

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

LAW OFFICES
LOSEE, CARSON, HAAS & CARROLL, P.A.
311 WEST QUAY AVENUE
P. O. BOX 1720
ARTESIA, NEW MEXICO 88211-1720
PHONE (505) 746-3505
FAX (505) 746-6316

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October 4, 2001

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

Re: Case No. 12744

Dear Ms. Davidson:

Enclosed please find an original and one copy of the Motion to Dismiss Application 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
Secretary to Ernest L. Carroll

Encl.

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

**IN THE MATTER OF THE APPLICATION OF
TMBR/SHARP DRILLING INC. APPEALING
THE ARTESIA DISTRICT SUPERVISOR'S
DECISION DENYING APPROVAL OF TWO
APPLICATIONS FOR PERMIT TO DRILL
FILED BY TMBR/SHARP DRILLING, INC.
LEA COUNTY, NEW MEXICO**

CASE NO. 12744

MOTION TO DISMISS APPLICATION

David H. Arrington Oil & Gas Inc. ("Arrington") by and through its attorneys of record, Losee, Carson, Haas and Carroll, P.A. (Ernest L. Carroll) moves to dismiss the application herein as grounds stating:

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 government. The true issue is strictly which of two contending parties is the rightful owner of the oil and gas leasehold in the acreage in Lea County, New Mexico.

2. The dispute which TMBR attempts to bring before this agency is already the subject of litigation in the Fifth Judicial District, Lea County, New Mexico.

3. The regulations cited by the applicant (19 NMAC 15.C.102, and 19 NMAC 15.M.1101) 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.

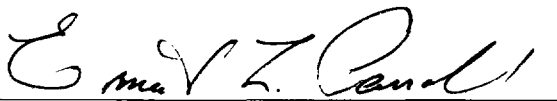
5. What TMBR, in reality, asks the Director to do is decide that earlier issued permits to drill have been issued to a party who does not have the leasehold rights to the acreage to be developed. That is a question for the courts, and the courts alone, to decide and not one within the power, authority or jurisdiction of the Division.

6. TMBR has filed a prior application on the same factors seeking essentially the same relief in Case Number 12731. That case has already been argued and a decision is now pending from the Division.

WHEREFORE the movant prays the order of the Division dismissing the subject application without further proceeding.

Respectfully submitted,

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

By: 

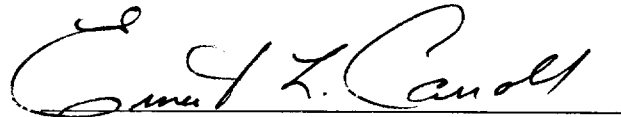
Ernest L. Carroll
P.O. Box 1720
Artesia, NM 88260
(505)746-3505

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

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing Motion to Dismiss Application to be mailed on this 4th day of October, 2001, to the following:

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, NM 87501


Ernest L. Carroll