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W. THOMAS KELLAHIN*

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RECOGNIZED SPECIALIST IN THE AREA OF
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September 14, 2001

HAND DELIVERED

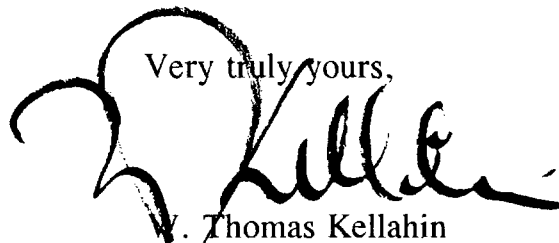
Ms. Lori Wrotenbery, Director
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

**Re: NMOCD Case 12731
Application of TMBR/Sharp Drilling, Inc.
for an order staying Division approval of
two applicaitons for permit to drill
by David H. Arrington Oil & Gas, inc.
Lea County, New Mexico**

Dear Ms. Wrotenbery:

On behalf of TMBR/Sharp Drilling, Inc., please find enclosed our response to David H. Arrington Oil & Gas, Inc.'s motion to dismiss.

Very truly yours,



W. Thomas Kellahin

cc: Michael E. Stogner, Hearing Examiner
David Brooks, Attorney OCD
Chris Williams
Supervisor (OCD-Hobbs)
Gene Gallegos, Esq.
Attorney for David H. Arrington Oil & Gas, Inc.
TMBR/Sharp Drilling Inc.
Attn: Tom Brown
Cotton, Bledsoe, Tighe & Dawson
Attn: Susan Richardson

SEP 14 10:47 AM
OCD-HOBBS

**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

**RESPONSE OF TMBR/SHARP DRILLING, INC.
TO
DAVID H. ARRINGTON OIL & GAS INC.'S
MOTION TO DISMISS**

Applicant TMBR/Sharp Drilling, Inc. ("TMBR/Sharp"), in response, requests that the New Mexico Oil Conservation Division deny David H. Arrington Oil & Gas Inc.'s ("Arrington") motion to dismiss, and in support states:

BACKGROUND

TMBR/Sharp filed two applications for permit to drill ("APDs") in an attempt to drill two additional wells in accordance with the provisions of Paragraph 12 of the Original Stoke Lease, but was denied those APDs by the OCD-Artesia only because the OCD had already issued approvals for APDs to Arrington for two wells whose designated spacing units included the disputed leasehold properties and were in conflict with TMBR/Sharp's APDs.

Because there is good cause for the Division to issue an order in this matter in order to maintain the status quo and preclude any party from gaining an unfair advantage over another while this matter is addressed by the District Court, TMBR/Sharp, in NMOCD Case 12731, has asked the Division for an order to stay its approval of Arrington's APDs. Arrington has responded by filing a motion to dismiss TMBR/Sharp's application.

In the alternative and by a separate application filed with the Division, TMBR/Sharp has appealed the Artesia District Supervisor's decision denying approval of TMBR/Sharp's two APDs and has requested that the Director order the District Supervisor to approve TMBR/Sharp's APDs. The District Supervisor's decision has effectively determined title in favor of Arrington, has precluded TMBR/Sharp from performing its obligations to commence a well within the lease term required for continuous development of its lease, and will cause TMBR/Sharp's lease to expire before this matter can be presented to the District Court, thereby giving Arrington an unfair advantage unless relief is granted to TMBR/Sharp.

ARRINGTON'S MOTION IS MISLEADING

Arrington wants MBR/Sharp's application dismissed and, to accomplish that objective, incorrectly contends that the Division has no jurisdiction because TMBR/Sharp is asking "the Division to determine the contested title to real property." Arrington mis-characterizes TMBR/Sharp's application and in doing so ignores what TMBR/Sharp is requesting. All that TMBR/Sharp is requesting is that the Division withdraw its approval of Arrington APDs because of additional facts which, if known to the Division when it approved those APDs, would have caused the Division to have not issued its approval. Arrington's APDs were approved based upon its representation that it had ownership and operations for the proposed wells and their respective spacing units. The OCD-Artesia did not know and Arrington did not disclose that its claim of operatorship and ownership were being contested by TMBR/Sharp.

Just because one of the disputed issues between the parties is a contractual dispute now being litigated in district court, does not preclude the Division from deciding it is in the best interest of protection of correlative rights for the Division to withdraw its approval of Arrington's APDs until the litigation is concluded.

**THE DIVISION HAS CONTINUING JURISDICTION
OVER ITS APPLICATIONS FOR PERMITS TO DRILL**

Contrary to Arrington's assertions, the Division does have jurisdiction over disputes even if they involve contractual, title or ownership disputes which also give rise to litigation disputes. **For Example, See OCD Case 11434, Order R-10545, Meridian v. Hartman; OCD Cases 11755, 11723, 11868 (De Novo) Order R-10868-A (Fasken v. Mewbourne, motion in Limine); OCD Case 12277, Order R-11341 (Burlington v. GLA-46 Group).**

In this case, Division Form C-101 and Form C-102 which were signed by Arrington, contained an operator certification "I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief." Based upon that certification, OCD-Artesia approved Arrington's APDs. If the Division does not have jurisdiction over issues of lease and ownership information affecting APDs requiring this information serves no purpose. When that information becomes disputed, is the Division precluded from taking action? To the contrary. Because TMBR/Sharp contests Arrington's claim for operations and the truthfulness of its certifications to the Division, it is incumbent upon the Division to act to protect all interests.

There is no question that the Division retains jurisdiction over its District Supervisor's approval of the Arrington APDs and his denial of the TMBR/Sharp APDs. An administrative agency has the authority to determine its own jurisdiction. "The Board retains the authority at all time to examine facts and make a finding concerning its own jurisdiction, subject, of course, to review by the courts" **Cibas v. New Mexico Energy Minerals and Natural Resources Dep't** 120 NM 127 Ct. App.) cert. denied (1995). In this case, the Division does not have to decide title to real property in order to decide that facts known to it after the issuance of its approval are sufficient to cause it to withdraw or stay approval pending resolution of issues even if those issues also involve the jurisdiction of the district courts.

In this case, the Division certainly has the authority to determine whether its approval of the Arrington APD should now be withdrawn without deciding the contractual dispute between Arrington and TMBR/Sharp.

RELEVANT DIVISION RULES

TMBR/Sharp's citations of Division jurisdiction are not irrelevant as claimed by Arrington. 19 NMAC 15.M.1101.A is the Division rule which requires that "before commencing drilling or deepening operations, or

before plugging a well back to another zone, the operator must file a permit to do so." (This is Form C-101 and it **must** be accompanied by Form C-102 **Well Location and Acreage Dedication Plat**) 19 NMAC 15.N.1102.A is the Division rule which states "Form C-102 is a dual purpose form used to show the exact location of the well and the acreage dedicated thereto. The form is also used to show the ownership and status of each lease contained within the dedicated acreage. When there is more than one working interest owner or royalty owner on a given lease, designation of the majority owner will be sufficient." 19 NMAC 15.N.1102.B says all information required on Form C-102 shall be filled out and certified by the operator of the well except for the well location on this plat which is certified by a professional surveyor or engineer.

This Division Rule, as well as all Division rules, are authorized by NMSA, 1979, Section 70-2-11.A which states "The division is hereby empowered and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided. To that end, the division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purposes of this act, whether or not indicated or specified in any section hereof."

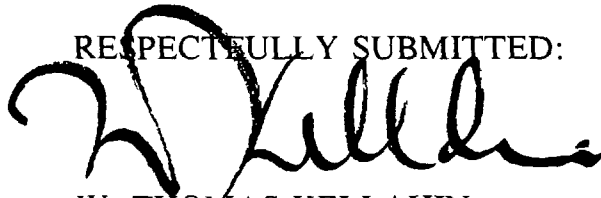
Other general statutory powers are at 70-2-6 which states "The division shall have, and is hereby given, jurisdiction and authority over all matter relating to the conservation of oil and gas....."

CONCLUSION

It is obvious that the Division cannot carry out its statutory duties if it does not require and control the permitting of wells and the declaration of spacing unit. Its rules and regulations are predicated upon the accuracy of those forms which are designed to provide disclosure of that information. When the accuracy of Arrington's information is now disputed, the Division can and must act. TMBR/Sharp's correlative rights will be impaired if Arrington decides to proceed with either of these wells prior to having this matter resolved either voluntarily or by the district court.

WHEREFORE TMBR/Sharp requests that the Division deny Arrington's motion to dismiss and proceed to a hearing of this matter.

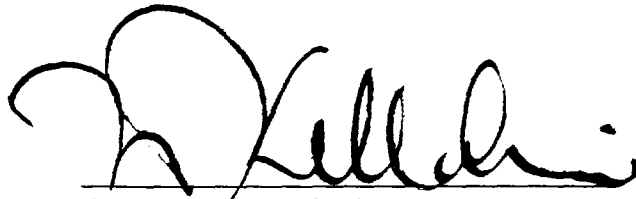
RESPECTFULLY SUBMITTED:

A handwritten signature in black ink, appearing to read 'W. Thomas Kellahin', is written over the typed name and address.

W. THOMAS KELLAHIN
KELLAHIN & KELLAHIN
P. O. Box 2265
Santa Fe, New Mexico 87501
(505) 982-4285

Certificate of Service

In accordance with Division Rule 1208.A, a true and correct copy of this pleading was hand delivered to Gene Gallegos, attorney for David H. Arrington Oil & Gas, Inc. this 14th day of September, 2001.



W. Thomas Kellahin

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

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PHONE (505) 746-3505
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September 13, 2001

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:

Enclosed please find an original and one copy of the Entry of Appearance for the above numbered case. Please stamp one copy received and return it to me in the enclosed self-addressed stamped envelope. Thank you very much.

Very truly yours,

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

Hannah Palomin

Hannah Palomin
Secretary to Ernest L. Carroll

Encl.

01 SEP 17 10:12:13
CLERK OF COURT

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

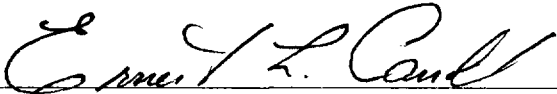
IN THE MATTER OF THE APPLICATION
OF TMBR/SHARP DRILLING INC. FOR
AN EMERGENCY ORDER OF THE
DIVISION

CASE NO. 12731

ENTRY OF APPEARANCE

COMES NOW Ernest L. Carroll, of Losee, Carson, Haas & Carroll, P. A. and hereby
enters his appearance on behalf of DAVID H. ARRINGTON OIL & GAS, INC.

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

By: 
Ernest L. Carroll
P.O. Box 1720
Artesia, NM 88260
(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 pleading to be
mailed to counsel of record this September 13, 2001.


Ernest L. Carroll