

1 controls this whole issue. There was not a compliance with  
2 the lease terms, their lease expired.

3 Now, they drilled the Blue Fin 24, there is a  
4 proration unit, but there just happens to be 40 acres in  
5 there that's not committed to it, to this joint operating  
6 agreement that we've got an exhibit in here, I'm not  
7 exactly sure why. We're not bound by it. We own the  
8 Hamilton and Stokes interest because we have a valid lease.  
9 That top lease went into effect, we paid off on it, because  
10 the prior leases expired.

11 Now -- And then there's the issue that we already  
12 own an interest. We have a right to apply for a permit.  
13 And you know what, that's all that the Oil Conservation  
14 Division has utilized as a rule since they've been in  
15 existence. The first one of the mineral owners that has a  
16 right to drill a well, if they go out there and propose a  
17 well, they get the permit.

18 Then you allow the other owners to utilize what  
19 legal -- They can come in, one or the other can -- if the  
20 one's not -- you can't drill unless you force pool, or if  
21 you're drilling you have to carry those people. I mean,  
22 every person here has a right.

23 And there's also -- If you're being damaged,  
24 you've got a right to go to the court system and get that  
25 damage taken care of. And I think, Mr. Brooks, you well

1 know to me that -- how do the courts cure problems like  
2 that? Just a checkbook. You're just doing a suit for  
3 accounting.

4 This so simple. There isn't any great problems  
5 here. The status quo is not the issue. It sounds like to  
6 me TMBR/Sharp is trying to gain some kind of unfair  
7 bargaining position to try to bargain their way out of a  
8 real deep hole, and I'd call it a dry hole, if you will.  
9 They don't have anything.

10 EXAMINER BROOKS: Hope it won't be that.

11 MR. CARROLL: What?

12 EXAMINER BROOKS: Hopefully from everybody's  
13 point of view it won't be that.

14 MR. CARROLL: Well, their dry hole is with  
15 respect to the issue of a valid lease. Quite frankly, Mr.  
16 Brooks, the Blue Fin is apparently a good well, and this is  
17 a very viable prospect out there, and that's why you have  
18 the whole issue out here in the first place. There's  
19 leases out here, they're good leases, and they're all --  
20 That's why we're fighting.

21 Who has the valid lease? Well, who has the valid  
22 lease is an issue that the District Court of Lea County is  
23 quite ably -- and it is the one party in this state that  
24 has the right to decide those issues. And there is a  
25 lawsuit filed. And if there was any need to preserve the

1 status quo, that issue could have been brought up there.

2 Now, we get back to the issue before us. What  
3 should happen here? Well frankly, this Application should  
4 be just flat dismissed, because it's inappropriate. The  
5 OCD has done its job, it received an application, it  
6 determined that application was proper, it meets the  
7 requirements of the statutes and the requirements that the  
8 OCD has to look over. And furthermore, David Arrington,  
9 even if you put the Stokes and Hamilton leases to the  
10 issue, they own rights out there, and they had a right to  
11 get out and propose the well -- or, excuse me, file an  
12 application for an APD.

13 There is nothing left -- There is no problem out  
14 there that cannot be taken care of. In other words, we  
15 don't need the OCD coming in here and preserving the status  
16 quo. It doesn't have any authority to do it. All it's to  
17 determine is, if it gets an application, is it proper? If  
18 there's already an application granted for the proration  
19 unit and for the zones that are being asked to go to, then  
20 you don't grant two applications. You then deny one. And  
21 if the parties denied have any rights to redress, they can  
22 go to the district court.

23 They can also seek, and let me call your  
24 attention to the fact, is that not only David Arrington has  
25 been named as a defendant in that lawsuit -- and you can

1 turn to Exhibit 10 in the book -- but also Mr. Huff, who is  
2 the top leasing agent, who has assigned his leases now to  
3 David Arrington, but also all of the Stokeses and the  
4 Hamiltons. They're all named. If there is any redress  
5 that may be gained or granted by law, all the parties are  
6 there. That basically sums it all up.

7 The OCD has no business nor need to get into this  
8 fight, because there is a proper form with a body to  
9 determine or take action, that form has the power to grant  
10 everything necessary to redress any harm.

11 Now, I would like to also address one last  
12 question. Now, Mr. -- oh, God, sorry, Tom --

13 MR. KELLAHIN: Kellahin.

14 MR. CARROLL: Tom Kellahin. I can't blame the  
15 stroke on that, I just don't know why I went blank.

16 But Mr. Kellahin proposes and has taken a  
17 position that is quite -- is a dilemma for himself. He  
18 says, we've got to maintain the status quo for his clients'  
19 sake. But we're not going to hurt David Arrington if you  
20 guys stay the APDs already granted.

21 Now, wait a minute. What happens to David  
22 Arrington? They've got requirements, they've got leases to  
23 drill on, they've got investors, they've got bankers. You  
24 know, the whole point is taking advantage -- And you know,  
25 it's quite artfully drawn in their complaint. They have a

1 count here that claims tortious interference to contractual  
2 rights. And it says, you know, drilling rigs are hard to  
3 come by, and if we can't drill right now we may never get  
4 another rig out there. Gas prices are high. If we don't  
5 get our well drilled, you know, gas prices may go down and  
6 we're going to be hurt.

7 Well, wait a minute. If we're staying the status  
8 quo for them, aren't you hurting Mr. Arrington, because you  
9 are now tortiously interfering with their contractual  
10 rights? Yes. His argument does create a real conflict for  
11 him, because you can't have it both ways for all parties.

12 But again, this poses a conflict and a problem  
13 for the OCD. You're not prepared, you don't have the  
14 authority to deal with those kind of arguments and those  
15 kind of issues. But the district court can, the district  
16 court is the proper party.

17 So what you do and what the OCD needs to do is  
18 just dismiss this Application filed by Mr. Kellahin, just  
19 altogether, or at the very least just put this Application  
20 on hold. Let the district court -- Let us handle it down  
21 there, where the forum has all of the powers, all of the  
22 authority to weigh the issues of harm, has all of the power  
23 and the authority to grant injunctive or temporary relief  
24 if it's required, has all the power and the authority to  
25 determine issues of title. I mean, that forum has it all,

1 and that's where we ought to leave it.

2 And remember, guess who filed that case?  
3 TMBR/Sharp. I mean, they need to make up their mind what  
4 they're doing here. If they've got a good case, they need  
5 to pursue it down there.

6 That's our full argument. And basically, Mr.  
7 Examiner, I'm not sure who'd going to get to do this  
8 because it's kind of a legal issue, but I'm sure you're  
9 both going to confer on it. That's the sum total of it.  
10 This is just not a proper issue for the -- You have done  
11 your job, you've done it properly, you've granted it, the  
12 party that made the Application has a right to make that  
13 Application and receive that Application, end of story. Go  
14 to the next forum where you can get the relief, if that  
15 relief is necessary, from the proper forum.

16 EXAMINER BROOKS: Just a couple of questions here  
17 because I guess I need to understand the situation a little  
18 bit better than I do. Obviously, we don't have  
19 jurisdiction to address the title, but I need to understand  
20 the title controversy here.

21 You said that -- Now, looking at the locator  
22 plat --

23 MR. CARROLL: Okay.

24 EXAMINER BROOKS: -- the section in question is  
25 Section 25, and that's the one immediately to the south of

1 where the Blue Fin 24 --

2 MR. CARROLL: That is correct, and in that case  
3 TMBR/Sharp has proposed a north-half proration unit, and  
4 David Arrington has proposed a west-half proration unit,  
5 but the wells are on the same acreage, the yellow acreage.

6 EXAMINER BROOKS: Which is the northwest quarter.  
7 Are they on the same --

8 MR. CARROLL: -- of 25.

9 EXAMINER BROOKS: Are they on the same 40-acre  
10 tract?

11 MR. CARROLL: No, I think there's some -- there  
12 is -- if that -- In the actual competing applications you  
13 see the actual --

14 EXAMINER BROOKS: Yeah, they are on the same --  
15 they are on the same 40 --

16 MR. CARROLL: Are they on the same 40?

17 EXAMINER BROOKS: -- looking at the location  
18 plat.

19 MR. CARROLL: Well --

20 EXAMINER BROOKS: But the -- Now, the entire  
21 northwest quarter of 25 is included in the Stokes Hamilton  
22 leases.

23 MR. CARROLL: They own undivided interest under  
24 the entire northwest quarter, is my information.

25 EXAMINER BROOKS: But even the Stokes and

1 Hamilton interests together don't add to a hundred percent.

2 MR. CARROLL: No, sir. No, sir.

3 EXAMINER BROOKS: And do you own -- or not you  
4 but your client --

5 MR. CARROLL: My client does --

6 EXAMINER BROOKS: -- owns other leasehold  
7 interests in that --

8 MR. CARROLL: Three farmouts, yes, sir.

9 EXAMINER BROOKS: Okay, what about this operating  
10 agreement? This operating agreement purports to cover that  
11 northwest quarter; is that right?

12 MR. CARROLL: I'm not sure, we can look at the  
13 initial page. It may.

14 EXAMINER BROOKS: We'll have to look at the  
15 Exhibit A, probably.

16 MR. CARROLL: It shows the northwest quarter of  
17 Section 25, yes, sir, it does.

18 EXAMINER BROOKS: Okay.

19 MR. CARROLL: But again, my clients in the  
20 interests they're claiming are not parties to that  
21 operating agreement.

22 EXAMINER BROOKS: Your clients claim leases --  
23 well, you are neither party to -- You're telling me that  
24 your client is neither a party to this operating agreement,  
25 nor a successor in interest to a party to this operating

1 agreement?

2 MR. CARROLL: No, no.

3 EXAMINER BROOKS: Your title is entirely  
4 independent --

5 MR. CARROLL: Yes, sir.

6 EXAMINER BROOKS: -- of the operating agreement,  
7 in the northwest quarter --

8 MR. CARROLL: Yes, sir.

9 EXAMINER BROOKS: -- of 25.

10 Now, the other location that's involved here is  
11 not even in the northwest quarter, right? So it would not  
12 be on the other --

13 MR. CARROLL: We're talking -- You move to  
14 Section 23, is the other two wells that have been --

15 EXAMINER BROOKS: Oh, okay.

16 MR. CARROLL: Do you see that? And we have --  
17 They propose a well in the northeast quarter, and we  
18 proposed in the southeast quarter.

19 EXAMINER BROOKS: Twenty, okay.

20 MR. CARROLL: They are not on the --

21 EXAMINER BROOKS: That's the --

22 MR. CARROLL: -- same quarter.

23 EXAMINER BROOKS: -- section to the west of the  
24 Blue Fin?

25 MR. CARROLL: That's correct, sir.

1 EXAMINER BROOKS: Okay, so the -- your proposed  
2 location there is -- yeah, okay, their proposed location is  
3 in the northwest, and yours -- is in the northeast, and  
4 yours is in the southeast?

5 MR. CARROLL: Yes, sir.

6 EXAMINER BROOKS: And again, you have -- again,  
7 the title -- independent -- you have an independent  
8 title --

9 MR. CARROLL: Yes, sir.

10 EXAMINER BROOKS: -- it's not --

11 MR. CARROLL: On the Stokes and Hamilton.

12 EXAMINER BROOKS: On the Stokes and Hamilton  
13 leases.

14 Okay, I think I understand the background  
15 situation now. Anything further, Mr. Stogner?

16 EXAMINER STOGNER: (Shakes head)

17 MR. CARROLL: Just unless Mr. --

18 MR. KELLAHIN: I'd like to respond --

19 MR. CARROLL: -- Kellahin makes some outrageous  
20 statement that I'd like to call your attention to, but --  
21 He's prone to do that.

22 MR. KELLAHIN: All right, sir, thank you.

23 Arrington argues that TMBR/Sharp is asking the  
24 Division to resolve a title problem and that we have no  
25 business doing that here, we ought to go to district court.

1 And in fact, TMBR/Sharp is asking the Division just the  
2 opposite. We've asked you, in my own phrasing, to maintain  
3 the status quo.

4 And Arrington says, well, what does that mean?  
5 What it means to me is, you're going to protect our  
6 correlative rights. By taking this action and staying the  
7 APDs, you are protecting our correlative rights.

8 Now you've asked Mr. Carroll about other  
9 leasehold arrangements that will give him title unaffected  
10 for his client outside of the Stokes Hamilton. Well, my  
11 client has the same thing. When you look at the spacing  
12 unit configurations, we've chosen the north half of 25.  
13 The northeast quarter is uncontested, we control that. So  
14 is that how you decide this? I would hope not.

15 The same is true in the east half of 25. That's  
16 the Berry lease that Mr. Carroll talks about. Well, the  
17 Berry lease is one that we have. We have a Berry lease  
18 that dates from October of 1997. Their Berry lease is July  
19 27th of this year. Isn't that an interesting coincidence,  
20 when you look how closely they've taken a lease and filed  
21 an APD? There's a true title conflict going on here. We  
22 see companies that are aggressive and competitive in the  
23 oil and gas industry, but this is beyond that. And we're  
24 looking for some relief because our correlative rights  
25 disappeared.

1           Let's talk procedurally about what the District  
2 Court can do. Mr. Carroll disagrees with me, but the  
3 dilemma for us is that under his Hamilton and Stokes top  
4 leases, they have until May 23rd, three years after May  
5 23rd, they've got three years, a little less than three  
6 years to resolve this and not lose their title. TMBR/Sharp  
7 title disappears about Christmas, we're done.

8           The problem is, I can't go to district court and  
9 get a TRO. And you know why? I've got nothing to ask them  
10 to do. I need an order from this agency, either approving  
11 or denying all four of these, to give me a cause of remedy  
12 before the District Court. I can't go and ask them to  
13 enjoin Hamilton and Stokes, that's a contractual problem.  
14 I can't get that done that way.

15           In order to trigger *force majeure*, we need some  
16 action by you. Has Mr. Williams' letter elevated itself to  
17 the status of an order whereby that denial -- I can now  
18 take that letter and go to district court and ask for  
19 relief from my continuous development obligation? I don't  
20 know. I'd rather have you decide here, because I know  
21 orders issued out of Santa Fe would have that force and  
22 effect. And so with that order I can go to district court  
23 and ask for relief, and Mr. Carroll can come fight with us,  
24 and we'll see what the judge says.

25           But at this point I can't use the *force majeure*

1 provisions of the lease in order to toll the continuous  
2 development clause unless you execute an order that  
3 confirms what Mr. Williams did in the denial of the  
4 TMBR/Sharp APDs. That's a contractual problem, and I have  
5 no remedy, and I can't get to the district court until you  
6 decide.

7           And what the district judge, then, is going to do  
8 is, he will have the opportunity to affirm or deny the  
9 stays of these orders, if that's what happens. But I don't  
10 have a procedural solution in district court at this point.  
11 I'm in no man's land.

12           If an order is entered by the Division that  
13 neither party may drill, then that, in my opinion, is  
14 maintaining the correlative rights of all parties and the  
15 status quo.

16           If there's an objection to that, we now have a  
17 document, an order, that we can go to Judge Klingman and  
18 ask him to review it.

19           If both parties are granted their permits, if you  
20 reverse Mr. Williams and grant TMBR/Sharp their permits,  
21 then we both have a remedy before district court as to  
22 those permits. We now have an action by the agency that's  
23 elevated itself beyond this letter, which, if it's not an  
24 order, we're captured in the dilemma of what's been  
25 orchestrated here.

1           They can grant the appropriate relief in the  
2 district court if you act, and that would be to allow  
3 Arrington to drill if they think his title is fine, to  
4 allow TMBR/Sharp to drill if they think our title is fine,  
5 or to not allow either to drill until it's resolved.

6           The Division is the one that issues the permit.  
7 I can't get a permit from the district court. It's your  
8 action that has to be taken before I have any opportunity  
9 to go to district court for relief. And what we think we  
10 have asked for you is fair, reasonable and appropriate,  
11 particularly in light of the fact that there are no rules,  
12 regulations, memorandums, policies, practices that tells  
13 the District how to handle APDs. And if we now know  
14 there's an unwritten rule about first come first wins, then  
15 how arbitrary and capricious to not put it in a rule and  
16 tell us.

17           And we have filled out all these forms in the  
18 same way as Arrington, we have interest in the property,  
19 and I ask you, give us some protection.

20           EXAMINER BROOKS: Do you dispute -- I was a  
21 little bit confused about what you said about the title  
22 situation. Do you dispute the proposition that in both of  
23 the proposed locations Arrington has a title that is  
24 independent of the Stokes and Hamilton leases?

25           MR. KELLAHIN: Subject to check, Mr. Brooks, I

1 believe that in each of the spacing units, each of the  
2 parties have title independent of the dispute.

3 EXAMINER BROOKS: Okay. Not just in the spacing  
4 units, but I'm thinking about in the proposed -- each  
5 party's own proposed location.

6 MR. KELLAHIN: In the proposed location for  
7 Arrington in the northwest quarter of 25, that's an obvious  
8 dispute between both parties, and I will have to check to  
9 see if there's title independent of that dispute in that  
10 northwest quarter --

11 EXAMINER BROOKS: Yeah.

12 MR. KELLAHIN: -- and I'm happy to do so. But I  
13 just don't want to guess.

14 EXAMINER BROOKS: Okay.

15 MR. KELLAHIN: And the same is true in the east  
16 half of 23. It's my belief in the southeast quarter  
17 Arrington's well location is based on that drill site where  
18 their only title comes from the Stokes and Hamilton top  
19 lease, but if you give me a moment, we'll check that.

20 EXAMINER BROOKS: Okay, I would appreciate that.

21 (Off the record)

22 MR. KELLAHIN: I'm sorry for the delay, Mr.  
23 Brooks.

24 EXAMINER BROOKS: Okay.

25 MR. KELLAHIN: In Section 23, the Arrington drill

1 site in the southeast quarter --

2 EXAMINER BROOKS: Yes.

3 MR. KELLAHIN: -- that's disputed Hamilton Stokes  
4 conflict in which we believe Arrington has no independent  
5 interest other than --

6 EXAMINER BROOKS: Other than --

7 MR. KELLAHIN: -- what he claims through that  
8 chain of title.

9 EXAMINER BROOKS: -- top leases.

10 MR. KELLAHIN: Yes, sir.

11 EXAMINER BROOKS: Okay.

12 MR. KELLAHIN: When you go over into the  
13 northwest quarter of 25, which is where the spacing units  
14 are oriented differently, in the northwest quarter of 25, I  
15 believe that's the same occurrence where title is derived  
16 based upon Hamilton and Stokes, but I would be more  
17 comfortable if after the hearing I could provide you that  
18 in writing, and I will do so immediately.

19 EXAMINER BROOKS: Okay.

20 MR. KELLAHIN: I don't want to be uncertain.

21 EXAMINER BROOKS: Yeah, that would be helpful.

22 Do you disagree with the remarks that Mr.  
23 Kellahin just made about the title, Mr. Carroll?

24 MR. CARROLL: I'm not -- I don't know that I do  
25 disagree. You've got to understand that I'm fairly new

1 into this matter.

2 EXAMINER BROOKS: Yeah.

3 MR. CARROLL: I believe that we have independent  
4 lease in the north -- in Section 23.

5 EXAMINER BROOKS: Yeah. Section 23?

6 MR. CARROLL: Section 23, I'm dealing with that  
7 one first. I believe we have a -- a Ms. Berry interest  
8 leased in the northeast quarter of that section, which  
9 provises [sic] the north half of that proration unit. That  
10 gives us an interest to propose a well in that proration  
11 unit.

12 And then plus we have the Stokes Hamilton, and  
13 that is why we could have done the lease on one or the  
14 other -- I mean proposed a well location on one or the  
15 other leases. But we've got leasehold in the southeast  
16 quarter, we've got leasehold in the northeast quarter. Now  
17 --

18 EXAMINER BROOKS: But you don't have any  
19 leasehold in the southeast quarter, other than the  
20 Stokes --

21 MR. CARROLL: Other than the Stokes, that's my  
22 best information.

23 EXAMINER BROOKS: Okay.

24 MR. CARROLL: There is one -- Earlier when we  
25 talked about the Stokes Hamilton interest, they own varying

1 amounts under each one of these yellow tracts.

2 EXAMINER BROOKS: Right.

3 MR. CARROLL: My information is that in the  
4 southeast quarter they own 100 percent. So there isn't  
5 anybody else to own --

6 EXAMINER BROOKS: Okay.

7 MR. CARROLL: -- all right?

8 EXAMINER BROOKS: So you don't disagree with what  
9 Mr. Kellahin --

10 MR. CARROLL: I think that it's physically  
11 impossible to disagree, based on my best information --

12 EXAMINER BROOKS: All right.

13 MR. CARROLL: -- and I want that to be clear.

14 EXAMINER BROOKS: Okay.

15 MR. CARROLL: Now, with respect to the Section  
16 25, we have taken a farmout, I have not seen the farmout  
17 from Ocean, a company by Ocean, Inc. They have taken  
18 farmout from about a half dozen or more mineral owners or  
19 lessees, and we have taken a farmout of Ocean's part of  
20 their interest which they have acquired. So that is  
21 where -- Part of ours comes from farmout, part of our  
22 ownership in this east-half proration unit -- west-half  
23 proration unit in 25, comes from the Stokes Hamilton  
24 leases.

25 I hope that maybe sheds some light.

1 EXAMINER BROOKS: Okay, very good.

2 MR. KELLAHIN: Mr. Brooks, might I comment? I  
3 hope the Division is not going to take all this information  
4 and try to make a decision based upon what you're guessing  
5 is the title, because that's exactly why we're not here.  
6 There are multiple title disputes in these spacing units.  
7 The Berry title is in dispute, the Hamilton Stokes title is  
8 in dispute, and I think it would be unfair to decide to not  
9 stay these based upon some representation of title.

10 I think this ought to be decided in the district  
11 court, and the only way to get there with the appropriate  
12 experts on title is to have you stay the Arrington APDs.

13 EXAMINER BROOKS: Well, I certainly recognize the  
14 Division has no authority to determine title. But at the  
15 same time it seems to me that there's a somewhat different  
16 situation between asking the Division to cancel the  
17 approval of an APD on the ground that the title of the  
18 person to whom we've issued the APD is in dispute in court  
19 and asking the Division to cancel an APD -- an approved  
20 APD, on the ground that somebody else also owns an interest  
21 in the land in which the well has been proposed, and I'm  
22 trying to get clear in my mind which ground is being  
23 established by the evidence that we've put forward here.

24 MR. CARROLL: Mr. Examiner, I would like to make  
25 a comment on some of the comments of Mr. -- the new

1 comments that Mr. Kellahin just made a moment ago.

2 EXAMINER BROOKS: Go ahead.

3 MR. CARROLL: And particularly, there's basically  
4 two issues that he raised new. One, he says, you've got to  
5 take an action because the district court cannot enjoin  
6 Hamilton and Stokes.

7 Now, I'm going -- I'm here to tell you, and I  
8 think you know, Mr. Brooks, that's a false statement. That  
9 court has every bit of authority to enjoin Hamilton and  
10 Stokes from declaring their lease is invalid or terminated  
11 if they're taking some action that is granting a top lease  
12 or a new lease to somebody else which keeps them from going  
13 out and drilling across or utilizing the continuous  
14 development clauses. That statement is wrong. The  
15 district court has every bit of the authority to enjoin  
16 Stokes and Hamilton.

17 EXAMINER BROOKS: Well, but isn't he correct that  
18 the district court cannot give TMBR/Sharp the right to  
19 drill by injunction unless he makes the Division a party to  
20 the suit?

21 MR. CARROLL: No. What happens, frankly -- and  
22 then he goes on and makes the argument, he says, well,  
23 without some action or order of the Division we can't do  
24 anything. Whoa. The granting of that drilling permit was  
25 just that. That is Division action. That gives Arrington

1 the right to go out and drill.

2 Now, wait a minute. Arrington has ownership out  
3 there so that they can drill that well. Now, you know  
4 what? If Arrington drills a well out there and there's a  
5 valid lease, all they have to do is file the proper pooling  
6 document and they come under theirs. I mean there's all  
7 kinds of ways that they can comply with their lease.

8 And, and, they can get any kind of relief they  
9 need from the district court with respect to Stokes and  
10 Hamilton. That was my point. They are parties to that  
11 cause of action. They have been enjoined -- there was a  
12 cause action pledged which says, you guys cannot cause my  
13 lease to be terminated, because it hasn't expired.

14 There is also a cause of action which  
15 specifically involves the *force majeure*. Now, wait. They  
16 didn't plead in there that there was no reason that they  
17 had to wait on a Division order before they could plead  
18 that cause of action. They said they had a right to it.  
19 Yes, they do have a right to it, because there's already --  
20 if, in fact, the granting of the APD does, in fact, do that  
21 -- and it must do that or there's no reason to stay it and  
22 enforce the status quo, and now wait a minute too.

23 If we get a status quo, just hold all things  
24 doing, why is that so necessary to a district court action?  
25 What has it done? Not one blasted thing. It just said

1 nobody can go out there and drill.

2 The same relief in any of those scenarios is  
3 available. There's nothing different. That's the point  
4 that I'm arguing here, is what Mr. Kellahin is arguing is  
5 absolutely wrong. The district court already has the power  
6 to make the kind of relief they want. They're saying, my  
7 lease didn't expire, that's the whole thing, their original  
8 1997 Stokes and Hamilton lease. The District Court of Lea  
9 County can say that, under the facts and circumstances.

10 If a well gets drilled out there by Arrington,  
11 and they are somehow determined not to own an ownership  
12 interest, all you do is an accounting, and everybody's  
13 taken care of. In other words, there's nothing here other  
14 than amorphous argument, we need the status quo.

15 We don't need the status quo for anything. The  
16 status quo is not necessary for the District Court of Lea  
17 County to act. That's the point. The OCD has granted an  
18 interest owner the right to drill a well, an APD. The OCD  
19 has a rule -- and I'm going to tell you, everybody knows  
20 this rule.

21 I don't know where Mr. Kellahin's been, he's been  
22 practicing up here longer than I have. But all of my  
23 clients know the first in is the one that gets the APD  
24 first, and then you've got to find some other way to fight  
25 it, or deal with the people that have a -- There's a

1 contractual issue there.

2           There is a risk for somebody that gets an APD if  
3 he doesn't have all the ownership tied up under a JOA or a  
4 force-pooling order. He pays for the whole well. And if  
5 it's dry, he eats all the risk. That alone has been more  
6 than sufficient impetus to take care of this all-of-a-  
7 sudden problem that Mr. Kellahin has just woke up one  
8 morning when he needed to file this and realized that the  
9 OCD is really faced with a troublesome problem here.

10           It's no trouble. The oil industry has been  
11 taking care of that problem all these many years. It just  
12 gets back, is, they don't want to go to the district court  
13 and ask for a temporary restraining order, which they have  
14 every right to do, but failed to plead for in this  
15 pleading. I think that alone is very, very important.

16           This body should act like it's always done for  
17 all these many years. Everyone knows, the industry is  
18 quite familiar with how this agency acts and issues permits  
19 and what to do and what the consequences are if you don't  
20 get that first APD in. There's no reason to change what --  
21 In other words, if it ain't broke, don't fix it. That's  
22 the problem with Mr. Kellahin's argument. It isn't broke,  
23 but he wants you to fix it.

24           And we talk about correlative rights. This  
25 really, really is wonderful. In other words, he wants you

1 to consider only one set of correlative rights. You're not  
2 protecting correlative rights. Their complaint makes an  
3 argument about tortious interference of Arrington with  
4 TMBR/Sharp, that we're denied being able to go out and  
5 drill this well, we're going to lose the advantage of  
6 present gas prices and deals that we can make on drilling  
7 rigs, which apparently are going through the sky every day.

8 But wait a minute. If they can make that  
9 argument, why isn't that applicable to Arrington? They  
10 don't want you to pay attention to that. In other words,  
11 there's only one set of correlative rights Mr. Kellahin  
12 wants you to consider, and that's TMBR/Sharp's not  
13 Arrington's.

14 Well, if there is something to be taken care of,  
15 the District Court of Lea County can take care of it, and  
16 that's the proper party to all these arguments. And there  
17 is already sufficient Division action available which will  
18 allow that court to act. Just the fact of the expiration  
19 of the lease is sufficient to allow that court to invoke  
20 its jurisdiction and not only stay Stokes and Hamilton but  
21 do whatever it deems necessary with Arrington, if, if, they  
22 can prove their point, if they have a case. And I'm  
23 telling you they don't.

24 MR. KELLAHIN: May I --

25 EXAMINER BROOKS: Yes, I thought --

1 MR. KELLAHIN: -- conclude briefly, sir?

2 EXAMINER BROOKS: -- perhaps you would want to  
3 respond to --

4 MR. KELLAHIN: Yes, sir.

5 EXAMINER BROOKS: -- Mr. Carroll's remarks.

6 MR. KELLAHIN: Sure. He says that the people get  
7 together in Hobbs and decide, first come wins. Show me the  
8 rule, show me the order, show me the regulation. I've been  
9 looking for it, I can't find it. Show me. We are entitled  
10 to have it written.

11 But that's not the point.

12 All we both have to assert to you this afternoon  
13 is that we have the right to drill. That's all Mr. Carroll  
14 is arguing, that's all I am arguing. And frankly, you  
15 can't decide that. You can't decide whether the permit  
16 should be given on that basis, and that's something you  
17 can't do.

18 We shouldn't be arguing about what the district  
19 court can do either. What it can't do is, it can't issue a  
20 permit, it can't commit us to drill. And the OCD should  
21 not be deciding this case on the basis of what the district  
22 court can and cannot do. That's for the district court to  
23 decide. We'll discuss title in the district court, that's  
24 where we'll go, we'll get that straightened out.

25 But what we need from you is a decision on the

1 permits. If you want to enter an order after we've had  
2 this discussion, an order affirming Mr. Williams' action in  
3 denying our permit on the basis that we weren't first, then  
4 please do that, I would invite you to do it today, because  
5 that gives me something to work with.

6 If you choose not to do that, we think the only  
7 reasonable way to act is to stop their APDs, because the  
8 only reason they were issued, first come, first served, and  
9 we now know in hindsight that there was a title dispute of  
10 serious importance to these people, and if you don't enjoin  
11 or stay them, we're going to lose by the lease provisions.  
12 Their lease has got more than three -- almost three years  
13 to go. Christmas, we're done.

14 How can it be unfair for you to say, wait a  
15 minute, let's take time out to protect all interests, we'll  
16 stay the APDs and you gentlemen go to the courthouse? And  
17 that's what we'd like to have.

18 EXAMINER BROOKS: Okay, I wanted to clarify the  
19 record, because I think I got it clear on the Section 23  
20 but I'm still not sure of the situation on Section 25.  
21 Now, in Section 23, as I understand it, the southeast  
22 quarter is entirely covered, 100-percent interest in the  
23 southeast quarter is covered by the Stokes Hamilton leases,  
24 and no one contends otherwise; is that correct?

25 MR. CARROLL: Let -- Mr. -- I -- And that's the

1 reason Mr. Diffie is here --

2 EXAMINER BROOKS: Okay.

3 MR. CARROLL: -- he's my landman. The situation  
4 that I described for you in the southeast corner of 23 is  
5 the same for the northwest quarter of 25. The Stokes and  
6 Hamilton own 100 percent.

7 EXAMINER BROOKS: Okay.

8 MR. CARROLL: Therefore, there is no other party  
9 to own there.

10 But our -- the farmouts and stuff involve  
11 ownership in the bottom half of that proration unit from  
12 Ocean, and that's where again we would have a right to  
13 drill a well in the proration unit, but our farmouts do  
14 cover acreage, at least to my information. And again, I  
15 haven't seen that farmout, I --

16 EXAMINER BROOKS: Okay.

17 MR. CARROLL: -- I really haven't, and neither  
18 has Mr. Diffie, is the problem. But we know that the  
19 acreage that has been purported -- at least we are  
20 reasonably sure, that's purported covered by it, is down  
21 there.

22 EXAMINER BROOKS: And when you say the bottom  
23 half of that unit, you mean --

24 MR. CARROLL: Southwest.

25 EXAMINER BROOKS: -- you're referring --

1 MR. CARROLL: Southwest.

2 EXAMINER BROOKS: -- to the southwest quarter of  
3 Section 25?

4 MR. CARROLL: That's correct, Mr. Examiner.

5 EXAMINER BROOKS: So you do not contend that you  
6 own an interest other than under the Stokes and Hamilton  
7 leases in either the northwest quarter of Section 25 or the  
8 southeast quarter of Section 23; is that correct?

9 MR. CARROLL: That's correct, because there's no  
10 other interest available.

11 EXAMINER BROOKS: Okay, very good. I think I  
12 understand, and I think the record is clear. Okay.

13 Mr. Examiner, I guess I've kind of taken over the  
14 hearing here, but --

15 EXAMINER STOGNER: And I thank you for that.

16 EXAMINER BROOKS: -- but you get to write the  
17 order. We'll keep that a secret.

18 MR. CARROLL: I have nothing further to present,  
19 Mr. Examiner.

20 EXAMINER STOGNER: Mr. Kellahin?

21 MR. KELLAHIN: No, sir. We'll be happy to stand  
22 for questions.

23 EXAMINER STOGNER: I don't have any. Do you have  
24 any?

25 EXAMINER BROOKS: No, I've done all my questions.

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(Off the record)

EXAMINER STOGNER: Okay, at this time, then, this matter will be taken under advisement and acted on accordingly.

(Thereupon, these proceedings were concluded at 4:01 p.m.)

\* \* \*

I hereby certify that the foregoing is a true and correct copy of the proceedings at the public hearing on Case No. \_\_\_\_\_ held by me on \_\_\_\_\_, 19\_\_\_\_  
Oil Conservation Division

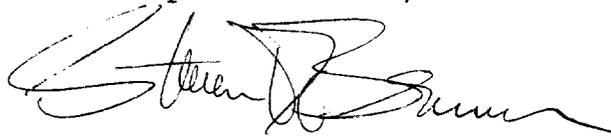
## CERTIFICATE OF REPORTER

STATE OF NEW MEXICO )  
 ) ss.  
 COUNTY OF SANTA FE )

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL September 24th, 2001.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 14, 2002