

LAW OFFICES

LOSEE, CARSON, HAAS & CARROLL, P. A.

311 WEST QUAY AVENUE

P. O. BOX 1720

ARTÉSIA, NEW MEXICO 86211-1720

PHONE (505) 746-3505

FAX (505) 746-6316

ERNEST L. CARROLL
JOEL M. CARSON
JANE SHULER GRAY
JAMES E. HAAS
OF COUNSEL
A. J. LOSEE

September 17, 2001

Via Facsimile to (505) 476-3462

New Mexico Oil Conservation Division
Attn: Florence Davidson
1220 S. Saint Francis Drive
Santa Fe, New Mexico 87505

Re: Case No. 12731

Dear Ms. Davidson:

Please find attached for filing the Prehearing Statement for David H. Arrington Oil & Gas, Inc. If you have any questions, please do not hesitate to call. Thank you very much.

Very truly yours,

LOSEE, CARSON, HAAS & CARROLL, P.A.



Hannah Palomin
Secretary to Ernest L. Carroll

Encl.

cc: Mr. W. Thomas Kellahin
(Via Fax to 505/982-2047)

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

**IN THE MATTER OF THE APPLICATION OF :
TMBR/SHARP DRILLING INC. FOR AN ORDER :
STAYING DIVISION APPROVAL OF TWO :
APPLICATIONS FOR PERMIT TO DRILL BY :
DAVID H. ARRINGTON OIL & GAS, INC., LEA :
COUNTY, NEW MEXICO :** **CASE NO. 12731**

PREHEARING STATEMENT

This prehearing statement is submitted by DAVID H. ARRINGTON OIL & GAS, INC. as required by the Oil Conservation Division.

APPEARANCES OF PARTIES

APPLICANT

TMBR/Sharp Drilling, Inc.

W. Thomas Kellahin
Kellahin and Kellahin
P.O. Box 2265
Santa Fe, NM 87504
(505) 982-4285

OPPOSITION

David H. Arrington Oil & Gas, Inc.

Ernest L. Carroll
Losee, Carson, Haas & Carroll
P.O. Box 1720
Artesia, NM 88211-1720
(505) 746-3505

STATEMENT OF THE CASE

1. The applicant TMBR/Sharp Drilling Inc. ("TMBR") attempts by this proceeding to involve this administrative agency in the adjudication of ownership rights to certain oil and gas leases, an issue and subject matter exclusively within the jurisdiction of the judicial branch of the government. The true issue is strictly which of the two

contending parties is the rightful owner of the oil and gas leasehold in the acreage in Lea County, New Mexico particularly described in the leases attached to Exhibit 7 to the application.

2. The application itself demonstrates that the dispute which TMBR attempts to bring before the agency is already the subject of litigation in the Fifth Judicial District Court, Lea County, New Mexico.
3. The regulations cited by the applicant (19 NMAC 15.C.102, 19 NMAC 15.M.1101 and 19 NMAC 15.N.1202) are irrelevant and do not confer jurisdiction in the Director of the Division to determine the contested title to real property.
4. The only administrative action which is cognizable by the Division concerns the August 8, 2001 letters of District I Supervisor, Chris Williams, disapproving Form C-101 applications for permits to drill submitted by TMBR. Copies of those letters are attached hereto. The actions of the District Supervisor result from the circumstance of TMBR seeking a permit to drill wells on acreage already dedicated to previously issued permits for the same pool and overlapping well spacing units. As an administrative matter the District Supervisor's actions were clearly and indisputably correct on the facts before him. There is nothing about those decisions that is even alleged to be erroneous, contrary to the rules or regulations or to law.
5. What TMBR, in reality, asks the Director to do is decide that the earliest issued permits to drill have been issued to a party who does not have the leasehold rights to the acreage to be developed. That is a question for the courts, and the courts alone, to decide and not one withing the power, authority or jurisdiction of the Division.

SEP 17 2001 11:10

LOSEE CARSON HAAS & CARROLL P.A.

20010917 11:10

PROPOSED EVIDENCE

DAVID H. ARRINGTON OIL & GAS, INC.:

<u>WITNESSES</u>	<u>EST. TIME</u>	<u>EXHIBITS</u>
Enich Diffee (landman)		None anticipated
Bill Baker (Exploration Mgr. David H. Arrington Oil & Gas, Inc.)		None anticipated

PROCEDURAL MATTERS

Arrington has filed a motion to dismiss and TMBR/Sharp has filed a response. Awaiting Division decision.

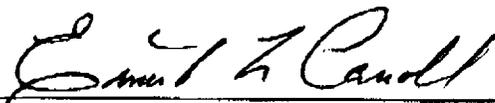
Respectfully submitted,

LOSEE, CARSON, HAAS & CARROLL, P.A.

By: 
Ernest L. Carroll
P.O. Box 1720
Artesia, NM 88211-1720
(505)746-3505

Attorneys for David H. Arrington Oil & Gas, Inc.

I hereby certify that I caused a true and correct copy of the foregoing to be mailed to counsel of record this September 17, 2001.


Ernest L. Carroll