Correspondence

Reno

Case No. 12744

July 2002

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July 10, 2002

VIA FEDERAL EXPRESS

Mr. W. Thomas Kellahin
Kellahin and Kellahin
117 North Guadalupe
Santa Fe, NM 87504

Re: **Case No. 12731** - Application of TMBR/Sharp Drilling, Inc. for an Order Staying David H. Arrington Oil & Gas, Inc. from Commencing Operations, Lea County, New Mexico; **Case No. 12744**; Application of TMBR/Sharp Drilling, Inc. Appealing the Hobbs District Supervisor's Decision Denying Approval of Two Applications for Permit to Drill Filed by TMBR/Sharp Drilling, Inc. Lea County, New Mexico.

Dear Mr. Kellahin:

Enclosed are the documents you requested regarding Arrington's recent appeal of the OCD ruling number R-11700-B, which are as follow:

1. Transcript of March 26, 2002 OCD proceeding and exhibits;
2. Documents related to the OCD ruling number R-11700-B
   a. Order of the Oil Conservation Division
   b. Letter dated May 1, 2002 from Chris Williams to David H. Arrington
   c. Letter dated May 9, 2002 from J. Scott Hall to Chris Williams
   d. Ocean Energy, Inc.'s Application for Rehearing and Motion to Stay Order
   e. Application for Rehearing and Request for Partial Stay of Order R-11700-B
   f. Consolidated Response to Application for Hearing filed by Arrington/Ocean

Should you need additional documents, please let us know.

Very truly yours,

COTTON, BLEDSOE, TIGHE & DAWSON

Crystal Pleasant

Crystal Pleasant, RP
Paralegal to Susan R. Richardson

Enclosure

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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION FOR THE PURPOSE OF CONSIDERING:

APPLICATION OF TMBR/SHARP DRILLING, INC. FOR AN ORDER STAYING DAVID H. ARRINGTON OIL & GAS, INC. FROM COMMENCING OPERATIONS, LEA COUNTY, NEW MEXICO. **CASE NO. 12731**

APPLICATION OF TMBR/SHARP DRILLING, INC. APPEALING THE HOBBS 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**

ORDER NO. R-11700-B

ORDER OF THE OIL CONSERVATION COMMISSION

BY THE COMMISSION:

THIS MATTER came before the Oil Conservation Commission (hereinafter referred to as "the Commission") on March 26, 2002, at Santa Fe, New Mexico, on application of TMBR/Sharp Drilling Inc. (hereinafter referred to as "TMBR/Sharp"), *de novo*, and opposed by David H. Arrington Oil and Gas Inc. (hereinafter referred to as "Arrington") and Ocean Energy Inc. (hereinafter referred to as "Ocean Energy") and the Commission, having carefully considered the evidence, the pleadings and other materials submitted by the parties hereto, now, on this 26th day of April, 2002,

FINDS,

1. Notice has been given of the application and the hearing on this matter, and the Commission has jurisdiction of the parties and the subject matter herein.

2. In Case No. 12731, TMBR/Sharp seeks an order voiding permits to drill obtained by Arrington and awarding or confirming permits to drill to TMBR/Sharp concerning the same property.

3. In Case No. 12744, TMBR/Sharp appeals the action of the Supervisor of District I of the Oil Conservation Division denying two applications for permit to drill.

4. Arrington and Ocean Energy oppose[1] both applications.

5. The cases were consolidated by the Division for purposes of hearing and remain so before the Commission.

6. Still pending before the Division are two applications for compulsory pooling. They are: Case No. 12816, Application of TMBR/Sharp for compulsory pooling, Lea County, and Case No. 12841, Application of Ocean Energy Inc. for compulsory pooling, Lea County.

7. The Commission conducted an evidentiary hearing on March 26, 2002, heard testimony from witnesses called by TMBR/Sharp, and accepted exhibits. The Commission also accepted pre-hearing statements from TMBR/Sharp and Arrington and heard opening statements from TMBR/Sharp, Arrington and Ocean Energy and accepted brief closing statements from TMBR/Sharp and Arrington.

8. Following the hearing, TMBR/Sharp filed a Motion to Supplement the Record to include the April 10, 2002 letter of Arrington to the Oil Conservation Division's Hobbs District Office and a portion of Arrington's Supplemental Response to Plaintiff's Motion for Reconsideration in Lea County Cause No. CV-2001-315C. Ocean filed a response to that motion that argued the items add nothing to the record, and Arrington filed a response arguing that the supplemental material is not new or inconsistent. The Motion to Supplement the Record should be granted as no party seems to object to review of the documents; the objections seem to relate only to the significance of the documents to this matter.

9. Applications for permit to drill were filed with the Division in Sections 23 and 25 by Arrington and TMBR/Sharp. The applications filed by TMBR/Sharp and Arrington both proposed a well in the NW/4 of in Section 25. In Section 23, the application for permit to drill filed by TMBR/Sharp proposed a well in the NE/4, and the application of Arrington proposed a well in the SE/4.

10. Arrington's application in Section 25 was filed on July 17, 2001 and sought a permit to drill its proposed "Triple-Hackle Dragon "25" Well No. 1." This application was approved on July 17. On or about August 7, 2001, TMBR/Sharp filed its application for a permit to drill its proposed "Blue Fin "25" Well No. 1" in the same section. That application was denied on August 8, 2001.

11. Arrington's application in Section 23 was filed on July 25, 2001 and sought a permit to drill its proposed "Blue Drake "23" Well No. 1." This application was

[1] On April 10, 2002 Arrington agreed to release its permit to drill to TMBR/Sharp. A dispute may no longer therefore exist concerning Section 23 although the parties apparently do not agree with this assessment.

approved on July 30, 2001. On or about August 6, 2001, TMBR/Sharp filed its application for a permit to drill its proposed "Leavelle "23" Well No. 1" in the same section. That application was denied on August 8, 2001.[2]

12. TMBR/Sharp's applications in Sections 23 and 25 were denied on the grounds of the permits previously issued to Arrington for the "Triple-Hackle Dragon "25" Well No. 1" and the "Blue Drake "23" Well No. 1." The Townsend Mississippian North Gas Pool, the pool from which the wells are to produce, is governed by the spacing and well density requirements of Rule 104.C(2) [19 NMAC 15.C.104.C(2)]. That rule imposes 320-acre spacing on wells producing from that pool. TMBR/Sharp's applications were denied because, if granted, more than one well would be present within a 320-acre spacing unit, in violation of Rule 104.C(2).

13. Before an oil or natural gas well may be drilled within the State of New Mexico, a permit to drill must be obtained. See NMAC 19.15.3.102.A, 19 NMAC 15.M.1101.A. Only an "operator" may obtain a permit to drill, 19 NMAC 15.M.1101.A, and an "operator" is a person who is "duly authorized" and "is in charge of the development of a lease or the operation of a producing property." NMAC 19.15.1.7.O(8).

14. The central issue in this case is whether Arrington was eligible to become the operator of the wells in question. If not, Arrington should not have received the permits to drill. If Arrington was eligible to become the operator, then the permits were properly issued to Arrington.

15. A dispute exists concerning the validity of Arrington and TMBR/Sharp's mineral leases in Sections 23 and 25. As will be seen below, resolution of this dispute in favor of Arrington or TMBR/Sharp determines which party is eligible to be the operator and thus, who should receive the permits to drill.

16. TMBR/Sharp is the owner of oil and gas leases comprising the NW/4 of Section 25 and the SE/4 of Section 23 (along with other lands) pursuant to leases dated August 25, 1997 granted by Madeline Stokes and Erma Stokes Hamilton. TMBR/Sharp Exhibit 6. The leases were granted to Ameristate Oil & Gas, Inc. (hereinafter referred to as "Ameristate") and were recorded respectively in Book 827 at Page 127 and in Book 827 at Page 124 in Lea County, New Mexico.

17. TMBR/Sharp and Ameristate entered into a Joint Operating Agreement along with other parties on July 1, 1998 and TMBR/Sharp was designated as the operator in Section 25. See TMBR/Sharp Exhibit 7.

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[2] Apparently TMBR/Sharp reapplied for the permits to drill that were previously denied, and the Division approved those permits on March 20, 2002.

18. Although the primary terms of the TMBR/Sharp leases have apparently expired, TMBR/Sharp alleges that the leases were preserved by the drilling of the "Blue Fin 24 Well No. 1" and subsequent production from that well. The Blue Fin 24 Well No. 1 is located in the offsetting section 24.

19. Subsequent to Stokes and Hamilton's execution of leases in favor of Ameristate Oil & Gas Inc., they granted leases in the same property to James D. Huff on March 27, 2001. See TMBR/Sharp Exhibit 9. The leases to Mr. Huff were recorded in Book 1084 at Page 282 and in Book 1084 at Page 285 in Lea County, New Mexico. The parties referred to these leases as "top leases," meaning that according to their terms, they would not take effect until the prior or "bottom" leases became ineffective. See TMBR/Sharp Exhibit 9, ¶ 15.

20. Arrington alleges Mr. Huff is an agent of Arrington but presented nothing to support that contention.

21. In July and August 2001, Ocean acquired a number of farm-out agreements in Section 25. See TMBR/Sharp Exhibit 10, Schedule 1. By an assignment dated September 10, 2001, Ocean assigned a percentage of the farm out agreements to Arrington under terms that require Arrington to drill a test well in Section 25 known as the Triple Hackle Dragon "25" Well No. 1 in the NW/4 of that section.

22. On August 21, 2001, after receiving the denials of the applied-for permits to drill from the District office, TMBR/Sharp filed suit against Arrington and the lessors of its mineral interests in the Fifth Judicial District Court of Lea County, New Mexico. In that case, styled "TMBR/Sharp Drilling, Inc. v. David H. Arrington Oil & Gas, Inc., *et al.*", TMBR/Sharp alleged that its leases were still effective and the Arrington top leases were ineffective. The District Court, in its Order Granting Partial Summary Judgment, dated December 24, 2001, agreed with TMBR/Sharp's contention. See TMBR/Sharp's Exhibit No. 12,

23. During the hearing of this matter, TMBR/Sharp argued that because the Fifth Judicial District Court found that Arrington's "top leases" had failed, TMBR/Sharp was entitled to permits to drill in Sections 23 and 25 and Arrington was not entitled to permits to drill and its permits should be rescinded. TMBR/Sharp also argued that Arrington had filed applications to prevent TMBR/Sharp from being able to drill and to place its obligations under the continuous drilling clauses of the oil and gas leases in jeopardy. TMBR/Sharp argued that Ocean Energy's letter agreement with Arrington could not revive Arrington's claim of title and that Ocean Energy's pending pooling application with the Division is essentially irrelevant to the question of whether TMBR/Sharp should have been granted a permit to drill.

24. Arrington argued in response that the title issue ruled upon by the District Court with respect to section 25 is irrelevant because Arrington acquired an independent

interest in that section by virtue of a farm out agreement in September of 2001. Arrington also argued it was willing to assign the disputed acreage in Section 23 to TMBR/Sharp in order to resolve the present controversy. Arrington also argued that it doesn't intend to actually drill at the present time under either approved permit to drill and argued, citing Order No. R-10731-B, that the Commission's practice has not been to rely on "first in time, first in right" principles in deciding competing applications on compulsory pooling, but instead on geological evidence. Arrington seemed to argue that a compulsory pooling proceeding is the place to present such geologic evidence. Arrington argues that these proceedings are unnecessary and that the Commission should rely upon the Division's pending pooling cases to decide who of the various parties should properly possess the permit to drill.

25. Ocean Energy argued that since its farm out agreement terminates on July 1, 2002 time is of the essence and that the matters at issue here should be resolved in the pending compulsory pooling proceeding instead of this proceeding. Ocean Energy argued that the permit to drill is meaningless in this context, that TMBR/Sharp is essentially asking the Commission to determine pooling in the context of the permit to drill, and that the dedication of acreage on the acreage dedication plat should not determine what acreage would be pooled to the well. If the Commission were to adopt this approach, Ocean Energy argues, the compulsory pooling statutes would be written out of existence.

26. The parties seem to agree that in a situation where the bottom lease has not failed, a person owning a top lease is not a person duly authorized to be in charge of the development of a lease or the operation of a producing property, and is therefore not entitled to a permit to drill. NMAC 19.15.1.7(O)(8). See also 1 Kramer & Martin, The Law of Pooling and Unitization, 3rd ed., § 11.04 at 11-10 (2001). Moreover, because only an "owner" may seek compulsory pooling, it seems that a person owning a top lease where the bottom lease has not failed might not be entitled to compulsory pooling either. See NMSA 1978, § 70-2-17(C).

27. When an application for permit to drill is filed, the Division does not determine whether an applicant can validly claim a real property interest in the property subject to the application, and therefore whether the applicant is "duly authorized" and "is in charge of the development of a lease or the operation of a producing property." The Division has no jurisdiction to determine the validity of any title, or the validity or continuation in force and effect of any oil and gas lease. Exclusive jurisdiction of such matters resides in the courts of the State of New Mexico. The Division so concluded in its Order in this matter. See Order No. R-11700 (December 13, 2001).

28. It is the responsibility of the operator filing an application for a permit to drill to do so under a good faith claim to title and a good faith belief that it is authorized to drill the well applied for. It appears to this body that Arrington had such a good faith belief when it filed its application, but subsequently the District Court found otherwise.

It is not within the purview of this body to question that decision and it should not do so in this case.

29. As of the date of this order, TMBR/Sharp, by Court declaration, is the owner of an oil and gas lease in both Section 23 and Section 25, and Arrington, also by Court declaration, is not an owner in those sections. Therefore, Arrington, who the Court has now decreed has no authority over the property, should not have been granted permits to drill in those sections and TMBR/Sharp should have been granted a permit.

30. Both Arrington and Ocean Energy imply that an appeal will be filed of the District Court's decision. Until the issue of title in Sections 23 and 25 is finally resolved by the courts or by agreement of the parties, the outcome of this proceeding is therefore uncertain. As of the present time, TMBR/Sharp has prevailed on the title question and this Order reflects that (present) reality. However, as an appeal could change that conclusion, jurisdiction of this matter should therefore be retained until matters are finally resolved.

31. The permits to drill issued by the Division in July 2001 to Arrington were issued erroneously and should be rescinded *ab initio*. The applications to drill submitted by TMBR/Sharp in August 2001 should have been processed within a few days of receipt. Arrington's later acquisition of an interest in section 23 and 25 through a farm out agreement doesn't change this analysis; Arrington had no interest by virtue of farm out as of the date of TMBR/Sharp's applications.

32. On another issue, Arrington and Ocean Energy have both urged this body to stay these proceedings pending the resolution of the applications for compulsory pooling, arguing that a decision on those matters will effectively resolve the issues surrounding the permits to drill.

33. Arrington and Ocean Energy's conclusion does not necessarily follow. An application for a permit to drill serves different objectives than an application for compulsory pooling and the two proceedings should not be confused. The application for a permit to drill is required to verify that requirements for a permit are satisfied. For example, on receipt of an application, the Division will verify whether an operator has financial assurance on file, identify which pool is the objective of the well so as to identify the proper well spacing and other applicable requirements, ensure that the casing and cementing program meets Division requirements and check the information provided to identify any other relevant issues. The acreage dedication plat that accompanies the application (form C-102) permits verification of the spacing requirements under the applicable pool rules or statewide rules. Compulsory pooling is related to these objectives in that compulsory pooling would not be needed in the absence of spacing requirements. 1 Kramer & Martin, The Law of Pooling and Unitization, § 10.01 (2001) at 10-2. But its primary objectives are to avoid the drilling of unnecessary wells and to protect correlative rights. NMSA 1978, § 70-2-17(C).

34. It has long been the practice in New Mexico that the operator is free to choose whether to drill first, whether to pool first, or whether to pursue both contemporaneously. The Oil and Gas Act explicitly permits an operator to apply for compulsory pooling after the well is already drilled. See NMSA 1978, § 70-2-17(C) (the compulsory pooling powers of the Division may be invoked by an owner or owners "... who has the right to drill *has drilled* or proposes to drill a well [sic] ..."). Issuance of the permit to drill does not prejudge the results of a compulsory pooling proceeding, and any suggestion that the acreage dedication plat attached to an application to drill somehow "pools" acreage is expressly disavowed. If acreage included on an acreage dedication plat is not owned in common, it is the obligation of the operator to seek voluntary pooling of the acreage pursuant to NMSA 1978, § 70-2-18(A) and, if unsuccessful, to seek compulsory pooling pursuant to NMSA 1978, § 70-2-17(C).

35. Thus, where compulsory pooling is not required because of voluntary agreement or because of common ownership of the dedicated acreage, the practice of designating the acreage to be dedicated to the well on the application for a permit to drill furthers administrative expedience. Once the application is approved, no further proceedings are necessary. An operator may first apply for a permit to drill a well and may thereafter pool (on a voluntary or compulsory basis) separately owned tracts to the well. Alternatively, the operator may first pool and later seek a permit to drill. The two are not mutually exclusive, and there is no preferred methodology.

36. Thus, the process fosters efficiency by permitting a simple approach in cases where ownership is common and pooling, voluntary or compulsory, is not necessary.

37. Ocean's expiring farm-outs present a difficult problem because the delay occasioned by this proceeding and any delay that might occur in the pending compulsory pooling cases may place Ocean's interests in jeopardy. It is worth noting that Ocean's interests seem to be free of the title issues plaguing the other parties, but since Ocean Energy intended that Arrington drill and become operator, Ocean isn't planning on preserving its rights by drilling a well itself and hasn't applied for a permit to drill. Unfortunately, this body is without authority to stay expiration of the farm-outs; Ocean should petition the District Court for relief if the expiring farm-outs are a concern.

CONCLUSION OF LAW:

The Oil Conservation Commission has no jurisdiction to determine the validity of any title, or the validity or continuation in force and effect of any oil and gas lease. Exclusive jurisdiction of such matters resides in the courts of the State of New Mexico.

IT IS THEREFORE ORDERED:

1. The portion of TMBR/Sharp's application in Case No. 12731 seeking to void permits to drill obtained by Arrington is granted. The permits to drill awarded to

Arrington shall be and hereby are rescinded *ab initio* and the applications originally filed by TMBR/Sharp in August, 2001 shall be and hereby are remanded to the District Office for approval consistent with this Order provided the applications otherwise meet applicable Division requirements.

2. TMBR/Sharp's application in Case No. 12744, appealing the decision of the Supervisor of District I of the Oil Conservation Division, is granted and the decision shall be and hereby is overruled.

3. The motions of Arrington and Ocean to continue this proceeding until after the decision in Cases No. 12816 and No. 12841 shall be and hereby are denied.

4. The motion of TMBR/Sharp to Supplement the Record is hereby granted.

5. Jurisdiction of this case is retained for the entry of such further orders as may be necessary given subsequent proceedings in TMBR/Sharp Drilling, Inc. v. David H. Arrington Oil & Gas, Inc., *et al.*

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

LORI WROTENBERY, CHAIR

JAMI BAILEY, MEMBER

ROBERT LEE, MEMBER

S E A L

NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

GARY E. JOHNSON
Governor
Betty Rivera
Cabinet Secretary

Lori Wrotenbery
Director
Oil Conservation Division

May 1, 2002

David H Arrington Oil & Gas Inc
ATT: Danny Ledford
P O Box 2071
Midland, TX 79702

RE: Cancel of Intents to Drill

Gentlemen:

Per the order #CV2001-315C from the 5th Judicial District Court of Lea County and the order R-11700-B from the Oil Conservation Division TMBR/Sharp Inc has the rights to drill in Sec.25, T-16s, R-35e.

The Oil Conservation Division is canceling your intents to drill the two wells listed below:
Triple-Hackle Dragon 25 #1-E, 25-16s-35e, API #30-025-35636
Glass-Eye Midge 25 #2-A, 25-16s-35e, API # 30-025-35787

If you have any questions on this matter, please call the Hobbs District office (505) 393-6161.

Yours truly,

OIL CONSERVATION DIVISION

Chris Williams
District I, Supervisor

CW:dm

CC: OCD Hobbs
OCD Santa Fe
Bureau of Land Management
State Land Office

MILLER, STRATVERT & TORGERSON, P.A.

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PLEASE REPLY TO SANTA FE

* NEW MEXICO BOARD OF SPECIALIZATION RECOGNIZED SPECIALIST IN NATURAL RESOURCES - OIL & GAS LAW
** NEW MEXICO BOARD OF SPECIALIZATION RECOGNIZED SPECIALIST IN REAL ESTATE LAW

May 9, 2002

VIA FACSIMILE (505) 393-0720
Mr. Chris Williams
District I Supervisor
New Mexico Oil Conservation Division
1625 French Drive
Hobbs, New Mexico 88240

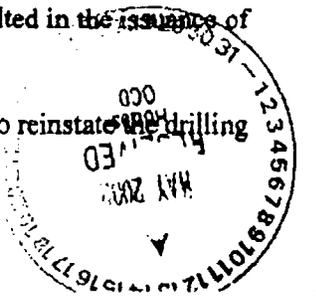
Re: Triple-Hackle Dragon 25 No. 1-E
Glass-Eye Midge 25 No. 2-A[1]
Sec. 25, T-16-S, R-35-E, NMPM, Lea County, New Mexico

Dear Mr. Williams:

This firm represents David H. Arrington Oil and Gas, Inc. in connection with the above-referenced matter. Your May 1, 2002 letter was received by Arrington on May 7, 2002 and forwarded to me.

Please be advised that Arrington has had and continues to have the right to drill in Section 25 independent of the oil and gas lease that is the subject of the ongoing litigation in the Fifth Judicial District Court referenced in your letter. Therefore, the premise underlying your conclusion that Arrington's C-101 and C-102 should be canceled is erroneous. Moreover, the APD approved by the Division for Arrington's Glass-Eyed Midge 25 Well No. 1 well on December 17, 2001, was not the subject of NMOCC Case Nos. 12731 and 12744 (*de novo*) which resulted in the issuance of Order No. R-11700-B.

On behalf of David H. Arrington Oil and Gas, Inc., you are requested to reinstate the drilling permit for the Glass-Eyed Midge Well No. 1 at the earliest opportunity.



1 The correct name of the well is the Glass-Eyed Midge 25 Well No. 1.

With respect to the Triple Hackle Well No. 1, Ocean Energy is planning on drilling that well and you should communicate with them directly.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall

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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION FOR THE PURPOSE OF CONSIDERING:

APPLICATION OF TMBR/SHARP DRILLING INC. FOR AN ORDER STAYING DAVID H. ARRINGTON OIL & GAS, INC. FROM COMMENCING OPERATIONS, LEA COUNTY, NEW MEXICO. Case No. 12,731 (*de novo*)

APPLICATION OF TMBR/SHARP DRILLING INC. APPEALING THE HOBBS 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. 12,744 (*de novo*)

Order No. R-11700-B

OCEAN ENERGY, INC.'S APPLICATION FOR REHEARING AND MOTION TO STAY ORDER

Pursuant to NMSA 1978 §70-2-25 and Division Rules 1220 and 1222, Ocean Energy, Inc. ("Ocean") requests that the Commission (a) rehear the above matter, and (b) stay the effectiveness of TMBR/Sharp Drilling, Inc.'s ("TMBR/Sharp") application for permit to drill ("APD") for a well in §25-16S-35E pending resolution of the pooling cases being heard by the Division on May 16, 2002, and in support thereof, states:

1. Ocean is a party of record adversely affected by the above order. The order is erroneous as noted below.

2. Ocean is protecting its rights:

Finding paragraph 37 of the order states that "Ocean isn't planning on preserving its rights by drilling a well itself, and hasn't applied for a permit to drill a well." That is incorrect.

When the rights of David H. Arrington Oil & Gas, Inc. ("Arrington") became an issue in January 2002, Ocean proposed a well in the NW½ of Section 25. **Affidavit of Derold Maney, attached as Exhibit A, at paragraph 6.** It then followed up on its well proposal by filing a compulsory pooling application on February 26, 2002. **Id., at paragraph 10; Division Case No. 12841.**[1] Ocean's pooling case has been continued for 8 weeks, against Ocean's wishes, at the request of TMBR/Sharp.

Ocean also filed an APD for its well in the NW¼ of Section 25, which was not approved by the Hobbs District Office due the pending APD's issued to Arrington and TMBR/Sharp. **See Affidavit of Derold Maney at paragraphs 7, 9.** Under the requirements set forth by the Commission in its order, Ocean's APD should have been approved because Ocean owns an interest in the well unit, spacing is proper, *etc.* **Order No. R-11700-B, at Paragraphs 29, 33.**

Due to the foregoing, basing the Commission's decision on the erroneous claim that Ocean is not protecting its rights is improper.

3. Under the Commission's findings, Arrington had the right to drill, and its APD is valid:

The Commission stated that "any suggestion that the acreage dedication plat "pools" acreage is expressly disavowed." **Order No. R-11700-B at paragraph 34.** The summary judgment granted by the Lea County District Court is based upon the premise that an acreage

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[1]Ocean has also filed a pooling application, in Case No. 12860, for a well located in the SW¼ of Section 25, solely due to concerns raised by the Commission about Ocean's right to drill on another party's lease.

dedication plat pools acreage. The Form C-102 is a form promulgated by the Division and Commission under Rule 1102. A court should defer to an agency's expertise. **See Santa Fe Exploration Co. v. Oil Conservation Comm'n, 114 N.M. 103, 835 P.2d 819 (1992)**. Therefore, TMBR/Sharp's claim to the NW¼ of Section 25 must fail, and Arrington's permit to drill must be approved.

4. Finally, the effectiveness of TMBR/Sharp's Section 25 APD should be stayed pending resolution of matters now before the Division. On May 16, 2002, the Division will hear pooling cases affecting all of Section 25. **See Case Nos. 12816 (N½ unit), 12840 (W½ unit), 12859 (E½ unit), and 12860 (W½ unit)**. Until the pooling process has run its course, the effectiveness of TMBR/Sharp's permit to drill must be stayed. At the May 16th hearing, substantial geologic, geophysical, and other evidence will be presented to determine the proper unit orientation and how to develop Section 25. Such a decision will supersede any APD.

Moreover, as the Commission noted, an appeal of the Lea County District Court's decision could alter the Commission's own conclusion. **Order No. R-11700-B at paragraph 30**. If Arrington is successful on appeal, 100% of the working interest owners in the W½ of Section 25 desire a standup unit. To allow TMBR/Sharp's APD to remain effective during the appeal process could impair the rights of Ocean and Arrington.

WHEREFORE, Ocean requests that a rehearing be granted, and that the effectiveness of the TMBR/Sharp's APD be stayed until all matters are resolved by the Division and the Commission.

Respectfully submitted,

James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for Ocean Energy, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record in the manner noted below this 15th day of May, 2002:

Hand Delivered
Stephen C. Ross
Oil Conservation Commission
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Fax and U.S. Mail
W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504
Fax No. (505) 982-2047

Fax and U.S. Mail
Susan Richardson
Cotton, Bledsoe, Tighe & Dawson
P.O. Box 2776
Midland, Texas 79702
Fax No. (915) 682-3672

Fax and U.S. Mail
William F. Carr
Holland & Hart LLP
Post Office Box 2208
Santa Fe, New Mexico 87504
Fax No. (505) 983-6043

Fax and U.S. Mail
J. Scott Hall
Miller, Torgerson & Stratvert, P.A.
P.O. Box 1986
Santa Fe, New Mexico 87504
Fax No. (505) 989-9857

James Bruce

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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION FOR THE PURPOSE OF CONSIDERING:

APPLICATION OF TMBR/SHARP DRILLING INC. FOR AN ORDER STAYING DAVID H. ARRINGTON OIL & GAS, INC. FROM COMMENCING OPERATIONS, LEA COUNTY, NEW MEXICO. Case No. 12,731 (*de novo*)

APPLICATION OF TMBR/SHARP DRILLING INC. APPEALING THE HOBBS 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. 12,744 (*de novo*)

Order No. R-11700-B

AFFIDAVIT OF DEROLD MANEY

STATE OF TEXAS)
) ss.
COUNTY OF HARRIS)

Derold Maney, being duly sworn upon his oath, deposes and states:

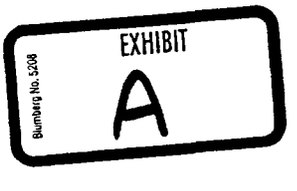
1. I am over the age of 18, and have personal knowledge of the matters stated herein.

2. I am a landman for Ocean Energy, Inc. ("Ocean").

3. Ocean obtained a farmout agreement in July 2001 covering 100% of the working interest in the SW¼ of Section 25, Township 16 South, Range 35 East, N.M.P.M., Lea County, New Mexico.

4. The farmout agreement requires a well to be commenced on the SW¼ of Section 25, or on lands pooled therewith, by July 1, 2002.

5. Since July 2001 Ocean has planned to drill a well, or cause a well to be drilled, in the W½ of Section 25, Township 16 South, Range 35 East, N.M.P.M. Ocean had an agreement with David H. Arrington Oil & Gas, Inc. ("Arrington") for Arrington to drill the well.



6. When Arrington's right to operate was placed in dispute in January 2002, Ocean sent proposal letters to all interest owners in the W½ of Section 25, for a well in the NW¼ of Section 25. Copies of the proposal letters are attached hereto as Exhibit 1.

7. Ocean also filed an Application for Permit to Drill for a well unit comprised of the W½ of Section 25, a copy of which is attached hereto as Exhibit 2. The permit was verbally denied by the Hobbs District Office in April 2002.

8. Due to questions raised by the Division and the Commission over Ocean's right to drill a well located in the NW¼ of Section 25 (in which it owns no interest), Ocean sent proposal letters to all interest owners in the W½ of Section 25, for a well in the SW¼ of Section 25. Copies of the proposal letters are attached hereto as Exhibit 3.

9. Ocean has also filed an Application for Permit to Drill for a well unit comprised of the W½ of Section 25, with a well in the SW¼ thereof, a copy of which is attached hereto as Exhibit 4.

10. Ocean has filed compulsory pooling applications on both of its well proposals. Those cases are docketed as Case Nos. 12841 and 12860 before the Oil Conservation Division.

Derold Maney

SUBSCRIBED AND SWORN TO before me this 30th day of April, 2002, by Derold Maney.

Notary Public

My Commission Expires:

10-4-05

ANNE CORBET
Notary Public, State of Texas
My Commission Expires Oct. 4, 2005

Ocean Energy

January 25, 2002

Ameristate Oil & Gas, Inc.
P. O. Box 341449
Austin, Texas 78734

Attention: Mr. Mark Nearburg

Re: Triple Hackle Dragon "25" #1
1815' FNL and 750' FWL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Gentlemen:

Ocean Energy Inc. hereby proposes to drill a 13,200' Mississippian Test at a location 1815' FNL and 750' FWL of Section 25, T16S, R35E, Lea County, New Mexico. Based upon our most current title information, Ameristate Oil & Gas, Inc. appears to own leasehold interest in the NW/4 of said Section 25. Please advise if this is incorrect.

Ocean respectfully requests that Ameristate Oil & Gas, Inc. participate for its proportionate interest in the proposed well. Enclosed for your review and execution are two (2) copies of the AFE for the above captioned well. Should Ameristate Oil & Gas, Inc. elect to participate in the proposed well, please execute and return one (1) copy of this letter and one (1) AFE well cost estimate. An Operating Agreement will be forwarded for your review and approval if you elect to participate in the proposed well. Also, please provide your well information requirements and the names of personnel to receive reports.

If Ameristate Oil & Gas, Inc. is not interested in participating in drilling the proposed well, please call me at 713-265-6897 to discuss other alternatives.

Thank you for your consideration of this proposal.

Yours very truly,

OCEAN ENERGY, INC.

Derold Maney

Derold Maney
Senior Land Advisor

_____ AMERISTATE OIL & GAS, INC. ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

_____ AMERISTATE OIL & GAS, INC. ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

By: _____
Title: _____
Date: _____

EXHIBIT
1
Blumberg No. 5208

Ocean Energy

January 25, 2002

TMBR/Sharp Drilling, Inc.
P. O. Drawer 10970
Midland, Texas 79702

Attention: Mr. Jeff Phillips

Re: Triple Hackle Dragon "25" #1
1815' FNL and 750' FWL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Gentlemen:

Ocean Energy Inc. hereby proposes to drill a 13,200' Mississippian Test at a location 1815' FNL and 750' FWL of Section 25, T16S, R35E, Lea County, New Mexico. Based upon our most current title information, TMBR/Sharp Drilling, Inc. appears to own leasehold interest in the NW/4 of said Section 25. Please advise if this is incorrect.

Ocean respectfully requests that TMBR/Sharp Drilling, Inc. participate for its proportionate interest in the proposed well. Enclosed for your review and execution are two (2) copies of the AFE for the above captioned well. Should TMBR/Sharp Drilling, Inc. elect to participate in the proposed well, please execute and return one (1) copy of this letter and one (1) AFE well cost estimate. An Operating Agreement will be forwarded for your review and approval if you elect to participate in the proposed well. Also, please provide your well information requirements and the names of personnel to receive reports.

If TMBR/Sharp Drilling, Inc. is not interested in participating in drilling the proposed well, please call me at 713-265-6897 to discuss other alternatives.

Thank you for your consideration of this proposal.

Yours very truly,

OCEAN ENERGY, INC.

Derold Maney

Derold Maney
Senior Land Advisor

_____ TMBR/SHARP DRILLING, INC. ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

_____ TMBR/SHARP DRILLING, INC. ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

By: _____
Title: _____
Date: _____

Ocean Energy

January 25, 2002

Fuel Products, Inc.
P. O. Box 3098
Midland, Texas 79702

Attention: Mr. Tom Beall

Re: Triple Hackle Dragon "25" #1
1815' FNL and 750' FWL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Gentlemen:

Ocean Energy Inc. hereby proposes to drill a 13,200' Mississippian Test at a location 1815' FNL and 750' FWL of Section 25, T16S, R35E, Lea County, New Mexico. Based upon our most current title information, Fuel Products, Inc. appears to own leasehold interest in the NW/4 of said Section 25. Please advise if this is incorrect.

Ocean respectfully requests that Fuel Products, Inc. participate for its proportionate interest in the proposed well. Enclosed for your review and execution are two (2) copies of the AFE for the above captioned well. Should Fuel Products, Inc. elect to participate in the proposed well, please execute and return one (1) copy of this letter and one (1) AFE well cost estimate. An Operating Agreement will be forwarded for your review and approval if you elect to participate in the proposed well. Also, please provide your well information requirements and the names of personnel to receive reports.

If Fuel Products, Inc. is not interested in participating in drilling the proposed well, please call me at 713-265-6897 to discuss other alternatives.

Thank you for your consideration of this proposal.

Yours very truly,

OCEAN ENERGY, INC.

Derold Maney
Senior Land Advisor

_____ FUEL PRODUCTS, INC. ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

_____ FUEL PRODUCTS, INC. ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

By: _____
Title: _____
Date: _____

January 25, 2002

Ocean Energy

Mr. Louis Mazzullo
P. O. Box 66657
Albuquerque, New Mexico 87193

Re: Triple Hackle Dragon "25" #1
1815' FNL and 750' FWL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Dear Mr. Mazzullo,

Ocean Energy Inc. hereby proposes to drill a 13,200' Mississippian Test at a location 1815' FNL and 750' FWL of Section 25, T16S, R35E, Lea County, New Mexico. Based upon our most current title information, you appear to own leasehold interest in the NW/4 of said Section 25. Please advise if this is incorrect.

Ocean respectfully requests that you participate for your proportionate interest in the proposed well. Enclosed for your review and execution are two (2) copies of the AFE for the above captioned well. Should you elect to participate in the proposed well, please execute and return one (1) copy of this letter and one (1) AFE well cost estimate. An Operating Agreement will be forwarded for your review and approval if you elect to participate in the proposed well. Also, please provide your well information requirements and the names of personnel to receive reports.

If you are not interested in participating in drilling the proposed well, please call me at 713-265-6897 to discuss other alternatives.

Thank you for your consideration of this proposal.

Yours very truly,

OCEAN ENERGY, INC.

Derold Maney

Derold Maney
Senior Land Advisor

_____ LOUIS MAZZULLO ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

_____ LOUIS MAZZULLO ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

By: _____
Title: _____
Date: _____

Ocean Energy

January 25, 2002

David H. Arrington Oil & Gas, Inc.
P. O. Box 2071
Midland, Texas 79702

Attention: Mr. David H. Arrington

Re: Triple Hackle Dragon "25" #1
1815' FNL and 750' FWL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Gentlemen:

Ocean Energy Inc. hereby proposes to drill a 13,200' Mississippian Test at a location 1815' FNL and 750' FWL of Section 25, T16S, R35E, Lea County, New Mexico. Based upon our most current title information, David H. Arrington Oil & Gas, Inc. appears to own leasehold interest in the NW/4 of said Section 25. Please advise if this is incorrect.

Ocean respectfully requests that David H. Arrington Oil & Gas, Inc. participate for its proportionate interest in the proposed well. Enclosed for your review and execution are two (2) copies of the AFE for the above captioned well. Should David H. Arrington Oil & Gas, Inc. elect to participate in the proposed well, please execute and return one (1) copy of this letter and one (1) AFE well cost estimate. An Operating Agreement will be forwarded for your review and approval if you elect to participate in the proposed well. Also, please provide your well information requirements and the names of personnel to receive reports.

If David H. Arrington Oil & Gas, Inc. is not interested in participating in drilling the proposed well, please call me at 713-265-6897 to discuss other alternatives.

Thank you for your consideration of this proposal.

Yours very truly,

OCEAN ENERGY, INC.

Derold Maney

Derold Maney
Senior Land Advisor

_____ DAVID H. ARRINGTON OIL & GAS, INC. ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

_____ DAVID H. ARRINGTON OIL & GAS, INC. ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

By: _____
Title: _____
Date: _____

District I
1625 N. French Dr., Hobbs, NM 88240
District II
811 South First, Artesia, NM 88210
District III
1000 Rio Brazos Road, Aztec, NM 87410
District IV
2040 South Pacheco, Santa Fe, NM 87505

State of New Mexico
Energy Minerals and Natural Resources

Oil Conservation Division
2040 South Pacheco
Santa Fe, NM 87505

Form C-101
Revised March 17, 1999

Submit to appropriate District Office
State Lease - 6 Copies
Fee Lease - 5 Copies

☐ AMENDED REPORT

APPLICATION FOR PERMIT TO DRILL, RE-ENTER, DEEPEN, PLUGBACK, OR ADD A ZONE

[1] Operator Name and Address	[2] OGRID Number
Ocean Energy, Inc. 1001 Fannin, Suite 1600, Houston, TX 77002	169334
	[3] API Number

[3] Property Code	[5] Property Name	[6] Well No.
28458	Triple-Rackle Dragon 25	1

[7] Surface Location

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
B	25	16S	35E		1815	North	750	East	Lea

[8] Proposed Bottom Hole Location If Different From Surface

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

[9] Proposed Pool 1	[10] Proposed Pool 2
North Townsend Mississippian 86390	

[11] Work Type Code	[12] Well Type Code	[13] Cable/Rotary	[14] Lease Type Code	[15] Ground Level Elevation
N	G	R	P	3958'
[16] Multiple	**[17] Proposed Depth**	**[18] Formation**	**[19] Contractor**	**[20] Spud Date**
N	13,500'	Mississippian	Grey Wolf	WHEN APPROVED

[21] Proposed Casing and Cement Program

Hole Size	Casing Size	Casing weight/foot	Setting Depth	Sacks of Cement	Estimated TOC
25"	20"	Conductor	40'	Redi-mix	Surface
17½"	13 3/8"	54.5	450'	500 Sx	Surface
11"	8 5/8"	32	4900'	1300 Sx.	Surface
7 7/8"	5½"	17	13,400'	1200 Sx	500' above upper-most pay.

[22] Describe the proposed program. If this application is to DEEPEN or PLUG BACK, give the data on the present productive zone and proposed new productive zone. Describe the blowout prevention program, if any. Use additional sheets if necessary.

Ocean Energy, Inc. proposes to drill this well to 13,500'. Log and run production casing as indicated above if log looks productive.

BOP Program: 11" 5000 psi type "U" ram. 11" 5000 psi annular preventor, 4" 5000 psi manifold. BOP's will be tested every two weeks. (See attached sketch of BOP's.

EXHIBIT 2
Blumberg No. 5208

[23] I hereby certify that the information given above is true and complete to the best of my knowledge and belief.	OIL CONSERVATION DIVISION	
Signature: Jeanie McMillan	Approved by:	
Printed name: Jeanie McMillan	Title:	
Title: Regulatory Specialist	Approval Date:	Expiration Date:
Date: 3/28/02 Phone: (713) 265-6834	Conditions of Approval: Attached ☐	

DISTRICT I
P. O. Box 1980
Hobbs, NM 88241-1980

DISTRICT II
P. O. Drawer DD
Artesia, NM 88211-0719

DISTRICT III
1000 Rio Brazos Rd.
Aztec, NM 87410

DISTRICT IV
P. O. Box 2088
Santa Fe, NM 87507-2088

State of New Mexico
Energy, Minerals, and Natural Resources Department

OIL CONSERVATION DIVISION
P. O. Box 2088
Santa Fe, New Mexico 87504-2088

Form C-102
Revised 02-10-94

Instructions on back

Submit to the Appropriate District Office
State Lease - 4 copies
Fee Lease - 3 copies

☐ AMENDED REPORT

WELL LOCATION AND ACREAGE DEDICATION PLAT

1 API Number	2 Pool Code	3 Pool Name
	86390	NORTH TOWNSEND MISSISSIPPIAN

4 Property Code	5 Property Name	6 Well Number
	TRIPLE-HACKLE DRAGON 25	1

7 OGRID No.	8 Operator Name	9 Elevation
169355	OCEAN ENERGY, INC.	3958'

10 SURFACE LOCATION

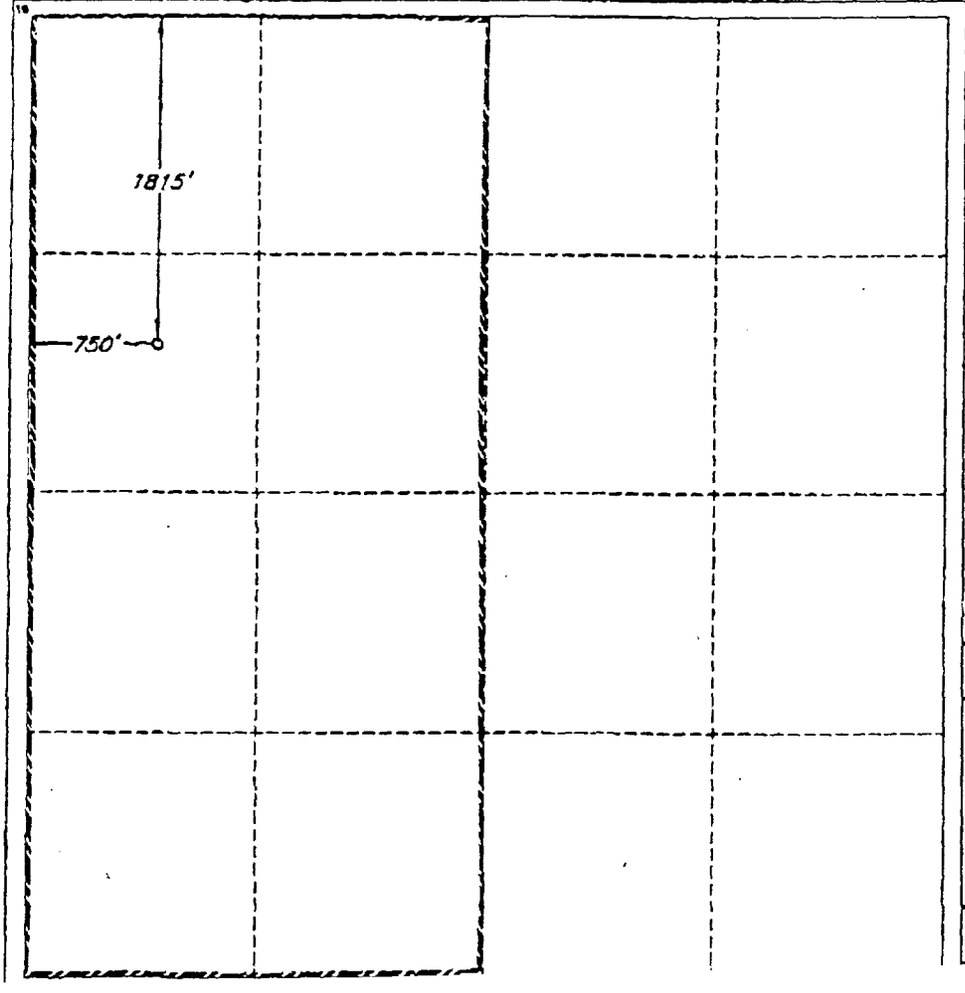
UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
E	25	16 SOUTH	35 EAST, N.M.P.M.		1815'	NORTH	750'	WEST	LEA

11 BOTTOM HOLE LOCATION IF DIFFERENT FROM SURFACE

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

12 Dedicated Acres	13 Joint or Infill	14 Consolidation Code	15 Order No.
320			

NO ALLOWABLE WELL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION



OPERATOR CERTIFICATION

I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief.

Signature: Joe T Janica

Printed Name: Joe T. Janica

Title: Agent

Date: 04/05/02

SURVEYOR CERTIFICATION

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my belief.

Date of Survey: DECEMBER 18, 2001

Signature & Seal of Professional Surveyor: STATE OF NEW MEXICO V. LYNN BEZNER NO.7920

Certificate No. V. LYNN BEZNER LAND S.S. #7920

April 4, 2002

Ocean Energy

Ameristate Oil & Gas, Inc.
P. O. Box 341449
Austin, Texas 78734

Attention: Mr. Mark Nearburg

Re: Triple Hackle Dragon "25" #2
1980' FWL and 1980' FSL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Gentlemen:

Ocean Energy Inc. hereby proposes to drill a 13,200' Mississippian Test at a location 1980' FWL and 1980' FSL of Section 25, T16S, R35E, Lea County, New Mexico. Based upon our most current title information, Ameristate Oil & Gas, Inc. appears to own leasehold interest in the NW/4 of said Section 25. Please advise if this is incorrect.

Ocean respectfully requests that Ameristate Oil & Gas, Inc. participate for its proportionate interest in the proposed well. Enclosed for your review and execution are two (2) copies of the AFE for the above captioned well. Should Ameristate Oil & Gas, Inc. elect to participate in the proposed well, please execute and return one (1) copy of this letter and one (1) AFE well cost estimate. An Operating Agreement will be forwarded for your review and approval if you elect to participate in the proposed well. Also, please provide your well information requirements and the names of personnel to receive reports.

If Ameristate Oil & Gas, Inc. is not interested in participating in drilling the proposed well, please call me at 713-265-6897 to discuss other alternatives.

Thank you for your consideration of this proposal.

Yours very truly,

OCEAN ENERGY, INC.

Derold Maney

Derold Maney
Senior Land Advisor

_____ AMERISTATE OIL & GAS, INC. ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #2 Well.

_____ AMERISTATE OIL & GAS, INC. ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #2 Well.

By: _____
Title: _____
Date: _____

April 4, 2002

Ocean Energy

TMBR/Sharp Drilling, Inc.
P. O. Drawer 10970
Midland, Texas 79702

Attention: Mr. Jeff Phillips

Re: Triple Hackle Dragon "25" #2
1980' FWL and 1980' FSL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Gentlemen:

Ocean Energy Inc. hereby proposes to drill a 13,200' Mississippian Test at a location 1980' FWL and 1980' FSL of Section 25, T16S, R35E, Lea County, New Mexico. Based upon our most current title information, TMBR/Sharp Drilling, Inc. appears to own leasehold interest in the NW/4 of said Section 25. Please advise if this is incorrect.

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Yours very truly,

OCEAN ENERGY, INC.

Derold Maney

Derold Maney
Senior Land Advisor

_____ TMBR/SHARP DRILLING, INC. ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #2 Well.

_____ TMBR/SHARP DRILLING, INC. ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #2 Well.

By: _____
Title: _____
Date: _____

April 4, 2002

Ocean Energy

Fuel Products, Inc.
P. O. Box 3098
Midland, Texas 79702

Attention: Mr. Tom Beall

Re: Triple Hackle Dragon "25" #2
1980' FWL and 1980' FSL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Gentlemen:

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Thank you for your consideration of this proposal.

Yours very truly,

OCEAN ENERGY, INC.

Derold Maney

Derold Maney
Senior Land Advisor

_____ FUEL PRODUCTS, INC. ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #2 Well.

_____ FUEL PRODUCTS, INC. ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #2 Well.

By: _____
Title: _____
Date: _____

April 4, 2002

Ocean Energy

Mr. Louis Mazzullo
P. O. Box 66657
Albuquerque, New Mexico 87193

Re: Triple Hackle Dragon "25" #2
1980' FWL and 1980' FSL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Gentlemen:

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If you are not interested in participating in drilling the proposed well, please call me at 713-265-6897 to discuss other alternatives.

Thank you for your consideration of this proposal.

Yours very truly,

OCEAN ENERGY, INC.

Derold Maney
Senior Land Advisor

_____ LOUIS MAZZULLO ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #2 Well.

_____ LOUIS MAZZULLO ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #2 Well.

By: _____
Title: _____
Date: _____

April 4, 2002

Ocean Energy

David H. Arrington Oil & Gas, Inc.
P. O. Box 2071
Midland, Texas 79702

Attention: Mr. David H. Arrington

Re: Triple Hackle Dragon "25" #2
1980' FWL and 1980' FSL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Gentlemen:

Ocean Energy Inc. hereby proposes to drill a 13,200' Mississippian Test at a location 1980' FWL and 1980' FSL of Section 25, T16S, R35E, Lea County, New Mexico. Based upon our most current title information, David H. Arrington Oil & Gas, Inc. appears to own leasehold interest in the NW/4 of said Section 25. Please advise if this is incorrect.

Ocean respectfully requests that David H. Arrington Oil & Gas, Inc. participate for its proportionate interest in the proposed well. Enclosed for your review and execution are two (2) copies of the AFE for the above captioned well. Should David H. Arrington Oil & Gas, Inc. elect to participate in the proposed well, please execute and return one (1) copy of this letter and one (1) AFE well cost estimate. An Operating Agreement will be forwarded for your review and approval if you elect to participate in the proposed well. Also, please provide your well information requirements and the names of personnel to receive reports.

If David H. Arrington Oil & Gas, Inc. is not interested in participating in drilling the proposed well, please call me at 713-265-6897 to discuss other alternatives.

Thank you for your consideration of this proposal.

Yours very truly,

OCEAN ENERGY, INC.

Derold Maney
Senior Land Advisor

_____ DAVID H. ARRINGTON OIL & GAS, INC. ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #2 Well.

_____ DAVID H. ARRINGTON OIL & GAS, INC. ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #2 Well.

By: _____
Title: _____
Date: _____

District I
1625 N. French Dr., Hobbs, NM 88240
District II
811 South First, Artesia, NM 88210
District III
1000 Rio Brazos Road, Aztec, NM 87410
District IV
2040 South Pacheco, Santa Fe, NM 87505

State of New Mexico
Energy Minerals and Natural Resources

Oil Conservation Division
2040 South Pacheco
Santa Fe, NM 87505

Form C-101
Revised March 17, 1999

Submit to appropriate District Office
State Lease - 6 Copies
Fee Lease - 5 Copies

☐ AMENDED REPORT

APPLICATION FOR PERMIT TO DRILL, RE-ENTER, DEEPEN, PLUGBACK, OR ADD A ZONE

[1] Operator Name and Address	[2] OGRID Number
Ocean Energy, Inc. 1001 Fannin, Suite 1600, Houston, TX 77002	169355
	[3] API Number

[3] Property Code	[3] Property Name	[6] Well No.
28458	Triple-Hackle Dragon 25	2

[7] Surface Location

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
K	25	16S	35E		1980	South	1980	West	Lea

[8] Proposed Bottom Hole Location If Different From Surface

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

[9] Proposed Pool 1	[10] Proposed Pool 2
Townsend Mississippian	

[11] Work Type Code	[12] Well Type Code	[13] Cable/Rotary	[14] Lease Type Code	[15] Ground Level Elevation
N	G	R	P	3959'
[16] Multiple	**[17] Proposed Depth**	**[18] Formation**	**[19] Contractor**	**[20] Spud Date**
N	13500'	Mississippian	Grey Wolf	When Approved

[21] Proposed Casing and Cement Program

Hole Size	Casing Size	Casing weight/foot	Setting Depth	Sacks of Cement	Estimated TOC
25"	20"	Conductor	40'	Redi-mix	Surface
17-1/2"	13-3/8"	54.5	450'	500 sx	Surface
11"	8-5/8"	32	4900'	1300 sx	Surface
7-7/8"	5-1/2"	17	13400'	1200 sx	500' above pay Upper most

22 Describe the proposed program. If this application is to DEEPEN or PLUG BACK, give the data on the present productive zone and proposed new productive zone. Describe the blowout prevention program, if any. Use additional sheets if necessary.

Ocean Energy, Inc. proposes to drill this well to 13,500'. Log and run production casing as indicated above if log looks productive.

BOP Program: 11" 5000 psi type "U" ram. 11" 5000 psi annular preventor. 4" 5000 psi manifold. BOP's will be tested every two weeks. (See attached sketch of BOP's.

EXHIBIT 4
Blumberg No. 5208

[23] I hereby certify that the information given above is true and complete to the best of my knowledge and belief.	OIL CONSERVATION DIVISION	
Signature: Jeanie McMillan	Approved by:	
Printed name: Jeanie McMillan	Title:	
Title: Regulatory Specialist	Approval Date:	Expiration Date:
Date: 4/29/02 Phone: (713) 265-6834	Conditions of Approval: Attached ☐	

DISTRICT I
1625 N. French Dr., Hobbs, NM 88240

DISTRICT II
811 South First, Artesia, NM 88210

DISTRICT III
1000 Rio Brazos Rd., Aztec, NM 87410

DISTRICT IV
2040 South Pacheco, Santa Fe, NM 87505

State of New Mexico
Energy, Minerals and Natural Resources Department

OIL CONSERVATION DIVISION

2040 South Pacheco
Santa Fe, New Mexico 87504-2088

Form C-102
Revised March 17, 1999

Submit to Appropriate District Office
State Lease - 4 Copies
Fee Lease - 3 Copies

☐ AMENDED REPORT

WELL LOCATION AND ACREAGE DEDICATION PLAT

API Number	Pool Code	Pool Name
	86390	NORTH TOWNSEND MISSISSIPPIAN

Property Code	Property Name	Well Number
	TRIPLE HACKLE DRAGON "25"	2

OGRID No.	Operator Name	Elevation
169355	OCEAN ENERGY, INC.	3959'

Surface Location

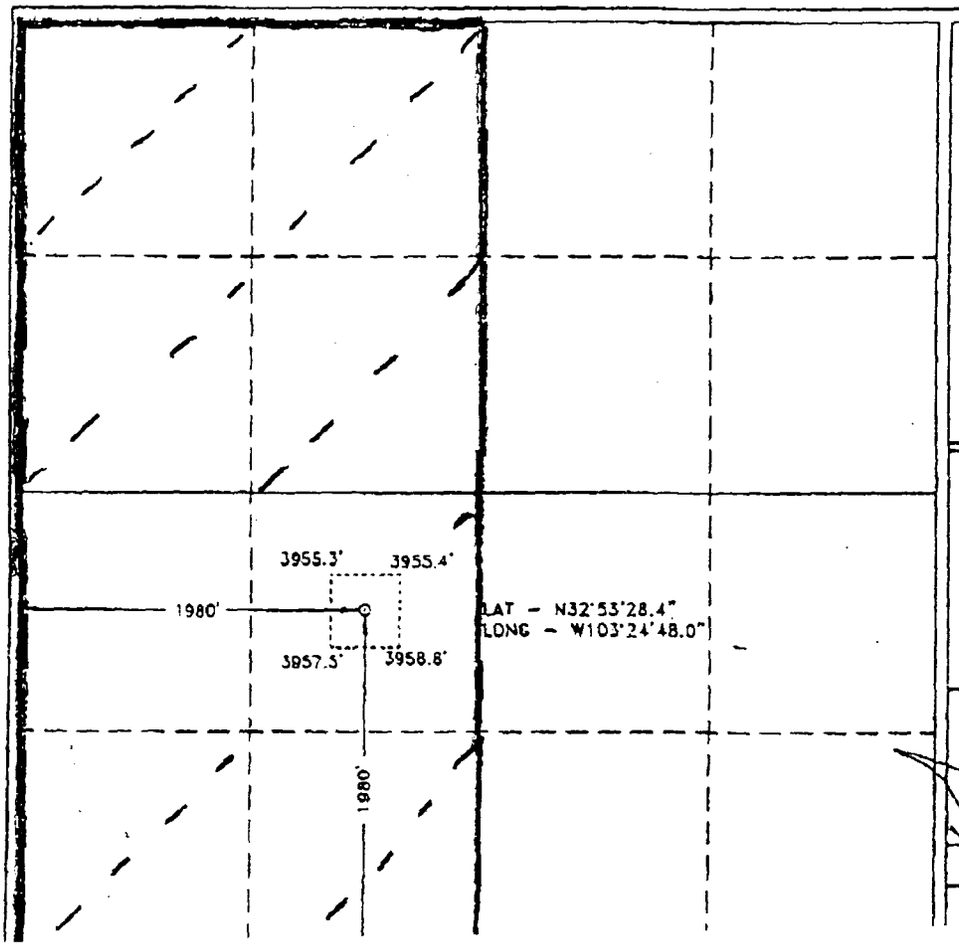
UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
K	25	16 S	35 E		1980	SOUTH	1980	WEST	LEA

Bottom Hole Location If Different From Surface

UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

Dedicated Acres	Joint or Infill	Consolidation Code	Order No.
320			

NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION



OPERATOR CERTIFICATION

I hereby certify the the information contained herein is true and complete to the best of my knowledge and belief.

Jeanie McMillan
Signature

JEANIE McMillan
Printed Name

SR. REGULATORY SPECIALIST
Title

4/29/02
Date

SURVEYOR CERTIFICATION

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision and that the same is true and correct to the best of my belief.

APRIL 8, 2002
Date Surveyed

Signature & Seal of Professional Surveyor

GARY L. JONES
NEW MEXICO
7977
REGISTERED PROFESSIONAL SURVEYOR

W.O. No. 2424

Certificate No. GARY L. JONES 7977

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

IN THE MATTER OF THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION COMMISSION
FOR THE PURPOSE OF CONSIDERING:

APPLICATION OF TMBR/SHARP DRILLING, INC.
FOR AN ORDER STAYING DAVID H. ARRINGTON
OIL AND GAS, INC. FROM COMMENCING
OPERATIONS, LEA COUNTY, NEW MEXICO — CASE NO. 12731

APPLICATION OF TMBR/SHARP DRILLING, INC., — CASE NO. 12744
APPEALING THE HOBBS DISTRICT SUPERVISOR'S
DECISION DENYING APPROVAL OF TWO
APPLICATIONS FOR PERMIT TO DRILL FILED BY
TMBR/SHARP DRILLING, INC.,
LEA COUNTY, NEW MEXICO

ORDER NO. R-11700-B

APPLICATION FOR REHEARING
AND
REQUEST FOR PARTIAL STAY OF ORDER NO. R-11700-B

David H. Arrington Oil and Gas, Inc., ("Arrington"), through its attorneys, Miller Stratvert & Torgerson, P.A., (J. Scott Hall), moves pursuant to NMSA 1978 Section 70-2-25 of the New Mexico Oil and Gas Act and 19 NMAC 15.N.1222 for rehearing on the issuance of Order No. R-11700-B issued by the Commission on April 26, 2002. Arrington also moves pursuant to 19 NMAC 15.N.1220.B for entry of an order staying Order No. R-11700-B

BACKGROUND FACTS

Case Nos. 12731 and 12744 involve consolidated applications filed by TMBR/Sharp Drilling, Inc., ("TMBR/Sharp"), challenging and APD issued on July 17, 2001 to Arrington for its Triple-Hackle Dragon 25 Well No. 1 covering lands in the W/2 of Section 25[1] as well as the

[1] All referenced lands are located in Township 16-South, Range 35-East, NMPM in Lea County.

permit approved on July 30, 2001 for Arrington's Blue Drake 23 Well No. 1 covering lands in the E/2 of Section 23. Applications filed in August, 2001 by TMBR/Sharp for permits to drill its Leavelle 23 No. 1 well and the Blue Fin 25 No. 1 well in Sections 23 and 25, respectively, had been denied by the Division's District I office due to the previous approval of the Arrington drilling permits for the same lands.

The consolidated administrative cases ultimately resulted in the issuance by the New Mexico Oil Conservation Commission of Order No. R-11700-B on April 26, 2002, which found, among other things, that the Division's District I Supervisor should issue an APD to TMBR/Sharp for its proposed Blue Fin 25 Well No. 1 in the NW/4 of Section 25 to which TMBR/Sharp proposes to dedicate a N/2 spacing and proration unit. The Order also directed that a drilling permit should be approved for TMBR/Sharp's Blue Drake 23 Well No. 1 to which it proposed to dedicate the E/2 of Section 23. In addition, the Commission expressly retained jurisdiction over the matter, noting that separate court proceedings to resolve title issues could affect the outcome these pending administrative cases. At issue in that collateral litigation presently pending before the 5th Judicial District Court in Lovington is whether the filing of a C-102 form with the Division's District I office in Hobbs for TMBR/Sharp's Blue Fin 24 No. 1 well in Section 24, T-16-S, R-35-E, was sufficient to perpetuate TMBR/Sharp's leases from Madeline Stokes and Erma Stokes Hamilton to Ameristate Oil and Gas (and, by assignment, to TMBR/Sharp) that covered portions of lands in Sections 23 and 25 identified in the APD's filed both by TMBR/Sharp and Arrington. In that litigation, the lessors and Arrington, the owner of top-leases executed by the Stokes family (by way of farmouts through Ocean Energy, Inc.), contend that the leases held by TMBR/Sharp had lapsed.

In the interim, on January 28, 2002, TMBR/Sharp had filed an application for compulsory pooling in Case No. 12816 seeking to consolidate the working interests in the N/2 of Section 25

for its Blue Fin 25 Well No. 1. Ocean Energy, Inc. also filed separate compulsory pooling applications (Case No. 12841 and Case No. 12860) seeking to pool the W/2 of Section 25 for two alternative proposed Mississippian formation well locations in the NW/4 and SW/4, respectively. More recently, Arrington has filed its application for compulsory pooling in Case No. 12859 to create an E/2 unit in Section 25 for its Glass-Eyed Midge 25 No. 1 Atoka/Morrow/Mississippian well to be drilled in the NE/4. Arrington's C-101 APD for the Glass-Eyed Midge 25 No. 1 well was issued by the Division on December 17, 2001 and its C-102 reflecting an E/2 unit was filed on November 29, 2001. The N/2 TMBR/Sharp unit is in obvious conflict with the E/2 and W/2 units proposed by Arrington and Ocean Energy. Case Nos. 12816, 12859, 12860 and 12841 are all scheduled to be heard by the Division's examiner on May 16, 2002.

Significantly, Arrington's Application does not present a title issue like TMBR/Sharp's Applications in Case Nos. 12731 and 12741 did, and the lands under its proposed E/2 unit were not involved in those two cases. Arrington's lease interests are wholly independent from the lease title currently in dispute in the 5th Judicial District Court litigation.

On March 15, 2002, without notice to the Applicant and ***before*** the issuance of Order R-11700-B, TMBR/Sharp Drilling, Inc. filed another C-101 APD with the Division's District I office for its Blue Fin 25 Well No. 1 (API No. 30-025-35865) which was also proposed to be drilled to the Mississippian formation in the NW/4 of Section 25. The C-102 acreage dedication plat which accompanied the filing of the TMBR/Sharp Drilling, Inc. APD proposed to dedicate the N/2 of said Section 25 to the Blue Fin 25 Well No. 1.

On March 20, 2002, again without notice to Arrington and ***before*** the issuance of Order No. R-11700-B, the Division's District I office approved the APD for the Blue Fin 25 Well No. 1. As a consequence of the actions of the Division's District I office, there existed two

simultaneously approved APD's with attached C-102's that both operators proposed to dedicate the NE/4 of Section 25 to their respective wells.

At the time of the filing of the APD's, there were owners of other interests in the N/2 and E/2 of Section 25, respectively, who had not voluntarily agreed to participate in the drilling of the proposed wells. Neither the Arrington nor TMBR/Sharp compulsory pooling cases had been heard and neither operator had consolidated the interests of all the non-participating owners either by way of a voluntary agreement, communitization agreement, or otherwise. Although TMBR/Sharp, Ocean Energy and Arrington now all have compulsory pooling applications pending before the Division to consolidate the unjoined interests, TMBR/Sharp moved to continue its own pooling case (Case No. 12816) and to dismiss Cases 12859, 12860 and 12841. The Division's examiner denied the TMBR/Sharp motion at a hearing on May 14, 2002.

To date, however, no geologic, engineering or equitable evidence having a bearing on the development of Section 23 and 25 has been presented to the Division or the Commission.

Significantly, it was learned on May 14th that TMBR/Sharp began drilling its Blue Fin 25 Well No. 1 on May 7, 2002, without having consolidated the unjoined interests and without allowing the Division to determine the final configuration of the spacing and proration units in Section 25.

On May 15, 2002, Arrington filed with the Division its *Application To Reinstate Drilling Permit* whereby it seeks an order directing the Division's District I office to reinstate the drilling permit for its Glass-Eye Midge 25 Well No. 1 previously approved on December 17, 2001. (A copy of the Application is attached as Exhibit "A".)

THE REQUEST FOR REHEARING

Arrington respectfully submits that Case Nos. 12731 and 12744 should be reheard for the reasons that (1) Order R-11700-B is based, in part, on error, (2) was improvidently issued, and (3) its operation allows a ministerial act to supersede the agency's statutory functions.

Order R-11700-B Is Based On Error.

In Order No. R-11700-B, the Commission, citing to the separately pending litigation in the district court involving conflicting leases, found that APD's previously issued to Arrington for wells in the S/2 of Section 23 and the W/2 of Section 25, T-16-S, R-35-E should not have been granted because Arrington was not an owner in those lands and had "no authority over the property". (Order R-11700-B, Par. 29.) This finding was the primary basis for the Commission's determination. This finding is clearly based on error. Arrington established that it had the right to drill and operate as the owner of lease interests in the W/2 of Section 25 separate and apart from the oil and gas leases involved in the district court litigation.

In addition, at the time it filed the APD for its Glass Eye Midge 25 No. 1 Well, Applicant owned separate oil and gas lease interests in the E/2 of Section 25 that were independent from the conflicting leases that are the subject of the district court litigation cited by the Commission in Order No. R-11700-B. As such, Applicant was eligible to become the operator of that well and the permit to drill that was issued to it on December 17, 2001 should have been undisturbed. In this regard, the findings in Paragraph 14 of Order No. R-11700-B are telling:

> *"14. The central issue in this case is whether Arrington was eligible to become the operator of the wells in question...If Arrington was eligible to become the operator, then the permits were properly issued to Arrington."*

In its findings at Paragraph 29 of Order R-11700-B, the Commission erroneously assumed that the rulings issued by the 5th Judicial District Court served to adjudicate all of the title owned by Arrington. Instead, the scope of the district court rulings affected only the lands encumbered

by the Stokes/Hamilton base lease claimed by Ameristate and TMBR/Sharp and the top-lease claimed by Arrington. The interests separately owned by Arrington remained unaffected, and as such, Arrington continued to be eligible to become operator throughout.

The agency's determination of the geologic and economic waste issues before it should determine the outcome of these disputed cases, not resolution of collateral title issues. Accordingly, the Division should discharge its statutory function and resolve these matters at the earliest opportunity.

Order R-11700-B Was Improvidently Issued.

Order No. R-11700-B was improvidently issued, failing to completely resolve the dispute before the agency or accord full relief to the affected parties. The initial determination of Cases 12731 and 12744 has allowed the permitting issue to unduly influence events and has pre-empted proper consideration by the agency's of its statutory mandates to prevent waste, protect correlative rights and avoid the drilling of unnecessary wells. As a further consequence of its issuance, Order No. R-11700-B has precipitated more problems for the parties, including the Division, that have become manifest in the frustrated efforts of Arrington to develop the E/2 of Section 25, acreage that should not have been affected by the proceedings.

Through no fault of the Commission, the scope of the TMBR/Sharp applications in Case Nos. 12731 and 12744 was limited to the issuance of drilling permits for its two proposed wells. That circumstance was the product of one single act of neglect on the part of TMBR/Sharp: That is, TMBR/Sharp's failure to abide by the terms of one of its oil and gas leases and properly file a pooled unit designation in the county records for their Blue Fin 24-1 well. That single failure or omission has consequently determined all of TMBR's actions, legal positions and arguments ever since, both in court and before the Division and Commission. That same omission has, by necessity, caused TMBR/Sharp to argue that it is not necessary to file a unit designation in the

county to perpetuate its lease interests. Rather, TMBR/Sharp has been compelled by events to assert that the mere filing of a C-102 with the Division is sufficient to perpetuate their lease on Section 25.

As a further consequence, TMBR/Sharp has placed itself in the position of having to argue to the Division that compulsory pooling is unnecessary altogether. (*See* April 29, 2002 Motion of TMBR/Sharp Drilling, Inc. To Continue Case No. 12816 And To Dismiss Cases 12859, 12860, and 12841.) As TMBR/Sharp asserts, the C-102 is sufficient to "consolidate" interests and that is enough to determine the unit configuration which will, in turn, determine the ultimate development of the entirety of Section 25.

It is apparent that issues of waste, correlative rights, and unnecessary drilling are inextricably bound with the issue of which operator may be entitled to drilling permits. These interrelated disputes cannot be resolved separately until the agency discharges its statutory obligations to consider the pooling applications and make its determinations, based on geologic, and engineering evidence that the resulting development will prevent waste and protect correlative rights.

The Operation Of Order R-11700-B Allows A Ministerial Act To Supersede The Agency's Statutory Functions.

The determination, first, that TMBR/Sharp may have been entitled to have its drilling permits approved before issues of correlative rights and waste are considered exalts a mere ministerial act over the substantive and discretionary quasi-judicial function that the Division is *mandated* to perform under N.M. Stat. Ann. 1978 Sections 70-2-17 and 70-2-18.[2]

[2] Compulsory Pooling proceedings are identified as adjudicatory matters at 19 NMAC 15N.1207.A(1).

In a situation such as this, where multiple owners have not agreed to pool their interests, under the Division's compulsory pooling statutes, on application, the agency is obliged to convene a hearing and consider evidence probative of whether pooling is necessary "...to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste". N. M. Stat. Ann. 1978 Section 70-2-17(C). See Simms v. Mechem 72 N.M. 186, 188, 382 P.2d 183, 184 (1963). ("Unquestionably the commission is authorized to require pooling of property when such pooling has not been agreed upon by the parties[.]") Where the evidence presented substantially supports affirmative findings and conclusions on any one of these issues, then the statute directs that the Division "***shall pool*** all or any part of such lands or interests or both in the spacing or proration unit." *Id.*, (emphasis added). Even under this statutory hearing process, depending on the evidence, the issuance of a compulsory pooling order is discretionary and is by no means an entitlement. This quasi-judicial function is expressly reserved to the Commission and the Director or her duly appointed examiners (N. M. Stat. Ann. 1978 sec. 70-2-13) and ***no part*** of it may be delegated by fiat under the guise of a ministerial approval of a drilling permit. *See* Kerr-McGee Nuclear Corp. v. New Mexico Environmental Improvement Board, 97 N.M. 88, 97, 637 P.2d 38, 47 (Ct. App. 1981). In Kerr-McGee, the Court of Appeals held that duties which are quasi-judicial in nature, and which require the exercise of judgment cannot be delegated. Id. As Kerr-McGee was a case of first impression in New Mexico, the Court of Appeals relied on Oklahoma case law. The Supreme Court of Oklahoma in Van Horn Oil Co. v. Okla. Corp. Com'n., 753 P.2d 1359, 1363 (1988) cited to the same authority relied on the New Mexico Court of Appeals when it quoted:

> Administrative bodies and officers cannot alienate, surrender, or abridge their powers and duties, or delegate authority and functions which under the law may be exercised only by them; and, although they may delegate merely ministerial functions, in the absence of statute or organic act permitting it, they

> cannot delegate powers and functions discretionary or quasi-judicial in character, or which require the exercise of judgment.

Citing, Anderson v. Grand River Dam Authority, 446 JP.2d 814 (1968). The Anderson Court also quoted with approval from American Jurisprudence and Corpus Juris Secundum:

> In 2 Am. Jur. 2nd Administrative Law, Section 222, it is said: It is a general principal of law, expressed in the maxim "delegates no protest delegare", that a delegated power may not be further delegated by the person to whom such power is delegated and than in all cases of delegated authority, or personal trust or confidence is reposed in the agent and especially where the exercise and application of the power is made subject to his judgment and discretion, the authority is purely personal and cannot be delegated to another***. A commission charged by law with power to promulgate rules, cannot in turn, delegate that power to another."

Because New Mexico has expressly adopted Oklahoma law, it is the law in this state that an administrative body may not delegate a statutory function, particularly in the manner that TMBR/Sharp advocates.

In making any determination under the compulsory pooling statute, under long-standing practice,[3] the Division will consider evidence relating to, among other matters: (1) the presence or absence of a voluntary pooling agreement; (2) whether a reasonable and good-faith effort was made to obtain the voluntary participation of others; (3) reasonableness of well costs; (4) geologic and engineering evidence bearing on the avoidance of waste and the protection of correlative rights, including the drilling of unnecessary wells; (5) the assessment of a risk penalty; and (6) whether a proposal is otherwise in the interests of conservation. The mere approval of a drilling permit and the filing of an acreage dedication plat serve to do none of these things and neither have any of the functions enumerated above been delegated outside the Division's regular hearing process.[4]

---

[3] *See* Morris, Richard, *Compulsory Pooling of Oil and Gas Interests in New Mexico*, 3 Nat. Resources J. 316 (1963).

[4] N. M. Stat. Ann. 1978 Section 70-2-17(C): "All orders effecting such pooling shall be made after notice and hearing[.]"

It is inappropriate to allow any portion of the pooling process to be subsumed by the mere processing of an APD. Order No. R-11700-B, Par. 33. ("An application for a permit to drill serves different objectives than an application of compulsory pooling and the two proceedings should not be confused.") Moreover, the issuance of a drilling permit does not constitute any determination of a property right. *See* Gray v. Helmerich & Payne, Inc., et al. 843 S.W. 2d 579 (Tex. 2000).

Whether intentional or not, the practical effect of Order R-11700-B was to allow a ministerial event to dictate events to the exclusion of the statutory adjudicatory functions that ought first be performed by the Division and the Commission.

THE REQUEST FOR PARTIAL STAY

Arrington requests that Order No. R-11700-B be stayed to the extent it operates to prevent the reinstatement of its drilling permit and otherwise prevents it from commencing the drilling of it Glass-Eye Midge 25 Well No. 1 in the NE/4 of Section 25.

Further stay of Order R-11700-B is requested to the extent it approves, by implication or otherwise, the creation of a N/2 spacing and proration unit for TMBR/Sharp's Blue Fin 25 Well No. 1 pending the agency's consideration of geologic and engineering evidence and the issuance of an order determining the proper orientation of the 320 acre units in Section 15.

A proposed Order of Partial Stay is attached hereto as Exhibit "B".

CONCLUSION

For the reasons outlined above, Arrington respectfully requests the Commission immediately enter its Order of Partial Stay and then set all these matters for rehearing at the next regularly scheduled Commission hearing docket set for June 21, 2002.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By J. Scott Hall

J. Scott Hall
Attorneys for David H. Arrington Oil & Gas, Inc.
Post Office Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 15th day of May, 2002, as follows:

James Bruce, Esq.
Post Office Box 1056
Santa Fe, New Mexico 87504

Thomas Kellahin, Esq.
Post Office Box 2265
Santa Fe, New Mexico 87504

David Brooks, Esq.
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Susan Richardson, Esq.
Cotton Bledsoe Tighe & Dawson
500 W Illinois Ave # 300
Midland, Texas 79701

William F. Carr, Esq.
Post Office Box 2208
Santa Fe, New Mexico 87504

J. Scott Hall

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

IN THE MATTER OF THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION COMMISSION
FOR THE PURPOSE OF CONSIDERING:

APPLICATION OF TMBR/SHARP DRILLING, INC.
FOR AN ORDER STAYING DAVID H. ARRINGTON
OIL AND GAS, INC. FROM COMMENCING
OPERATIONS, LEA COUNTY, NEW MEXICO — CASE NO. 12731

APPLICATION OF TMBR/SHARP DRILLING, INC.,
APPEALING THE HOBBS 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

ORDER NO. R-11700-B

CONSOLIDATED RESPONSE TO APPLICATIONS FOR REHEARING
FILED BY DAVID H. ARRINGTON OIL & GAS, INC. AND OCEAN ENERGY, INC.

TMBR/Sharp Drilling, Inc. ("TMBR/Sharp") submits this consolidated response to the applications for rehearing filed by David H. Arrington Oil & Gas, Inc. ("Arrington") and Ocean Energy, Inc. ("Ocean") for the Commission's consideration:

Ocean's Application Should be Denied

The application of Ocean is premised upon finding paragraph 37 in the above-captioned Order being erroneous. More particularly, Ocean asserts that it has made efforts to drill two alternative wells in the W/2 Section 25, Township 16 South, Range 35 East, N.M.P.M., and has applied for permits to drill said wells. Ocean does not, however, disclose that its first application in Section 25 (for the Triple-Hackle Dragon

25 No. 1 Well) was not filed with the Division until sometime after April 5, 2002, nor that its second application (for the Triple-Hackle Dragon 25 No. 2 Well) was filed subsequent thereto. Neither of these actions were taken by Ocean prior to the hearing in these causes held before the Commission on March 26, 2002 and this is in all respects consistent with the evidence adduced at the Commission hearing that Ocean was relying upon Arrington to operate and drill a well in the W/2 Section 25. The affidavit of Darold Maney attached to Ocean's application, relating to alleged efforts by Ocean to drill a well in the W/2 Section 25 separate from Arrington, attempts to set out facts that could have been presented to the Commission through Mr. Maney's testimony at the time the hearing in these causes was held. It is well established New Mexico law that in the context of a motion for rehearing, questions or points not raised in the original hearing will not be considered on rehearing. City of Roswell v. Levers 34 P2d. 867 (NM 1934); Marney v. Home Royalty Ass'n of Oklahoma 286 P 979 (NM 1930). Any pre-hearing drilling plans that may have been made by Ocean, and any curative actions Ocean may have taken after the hearing, have no bearing on the evidence considered by the Commission on March 26, 2002, upon which the above-captioned Order was based. Ocean's application for rehearing should be denied.

Arrington's Application Should be Denied

Arrington proposes three reasons why a rehearing should occur. The first reason is that Arrington claims the captioned Order to be based, in part, on error. While TMBR/Sharp admits that the chronology of drilling permit application and

approval in Section 25 is more complicated than is the case with most cases coming before the Commission, it is respectfully submitted that said chronology is not nearly so confusing as Arrington's description of the same in its application would suggest. The sequence of events put before the Commission at its March 26, 2002 hearing was, quite simply:

1. In July of 2001, when Arrington applied for its permit to drill the Triple-Hackle Dragon No. 1 Well with a W/2 spacing unit, Arrington's only claim to be in charge of the development of a lease (thereby satisfying the definition of "operator" contained in the Division's regulations) arose from the alleged present effectiveness of the top leases that it held from Madeline Stokes, et al. covering the NW/4 Section 25. Arrington had no rights in the SW/4 Section 25, whatever prospective agreements it may have reached with Ocean on the subject, until farmout agreements from Branex Resources, Inc., et al. were executed on or after July 26, 2001, well after Arrington's application was filed.

2. The Lea County District Court ruled in Cause No. CV-2001-315C that Arrington's top leases are not presently effective.

3. Arrington could not, therefore, satisfy the definition of "operator" when it filed the application referenced above and the permit issued in connection therewith was appropriately rescinded by the Commission.

4. TMBR/Sharp was the first party satisfying the definition of operator to apply for a drilling permit in Section 25, doing so in connection with its "Blue Fin 25

Well No. 1" having a N/2 spacing unit and its application was appropriately granted by the Commission.

5. Arrington's efforts to maintain a drilling permit for its Glass-eyed Midge No. 1 Well, having a spacing unit in direct conflict with the spacing unit approved in connection with TMBR/Sharp's application, merely seeks to inject confusion into an otherwise clear and understandable event sequence. Whether or not Arrington might have satisfied the definition of operator at the time this later application was filed, the Commission correctly ruled that TMBR/Sharp had priority in terms of time of application and right of development. As the captioned order clearly states, New Mexico statutes relating to compulsory pooling prescribe no order for these proceedings to take place vis a vis the issuance of a drilling permit. Arrington's assertion that contested permit and pooling applications must be heard contemporaneously lacks statutory basis. The Commission's decision was not based on error and said decision should not, therefore, be the subject of further hearing before the Commission.

Arrington further asserts that the decision to issue a drilling permit for the Blue Fin 25 Well No. 1 to TMBR/Sharp was improvident. The gist of the argument made by Arrington in its application seems to be that TMBR/Sharp did not properly pool the Stokes/Hamilton oil and gas leases at issue, notwithstanding the decision issued by Judge Clingman. TMBR/Sharp understands that Arrington does not like this decision and is apparently intent on rearguing the core issue of pooling in whatever forum it can

find. To say, however, that the present proceedings result from some "omission" on TMBR/Sharp's party is to totally ignore Judge Clingman's contrary resolution of the pooling issue as between all affected parties. The Commission used proper restraint in not involving itself with issues of leasehold title, deferring said matters to a court of competent jurisdiction, and Arrington's efforts to revisit the same under the guise of improvident issuance of a drilling permit should be resisted.

Arrington finally argues that the issuance of the Blue Fin 25 Well No. 1 Permit to TMBR/Sharp improperly delegated the Commission's authority to its Hobbs field office. TMBR/Sharp cannot appreciate this argument since the captioned order, issued by the Commission itself, resolves all issues relating to who should have a permit for drilling operations in Section 25. Whoever issued the permit to TMBR/Sharp, whenever it was issued, and whatever actions may have been taken to cancel erroneously granted prior drilling permits, said actions were in all respects consistent with the captioned order (ratifying, to the extent necessary, and/or authorizing any ministerial acts taken by Division personnel in accordance therewith). No cause, therefore, exists to reconsider the Commission's decision on the basis of improper delegation.

Conclusion

As the Commission is all too well aware, the drilling activity presently being undertaken by TMBR/Sharp is the culmination of an arduous administrative process that has gone through almost every level of decision making authority, spanning a

period of several months, and other collateral issues still require resolution by the Division. It seems clear that Arrington and Ocean will not rest until the Commission resolves these cases in a manner completely inconsistent with the action that it has previously taken. If this perception is correct, these parties should pursue their judicial appellate options and not take up any more of the Commission's time on a matter that has been the subject of exhaustive deliberation. The applications for rehearing filed by Ocean and Arrington should be denied.

Respectfully submitted,

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Certificate of Mailing

I certify that a copy of the foregoing pleading was faxed to counsel of record on the _____ day of May, 2002, as follows:

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

APPLICATION OF TMBR/SHARP DRILLING, INC., FOR AN ORDER STAYING DAVID H. ARRINGTON OIL AND GAS, INC., FROM COMMENCING OPERATIONS, LEA COUNTY, NEW MEXICO — **CASE NO. 12731**

APPLICATION OF TMBR/SHARP DRILLING, INC. APPEALING THE HOBBS 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**

Order No. R-11700-B *De Novo*

NOTICE OF APPEAL

David H. Arrington Oil and Gas, Inc., ("Appellant"), through its counsel of record, Miller, Stratvert & Torgerson, P.A. (J. Scott Hall), pursuant to NMSA 1978 Section 70-2-25 of the New Mexico Oil and Gas Act and Section 39-3-1.1 (Repl. Pamp. 1995), hereby files this Notice of Appeal from Order No. R-11700-B issued by the New Mexico Oil Conservation Commission on April 26, 2002 and from the Commission's disposition of Appellants' Application For Rehearing and Request for Partial Stay of Order No. R-11700-B filed pursuant thereto.

Appeal is made to the District Court for the County of Santa Fe, New Mexico. The Appeal is taken against the Commission and against TMBR/Sharp Drilling, Inc. Copies of Order No. R-11700-B and the Application For Rehearing and Request for Partial Stay are attached hereto.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, PA.

By _____

J. Scott Hall, Esq.
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ATTORNEYS FOR DAVID H. ARRINGTON OIL AND GAS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Application for Rehearing was mailed on this 25th day of June, 2002 to the following:

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_____

J. Scott Hall, Esq.

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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION FOR THE PURPOSE OF CONSIDERING:

APPLICATION OF TMBR/SHARP DRILLING, INC. FOR AN ORDER STAYING DAVID H. ARRINGTON OIL & GAS, INC. FROM COMMENCING OPERATIONS, LEA COUNTY, NEW MEXICO. **CASE NO. 12731**

APPLICATION OF TMBR/SHARP DRILLING, INC. APPEALING THE HOBBS 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**

ORDER NO. R-11700-B

ORDER OF THE OIL CONSERVATION COMMISSION

BY THE COMMISSION:

THIS MATTER came before the Oil Conservation Commission (hereinafter referred to as "the Commission") on March 26, 2002, at Santa Fe, New Mexico, on application of TMBR/Sharp Drilling Inc. (hereinafter referred to as "TMBR/Sharp"), *de novo*, and opposed by David H. Arrington Oil and Gas Inc. (hereinafter referred to as "Arrington") and Ocean Energy Inc. (hereinafter referred to as "Ocean Energy") and the Commission, having carefully considered the evidence, the pleadings and other materials submitted by the parties hereto, now, on this 26th day of April, 2002,

FINDS,

1. Notice has been given of the application and the hearing on this matter, and the Commission has jurisdiction of the parties and the subject matter herein.

2. In Case No. 12731, TMBR/Sharp seeks an order voiding permits to drill obtained by Arrington and awarding or confirming permits to drill to TMBR/Sharp concerning the same property.

3. In Case No. 12744, TMBR/Sharp appeals the action of the Supervisor of District I of the Oil Conservation Division denying two applications for permit to drill.

4. Arrington and Ocean Energy oppose[1] both applications.

5. The cases were consolidated by the Division for purposes of hearing and remain so before the Commission.

6. Still pending before the Division are two applications for compulsory pooling. They are: Case No. 12816, Application of TMBR/Sharp for compulsory pooling, Lea County, and Case No. 12841, Application of Ocean Energy Inc. for compulsory pooling, Lea County.

7. The Commission conducted an evidentiary hearing on March 26, 2002, heard testimony from witnesses called by TMBR/Sharp, and accepted exhibits. The Commission also accepted pre-hearing statements from TMBR/Sharp and Arrington and heard opening statements from TMBR/Sharp, Arrington and Ocean Energy and accepted brief closing statements from TMBR/Sharp and Arrington.

8. Following the hearing, TMBR/Sharp filed a Motion to Supplement the Record to include the April 10, 2002 letter of Arrington to the Oil Conservation Division's Hobbs District Office and a portion of Arrington's Supplemental Response to Plaintiff's Motion for Reconsideration in Lea County Cause No. CV-2001-315C. Ocean filed a response to that motion that argued the items add nothing to the record, and Arrington filed a response arguing that the supplemental material is not new or inconsistent. The Motion to Supplement the Record should be granted as no party seems to object to review of the documents; the objections seem to relate only to the significance of the documents to this matter.

9. Applications for permit to drill were filed with the Division in Sections 23 and 25 by Arrington and TMBR/Sharp. The applications filed by TMBR/Sharp and Arrington both proposed a well in the NW/4 of in Section 25. In Section 23, the application for permit to drill filed by TMBR/Sharp proposed a well in the NE/4, and the application of Arrington proposed a well in the SE/4.

10. Arrington's application in Section 25 was filed on July 17, 2001 and sought a permit to drill its proposed "Triple-Hackle Dragon "25" Well No. 1." This application was approved on July 17. On or about August 7, 2001, TMBR/Sharp filed its application for a permit to drill its proposed "Blue Fin "25" Well No. 1" in the same section. That application was denied on August 8, 2001.

11. Arrington's application in Section 23 was filed on July 25, 2001 and sought a permit to drill its proposed "Blue Drake "23" Well No. 1." This application was

[1] On April 10, 2002 Arrington agreed to release its permit to drill to TMBR/Sharp. A dispute may no longer therefore exist concerning Section 23 although the parties apparently do not agree with this assessment.

approved on July 30, 2001. On or about August 6, 2001, TMBR/Sharp filed its application for a permit to drill its proposed "Leavelle "23" Well No. 1" in the same section. That application was denied on August 8, 2001.[2]

12. TMBR/Sharp's applications in Sections 23 and 25 were denied on the grounds of the permits previously issued to Arrington for the "Triple-Hackle Dragon "25" Well No. 1" and the "Blue Drake "23" Well No. 1." The Townsend Mississippian North Gas Pool, the pool from which the wells are to produce, is governed by the spacing and well density requirements of Rule 104.C(2) [19 NMAC 15.C.104.C(2)]. That rule imposes 320-acre spacing on wells producing from that pool. TMBR/Sharp's applications were denied because, if granted, more than one well would be present within a 320-acre spacing unit, in violation of Rule 104.C(2).

13. Before an oil or natural gas well may be drilled within the State of New Mexico, a permit to drill must be obtained. See NMAC 19.15.3.102.A, 19 NMAC 15.M.1101.A. Only an "operator" may obtain a permit to drill, 19 NMAC 15.M.1101.A, and an "operator" is a person who is "duly authorized" and "is in charge of the development of a lease or the operation of a producing property." NMAC 19.15.1.7.O(8).

14. The central issue in this case is whether Arrington was eligible to become the operator of the wells in question. If not, Arrington should not have received the permits to drill. If Arrington was eligible to become the operator, then the permits were properly issued to Arrington.

15. A dispute exists concerning the validity of Arrington and TMBR/Sharp's mineral leases in Sections 23 and 25. As will be seen below, resolution of this dispute in favor of Arrington or TMBR/Sharp determines which party is eligible to be the operator and thus, who should receive the permits to drill.

16. TMBR/Sharp is the owner of oil and gas leases comprising the NW/4 of Section 25 and the SE/4 of Section 23 (along with other lands) pursuant to leases dated August 25, 1997 granted by Madeline Stokes and Erma Stokes Hamilton. TMBR/Sharp Exhibit 6. The leases were granted to Ameristate Oil & Gas, Inc. (hereinafter referred to as "Ameristate") and were recorded respectively in Book 827 at Page 127 and in Book 827 at Page 124 in Lea County, New Mexico.

17. TMBR/Sharp and Ameristate entered into a Joint Operating Agreement along with other parties on July 1, 1998 and TMBR/Sharp was designated as the operator in Section 25. See TMBR/Sharp Exhibit 7.

[2] Apparently TMBR/Sharp reapplied for the permits to drill that were previously denied, and the Division approved those permits on March 20, 2002.

18. Although the primary terms of the TMBR/Sharp leases have apparently expired, TMBR/Sharp alleges that the leases were preserved by the drilling of the "Blue Fin 24 Well No. 1" and subsequent production from that well. The Blue Fin 24 Well No. 1 is located in the offsetting section 24.

19. Subsequent to Stokes and Hamilton's execution of leases in favor of Ameristate Oil & Gas Inc., they granted leases in the same property to James D. Huff on March 27, 2001. See TMBR/Sharp Exhibit 9. The leases to Mr. Huff were recorded in Book 1084 at Page 282 and in Book 1084 at Page 285 in Lea County, New Mexico. The parties referred to these leases as "top leases," meaning that according to their terms, they would not take effect until the prior or "bottom" leases became ineffective. See TMBR/Sharp Exhibit 9, ¶ 15.

20. Arrington alleges Mr. Huff is an agent of Arrington but presented nothing to support that contention.

21. In July and August 2001, Ocean acquired a number of farm-out agreements in Section 25. See TMBR/Sharp Exhibit 10, Schedule 1. By an assignment dated September 10, 2001, Ocean assigned a percentage of the farm out agreements to Arrington under terms that require Arrington to drill a test well in Section 25 known as the Triple Hackle Dragon "25" Well No. 1 in the NW/4 of that section.

22. On August 21, 2001, after receiving the denials of the applied-for permits to drill from the District office, TMBR/Sharp filed suit against Arrington and the lessors of its mineral interests in the Fifth Judicial District Court of Lea County, New Mexico. In that case, styled "TMBR/Sharp Drilling, Inc. v. David H. Arrington Oil & Gas, Inc., *et al.*", TMBR/Sharp alleged that its leases were still effective and the Arrington top leases were ineffective. The District Court, in its Order Granting Partial Summary Judgment, dated December 24, 2001, agreed with TMBR/Sharp's contention. See TMBR/Sharp's Exhibit No. 12,

23. During the hearing of this matter, TMBR/Sharp argued that because the Fifth Judicial District Court found that Arrington's "top leases" had failed, TMBR/Sharp was entitled to permits to drill in Sections 23 and 25 and Arrington was not entitled to permits to drill and its permits should be rescinded. TMBR/Sharp also argued that Arrington had filed applications to prevent TMBR/Sharp from being able to drill and to place its obligations under the continuous drilling clauses of the oil and gas leases in jeopardy. TMBR/Sharp argued that Ocean Energy's letter agreement with Arrington could not revive Arrington's claim of title and that Ocean Energy's pending pooling application with the Division is essentially irrelevant to the question of whether TMBR/Sharp should have been granted a permit to drill.

24. Arrington argued in response that the title issue ruled upon by the District Court with respect to section 25 is irrelevant because Arrington acquired an independent

interest in that section by virtue of a farm out agreement in September of 2001. Arrington also argued it was willing to assign the disputed acreage in Section 23 to TMBR/Sharp in order to resolve the present controversy. Arrington also argued that it doesn't intend to actually drill at the present time under either approved permit to drill and argued, citing Order No. R-10731-B, that the Commission's practice has not been to rely on "first in time, first in right" principles in deciding competing applications on compulsory pooling, but instead on geological evidence. Arrington seemed to argue that a compulsory pooling proceeding is the place to present such geologic evidence. Arrington argues that these proceedings are unnecessary and that the Commission should rely upon the Division's pending pooling cases to decide who of the various parties should properly possess the permit to drill.

25. Ocean Energy argued that since its farm out agreement terminates on July 1, 2002 time is of the essence and that the matters at issue here should be resolved in the pending compulsory pooling proceeding instead of this proceeding. Ocean Energy argued that the permit to drill is meaningless in this context, that TMBR/Sharp is essentially asking the Commission to determine pooling in the context of the permit to drill, and that the dedication of acreage on the acreage dedication plat should not determine what acreage would be pooled to the well. If the Commission were to adopt this approach, Ocean Energy argues, the compulsory pooling statutes would be written out of existence.

26. The parties seem to agree that in a situation where the bottom lease has not failed, a person owning a top lease is not a person duly authorized to be in charge of the development of a lease or the operation of a producing property, and is therefore not entitled to a permit to drill. NMAC 19.15.1.7(O)(8). See also 1 Kramer & Martin, The Law of Pooling and Unitization, 3rd ed., § 11.04 at 11-10 (2001). Moreover, because only an "owner" may seek compulsory pooling, it seems that a person owning a top lease where the bottom lease has not failed might not be entitled to compulsory pooling either. See NMSA 1978, § 70-2-17(C).

27. When an application for permit to drill is filed, the Division does not determine whether an applicant can validly claim a real property interest in the property subject to the application, and therefore whether the applicant is "duly authorized" and "is in charge of the development of a lease or the operation of a producing property." The Division has no jurisdiction to determine the validity of any title, or the validity or continuation in force and effect of any oil and gas lease. Exclusive jurisdiction of such matters resides in the courts of the State of New Mexico. The Division so concluded in its Order in this matter. See Order No. R-11700 (December 13, 2001).

28. It is the responsibility of the operator filing an application for a permit to drill to do so under a good faith claim to title and a good faith belief that it is authorized to drill the well applied for. It appears to this body that Arrington had such a good faith belief when it filed its application, but subsequently the District Court found otherwise.

It is not within the purview of this body to question that decision and it should not do so in this case.

29. As of the date of this order, TMBR/Sharp, by Court declaration, is the owner of an oil and gas lease in both Section 23 and Section 25, and Arrington, also by Court declaration, is not an owner in those sections. Therefore, Arrington, who the Court has now decreed has no authority over the property, should not have been granted permits to drill in those sections and TMBR/Sharp should have been granted a permit.

30. Both Arrington and Ocean Energy imply that an appeal will be filed of the District Court's decision. Until the issue of title in Sections 23 and 25 is finally resolved by the courts or by agreement of the parties, the outcome of this proceeding is therefore uncertain. As of the present time, TMBR/Sharp has prevailed on the title question and this Order reflects that (present) reality. However, as an appeal could change that conclusion, jurisdiction of this matter should therefore be retained until matters are finally resolved.

31. The permits to drill issued by the Division in July 2001 to Arrington were issued erroneously and should be rescinded *ab initio*. The applications to drill submitted by TMBR/Sharp in August 2001 should have been processed within a few days of receipt. Arrington's later acquisition of an interest in section 23 and 25 through a farm out agreement doesn't change this analysis; Arrington had no interest by virtue of farm out as of the date of TMBR/Sharp's applications.

32. On another issue, Arrington and Ocean Energy have both urged this body to stay these proceedings pending the resolution of the applications for compulsory pooling, arguing that a decision on those matters will effectively resolve the issues surrounding the permits to drill.

33. Arrington and Ocean Energy's conclusion does not necessarily follow. An application for a permit to drill serves different objectives than an application for compulsory pooling and the two proceedings should not be confused. The application for a permit to drill is required to verify that requirements for a permit are satisfied. For example, on receipt of an application, the Division will verify whether an operator has financial assurance on file, identify which pool is the objective of the well so as to identify the proper well spacing and other applicable requirements, ensure that the casing and cementing program meets Division requirements and check the information provided to identify any other relevant issues. The acreage dedication plat that accompanies the application (form C-102) permits verification of the spacing requirements under the applicable pool rules or statewide rules. Compulsory pooling is related to these objectives in that compulsory pooling would not be needed in the absence of spacing requirements. 1 Kramer & Martin, The Law of Pooling and Unitization, § 10.01 (2001) at 10-2. But its primary objectives are to avoid the drilling of unnecessary wells and to protect correlative rights. NMSA 1978, § 70-2-17(C).

34. It has long been the practice in New Mexico that the operator is free to choose whether to drill first, whether to pool first, or whether to pursue both contemporaneously. The Oil and Gas Act explicitly permits an operator to apply for compulsory pooling after the well is already drilled. See NMSA 1978, § 70-2-17(C) (the compulsory pooling powers of the Division may be invoked by an owner or owners "... who has the right to drill *has drilled* or proposes to drill a well [sic] ..."). Issuance of the permit to drill does not prejudge the results of a compulsory pooling proceeding, and any suggestion that the acreage dedication plat attached to an application to drill somehow "pools" acreage is expressly disavowed. If acreage included on an acreage dedication plat is not owned in common, it is the obligation of the operator to seek voluntary pooling of the acreage pursuant to NMSA 1978, § 70-2-18(A) and, if unsuccessful, to seek compulsory pooling pursuant to NMSA 1978, § 70-2-17(C).

35. Thus, where compulsory pooling is not required because of voluntary agreement or because of common ownership of the dedicated acreage, the practice of designating the acreage to be dedicated to the well on the application for a permit to drill furthers administrative expedience. Once the application is approved, no further proceedings are necessary. An operator may first apply for a permit to drill a well and may thereafter pool (on a voluntary or compulsory basis) separately owned tracts to the well. Alternatively, the operator may first pool and later seek a permit to drill. The two are not mutually exclusive, and there is no preferred methodology.

36. Thus, the process fosters efficiency by permitting a simple approach in cases where ownership is common and pooling, voluntary or compulsory, is not necessary.

37. Ocean's expiring farm-outs present a difficult problem because the delay occasioned by this proceeding and any delay that might occur in the pending compulsory pooling cases may place Ocean's interests in jeopardy. It is worth noting that Ocean's interests seem to be free of the title issues plaguing the other parties, but since Ocean Energy intended that Arrington drill and become operator, Ocean isn't planning on preserving its rights by drilling a well itself and hasn't applied for a permit to drill. Unfortunately, this body is without authority to stay expiration of the farm-outs; Ocean should petition the District Court for relief if the expiring farm-outs are a concern.

CONCLUSION OF LAW:

The Oil Conservation Commission has no jurisdiction to determine the validity of any title, or the validity or continuation in force and effect of any oil and gas lease. Exclusive jurisdiction of such matters resides in the courts of the State of New Mexico.

IT IS THEREFORE ORDERED:

1. The portion of TMBR/Sharp's application in Case No. 12731 seeking to void permits to drill obtained by Arrington is granted. The permits to drill awarded to

Arrington shall be and hereby are rescinded *ab initio* and the applications originally filed by TMBR/Sharp in August, 2001 shall be and hereby are remanded to the District Office for approval consistent with this Order provided the applications otherwise meet applicable Division requirements.

2. TMBR/Sharp's application in Case No. 12744, appealing the decision of the Supervisor of District I of the Oil Conservation Division, is granted and the decision shall be and hereby is overruled.

3. The motions of Arrington and Ocean to continue this proceeding until after the decision in Cases No. 12816 and No. 12841 shall be and hereby are denied.

4. The motion of TMBR/Sharp to Supplement the Record is hereby granted.

5. Jurisdiction of this case is retained for the entry of such further orders as may be necessary given subsequent proceedings in TMBR/Sharp Drilling, Inc. v. David H. Arrington Oil & Gas, Inc., *et al.*

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

LORI WROTENBERY, CHAIR

JAMI BAILEY, MEMBER

ROBERT LEE, MEMBER

S E A L

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

IN THE MATTER OF THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION COMMISSION
FOR THE PURPOSE OF CONSIDERING:

APPLICATION OF TMBR/SHARP DRILLING, INC.
FOR AN ORDER STAYING DAVID H. ARRINGTON
OIL AND GAS, INC. FROM COMMENCING
OPERATIONS, LEA COUNTY, NEW MEXICO — CASE NO. 12731

APPLICATION OF TMBR/SHARP DRILLING, INC.,
APPEALING THE HOBBS 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

ORDER NO. R-11700-B

APPLICATION FOR REHEARING
AND
REQUEST FOR PARTIAL STAY OF ORDER NO. R-11700-B

David H. Arrington Oil and Gas, Inc., ("Arrington"), through its attorneys, Miller Stratvert & Torgerson, P.A., (J. Scott Hall), moves pursuant to NMSA 1978 Section 70-2-25 of the New Mexico Oil and Gas Act and 19 NMAC 15.N.1222 for rehearing on the issuance of Order No. R-11700-B issued by the Commission on April 26, 2002. Arrington also moves pursuant to 19 NMAC 15.N.1220.B for entry of an order staying Order No. R-11700-B

BACKGROUND FACTS

Case Nos. 12731 and 12744 involve consolidated applications filed by TMBR/Sharp Drilling, Inc., ("TMBR/Sharp"), challenging and APD issued on July 17, 2001 to Arrington for its Triple-Hackle Dragon 25 Well No. 1 covering lands in the W/2 of Section 25[1] as well as the

[1] All referenced lands are located in Township 16-South, Range 35-East, NMPM in Lea County.

permit approved on July 30, 2001 for Arrington's Blue Drake 23 Well No. 1 covering lands in the E/2 of Section 23. Applications filed in August, 2001 by TMBR/Sharp for permits to drill its Leavelle 23 No. 1 well and the Blue Fin 25 No. 1 well in Sections 23 and 25, respectively, had been denied by the Division's District I office due to the previous approval of the Arrington drilling permits for the same lands.

The consolidated administrative cases ultimately resulted in the issuance by the New Mexico Oil Conservation Commission of Order No. R-11700-B on April 26, 2002, which found, among other things, that the Division's District I Supervisor should issue an APD to TMBR/Sharp for its proposed Blue Fin 25 Well No. 1 in the NW/4 of Section 25 to which TMBR/Sharp proposes to dedicate a N/2 spacing and proration unit. The Order also directed that a drilling permit should be approved for TMBR/Sharp's Blue Drake 23 Well No. 1 to which it proposed to dedicate the E/2 of Section 23. In addition, the Commission expressly retained jurisdiction over the matter, noting that separate court proceedings to resolve title issues could affect the outcome these pending administrative cases. At issue in that collateral litigation presently pending before the 5th Judicial District Court in Lovington is whether the filing of a C-102 form with the Division's District I office in Hobbs for TMBR/Sharp's Blue Fin 24 No. 1 well in Section 24, T-16-S, R-35-E, was sufficient to perpetuate TMBR/Sharp's leases from Madeline Stokes and Erma Stokes Hamilton to Ameristate Oil and Gas (and, by assignment, to TMBR/Sharp) that covered portions of lands in Sections 23 and 25 identified in the APD's filed both by TMBR/Sharp and Arrington. In that litigation, the lessors and Arrington, the owner of top-leases executed by the Stokes family (by way of farmouts through Ocean Energy, Inc.), contend that the leases held by TMBR/Sharp had lapsed.

In the interim, on January 28, 2002, TMBR/Sharp had filed an application for compulsory pooling in Case No. 12816 seeking to consolidate the working interests in the N/2 of Section 25

for its Blue Fin 25 Well No. 1. Ocean Energy, Inc. also filed separate compulsory pooling applications (Case No. 12841 and Case No. 12860) seeking to pool the W/2 of Section 25 for two alternative proposed Mississippian formation well locations in the NW/4 and SW/4, respectively. More recently, Arrington has filed its application for compulsory pooling in Case No. 12859 to create an E/2 unit in Section 25 for its Glass-Eyed Midge 25 No. 1 Atoka/Morrow/Mississippian well to be drilled in the NE/4. Arrington's C-101 APD for the Glass-Eyed Midge 25 No. 1 well was issued by the Division on December 17, 2001 and its C-102 reflecting an E/2 unit was filed on November 29, 2001. The N/2 TMBR/Sharp unit is in obvious conflict with the E/2 and W/2 units proposed by Arrington and Ocean Energy. Case Nos. 12816, 12859, 12860 and 12841 are all scheduled to be heard by the Division's examiner on May 16, 2002.

Significantly, Arrington's Application does not present a title issue like TMBR/Sharp's Applications in Case Nos. 12731 and 12741 did, and the lands under its proposed E/2 unit were not involved in those two cases. Arrington's lease interests are wholly independent from the lease title currently in dispute in the 5th Judicial District Court litigation.

On March 15, 2002, without notice to the Applicant and ***before*** the issuance of Order R-11700-B, TMBR/Sharp Drilling, Inc. filed another C-101 APD with the Division's District I office for its Blue Fin 25 Well No. 1 (API No. 30-025-35865) which was also proposed to be drilled to the Mississippian formation in the NW/4 of Section 25. The C-102 acreage dedication plat which accompanied the filing of the TMBR/Sharp Drilling, Inc. APD proposed to dedicate the N/2 of said Section 25 to the Blue Fin 25 Well No. 1.

On March 20, 2002, again without notice to Arrington and ***before*** the issuance of Order No. R-11700-B, the Division's District I office approved the APD for the Blue Fin 25 Well No. 1.

As a consequence of the actions of the Division's District I office, there existed two

simultaneously approved APD's with attached C-102's that both operators proposed to dedicate the NE/4 of Section 25 to their respective wells.

At the time of the filing of the APD's, there were owners of other interests in the N/2 and E/2 of Section 25, respectively, who had not voluntarily agreed to participate in the drilling of the proposed wells. Neither the Arrington nor TMBR/Sharp compulsory pooling cases had been heard and neither operator had consolidated the interests of all the non-participating owners either by way of a voluntary agreement, communitization agreement, or otherwise. Although TMBR/Sharp, Ocean Energy and Arrington now all have compulsory pooling applications pending before the Division to consolidate the unjoined interests, TMBR/Sharp moved to continue its own pooling case (Case No. 12816) and to dismiss Cases 12859, 12860 and 12841. The Division's examiner denied the TMBR/Sharp motion at a hearing on May 14, 2002.

To date, however, no geologic, engineering or equitable evidence having a bearing on the development of Section 23 and 25 has been presented to the Division or the Commission.

Significantly, it was learned on May 14th that TMBR/Sharp began drilling its Blue Fin 25 Well No. 1 on May 7, 2002, without having consolidated the unjoined interests and without allowing the Division to determine the final configuration of the spacing and proration units in Section 25.

On May 15, 2002, Arrington filed with the Division its *Application To Reinstate Drilling Permit* whereby it seeks an order directing the Division's District I office to reinstate the drilling permit for its Glass-Eye Midge 25 Well No. 1 previously approved on December 17, 2001. (A copy of the Application is attached as Exhibit "A".)

THE REQUEST FOR REHEARING

Arrington respectfully submits that Case Nos. 12731 and 12744 should be reheard for the reasons that (1) Order R-11700-B is based, in part, on error, (2) was improvidently issued, and (3) its operation allows a ministerial act to supersede the agency's statutory functions.

Order R-11700-B Is Based On Error.

In Order No. R-11700-B, the Commission, citing to the separately pending litigation in the district court involving conflicting leases, found that APD's previously issued to Arrington for wells in the S/2 of Section 23 and the W/2 of Section 25, T-16-S, R-35-E should not have been granted because Arrington was not an owner in those lands and had "no authority over the property". (Order R-11700-B, Par. 29.) This finding was the primary basis for the Commission's determination. This finding is clearly based on error. Arrington established that it had the right to drill and operate as the owner of lease interests in the W/2 of Section 25 separate and apart from the oil and gas leases involved in the district court litigation.

In addition, at the time it filed the APD for its Glass Eye Midge 25 No. 1 Well, Applicant owned separate oil and gas lease interests in the E/2 of Section 25 that were independent from the conflicting leases that are the subject of the district court litigation cited by the Commission in Order No. R-11700-B. As such, Applicant was eligible to become the operator of that well and the permit to drill that was issued to it on December 17, 2001 should have been undisturbed. In this regard, the findings in Paragraph 14 of Order No. R-11700-B are telling:

> *"14 The central issue in this case is whether Arrington was eligible to become the operator of the wells in question...If Arrington was eligible to become the operator, then the permits were properly issued to Arrington."*

In its findings at Paragraph 29 of Order R-11700-B, the Commission erroneously assumed that the rulings issued by the 5th Judicial District Court served to adjudicate all of the title owned by Arrington. Instead, the scope of the district court rulings affected only the lands encumbered

by the Stokes/Hamilton base lease claimed by Ameristate and TMBR/Sharp and the top-lease claimed by Arrington. The interests separately owned by Arrington remained unaffected, and as such, Arrington continued to be eligible to become operator throughout.

The agency's determination of the geologic and economic waste issues before it should determine the outcome of these disputed cases, not resolution of collateral title issues. Accordingly, the Division should discharge its statutory function and resolve these matters at the earliest opportunity.

Order R-11700-B Was Improvidently Issued.

Order No. R-11700-B was improvidently issued, failing to completely resolve the dispute before the agency or accord full relief to the affected parties. The initial determination of Cases 12731 and 12744 has allowed the permitting issue to unduly influence events and has pre-empted proper consideration by the agency's of its statutory mandates to prevent waste, protect correlative rights and avoid the drilling of unnecessary wells. As a further consequence of its issuance, Order No. R-11700-B has precipitated more problems for the parties, including the Division, that have become manifest in the frustrated efforts of Arrington to develop the E/2 of Section 25, acreage that should not have been affected by the proceedings.

Through no fault of the Commission, the scope of the TMBR/Sharp applications in Case Nos. 12731 and 12744 was limited to the issuance of drilling permits for its two proposed wells. That circumstance was the product of one single act of neglect on the part of TMBR/Sharp: That is, TMBR/Sharp's failure to abide by the terms of one of its oil and gas leases and properly file a pooled unit designation in the county records for their Blue Fin 24-1 well. That single failure or omission has consequently determined all of TMBR's actions, legal positions and arguments ever since, both in court and before the Division and Commission. That same omission has, by necessity, caused TMBR/Sharp to argue that it is not necessary to file a unit designation in the

> cannot delegate powers and functions discretionary or quasi-judicial in character, or which require the exercise of judgment.

Citing, Anderson v. Grand River Dam Authority, 446 JP.2d 814 (1968). The Anderson Court also quoted with approval from American Jurisprudence and Corpus Juris Secundum:

> In 2 Am. Jur. 2nd Administrative Law, Section 222, it is said: It is a general principal of law, expressed in the maxim "delegates no protest delegare", that a delegated power may not be further delegated by the person to whom such power is delegated and than in all cases of delegated authority, or personal trust or confidence is reposed in the agent and especially where the exercise and application of the power is made subject to his judgment and discretion, the authority is purely personal and cannot be delegated to another***. A commission charged by law with power to promulgate rules, cannot in turn, delegate that power to another."

Because New Mexico has expressly adopted Oklahoma law, it is the law in this state that an administrative body may not delegate a statutory function, particularly in the manner that TMBR/Sharp advocates.

In making any determination under the compulsory pooling statute, under long-standing practice,[3] the Division will consider evidence relating to, among other matters: (1) the presence or absence of a voluntary pooling agreement; (2) whether a reasonable and good-faith effort was made to obtain the voluntary participation of others; (3) reasonableness of well costs; (4) geologic and engineering evidence bearing on the avoidance of waste and the protection of correlative rights, including the drilling of unnecessary wells; (5) the assessment of a risk penalty; and (6) whether a proposal is otherwise in the interests of conservation. The mere approval of a drilling permit and the filing of an acreage dedication plat serve to do none of these things and neither have any of the functions enumerated above been delegated outside the Division's regular hearing process.[4]

---

[3] *See* Morris, Richard, *Compulsory Pooling of Oil and Gas Interests in New Mexico*, 3 Nat. Resources J. 316 (1963).

[4] N. M. Stat. Ann. 1978 Section 70-2-17(C): "All orders effecting such pooling shall be made after notice and hearing[.]"

It is inappropriate to allow any portion of the pooling process to be subsumed by the mere processing of an APD. Order No. R-11700-B, Par. 33. ("An application for a permit to drill serves different objectives than an application of compulsory pooling and the two proceedings should not be confused.") Moreover, the issuance of a drilling permit does not constitute any determination of a property right. *See* Gray v. Helmerich & Payne, Inc., et al. 843 S.W. 2d 579 (Tex. 2000).

Whether intentional or not, the practical effect of Order R-11700-B was to allow a ministerial event to dictate events to the exclusion of the statutory adjudicatory functions that ought first be performed by the Division and the Commission.

THE REQUEST FOR PARTIAL STAY

Arrington requests that Order No. R-11700-B be stayed to the extent it operates to prevent the reinstatement of its drilling permit and otherwise prevents it from commencing the drilling of it Glass-Eye Midge 25 Well No. 1 in the NE/4 of Section 25.

Further stay of Order R-11700-B is requested to the extent it approves, by implication or otherwise, the creation of a N/2 spacing and proration unit for TMBR/Sharp's Blue Fin 25 Well No. 1 pending the agency's consideration of geologic and engineering evidence and the issuance of an order determining the proper orientation of the 320 acre units in Section 15.

A proposed Order of Partial Stay is attached hereto as Exhibit "B".

CONCLUSION

For the reasons outlined above, Arrington respectfully requests the Commission immediately enter its Order of Partial Stay and then set all these matters for rehearing at the next regularly scheduled Commission hearing docket set for June 21, 2002.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By _____

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Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 15th day of May, 2002, as follows:

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J. Scott Hall

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

IN THE MATTER OF THE APPLICATION OF
DAVID H. ARRINGTON OIL AND GAS, INC.
TO REINSTATE DRILLING PERMIT,
LEA COUNTY, NEW MEXICO CASE No. _____

APPLICATION

DAVID H. ARRINGTON OIL AND GAS, INC., by its undersigned attorneys, Miller, Stratvert & Torgerson, P.A. (J. Scott Hall), hereby makes application pursuant to Section 70-2-11 N.M.S.A. (1978) for an order reinstating its previously approved C-101 and C-102 drilling permit for Applicant's proposed Glass-Eyed Midge 25 Well No. 1 (API No. 30-025-35787) to be drilled at a standard 320-acre spacing and proration unit gas well location 803 feet from the North line and 902 feet from the East line in E/2 of Section 25. Township 16-South, Range 35-East. NMPM, Lea County, New Mexico. Applicant, in support thereof would show the Division:

1. Applicant owns a substantial portion of the working interest in and under the E/2 of Section 25, and Applicant has the right to drill thereon.
2. Applicant first acquired its lease interests in the E/2 of Section 25 in approximately January, 2001.
3. On November 29, 2001, Applicant filed with the Division's District I office in Hobbs its C-101 Application for Permit to Drill, ("APD"), for the Glass Eye Midge 25 Well No. 1 which it proposed to drill to the Townsend-Mississippian Gas pool. Applicant simultaneously filed a C-102 acreage dedication plat form proposing to dedicate the E/2 of said Section 25 to the subject well.

EXHIBIT 1

4. On December 17, 2001, the Division's District I office approved Applicant's permit to drill the subject well.

5. On March 15, 2002, without notice to the Applicant, TMBR/Sharp Drilling, Inc. filed another C-101 APD with the Division's District I office for its Blue Fin 25 Well No. 1 (API No. 30-025-35865) which was also proposed to be drilled to the Mississippian formation in the NW/4 of Section 25, T-16-S, R-35-E, NMPM in Lea County. The C-102 acreage dedication plat which accompanied the filing of the TMBR/Sharp Drilling, Inc. APD proposed to dedicate the N/2 of said Section 25 to the Blue Fin 25 Well No. 1.

6. On March 20, 2002, without notice to the Applicant, the Division's District I office approved the APD for the Blue Fin 25 Well No. 1.

7. As a consequence of the actions of the Division's District I office, there existed two simultaneously approved APD's with attached C-102's that both proposed to dedicate the NE/4 of Section 25 in violation of, *inter alia*, 19 NMAC 15.C.104(C)(2)(c).

8. At the time of the filing of the APD's, there were owners of other interests in the N/2 and E/2 of Section 25, respectively, who had not voluntarily agreed to participate in the drilling of the proposed wells. Neither Applicant nor TMBR/Sharp Drilling, Inc. had consolidated the interests of all the non-participating owners either by way of a voluntary agreement, communitization agreement, or compulsory pooling order. Both Applicant and TMBR/Sharp Drilling, Inc. subsequently initiated separate compulsory pooling proceedings before the Division seeking to consolidate those interests.

9. On April 26, 2002, the New Mexico Oil Conservation Commission issued Order No. R-11700-B in Case Nos. 12731 and 12744. In Order No. R-11700-B, the Commission, citing to separately pending litigation in the district court involving conflicting leases, found that APD's previously issued to Arrington for wells in the S/2 of Section 23 and the W/2 of Section 25, T-16-S, R-35-E should not have been granted because Arrington was not an owner in those lands.

10. At the time it filed the APD for its Glass Eye Midge 25 No. 1 Well, Applicant owned separate oil and gas lease interests independent from the conflicting leases that are the subject of the district court litigation cited by the Commission in Order No. R-11700-B. As such, Applicant was eligible to become the operator of the subject well and should have received the permit to drill that was issued to it on December 17, 2001.

11. On May 1, 2002, the Division's District I office notified Applicant that its approved APD was canceled. Applicant received the notification on May 7, 2002.

12. Applicant continues to own lease interests underlying the E/2 of said Section 25 and continues to be eligible to be operator.

13. The cancellation of Applicant's permit by the Division's District I office was arbitrary, capricious and otherwise unreasonable.

14. Geological, engineering and equitable considerations mandate that development occur by way of a 320 acre spacing and proration unit located in the E/2 of said Section 25 dedicated to Applicant's proposed well in order to avoid the drilling of unnecessary wells, prevent waste and protect correlative rights.

WHEREFORE, Applicant prays that this application be set for hearing before a duly appointed examiner of the Oil Conservation Division no later than June 13, 2002, and that after notice and hearing as required by law, the Division enter its order reinstating the drilling permit for Applicant's proposed well and making such other and further provisions as may be proper in the premises.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By _____

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ATTORNEYS FOR DAVID H. ARRINGTON OIL AND GAS, INC.

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

IN THE MATTER OF THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION COMMISSION
FOR THE PURPOSE OF CONSIDERING:

APPLICATION OF TMBR/SHARP DRILLING, INC.
FOR AN ORDER STAYING DAVID H. ARRINGTON
OIL AND GAS, INC. FROM COMMENCING
OPERATIONS, LEA COUNTY, NEW MEXICO — CASE NO. 12731

APPLICATION OF TMBR/SHARP DRILLING, INC., — CASE NO. 12744
APPEALING THE HOBBS DISTRICT SUPERVISOR'S
DECISION DENYING APPROVAL OF TWO
APPLICATIONS FOR PERMIT TO DRILL FILED BY
TMBR/SHARP DRILLING, INC.,
LEA COUNTY, NEW MEXICO

ORDER OF PARTIAL STAY
OF ORDER NO. R-11700-B

THIS MATTER, having come before the Commission on the Application For Rehearing And Request For Partial Stay Of Order No. R-11700-B filed by David H. Arrington Oil and Gas, Inc., and the Commission, being duly advised, ORDERS as follows:

1. Order No. R-11700-B is stayed to the extent it may operate to prevent the reinstatement of the drilling permit previously issued to David H. Arrington Oil and Gas, Inc. on December 17, 2001 for the drilling of the Glass-Eye Midge 25 Well No. 1 (API No.30-025-35787) 803' from the north line and 962' from the east line in the NE/4 of Section 25, Township 16-South, Range 35-East, NMPM, Lea County, New Mexico. Order No. R-11700-B is

Exh B

further stayed to the extent it prevents Arrington from commencing drilling operations for the referenced well.

2. Order No. R-11700-B is further stayed to the extent it may be regarded as approving, by implication or otherwise, the establishment of a spacing and proration unit consisting of the N/2 of Section 25, Township 16-South, Range 35-East, NMPM, Lea County, New Mexico, for the TMBR/Sharp Drilling, Inc. Blue Fin 25 Well No. 1 located in the NW/4 of said Section 25.

3. Jurisdiction over these cases is retained for the entry of such further orders as may be necessary.

DONE at Santa Fe, New Mexico, on this ____day of May, 2002.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

By:_____
Lori Wrotenbery, Chair.

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION FOR THE PURPOSE OF CONSIDERING:	
APPLICATION OF TMBR/SHARP DRILLING, INC., APPEALING TO THE DIRECTOR OF THE NEW MEXICO OIL CONSERVATION DIVISION THE HOBBS DISTRICT SUPERVISOR'S DECISION DENYING APPROVAL OF TWO APPLICATIONS FOR PERMIT TO DRILL FILED BY TMBR/SHARP, INC., LEA COUNTY, NEW MEXICO	CASE NO. 12,744
APPLICATION OF TMBR/SHARP DRILLING, INC., FOR AN ORDER STAYING DIVISION APPROVAL OF TWO APPLICATIONS FOR PERMIT TO DRILL OBTAINED BY DAVID H. ARRINGTON OIL AND GAS, INC., LEA COUNTY, NEW MEXICO	CASE NO. 12,731
	(Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN
JAMI BAILEY, COMMISSIONER
ROBERT LEE, COMMISSIONER

March 26th, 2002
Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Tuesday, March 26th, 2002, 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.

* * *

I N D E X

March 26th, 2002
Commission Hearing
CASE NOS. 12,744 and 12,731 (Consolidated)

* * *

E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	-	103
Exhibit 2	88	103
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Exhibit 4	82	103
Exhibit 5	88	103
Exhibit 6	56	103
Exhibit 7	48	103
Exhibit 8	75	103
Exhibit 9	-	103
Exhibit 10	-	103
Exhibit 11	-	103
Exhibit 12	-	103
Exhibit 13	-	103
Exhibit 14	-	103
Exhibit 15	49	103
Exhibit 16	46	103
Exhibit 17	85	103
Exhibit 18	103	103
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* * *

Arrington	Identified	Admitted
Exhibit 1	105	106
Exhibit 2	105	106
Exhibit 3	105	106
Exhibit 4	106	106

* * *

(Continued...)

E X H I B I T S (Continued)

Additional submissions, not offered or admitted:

	Identified
By Applicant:	
Locator map	9
By Ocean:	
Statue 70-2-18	28
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* * *

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(Continued...)

A P P E A R A N C E S (Continued)

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* * *

WHEREUPON, the following proceedings were had at 11:52 a.m.:

CHAIRMAN WROTENBERY: Okay, if everybody's ready we'll go back on the record, and at this point we'll take up two cases that are being consolidated for the purpose of hearing. One is Case 12,744, the Application of TMBR/Sharp Drilling, Inc., appealing the decision of the Hobbs District Supervisor denying approval of two applications for permit to drill filed by TMBR/Sharp, Inc., in Lea County, New Mexico.

Also Case 12,731, the Application of TMBR/Sharp Drilling, Inc., for an order staying Division approval of two applications for permit to drill obtained by David H. Arrington Oil and Gas, Inc., in Lea County, New Mexico.

Both of these cases are being heard *de novo* by the Commission upon the Application of TMBR/Sharp Drilling, Inc.

And at this time I'll call for appearances.

MR. KELLAHIN: Members of the Commission, my name is Tom Kellahin. I'm an attorney with Kellahin and Kellahin of Santa Fe, New Mexico. I'm appearing today in association with Mrs. Susan Richardson and Mr. Richard Montgomery. They are Midland attorneys and they, in association with me, represent TMBR/Sharp Drilling Company.

MR. CARROLL: Members of the Commission, my name

is Ernest Carroll of the Losee, Carson, Haas and Carroll law firm of Artesia, New Mexico. I am here today on behalf of David H. Arrington and Company.

CHAIRMAN WROTENBERY: Thank you, Mr. Carroll.

MR. BRUCE: Madame Chair, my name James Bruce of Santa Fe. I'm here today on behalf of Ocean Energy, Incorporated.

CHAIRMAN WROTENBERY: And do you each have witnesses here today?

MR. KELLAHIN: I have two witnesses to be sworn.

CHAIRMAN WROTENBERY: Mr. Carroll?

MR. CARROLL: Ms. Wrotenbery, I have witnesses here who were going to authenticate certain of our exhibits. Because Counsel Richardson and I have entered into an agreement where there will be no objection to any of the exhibits, I think the necessity of calling my witnesses has been negated.

The other problem is, my witnesses both have airplane commitments to make within the next hour, so... We had anticipated going on first, and so for those reasons we have a stipulation as to the evidence, the exhibits, and therefore I will not -- do not plan to call the witnesses then.

CHAIRMAN WROTENBERY: Thank you, Mr. Carroll.

Mr. Bruce?

MR. BRUCE: I do not have any witnesses.

MR. KELLAHIN: I have two witnesses to be sworn.

CHAIRMAN WROTENBERY: Mr. Carroll -- Okay, would the two witnesses for TMBR/Sharp please stand to be sworn?

(Thereupon, the witnesses were sworn.)

CHAIRMAN WROTENBERY: Thank you. Would you like to make opening statements?

MR. KELLAHIN: Yes, ma'am, I would like to do so.

CHAIRMAN WROTENBERY: Okay, Mr. Kellahin?

MR. KELLAHIN: Madame Chairman, we distributed to members of the Commission last week an exhibit book. There will be some supplements to the book by stipulation.

In addition, that book has a poor copy of a locator map. It is not very useful, and I have some substitutes for it.

CHAIRMAN WROTENBERY: That would be great. It's hard to tell the colors.

MR. KELLAHIN: This one has colors.

CHAIRMAN WROTENBERY: Good. Thank you.

MR. KELLAHIN: We're here before you this morning to ask you to resolve a permitting dispute between Arrington and TMBR/Sharp. That permitting dispute occurred in July and August of last year. It occurred at the Hobbs District Office.

The area involved involved four APDs; there were

two filed by Arrington and two filed by TMBR/Sharp. If you'll look at the map I just handed out to you, I can orient you as to the dispute.

If you'll look at Section 23, both Arrington and TMBR/Sharp have proposed a west-half spacing unit for a deep gas well. This is to be drilled to the Mississippian. It would include all deep gas formations on 320 acres.

The disputed acreage is a question about what we call the Stokes and the Hamilton leases. I'll explain that to you in a moment, but you can see that in 23 the Stokes Hamilton acreage is shaded in green.

I'm going to focus my comments and attention on Section 25. In Section 25 there were two APDs filed, one by Arrington and one by TMBR/Sharp. The Arrington APD was a west-half deep gas spacing unit with a well up in Unit Letter D of Section 25. The disputed acreage is the northwest quarter. TMBR/Sharp proposed a north-half orientation to the 320 with its well approximately the same location. They're a hundred feet or more apart.

When we talk about another well, there's a well in Section 24 with a standup west-half spacing unit. That's the Blue Fin 24 well that was drilled and operated by TMBR/Sharp, and you can see the location of that well.

We're asking you to void the Arrington APDs, and at this point to confirm the TMBR/Sharp APDs that were

filed in August of last year.

On August 7th, TMBR/Sharp filed its application to drill with the Hobbs Office for the north half of Section 25, to dedicate that spacing unit to the Blue Fin 25 well. TMBR/Sharp controlled about 80 percent of the working interest ownership in that spacing unit at that time. Since then it's increased.

It included the northwest quarter, the disputed acreage. We refer to that at TMBR/Sharp as the Stokes Hamilton base lease.

TMBR/Sharp had obtained these leases from Ameristate in July of 1998. The primary term for those leases would have expired on June 6th of last year.

At the same time, on July 1st of 1998, TMBR/Sharp entered into an operating agreement that included the disputed lands and other lands. Pursuant to the operating agreement, TMBR/Sharp perpetuated the disputed acreage by drilling the Blue Fin 24 well, and you see that one on the locator map. That's the west half of 24. They drilled that well; it was completed for production on June 29th.

And as a result of that activity, TMBR/Sharp contends that the Stokes Hamilton base lease that it controlled in the northwest quarter was extended beyond the primary term and that TMBR/Sharp took all necessary action pursuant to that contract to extend their base lease.

The next important sequence is that the day after TMBR/Sharp filed its application for permit to drill with Mr. Williams's office, they received a letter on August 8th, denying their APD. And it was denied based upon the fact that on July 18th, the Division's District Office had approved Arrington's APD for what he calls the Triple Hackle Dragon 25 Well Number 1, and that was to be drilled with a spacing unit for the west half of Section 25.

Arrington's claim for a right to drill and operate that well was predicated upon its assumption that the oil and gas leases held by TMBR/Sharp over the disputed acreage had expired and that Arrington now controlled some top leases. He obtained some top leases through a man named James Huff for the disputed acreage.

Without the claim of interest in the two top leases, Arrington would have no interest in the west half of Section 25. In addition, he would have had no interest in the east half of 23. So it's critical to Arrington that his top leases prevail.

The top leases were dated just two days after TMBR/Sharp spudded the Blue Fin 24 well and were finally placed of record in September, on September 6th of last year.

Except for Arrington's action in claiming the top leases for the disputed acreage, TMBR/Sharp's APDs would

have been approved. The practice is to approve the APDs first in time, get your APD. There are no other deep gas wells in the section, so whoever files first gets to select orientation, gets their APD approved and goes about drilling their well.

TMBR/Sharp appealed the District Division Supervisor's action. He sent a letter. It's in the file here, the August letter. He sent a letter in the file and he says, We're denying you approval of your two APDs because we have issued permits to Arrington ahead of hearing. There was a hearing held before the Division on September 20th of last year.

On December 13th of this year the Division entered an order. It's R-11,700. It denied TMBR/Sharp's Application, which would have been to terminate the Arrington APDs and to then instate the TMBR/Sharp APDs. They denied that.

And they stated in the findings -- and we have a copy of the order in the exhibit book -- in Finding 24 they said because Arrington had demonstrated at least a colorable claim of title -- they call it a colorable claim of title -- that would confer upon it a right to drill its proposed well. No basis exists to reverse or overrule the action of the District Supervisor in approving Arrington's APDs.

They also found that -- in paragraph 21, that the Division has no jurisdiction to determine the validity of title or the validity or continuation in force and effect of oil and gas leases and said the exclusive jurisdiction is with the courts.

They then, in paragraph 25, said the Division does have jurisdiction to revoke its approval of APDs in appropriate cases.

What has happened now is, Arrington has prevailed in the permitting dispute because the District and this order has decided that Arrington was first in time and sad some colorable claim of title as a result of the top leases. The order, when you read it, gave TMBR/Sharp 10 days to go to district court.

In fact, TMBR/Sharp was already in district court. They had filed the lawsuit in August, on August 24th of last year, and were litigating in Lea County with Arrington to obtain a judicial determination, among other things, of the validity of Arrington's claim of title to the disputed acreage.

On December 24th of last year the District Court entered a decision about the title dispute. They entered an order holding that Arrington's assumptions were wrong and entered summary judgment in favor of TMBR/Sharp. Arrington's claim of a top lease, interest in the top

lease, had now failed. And TMBR/Sharp's position is that its leases are valid -- that's what the court said -- and we are now entitled to have our permit issued.

That case is proceeding to trial on other issues, including the effects of Arrington's action and whether that action results in damages, so it's on a damage claim basis at this point.

At this point we have obtained from the District Court a decision on the title, and we're now back before the Commission to have you exercise your jurisdiction and to issue to TMBR/Sharp approvals of the APDs they would have otherwise have obtained back in August.

Pursuant to the order issued by the Division at the Examiner Hearing, Arrington has failed now to demonstrate colorable title and, except for that demonstration before the Examiner, could never have gotten their APDs approved.

We would now like you to issue our APDs without interference from Arrington and from Ocean.

Let's talk a minute why Mr. Bruce is here on behalf of Ocean. We think now is the time to do for us what we would have obtained back in August, and that was the opportunity to drill our well.

A decision by you today is a decision on whether our permit has priority now because we have the better

title, we have that proof, and that decision will resolve some compulsory pooling cases that had been pending before the Examiner.

Those cases -- the first one was filed by TMBR/Sharp on January 25th, and it was TMBR/Sharp's application to complete its consolidation of the north half of 25.

At this point I think their consolidation represents more than 90 percent. Back in August they had 80 percent. But their pooling case at this point is to consolidate the remaining interest in the north half of the section. It does not attempt to pool Ocean. Ocean is not a party or an interest owner in the north half of the section.

Six months after this APD dispute started, Ocean, on February 2nd, filed a compulsory pooling application for the west half of Section 25. The Division, as a result of a prehearing conference last week, continued the pooling cases until this Commission could decide the permitting dispute that occurred back in August of last year.

Ocean claims this: Ocean claims an interest in the southwest quarter of Section 25. They base that claim on the fact that in the southwest quarter, on July 23rd last year, they obtained some farmouts of interest owners in the southwest quarter. Those farmouts are going to

expire on July 1st of this year. So they had a one-year window in which to act.

After they obtained the farmouts, they did not oppose the well, they did not institute compulsory pooling, they did not file for an application for a permit to drill their well. What they have simply done is entered into a letter agreement with Mr. Arrington, which Ocean accepted on November 14th. And pursuant to that letter agreement, Arrington has a 15-percent interest in the southwest quarter.

It appears that Ocean is trying to substitute themselves now for Mr. Arrington. They're going forward with a well in the west half under the same name, using the same location that Arrington attempted to achieve until his title failed.

Interesting to note that Arrington had no interest in the Ocean farmout acreage until Ocean accepted that arrangement in November, on the 14th of November last year. The letter agreement is not even dated until September 12th.

Ocean's compulsory pooling application is simply an attempt by Ocean to substitute itself for Arrington on the APD that Arrington obtained back on July 18th. They've used the same location and they're attempting to stand in his shoes.

If the Ocean farmouts expire, it really is Ocean's fault. They took no action to independently develop the west half of the spacing unit, except to marry themselves to Mr. Arrington. They've simply joined at the hip with regards to that development and relied upon him to accomplish it. They have not been successful.

They have not exhausted the opportunity to save their farmouts. Back when TMBR/Sharp was worried about its leasing arrangements and the top lease and whether its base leases were still in effect, we went to district court in a timely fashion, obtained an injunction and relief from the District Court to save our leases. Ocean could do the same thing, and they've not sought the opportunity to do that.

Our position here today, before you this morning, is that Ocean should not be allowed to take advantage of a wrong caused by Mr. Arrington. And that wrong was to stand in the way of TMBR/Sharp, which was entitled to and should have received its permits for approval of its spacing units back in August of last year.

Our position is, Arrington's APDs are invalid, cannot be transferred to Ocean, that Arrington's title has failed, so that Ocean cannot be substitute for Arrington. Except for Arrington's actions, TMBR/Sharp's APDs would have been approved, and TMBR/Sharp would have drilled these wells.

If you decide in our favor, there's no point in going forward with the Ocean force pooling case, and that's why those cases have been postponed until you make the decision on how we issue permits at the District level for APDs and, now that Arrington's title has failed, whether or not we are next in priority and should be approved.

Our presentation this morning includes the exhibits to support all those statements. We have a chronology to present to our witnesses about the sequence of activities to get to the conclusion I've just advanced.

Thank you.

CHAIRMAN WROTENBERY: Thank you, Mr. Kellahin.

Mr. Carroll?

MR. CARROLL: Thank you, Commissioner Wrotenbery.

I think we ought to put this hearing in a little better perspective because, quite frankly, I'm a little concerned about why we're even here.

First of all, some time ago -- There are actually two permits, one in Section 23 and one in Section 25. Some time ago, Arrington has put TMBR/Sharp on notice that it wasn't going to drill either one of these APDs at the present time. And in fact, we offered to turn the Section 23 APD back to or do an assignment of operatorship and give it to TMBR/Sharp. We've never had an official response other than, No, we're going to go to the Commission.

I would put the Commission on notice that with respect to Section 23, that offer still stands. We will do an assignment of operatorship to TMBR/Sharp, if that's what they request.

Now, with respect to Section 25, Mr. Kellahin has forgotten to inform the Commission that with respect to an Application for an APD in Section 25, on March 20th, 2002, they were granted one. There is an APD for the Section 25 well existing in TMBR/Sharp. They made an application for it, it was signed by Paul Krautz -- Kautz, I guess, I'm not sure if I'm --

CHAIRMAN WROTENBERY: Kautz.

MR. CARROLL: -- pronouncing it right -- Kautz?

MR. BROOKS: Kautz.

MR. CARROLL: Kautz, okay. K-a-u-t-z. It was signed by him, and it's granted. So there is an APD in existence for Section 25.

Now, with respect to this issue that Mr. Kellahin has been bringing up, he has tried to make, I think, very short shrift of the Commission policy with respect to competing Applications for wells. He has basically stated that this Commission only enforces a "first in time, first in right" rule. That is not the rule before this Commission.

In -- and I don't want to steal any of the steam

of Mr. Bruce, but in Order Number R-10,731-D -- this was in an Application between KCS Medallion Resources and Yates Petroleum Corporation -- this Commission, not the Division but the Commission, ruled that the most important consideration in awarding operations to competing interest owners is geologic evidence as it relates to well location and recovery of oil and gas and associated risk.

Now, what Arrington is willing to do with respect to the TMBR/Sharp -- I mean with respect to its present APD in Section 25 -- and you must also understand that one of the things Mr. Kellahin left -- did not tell you, is that first of all with respect to this Section 25, they have -- TMBR/Sharp seeks to have a north-half orientation of its proration unit.

David H. Arrington controls acreage in the northeast quarter. He has leases in the northeast quarter presently.

And yet TMBR/Sharp is telling us -- and they have told us -- and is telling this Commission, they don't intend to force pool this proration unit.

I'm not sure exactly what the role is here. We're playing games, is what I'm trying to, I guess, point out to the Commission, is that we have a force pooling statute that is mandatory, it says it shall. If you don't control all the interest in a well, you shall force pool,

or you shall obtain a voluntary pooling agreement.

Well, I can tell you, there is no voluntary pooling agreement between David Arrington in the northeast quarter, in the north half of Section 25.

Now, what we do have is that David Arrington does own part of the acreage, part of the farmout -- and that's part of some of the agreements that we're going to put into evidence -- in the west half of Section 25.

Now, what David Arrington is willing to do, because there are now two competing force pooling Applications before the Division, and this Commission hearing ruling which I just recited to you and read from, will control. And not only -- I read only one of them, which was termed as the most important. There were a good number of things that should be considered, and that the Commission said and ranked them in importance. But again, geology is the most important one, not first in time to get an APD.

But Arrington is willing, and puts the Commission on notice, that it will assign -- it has no intent at this time to drill that well, but it has an APD, and it is willing to do whatever the Division says, whoever the Division grants the pooling Application for. If it's TMBR/Sharp, David Arrington will assign that APD.

And of course, that's just a simple procedure, as

I think this Commission knows. You just do a change of operatorship. Once you're the operator, you can pick any location. But the point is, that location, because this is -- we've got two competing -- it should be the subject of a hearing. There are applications before the Division to test that very aspect of it, the geological, which has been stated by this Commission is the most important.

Now, so frankly, what are we proposing? This Commission -- I frankly don't know where we stand. Arrington has agreed to assign to whomever this Commission says it should assign those two APDs. That's the key thing here. Why do we need to go on any further?

Because first of all, what are we here for? We are appealing two cases. First of all, 12,731, which was an application for an order staying David H. Arrington from drilling. David H. Arrington has told this Commission it doesn't intend to drill. But it intends to abide by the Commission's wishes as to where those APDs should go. That settles the first application for appeal *de novo*.

The second one, TMBR/Sharp in 12,744 asks for it to be granted APDs. First of all, Arrington with respect to Section 23 has said, If you want it, TMBR/Sharp, you just ask it, and if the Commission approves it we'll assign operatorship. Well, we'll assign operatorship and then it gets approved.

As to Section 25, the Division has already granted an APD. It is Exhibit Number 17 of the exhibits that TMBR/Sharp will be presenting here at this hearing.

So frankly, all of the wishes have already -- of TMBR/Sharp, have already occurred. So where do we go from here? I'm not exactly sure, but that is our position. All we want this Commission to know by David Arrington's presence is, first of all, we control an interest in this area.

We have in Section 25, in the west half, we have a farmout agreement. That was dated back in September of 2001. We had an AMI agreement with Ocean -- that is who the farmout agreement is with -- that dates back into 2000. We had a contractual arrangement with Ocean out in this area. Ocean was getting leases, David H. Arrington was out getting leases.

And now we have the competing pooling Applications. And frankly, the Commission has got to get around that hurdle. Which comes first, the chicken or the egg?

In my opinion, and I think this is what David Arrington is asking this Commission to do, is to state -- the Commission needs to stand by its ruling, its orders that are on record, and throw out this notion of first in time but go back to where it said, We're going to look at

competing applications based on geology, and that this hearing needs to be sent back to await for the Division Hearings to decide who should, in fact, be the operator and which one of these competing applications should control based on geology, and then after that David Arrington will just -- is here as almost a passing party at this stage.

We will give and do what the Commission says with these APDs, because there are parties out there that need to drill and that want to drill, and we're willing to abide by that.

Thank you.

CHAIRMAN WROTENBERY: Thank you, Mr. Carroll.

MR. KELLAHIN: May I respond to that?

CHAIRMAN WROTENBERY: Mr. Bruce first.

MR. KELLAHIN: Next in turn?

CHAIRMAN WROTENBERY: Pardon me?

MR. KELLAHIN: Next in turn.

CHAIRMAN WROTENBERY: That's right.

MR. BRUCE: I was planning on giving this as my closing, Madame Chair, but since people are going into detail I think it would help the Commissioners to know up front what's really at issue here.

First, let me address one thing that Mr. Kellahin said about Ocean Energy, and I'll get into this in a little more detail in a minute.

Ocean does have a farmout in the southwest quarter of Section 25. It expires July 1 of this year. They have been informed in writing, it will not be extended. So they need to drill a well. They need to protect their rights.

The fact of the matter is, when they got that farmout it was anticipated that David Arrington would be the operator of the well and it would be a west-half well unit. They didn't sit on their rights. David Arrington got the APD approved, and it was moving forward toward the drilling of the well until the lawsuit occurred.

Once that became an issue -- and of course this isn't before you, but I will represent to the Commission that Ocean sent out a proposal letter to all of the interest owners, TMBR/Sharp, Arrington, in the northwest quarter, proposed a well and filed its pooling application for a west-half well unit. That's on the Division's docket right now, because it was TMBR/Sharp's application for force pooling of a north-half well unit. They didn't sit on their rights, they just thought Arrington was going to operate it. Once that became a legal issue in the District Court, and probably in the court of appeals, Ocean had to act. It's acting.

I would also say that all of these companies are aware of what's going on in this area of Lea County. It's

a hot area. There has -- Commissioner Bailey knows, there has been a lot of money paid for oil and gas leases at the state lease sales over the last couple of years in this Townsend area, in the Lovington area.

Believe me, if TMBR/Sharp had attempted to move forward with the drilling of a well last year, last fall, Ocean would have done something about it. These parties are out there protecting their rights and the rights of their royalty owners.

As I said, Ocean has a farmout and the working interest in the southwest quarter of Section 25. That farmout expires July 1. In order to develop that property, Ocean has applied to the Division for an order pooling mineral interests in the west half of that section. That's Case 12,841 on the Division's docket. TMBR/Sharp applied in Case 12,816 for an order pooling the north half. These matters were set for hearing on the last Division docket. Currently, they've been continued to the April 4th docket.

TMBR/Sharp's argument is essentially that first the District Court has ruled in its favor in the title dispute with Arrington. As a result, TMBR/Sharp is now entitled to have its APDs issued by the Division or the Commission. And therefore, because they're entitled to a north half APD, the west half is not available for compulsory pooling.

Frankly, if this argument is accepted by the Commission -- if you say, TMBR/Sharp, go ahead and drill -- it means that the force-pooling states in this state have become absolutely meaningless.

That's the case, because what Mr. Kellahin is saying in so many words is, once an APD is issued, that determines who the operator is, what the well unit is, standup or laydown, and it determines the well's location, and nobody can challenge it, nobody, because an APD is issued. That's contrary to the law and Division and Commission precedent.

The Oil and Gas Act requires that there are separately owned tracts of land in a well unit or undivided interest in the well unit -- and I've handed you the statue, Number 70-2-18 -- it says, It shall be the obligation of the operator to obtain voluntary agreements pooling those lands or an order of the Division pooling those lands. It doesn't say anything about an APD. It says order of the Division pooling those lands.

Secondly, if you go to the primary pooling statute, Section 17, it says, All orders effecting pooling shall be made after notice and hearing. Not the filing of an APD which goes down to the District Office and is approved, who knows how. It says notice and hearing.

And it says, Each order shall describe the lands

included in the unit designated thereby. Not by the APD, but by the pooling order.

And it says it shall designate an operator of the unit. Once again, it doesn't reference an APD. Nobody cares about an APD. I hate to say they're meaningless, but at this point they are, when there are contested issues of fact about how the well unit should be oriented.

The final matter I've handed you are portions of an order issued by the Commission a few years ago. And I'll tell you this, it was a very hotly contested case between KCS Medallion and Yates Petroleum.

If you go to page 9 of that order, the Commission went down a list of things that should be considered in competing pooling cases. As Mr. Carroll's brief just cited, it says the most important consideration in awarding operations to competing interest owners is geologic evidence as it relates to well location and recovery of oil and gas and associated risk.

I submit to you that the proper place for that determination is in a contested hearing before the Hearing Examiner and, if necessary, an appeal to the Commission. Not by filing an APD.

Ocean is ready to go before the Division and put forward its geology to show why it should be a west-half well unit. It goes through these other factors, good-faith

negotiations prior to force pooling, risk factor, the capability of parties to operate. And last, and least, in the absence of other compelling factors, working interest control.

But what they're talking about there is, you've got to look at the geology, you've got to look at the good-faith negotiations, and that's what's required for a force-pooling hearing. Not with -- Once again, this order says nothing about APDs. It doesn't say first in time, first in right, or anything else. It never once mentions an APD, but it does mention the evidence presented at a normal pooling hearing.

There are no voluntary agreements covering either the west-half well unit at this point or the north-half unit. That's why a pooling is required.

Ocean s ready to present evidence as to why the geology favors a west-half well unit. I presume TMBR/Sharp has geology as to why it should be a north-half unit. You can't tell that from the APD.

However, instead of having the Division review the evidence in two competing pooling applications, TMBR/Sharp just wants you to approve the APD, and we're out of here. That's just not proper. The Division must still examine the evidence presented.

I think TMBR/Sharp's argument also ignores the

fact that the order of the District Court regarding title -- and I don't know how that's going to end up, but that's appealable. I'm sure it will go up to the Court of Appeals and maybe the Supreme Court. At this point, I do know that Ocean has the right to drill that well up there. They've got a farmout. And Ocean is prepared to pursue its rights.

In short, any dispute over the APD or APDs is subsidiary to a pooling order entered by the Division. The pooling cases are filed, they're set for hearing next week, let them go forward.

At such time as a pooling order is issued by the Division or on appeal by the Commission, then the Commission can decide which APD to validate.

Basically, I think this is the tail wagging the dog. As I now understand it -- I've seen the exhibit booklet -- we've got an approved APD for David Arrington, we've got an approved APD for TMBR/Sharp. And again I will represent to the Commission that Ocean is filing its own APD. Based on the fact that these other two are approved, I presume this third one by Ocean will be approved.

If you go back to the pooling statute, it says what the Division and the Commission must do is avoid the drilling of unnecessary wells. That's in subsection C of 70-2-17, bottom of the first paragraph, the Division, to avoid the drilling of unnecessary wells, shall pool the

lands at issue. That cannot be done without pooling hearings. It can't be done simply by the filing of an APD.

What do I think should happen? I think the Division and the Commission should either approve all the APDs or deny them all. It doesn't matter, but hold in abeyance, in essence, pending a force-pooling hearing. Then on appeal of the pooling order, the Commission can decide which well unit orientation is correct, who should operate it, and where the well should be located. And at that time, one of the parties will win, and there's nothing they can do about it.

But this is not the proper forum. And my suggestion here, frankly, I don't even see the need for testimony. Hold it in abeyance, continue this for a couple of months and let it come forward up through the force-pooling process, and make your decision at that time.

Thank you.

CHAIRMAN WROTENBERY: Thank you, Mr. Bruce.

Mr. Kellahin, did you want to say something more?

MR. KELLAHIN: Yes, ma'am, please.

Members of the Commission, this is a case of first impression. I've been practicing before you for more than 30 years. I cannot find a case like this. I was in the Yates case, I did the Yates case that Mr. Bruce wants to rely on. I was in that case. And that case involved

contemporaneous competing pooling cases between the two operators, and the order before the Commission simply set forth a method by which you decide that dispute.

What's occurred here is, but for the wrongful actions of Arrington, TMBR/Sharp would have received its APD approval in August of last year, some six months before this pooling proceeding was initiated by Ocean. There's a substantial difference in time.

When I have an open section with no spacing units in it, I get to decide the orientation when I file my APD. There's no examination by the District Supervisor of the geology or any of that. You simply file it and get it approved if you fill in the blanks right, and on Form C-102 it calls it a declaration. You dedicate a certain spacing unit orientation and a certain amount of acreage. It's right on the form.

There's absolutely no case I can find like this where a party waits six or seven months later to raise the arguments Mr. Bruce has raised about how we have dealt historically with contemporaneous pooling disputes. This well would have been drilled by now, except for the wrongful actions of Mr. Arrington in blocking the TMBR/Sharp applications.

The pooling statute, as we all should know, and I think do know, allows you to pool before or after you drill

the well. It says so right in the statute. It is not unusual to have pooling orders issued after the fact.

In fact, I think that was TMBR/Sharp's intention. They had 80-plus percent of the north half. Ocean's not involved in it. Mr. Arrington has no interest of record in the north half. They're proceeding under the presumption they'll just drill and carry the rest. It happens, and they intended to do it in that fashion. Had he not blocked their APD, we wouldn't be here talking about it.

We've followed the outline and guidance the Division established in Mr. Brooks' order about how you get an APD. He said the APD approval is based upon a representation of color of title. That title has failed for Mr. Arrington. We would have gotten our permit six months ago, had it not been for his wrongful action.

Ocean wants to step in that position and take advantage of the wrongful action and now turn this into a contested technical dispute on geology. That's not the standard, I can find no cases like that anywhere in any of your books. I've never done one like that.

What we're looking for is relief from Arrington's actions that he had undertaken some six months ago and for which we are entitled to relief. We have followed the guidance of the Division Examiner order in seeking relief in district court as to the title, and we invite Ocean to

do the same thing. They may have an expiring farmout, but there is nothing that precludes them from going to district court, like we were forced to do, and getting declaratory relief from their problem. We didn't create it, it's their problem. There's a remedy for them, and it's not here.

We are back before this agency to make a decision of first impression about what it means to have an application for permit to drill.

MR. CARROLL: Ms. Wrotenbery, may I have just two sentences?

CHAIRMAN WROTENBERY: Certainly.

MR. CARROLL: In response to the very lengthy rebuttal that Mr. Kellahin made, I direct the Commissioners' attention to the second page of the APD, and this is the --

CHAIRMAN WROTENBERY: Is this --

MR. CARROLL: -- well dedication plat.

CHAIRMAN WROTENBERY: Which exhibit?

MR. CARROLL: This is Exhibit 17.

CHAIRMAN WROTENBERY: I don't have it yet.

MR. CARROLL: Well --

CHAIRMAN WROTENBERY: In --

MR. CARROLL: -- this is the standard form, and all I want to call attention to is some language that I think reflects on what Mr. Kellahin very lengthily tried to

state.

It says, "No allowable will be assigned to this completion until all interests have been consolidated or a non-standard unit has been approved by the Division." I think that rebuts just about everything that Mr. Kellahin made in his last comments.

MR. KELLAHIN: It doesn't say you can't drill. You get an allowable after you drill the well.

MR. CARROLL: But then why drill if it you don't get an allowable, Mr. Kellahin?

CHAIRMAN WROTENBERY: Okay, thank you, we understand the different perspectives.

Mr. Bruce?

MR. BRUCE: Same thing. And Madame Chair, I have obligations to get out of town, I may not be here all day. So if I suddenly disappear I beg the Commission's permission to do that.

CHAIRMAN WROTENBERY: Okay, we understand.

MR. BRUCE: I would say -- and there is -- I believe Mr. Kellahin is right, there is no written order of the Commission in a similar situation at this time.

I would refer the Commission, however, to Case 11,887. In that case, Santa Fe Energy Resources filed an Application to pool a standup unit, just like Ocean is doing today. The interest owner being owner, the only

interest owner, was Phillips Petroleum Company. Phillips Petroleum has controlled, in effect, the north-half unit, went out after getting a pooling application and filed and APD for a north-half unit. And they said, You can't move forward. This acreage is dedicated already, you can't force-pool our acreage because we've dedicated a north-half unit.

Now, although there was no written decision, there was a motion to dismiss filed by Phillips Petroleum in that matter, and the Division Hearing Examiner, Mr. Stogner, denied it. He said APD is meaningless and allowed the Santa Fe Energy pooling case to proceed. Now, the parties eventually settled their differences, but that's as close as you're going to find to a decision on this matter.

But clearly the Division recognized at the time that merely having an APD doesn't control over a force pooling. An APD is an OCD form.

What you have here is a statute enacted by the Legislature, and we believe that controls.

Thank you.

MR. KELLAHIN: I did the Phillips case --

CHAIRMAN WROTENBERY: Thank you, Mr. Bruce.

MR. KELLAHIN: -- would you like to hear the rest of the story?

CHAIRMAN WROTENBERY: Okay, please go ahead.

MR. KELLAHIN: After Phillips is served with the force-pooling application, and after the fact, Phillips races out and gets an APD approved in an effort to circumvent and avoid the force-pooling. Mr. Stogner says after you've been served you can't engage in that kind of gamesmanship, and therefore he denied their ability to avoid force pooling in that fashion.

There's no case I can find where the APD activity that was blocked by Arrington occurred some seven months prior to the pooling dispute.

CHAIRMAN WROTENBERY: Thank you, Mr. Kellahin.

Mr. Bruce, since you said you may need to duck out, may I ask you one question related to Section 17 and paragraph C, and it's the -- these are long sentences; it looks like it's the second sentence: "Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners...has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit."

My question is about the part that describes, you need to have a right to drill, to have drilled or to

propose to drill a well on said unit, and how that applies in a case like this one where Ocean has an interest in the southwest quarter and has filed a pooling application involving a well in the northwest quarter.

MR. BRUCE: Okay.

CHAIRMAN WROTENBERY: What can you tell the Commission about the law in New Mexico on --

MR. BRUCE: Okay, drilling --

CHAIRMAN WROTENBERY: -- the right to drill a well on acreage in which the applicant does not have an interest?

MR. BRUCE: A couple of things, Madame Chair. First of all, for that matter -- Let me digress a minute first.

If on appeal it's determined TMBR/Sharp has also proposed drilling in the northwest quarter. All of the parties here have proposed drilling in the northwest quarter. And if TMBR/Sharp is ultimately not successful on its appeal on the title dispute, it won't own an interest in the northwest quarter either. I just want to point that out.

But as to drilling, there are two things. The statute says "drill a well on said unit". It doesn't restrict -- Subparagraph C, first paragraph, third line from the bottom, "proposes to drill a well on said unit".

It is not restricted to on said unit on a lease owned by the operator.

Secondly, if you go down to the next paragraph, to the third sentence, it says "All operations for the pooled oil or gas, or both, which are conducted on any portion of the unit shall be deemed for all purposes to have been conducted upon each tract within the unit by the owner or owners of such tract." I think that clearly evidences that unit operations anywhere are considered operations on your tract. Since Ocean clearly owns an interest in the west half well unit, operations on the northwest quarter would be considered operations on its tract.

There has been no court case in this state, but there is Oklahoma law, and Oklahoma has a similar pooling statute to New Mexico. If you look at the statute, it's quite similar with respect to how pooling decisions are made, and Oklahoma case law says, in effect, that you are allowed to drill on somebody else's tract, because if you're not it would do away with the pooling statute.

How could you -- You would be restricted to drilling on your tract, even if a better location was on another tract, which everybody in this case thinks is the case. And if you couldn't drill on that other tract that could lead to waste, which is the primary mandate of this

Commission, to prevent waste.

There is also Louisiana case law. I don't have the cite. I believe the case is *Nunez vs. Wainoco Oil and Gas*, which in that case it was -- Nunez said, Wainoco Oil and Gas, you're drilling on my tract despite the pooling order that occurred, and sued for trespass.

And the court in that case -- and I can get you the cite; it would take me an hour or two -- said that, No, once there's a pooling order issued by the commission in Oklahoma, the Conservation Commission, operations on a separately owned tract cannot be trespassed because you are authorized by the state to enter on that tract and drill. And furthermore, in deciding that case the Louisiana court said that Louisiana's conservation statutes were fashioned after New Mexico's statutes.

So I think based on those two cases, the Oklahoma case and the Louisiana case, Ocean has the perfect right to drill on the northwest quarter.

CHAIRMAN WROTENBERY: Okay, Mr. Kellahin or --

MR. KELLAHIN: Thank you.

CHAIRMAN WROTENBERY: -- Mr. Carroll, would you like to comment on that particular point?

MR. KELLAHIN: Louisiana --

MR. CARROLL: I agree with Mr. Bruce --

MR. KELLAHIN: Louisiana is a foreign country.

Lord knows what they do down there. There is no case law in New Mexico on the issue of whether you drill on your own lease. Mr. Brooks and Mr. Bruce and I chased that money last Monday at the prehearing conference on the pooling cases, and Mr. Brooks said he'd done research and couldn't find any law in New Mexico, and I told him there wasn't any.

If you'll look for a moment at the pooling statute and you look at your own Form C-102, it says well location and acreage dedication plat. You're dedicating the acreage when you file this thing, and you filed with your application for permit to drill.

And the first sentence of the pooling statute, 70-2-17, says whenever the operator of any well, oil or gas well, shall dedicate lands, you dedicate it by means of the C-102. And then your obligation under the rest of the pooling statute is to consolidate it. And you can consolidate it before or after.

And but for Arrington, we would have proceeded with the drilling of the well, and then we could have consolidated after the fact. That's permitted.

CHAIRMAN WROTENBERY: Okay, thank you.

And I think it's time for the Commission to take a lunch break. So we'll do that now and start back up at a quarter of 2:00. Will that give everybody plenty of time?

Thank you very much.

(Thereupon, a recess was taken at 12:50 p.m.)

(The following proceedings had at 1:48 p.m.)

CHAIRMAN WROTENBERY: We'll go back on the record.

Mr. Bruce, are you standing for --

MR. BRUCE: I wonder if I could make one request. The Commission's last question to me was on the issue of drilling on a tract that you didn't own --

CHAIRMAN WROTENBERY: Uh-huh.

MR. BRUCE: -- and I scurried back to my office, and I will copy this one page and give it to all the counsel, including Mr. Ross, so that they have the cites. But most of these cases take a step back. I mean, I don't think there's any question that if the parties enter into a voluntary agreement they can drill on whosever tract it is, and I submit that the effect of a force-pooling order is substitute for a voluntary agreement, and therefore it should allow drilling on somebody else's tract.

Most of these cases have come up where somebody drilled on another person's tract, and the owner of the drill site sued the operator for trespass, saying he didn't have the right to go on that tract. And the cases uniformly hold -- there's Oklahoma cases, Louisiana cases and North Dakota cases that basically say that the property

law of trespass is superseded by a pooling order.

And I will -- rather than cite those cases now on the record, I will run upstairs and copy it and leave it for all counsel and for the Commission.

CHAIRMAN WROTENBERY: Thank you, Mr. Bruce.

MR. BRUCE: And with that, you probably won't hear from me again today.

CHAIRMAN WROTENBERY: Thank you.

Mr. Kellahin, are you ready to proceed here?

MR. KELLAHIN: We're ready to proceed with our witness.

CHAIRMAN WROTENBERY: Okay, please call your first witness.

MR. KELLAHIN: I'd like to turn this over to Susan Richardson.

MS. RICHARDSON: Thank you, Madame Chairman. If we could call Mark Nearburg, please.

MARK K. NEARBURG,

the witness herein, after having been first duly sworn upon his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. RICHARDSON:

Q. Mr. Nearburg, would you please state your name?

A. Mark Nearburg.

Q. And who are you affiliated with?

A. Ameristate Oil and Gas.

Q. And if you could give us a little background about yourself, where did you grow up?

A. I was born and raised in Roswell, New Mexico, grew up there. I went to school at Texas A&M University and received an undergraduate degree in economics. I received a graduate degree in communication from the University of Texas, then I returned to Roswell and was trained there as a landman by a man named Don Blackmore.

Q. Okay. And what kind of work have you been engaged in for the last 20, 25 years?

A. Land work in the oil and gas business, first checking court records, then taking leases, then doing industry agreements, and now I run my own company.

Q. And you're aware that the matter before the Commission *de novo* today involves portions -- or actually all of Section 23, 24 and 25 in Lea County, New Mexico?

A. Yes.

Q. Okay. And could you please explain how you and your group, including TMBR/Sharp Drilling, the operator, came to be involved in this part of New Mexico in developing oil and gas prospects?

A. For the 20-plus years I've worked in oil and gas, 95 percent of my work has been in Eddy, Lea and Chaves Counties, New Mexico.

This project began in the late 1980s as a geologic study. In 1991 we purchased our first leases on the west side of this township. We continued to drill wells, take leases and understand the township.

In 1994, we purchased the first leases in Sections 23 and 24, among others, that are directly related to what we're here for today.

Q. And Mr. Nearburg, I think you prepared an exhibit for the Commission, which is Number 16, the other map that we have?

A. Yes.

Q. Okay. And while you're testifying, if you could just make reference to that map and to where the sections are located?

A. Okay. We took the first leases in 1994 from Stokes Hamilton and other mineral owners in Sections 23, 24, 25, 26 and 13.

In 1997 we sold the first stage of the prospect to TMBR/Sharp Drilling, Inc. They proceeded to drill the well highlighted by a red dot in the southwest quarter of Section 23. This well was drilled to test the Atoka and Morrow formations.

We followed that with a well in the northwest quarter of Section 26, indicated by the red dot. Based on the results of the first well, we took that well down to

the Mississippian formation to begin evaluating the deeper zones which are the subject of this hearing.

Following that, we drilled the well in the northeast quarter of Section 23, and those wells were both drilled on north-half units. The Number 1 well at that time had been plugged back to a zone on less than 320-acre spacing, so we were free to drill the Number 2 well, again, down to the Mississippian. Okay.

Following that, in -- sometime in 1999, the well that is in the southeast quarter of Section 23 -- that's the old Del Apache Stokes well -- we attempted to re-enter that well and drill down to the Mississippian. It had not been drilled deep enough to give us an evaluation of the Morrow or the deeper zones. We attempted to re-enter that well and deviate it to the bottomhole location indicated on the map, but mechanically it was unsuccessful, we were not able to do that.

Q. Mr. Nearburg, let me interrupt you just a moment. The area on Exhibit 16 which you have shaded in orange --

A. Uh-huh.

Q. -- what was that prospect known as among you and the other investors?

A. That was known as the Edsen Ranch prospect.

Q. Okay, and that involved all of Section 23 and the north half of Section 26?

A. That's right.

Q. Okay. And then the area that you have shaded in blue, what did you all call that prospect?

A. We called that the Big Tuna prospect. And following up the geologic work we had done, we purchased -- I'm going to go back to the early 1990s. We had done the geologic work, then we started drilling. We incorporated 2-D seismic into our evaluations.

In 1999 to 2000 we incorporated 3-D seismic into our evaluations. The result of that was the drilling of the Blue Fin well on a west-half Section 24 unit, and that's the red dot in the southwest quarter of Section 24.

Q. Okay. And the Big Tuna prospect that you all began developing in the early 1990s, you and your company and TMBR/Sharp Drilling and others entered into an agreement in 1998?

A. Uh-huh.

Q. And I believe that's Exhibit 7 in the black volume.

You also entered into an operating agreement at the same time involving the Edson Ranch, which is the area shaded in orange on Exhibit 16?

A. Uh-huh, yes.

Q. Thank you. The focus of the Big Tuna prospect was on Section 24 and the north half of Section 25?

A. That's correct, we -- after evaluating the 3-D, the priority of operations were to drill the southwest quarter of 24 on a west-half unit and a well located in the northwest quarter of Section 25 on a north-half unit. We intended to follow that up with a well on the east half of Section 23 with a well in the northeast quarter.

Q. And the Blue Fin Tuna was drilled when?

A. The Blue Fin was drilled in May and June of last year.

Q. Okay, actually spudded March 29th, 2001?

A. Okay.

Q. Okay. I think in front of you is a time line which we have marked as Exhibit 15.

A. Okay.

MS. RICHARDSON: There's several pages here, but if the Commissioners would turn their attention to the outline that says "Timeline of Events Relating to Section 25", if you can find that in the packet, which is Exhibit 16, it's probably the last three pages. Thank you.

Q. (By Ms. Richardson) In order to get ready and bring us to the time that the Blue Fin was drilled in March of 2001, you said that you all had geological information you relied on, correct?

A. Yes.

Q. Who were the geologists that you got involved in

the project?

A. Originally John Herbig had done our mapping on the west side of the township. In 1995 I started working with Louis Mazzullo, and at that time we had both Louis Mazzullo and John Herbig begin work in the lands in the Edson Ranch and the Big Tuna prospect.

Q. Did you also purchase 2-D seismic?

A. Yes, we did.

Q. And then at some point did you acquire 3-D seismic?

A. Yes, we did.

Q. Okay, and what did you do with your 3-D seismic?

A. We employed Ed Luckabaugh in Midland to evaluate the 3-D, interpret it, process it, and give us his interpretation of the 3-D seismic. We coordinated that with work that Louis Mazzullo had done on the subsurface geology as a result of the wells we had drilled. This was prior to the Blue Fin.

We also had the 3-D seismic independently interpreted by Robert Scolman in Denver, Colorado.

Q. Okay. And then, of course, the Blue Fin was drilled, so you got additional information from the logging of that well?

A. Yes.

Q. From the time you all started putting this

prospect together in 1991, to the time we sit here in 2002, how much money has your group spent on developing this acreage which is represented by 23, 24 and 25?

A. We have spent approximately $7.5 million.

Q. And was it the group's intention after drilling the Blue Fin to immediately proceed to drill a well on Section 25 and a well on Section 23?

A. Yes, we felt it prudent to evaluate the production from the Blue Fin and proceed with drilling the northwest quarter of Section 25 on a north-half unit and then the east half of Section 23 with a well in the northeast quarter.

Q. I want to take you a little bit back into time, to put into context the Arrington Oil and Gas and Ocean Energy involvement in this matter.

Prior to drilling the Blue Fin, in the fall of 2000, was your group looking for additional investors in order to participate in these drilling projects on 23, 24 and 25?

A. Yes, TMBR/Sharp was the operator, and their partners had the majority working interest in this project. Some of the TMBR/Sharp investors were concerned about the risk of drilling. They did not want to take that risk. And we were put in the position, then, of having to find other investors to carry forward with the drilling of the

Blue Fin well.

Q. Okay. And did you have occasion to show this prospect and give fairly detailed information about it to Ocean Energy?

A. Yes, we did, on several occasions, sometimes at our calling Ocean and talking to them about it, sometimes when they called us and asked us to see more information, we would show them the prospect and go through it with them. Each time, they declined to participate in the prospect because of the risk associated with where we were drilling.

Q. What's the earliest date you can recall showing the prospect to Ocean?

A. On meetings in which I was involved, in the fall of 2000.

Q. Okay. And then in January of 2000, did you provide Mr. Maney, who's a landman with Ocean, a land map of the Big Tuna area?

A. Yes, they have a prospect exposition in Houston each year that's put on by the Independent Petroleum Association of New Mexico and the American Association of Petroleum Landmen. We were going to Houston for that exposition, and Ocean called and asked if they could have a land map of our land position under this prospect.

I forwarded, in the first week of January, I

believe, a land map to Mr. Maney outlining where we held acreage.

Q. Did that indicate to you that Ocean was interested in participating with the group?

A. Yes, they specifically stated that they were interested in reviewing the prospect again and that they wanted to see it before we exhibited it at the exposition, the reason being they wanted a private showing to evaluate the prospect before it was shown publicly.

Q. Okay. And did you give them a private showing at the NAP conference where you showed them science, maps, gave them any information that they asked for, basically?

A. Well, the showing was actually in their offices. It was not at the convention, it was in Ocean's offices in Houston the day before the convention started.

Q. Okay. Well, tell us what you talked about, what you showed them.

A. We talked about -- Well, let me just point out on this map, Ocean had drilled a well targeting the formation that was targeted in the Blue Fin, and they drilled that well up in Section 10. And that was a good well, and for that reason they were interested in our project.

We showed them our regional geology, we talked about the setting and how we saw this location on a regional basis.

Their reaction was that we are low regionally, by dip, to their location in Section 10, and they felt that we would be wet and not have a reservoir in our well. They fell the risk of being low and wet regionally precluded them from pursuing the prospect.

Q. In discussing the prospect with them, did you specifically pinpoint for them the Blue Fin 24 location, the Blue Fin 25 location and the Leavelle location on Section 23?

A. Yes, we identified each of those three locations and the proration units upon which we wanted to drill them.

Q. And they concluded that they didn't want to participate because they thought you were too low and too wet?

A. Yes.

Q. At any time did you ask them to sign a confidentiality or a noncompete agreement in exchange for viewing your scientific information?

A. No, we did not, we did not. Normally in dealings with the industry, that's not necessary.

Q. Okay. Did they disclose to you that they had any AMI with David Arrington or that they themselves were pursuing farm-ins in this same area? Did they tell you that?

A. No, they did not.

Q. If they had told you they were independently pursuing acreage in the area, didn't have it but were pursuing it, would you have showed them all of your scientific information and discussed the prospect with them?

A. Probably not without a confidentiality agreement and noncompete.

Q. Did the information that was available about the prospect at the NAP convention, not the private showing that Ocean got but the public showing at the NAP convention, did anyone from Mr. Arrington's business or company have occasion to drop by your booth and look at that?

A. There were approximately 8000 people at that conference, and I was showing five different prospects in our booth, and I'm sure that Arrington's employees had occasion, if they wanted to, to come by and look, but I do not specifically remember them coming by.

Q. Okay. Do you know if --

A. I did not make a presentation to them.

Q. Do you know if David Arrington or some people from his company attended the conference?

A. I believe at least one of his geologists was at the conference.

Q. Okay. I want to talk just a few minutes about

the Stokes Hamilton leases and that acreage position in Sections 23, 24 and 25. You were the one, or someone working with you, obtained leases from the Stokes Hamilton group?

A. Yes.

Q. First time, in 1994?

A. Yes.

Q. Okay. If you'll look with me at Exhibit 6 in your book, there are two leases here. One is a lease between Ms. Stokes and Ameristate Oil and Gas Company. That's your company?

A. Yes.

Q. Okay. This was really the replacement lease, this 1997 lease was the replacement lease for the 1994 lease?

A. Yes.

Q. But you had already leased their acreage for a prior three-year period?

A. Are you talking before 1997?

Q. Right.

A. Yes.

Q. Right. Okay, you took new leases from then, then, effective December 7th, 1997?

A. Correct.

Q. Okay. I believe the first one is the Stokes

lease and the second one is the Hamilton lease?

A. Yes.

Q. If you would look with me at paragraph 5 -- and I apologize, the copies are really difficult to read, but in paragraph 5 it says, "Lessee shall file written unit designations in the county in which the premises are located..."

A. Yes.

Q. Do you see that language?

A. Yes, ma'am.

Q. Okay. And did TMBR/Sharp, on behalf of the group, file written designations in Lea County describing the premises and including the Stokes Hamilton acreage?

A. Yes, we did, when we proceeded to drill the Blue Fin 24 Number 1 well, we filed the C-102 with the Commission in Hobbs. It had attached the acreage dedication plat showing the west-half unit and specified 320 acres for that proration unit.

Q. And the Stokes Hamilton acreage, is that shown in green on the colored map? And I don't know if you have one of those.

A. I don't have that. That is a portion of the lease -- That's a portion of the acreage covered by the Stokes Hamilton lease.

Q. Okay. After the lease this paragraph 5 also

says, "Lessee shall file a written unit designation in the county in which the premises are located..."

A. I'm sorry, could you begin again?

Q. Sure. Paragraph 5 talked about filing written unit designations in the county, and you've talked about the TMBR/Sharp file in the county, in the OCD, in Lea County, its designation of unit.

Did you also, subsequent to the drilling of the well, file in the county clerk's records?

A. Yes, we did, we filed the C-102 for a notice between lessor and lessee as required by the lease.

Subsequent to drilling the well, when we could determine the proration unit from which we would produce, we filed a notice to third parties in the county.

Q. And reading from the lease, the lease says that "...such units may be designated from time to time and either before or after the completion of the well..." is filed?

A. Yes.

Q. Okay. Was it your group's belief that after the Blue Fin was drilled across the primary term of the Stokes Hamilton lease, that its lease was still alive?

A. Of course, yes.

Q. In fact, you had obtained a six-month extension. The lease was originally due to expire in December of 2000?

A. Correct.

Q. And what kind of extension did you obtain?

A. We obtained a six-month extension to June 17th of 2001, in anticipation of drilling the Blue Fin well.

Q. Okay. Looking at your time line of events relating to Section 25, the well was spudded March 29th --

A. Section 24?

Q. No, your time line on Section 25.

A. 25?

Q. Uh-huh. It's the last three pages.

A. Okay.

Q. Okay? The Blue Fin 24 was spudded on March 29th, 2001?

A. Yes.

Q. You see there's another entry there that on March 27th, 2001, that Huff had acquired top leases from Madeline Stokes?

A. Yes.

Q. Okay, and Erma Stokes Hamilton.

At that time did the TMBR/Sharp group know that Huff had acquired top leases?

A. No, we did not.

Q. Please explain to the Commission what a top lease is.

A. A top lease is a lease that is taken subject to

the underlying lease. We have the valid underlying lease, which is our -- a 1997 lease that was extended to June 17th. The top lease was taken -- any top lease is taken to become effective upon the termination of rights under the underlying lease. Is that --

Q. And in other words, the top lease doesn't ever come into effect until the base lease has expired?

A. Correct.

Q. And it was you and your investors' belief that the base lease had not expired, because it had been pooled prior to expiration?

A. Well, it had not expired. We performed under the terms of the lease, drilled the well -- We filed the unit designation with the OCD, dedicating the 320 acres on the west half, then we drilled the well. We continuously worked on the well under the provisions of the lease until it began producing, and we filed the notice in the country subsequent to that.

Q. Okay. And because a controversy had arisen, whose lease was the good one, did TMBR/Sharp and your group file a declaratory judgment action in District Court in Lea County?

A. Yes, we did.

Q. And has the group now obtained a ruling from Judge Clingman that TMBR/Sharp and your Stoke Hamilton base

lease is still valid, and the Huff top lease is invalid?

A. That's correct, the ruled that we continue to have a valid lease, and therefore the top lease is not effective.

Q. Okay. In your experience as a landman and working in oil and gas prospects, what does a top lessee do in order to ensure that the base lease is no longer valid and the top lease has, in fact, come into being?

A. In instances where Ameristate is top-leased, when we feel that the top lease has become effective, we go to the holder of the lease that we have top-leased, the lessee, and we ask that they release their lease as to the lands that the top lease is now effective, the lands it covers that are now affected.

If the lessee of the underlying lease will not release those lands, we go to the District Court and ask for a determination of the status of the leases.

Q. In your experience, have you ever seen a top lessee file for and receive a permit on a top lease, such as Mr. Arrington did in this instance? Have you ever seen someone do that without first getting a release of the base lease or a declaration from a district court as to whose lease is the valid one?

A. No.

Q. Do you know whether -- if Mr. Arrington had

wanted to review whether we had complied with the lease and filed in the county, that the OCD District records would have been available to him to review so that he could see that we had dedicated acreage that included Stokes Hamilton?

A. Well, the filing of the permit in Hobbs is public notice of our actions.

In addition, there are reports that are filed with the Commission as you drill that detail your activities. Those all go in the well file. I feel like there's many ways they could have determined and did know of our actions.

Q. And you were aware that Arrington Oil and Gas had filed for and received an application to drill both Section 25 and 23?

A. Yes.

Q. Okay. And you understand that his having filed for those and received them is what prevented your group from getting their permits?

A. That's correct.

Q. TMBR/Sharp did file for both a Section 25 and Section 23 permit to drill --

A. That's correct.

Q. -- which was denied?

A. Yes.

Q. Okay. And was it the intention of TMBR/Sharp to drill those wells pretty immediately after the getting new permit?

A. Yes, I'll let Mr. Phillips testify to the details of that, since TMBR/Sharp is the operator that filed the permits. But I do believe we had reasonably fast commencement of drilling operation dates in the permits.

Q. Okay. You have heard Mr. Carroll speaking on behalf of his client, Arrington Oil and Gas, say that even though they applied for and received permits to drill in 25 and 23, that they never intended to drill a well. Is that unusual in your experience?

MR. CARROLL: I object to that characterization of my statement because I did not say that. I just said at this time there was no intent to drill the well.

Q. (By Ms. Richardson) Thank you. Is that unusual in your experience, that someone would apply for and receive a permit in July, August, 2001, but not drill?

A. Normally we wait to file a permit, and -- we wait until we're ready to drill, and we follow that up in a timely manner with drilling.

MS. RICHARDSON: I'll pass the witness. Thank you.

CHAIRMAN WROTENBERY: Mr. Carroll?

MR. CARROLL: Thank you.

CROSS-EXAMINATION

BY MR. CARROLL:

Q. Mr. Nearburg, with respect to the decision to file the designation as required by paragraph 5 of the Stokes Hamilton leases, who made that decision to file it in the OCD's office rather than the county clerk's office? Did you make it?

A. We made that because the lease says that's what we need to do.

Q. Well now, no, Mr. Nearburg, who actually made that decision? Did you participate in it before the decision was made?

A. Well, we had many conversations with TMBR/Sharp as operator as to how to proceed with development of the prospect, so --

Q. Well, again, Mr. Nearburg, who is "we", and did these conversations occur prior to the filing of the C-102?

A. You mean did we talk about what proration unit we were going to drill on?

Q. No, did you talk about what filing would be necessary to comply with paragraph number 5 of the Stokes Hamilton leases?

A. Sure.

Q. Who did the conversations and when did they occur?

A. Oh, I can't give you the exact dates, but it was conversations between the working interest owners and TMBR/Sharp as operator.

Q. Did you actually have a conversation?

A. About where to file?

Q. Where to file, what agency, what office, whether it was the county clerk's office or with the office of the OCD?

A. No, we filed under the terms that the lease required, which is in the OCD.

Q. No. No, no. Mr. Nearburg, did you have a conversation with someone concerning where the proper place to file was?

A. Yes.

Q. Okay, that was you. You had a conversation; is that correct?

A. Uh-huh.

Q. With whom?

A. Mr. Phillips and the other working interest owners.

Q. When did that conversation occur?

A. Prior to the drilling.

Q. Prior to the drilling of --

A. -- of the Blue Fin.

Q. -- the Blue Fin 21. And you made a determination

that the C-102 would comply with paragraph number 5 of the lease; is that correct?

A. No, that only occurred after we were forced into a lawsuit by Mr. Arrington.

Q. All right. In fact, who was responsible, then, what parties were responsible for filing a unit designation in compliance with paragraph number 5?

A. The operator, TMBR/Sharp drilling.

Q. All right, do you know who those persons would have been with the operator that would have been responsible?

A. Well, the people in TMBR/Sharp that file the permits.

Q. Do you know who those people are?

A. Well, why don't -- you should ask Mr. Phillips, since he is --

Q. No, Mr. Nearburg, I want -- I asked you. Do you know who -- You have given us testimony about how these things progress, what happened and how they occurred, and I am trying to find out if you really knew what was going on, other than just broad generalizations. And that's why I'm asking, do you know who was responsible for doing that?

A. Well, I would say the person that signed the permit on behalf of TMBR/Sharp drilling would be my answer. That's as clear as I can make it.

Q. Mr. Nearburg, have you operated wells?

A. No, sir, I do not operate.

Q. You do not operate. Mr. Nearburg, you understand that paragraph number 5 of the lease required that the pooling designation be filed in the county; is that correct?

A. Yes.

Q. And that's the county where the lease is located, or the premises that are leased; is that correct?

A. That's correct.

Q. You also know that there is not an OCD office in every county of the State of New Mexico, do you not?

A. I did not know that.

Q. You do not know that. You were present this morning when Mr. Tim Gum testified that his office in Artesia actually represented 10 separate counties, did he not?

A. No, sir, I was not here then.

Q. You weren't in here. Well, Mr. Nearburg, if there is not an OCD office -- if there had not been an OCD office in Lea County, where would you have filed that notice?

A. Well, since our operations were in Lea County, we filed it in Lea County. That's a hypothetical question, I can't answer it.

Q. You just can't answer, or you don't want to answer it?

A. It's a question for which I doubt there's an answer.

Q. Well, Mr. Nearburg, there is not an OCD office in Chaves County. Where would you have filed it, had the lease premises been in Chaves County.

MS. RICHARDSON: Madame Chairman, I just think it's irrelevant what would have happened in another county. The lease was in Lea County, and we just had to comply with the lease in Lea County.

CHAIRMAN WROTENBERY: I do believe Mr. Nearburg has answered your question, so please go on.

MR. CARROLL: I have no other questions.

MS. RICHARDSON: Just a couple.

CHAIRMAN WROTENBERY: Excuse me, Mr. Bruce first.

MS. RICHARDSON: Sorry, I apologize.

CHAIRMAN WROTENBERY: That's okay.

EXAMINATION

BY MR. BRUCE:

Q. Mr. Nearburg, I kind of came in in the middle when you were testifying about your contacts with Ocean.

You're aware, aren't you, that Ocean Energy or its predecessor UMC Petroleum has had a substantial interest in Township 16 South, 35 East for a number of

years, aren't you?

A. Oh, yes, they're up in -- they're about, as I understand their activity, in the top two tiers of sections in the township.

Q. Okay. And as a matter of fact, a couple of years ago, right about maybe May or June -- Your company is Ameristate Exploration?

A. Correct.

Q. And Ameristate Exploration --

A. Well, Ameristate Oil and Gas.

Q. Ameristate -- Excuse me. About two years ago Ameristate Oil and Gas and some other companies made a deal with Ocean Energy to farm out their leases in another -- probably just to the west or northwest of the acreage we're here about today?

A. Are you speaking of Section 17, 20, 28, 29?

Q. Yes, sir.

A. And 27 and 34?

Q. Uh-huh.

A. Yes, I am.

Q. So Ocean has been acquiring property out here for quite some time?

A. Well, they acquired the leases from us last year on the western side of this township.

Q. And it's not unusual for companies to go out and

acquire leases all the time, is it?

A. No.

MR. BRUCE: Thank you.

CHAIRMAN WROTENBERY: Thank you, Mr. Bruce.

Commissioners, do you have any questions?

EXAMINATION

BY COMMISSIONER BAILEY:

Q. When you're talking about the -- the Blue Tuna?

A. The Blue Fin?

Q. The Blue Fin.

A. Well, it's the Big Tuna prospect.

Q. That's right, the Big Tuna prospect.

A. And the Blue Fin well.

Q. Okay. When you were discussing the prospect, you mentioned that you had chosen the north half of Section 25 based on seismic and on geological --

A. Yes.

Q. -- interpretation. Will there be any testimony today at all, that you know of, concerning those two areas?

A. No.

Q. What was the time delay between the unsuccessful re-entry in Section 23 and spudding of the Blue Fin in 24?

A. Well, Mr. Phillips will have a better idea of that, but I think about a year to a year and a half.

Q. Is that normal, to take a year to a year and a

half between wells when you're exploring your prospect?

A. Given what happened to gas prices and the interpretation process on the 3-D, yes.

COMMISSIONER BAILEY: That's all I have.

CHAIRMAN WROTENBERY: Commissioner Lee?

COMMISSIONER LEE: (Shakes head)

CHAIRMAN WROTENBERY: Mr. Ross, would you have any questions?

THE WITNESS: Oh, ma'am?

CHAIRMAN WROTENBERY: Yes.

THE WITNESS: Also, the situation with the partners was the main delay in moving between the Del Apache Stokes over to the Blue Fin. Because of the risk of drilling the Blue Fin we had partners in between the Del Apache Stokes attempted re-entry and the drilling of the Blue Fine but decided not to participate in the Blue Fin due to its risk.

CHAIRMAN WROTENBERY: I just had one question about your time line of events leading to Section 25.

The second page of that time line where you talk about the application for permit to drill the Blue Fin 25 Number 1 well, the time line says it would be on the east half of Section 25.

Is that supposed to be the north half?

MS. RICHARDSON: Yes, your Honor, that is an

error. Thank you so much for pointing that out.

CHAIRMAN WROTENBERY: So there, and then -- That's for 8-6-01.

And then the event on 8-8-01 where the OCD denied the application, that was also --

MS. RICHARDSON: Yes, thank you. I can't tell you how many times we have -- the word processor just eats it up. Thank you for that change.

CHAIRMAN WROTENBERY: Okay. Did you have some redirect?

MS. RICHARDSON: Just a couple, please.

REDIRECT EXAMINATION

BY MS. RICHARDSON:

Q. We knew that in order to drill the Blue Fin, that we had to file a permit to drill?

A. Yes.

Q. And that that acreage had to be dedicated, a proration unit had to be dedicated in the C-102 and described for the Commission, in order to get the permit?

A. That's correct, that's why we outline -- well, everybody outlines the proration unit that they're going to dedicate to the well, and we outlined the west half and spelled out 320 acres under the number of acres dedicated to the unit.

Q. And that that dedication was filed in Lea County?

A. Yes.

Q. Okay, and that there had been discussions about the well location, the orientation of the proration unit and all the matters relating to the filing of that permit?

A. Yes, all of those discussions culminated in the filing of the C-102 that we filed on the Blue Fin.

Q. I think you said the west half. You meant the north half?

A. If we're talking about the Blue Fin, it's the west half. If we're talking about --

Q. Okay.

A. -- the second well we want to drill --

Q. You're right.

A. -- it's the north half --

Q. You're right.

A. -- of 25.

Q. You're right, and I'm sorry.

A. That's okay.

MS. RICHARDSON: No further questions.

CHAIRMAN WROTENBERY: Anybody else?

Thank you for your testimony --

THE WITNESS: Thank you.

CHAIRMAN WROTENBERY: -- Mr. Nearburg.

MS. RICHARDSON: Madame Chairman, we would call Jeff Phillips to the stand.

JEFFREY D. PHILLIPS,

the witness herein, after having been first duly sworn upon his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. RICHARDSON:

Q. Mr. Phillips, would you please state your name?

A. My name is Jeff Phillips.

Q. And by whom are you employed?

A. I'm employed by TMBR/Sharp Drilling, Inc.

Q. Okay, and how long have you worked for them?

A. I've worked for TMBR/Sharp for seven years now.

Q. And your title?

A. My title is now president.

Q. And tell us a little bit about where you grew up and what your educational background is.

A. I grew up in west Texas, Odessa primarily. I was educated in Lubbock, received an undergraduate degree in petroleum engineering in May of 1985, went to work for an independent operator named Adobe Oil and Gas in Midland, Texas, moved to south Louisiana and became the manager of offshore and onshore Gulf Coast gas district down there, left Adobe in a merger in 1992 and came back to west Texas, consulted for a year, worked for a couple independents and went to work for TMBR/Sharp Drilling, Inc., in March of 1995.

Q. Okay. I want to go through a little bit about the history of drilling the Blue Fin 24. When that was contemplated to be drilling, had the locations for the 25 and 23 wells already been picked out?

A. Yes, they had.

Q. Okay. And how long before the Blue Fin was spudded in March of 2001 had you all identified those precise locations? Do you remember?

A. I don't recall. It was over a year prior.

Q. Okay. If you would look with me at Exhibit Number 8, is this the C-101 filing for the Blue Fin 24 and the C-102 filing?

A. Yes, it is.

Q. This was approved by the Division, your permit to drill the Blue Fin 24, on November 22nd, 2000?

A. That's correct.

Q. Okay. And when did you all prepare your location?

A. We prepared our location in November of 2000, facing a lease expiration in November, and we had filed for a permit to drill and were preparing a surface location to drill when Mr. Nearburg acquired the lease extensions into June of the next year.

Q. Okay. What was the delay between obtaining the permit in November, 2000, and spudding the well March 29th,

2001?

A. We were -- a couple of reasons for delay. We were under pressure of -- Rig activity was very high at that time. We used our own drilling rigs to drill our prospects with, and all of those were committed at the time. It was nip and tuck as to whether we could get one of our own rigs.

We also had problems with partner participation. We'd had one partner drop out because of the risk, and we had one partner that we were not going to carry into this prospect with us. So we had about a third of the participation interest uncommitted for, and we were trying to find another industry partner to drill with us.

Q. Okay. You finally shored up who your investor group was going to be --

A. We did.

Q. -- and drilled the well?

You conducted the drill stem test on that well on May 15th, 2001?

A. That's correct.

Q. And what information did you get about the well as of that time?

A. When we conducted the drill stem test of the primary or Chester zone, we found a prolific gas interval. It was about a 35 interval. It is a chert detritus, it was

very prolific on the drill stem test, good bottomhole pressures, we definitely had found a reservoir in what was a very risky -- it was one of the reasons we had trouble getting investors is, we were drilling in a low, and most people are used to drilling on a bump.

And as Mr. Nearburg said earlier, Ocean had declined previously to participate with us because they were afraid we would be too low and wet, and our drill stem test confirmed that we did have reservoir.

Q. And you actually obtained production of hydrocarbons June 29th of 2001?

A. That's correct.

Q. And then at that point in time, did you have any idea that Huff had obtained top leases from the Stokes and Hamilton lessors?

A. At June 29th?

Q. Right.

A. No.

Q. Okay. Shortly after that, though, did you receive some kind of communications from an attorney for the Stokes Hamilton lessors?

A. Yes, we did, we received a communication -- I believe Mike Canon, who represented the Stokes Hamilton interests, contacted first our landman, Randy Watts, and then Phil Brewer.

Q. And what did Mr. Canon discuss with your group?

A. Mr. Canon had informed us that his clients, the Stokes Hamiltons, had given a top lease to an entity that he declined to name at that time, so we didn't know who it was. They said that this entity claimed that their top lease was valid and our lease was now invalid.

Q. And what did you all tell him?

A. We told Mr. Canon that we disagreed with that assertation that our lease was no longer valid.

Q. And did you know at that time who the top lessee was?

A. No, we didn't.

Q. Did you have occasion to see David Arrington at the Petroleum Club in Midland on about July 24th, 2001?

A. I did.

Q. Okay. Can you relate to the Commission the substance of that conversation?

A. On July 24th we knew at that time that Huff had taken the top leases, because we had investigated the county records and saw Huff's name in the record. We speculated that Arrington may have been involved, because Huff leases for him sometimes. And I ran into David Arrington in the Midland Petroleum Club at noon on July the 24th and we spoke topically for a few minutes, as we had known each other previously, and were cordial and civil.

As we were preparing to part company, I asked Mr. Arrington if that were him that had top-leased us in the Big Tuna area.

His response was, Oh, please don't ask me that right now.

I asked him again, I said, You did, didn't you? You top-leased us in our Big Tuna area?

And Mr. Arrington again said, Oh, please don't ask me that right now.

And again I asserted, It was you, wasn't it? Didn't you top-lease us?

And he said, Well, yes, I did, but I didn't know that that was you and Tom -- meaning Tom Brown. He said, I thought it was Tom Bell, who was operating in that area.

Q. Tom Brown is the CEO of TMBR/Sharp Drilling?

A. Tom Brown is the chairman and chief executive of TMBR/Sharp. The TMBR in TMBR/Sharp stands for Tom Brown. We're not affiliated nor connected in any way any longer with Tom Brown, Inc., the production company.

Q. And Tom Bell is the owner of Fuel Products?

A. That's correct.

Q. Another investor in these wells?

A. Another investor.

Q. Okay. So after he made that comment, what else was said?

A. We discussed the merits of both of our arguments as to why each of us thought our leases were valid and the others weren't. We didn't discuss it long because we're still in court and in these proceedings, deciding the matter.

Q. By that time a lawsuit had already been filed?

A. By July 24th, no.

Q. Well, it was filed on July the 24th -- Excuse me, that's wrong, it was filed on August 24th. Excuse me --

A. Right.

Q. -- I misspoke, no lawsuit had been filed. But there was a controversy?

A. Right, there was a controversy. When we again were preparing to part company David said, Well, I need to come talk to Tom.

And I said, you do, David, because it's an eighth of the well we just drilled. And I said, Even more importantly, it's half of the next two locations we'll drill.

And he said, Well, I'll come talk to Tom about that one, but we're going to fight you on the other two. And he said, We were real surprised that you were able to get your well drilled when you did. And he said, But we are certain that you won't be able to drill the next two.

Q. Is there a 180-day continuous drilling clause in

the Stokes Hamilton lease?

A. There is.

Q. So from completion on or about sometime in June of 2001, basically TMBR/Sharp and its investors had 180 days to drill the next well or lose its leases?

A. That's correct.

Q. Did you understand at that time what Arrington was going to do to see that TMBR/Sharp couldn't drill within its continuous drilling obligation time period?

A. No, he had not specifically said what he was going to do, but I understood that he intended to block us somehow.

Q. Okay. You were not aware at that time that on July 17th, 2001, Arrington had already applied for and received his Triple-Hackle Dragon 25 well on the west half of Section 25?

A. No, we were not aware at that time.

Q. How did you become aware that Arrington had obtained permits which were going to block your drilling?

A. We became aware of Arrington's permits filed in our locations when we read their publishment in the Anderson reports, the report that publishes newly released permits.

Q. And what did you do in response to hearing that he had permits that were going -- that were on the acreage

you planned to drill next?

A. We were already in the process of preparing our own permits. We had the surveyors in process of staking the locations and anticipating filing our own permits. And so we rushed the process up and filed our own competing permits in the District Office.

Q. Okay, and you filed your applications for a permit to drill the Blue Fin 25 Number 1 well on August 6th, 2001?

A. That's correct.

Q. Okay. If you would look at Exhibit 5 in your book -- Excuse me, if you'd look at Exhibit 4 in your book, and then we'll look at 5. All right, if you'll look at the C-102 filing, it says the surveyor's certification was July 26th, 2001, only two days after you had your conversation with Mr. Arrington at the Petroleum Club. Did you already have the survey process in the works before you even had the conversation with Mr. Arrington?

A. I'm not certain, but either prior to or after that conversation we were in the works.

Q. But in any case, you did an expedited effort to go ahead and get your applications for permits to drill filed?

A. That's correct.

Q. And what happened when -- Well, who filed them

for you? Who actually in your shop filed them?

A. Lonnie Arnold is my production manager, filed both of these permits and carried them to the Hobbs District Office.

Q. And what happened at the Hobbs District Office?

A. The Hobbs District informed Lonnie that they couldn't grant these permits because there were competing permit APDs that had been granted prior to our application.

Q. Okay. What action did TMBR/Sharp take next to protect its interest in the property? Did it file these cases before the OCD?

A. Yes, we filed for a hearing in front of the OCD to determine the status of the permits, which was the first hearing. We subsequently filed a lawsuit in the District Court in Lea County in regards to our contested interests and leases.

Q. And that lawsuit was filed on August 24th, 2001?

A. Right.

Q. At the time -- After having examined the land records in Section 25, at the time Mr. Arrington applied for and received his permits in Section 25, it's true, isn't it, that he personally of record title didn't own any interest in Section 25, even in the Stokes Hamilton lease, top lease?

A. That's correct, I did not personally examine the

title records, but that's what we believe to be true.

Q. Okay. If you'll look at your time line that I believe is in front of you, September 17th, 2001 --

A. Okay.

Q. -- do you see that entry?

A. I do.

Q. It says "Huff assigns his entire interest in the Huff Top Leases to Arrington Oil & Gas." So far as you know, was that the first time Arrington even purportedly had any interest in this section?

A. That is correct.

Q. Have -- Time to time in the course of the litigation, has TMBR/Sharp requested, either in person or by filing pleadings with the District Court requesting that Arrington release or withdraw his permits so that our permits to drill could be granted?

A. Yes.

Q. And as of this date, has Mr. Arrington withdrawn either his Section 25 permit to drill or his Section 23 permit to drill?

A. He has not.

Q. Did TMBR/Sharp decide to file a supplemental application for a permit to drill on Section 25 recently?

A. Yes, we did.

MS. RICHARDSON: And -- I'm sorry, Madame

Chairman, I don't know the exhibit number of that most recent supplemental filing.

MR. CARROLL: It was 17.

Q. (By Ms. Richardson) 17, thank you. Okay.

Why did TMBR/Sharp file Exhibit 17, which was the supplemental application for a permit to drill that basically mirrored the prior one?

A. We filed it strictly as a supplement to our original permit application. We used the same property code, we used the same API number in our filing, and we typed at the head of the Application, supplemental to our original API number, and we filed it with the motions from the District Court granting summary judgment on our lawsuit regarding the validity of our leases.

Q. And about last Saturday -- It seems like a long time ago now, but last Saturday did we learn that the District Office of the Oil Conservation Division had granted our supplemental filing for the Blue Fin 25?

A. That's correct.

Q. So that at this point in time there are two approved permits to drill on Section 25, both Arrington's and ours?

A. That is correct.

Q. When we filed our Section 25 Application for permit to drill originally, did we intend at that time to

obtain the permit and file a pooling action, or did we intend to obtain the permit and drill the well, and then file a pooling action if necessary?

A. We intended to file the permit, receive approval for it and drill the well, and pool the well after we had drilled it.

Q. Okay. And why would we do it in that order?

A. We -- Time is of the essence all the time here, in light of my conversation with Arrington, so we had a lease clock ticking. We typically drill our wells that way, because although this would be pooled in the same pool as the Blue Fin 24, these wells are all still really wildcats. It's not a development well.

And so that if we dryholed in the lower, deeper zone, it might not be necessary for us to have a 320-acre unit. It would be possible to make a well in the Strawn horizon or another horizon, which might be a 160- or an 80-acre unit.

And so that after we drill a well, we're more informed about what we actually want to pool. And if we made a deep-horizon 320-acre well, well, that's the one we would pool.

Q. And with the 180-day clock ticking, because we had completed the well sometime in June, 2001, we basically had till the end of the year 2001 to drill the next well

before the rest of the lease expires?

A. That's correct.

Q. Was there some concern on our part that if we obtained our permit and then engaged in a protracted pooling filing that our time clock might run before we could ever drill?

A. Obviously.

Q. Okay. The same was true with the 23 well, our intention was to move forward, obtain the permit and drill, and pool if necessary?

A. That's correct.

Q. Okay. If we had drilled another well after the Blue Fin 24 on the Stokes Hamilton acreage, we would have bought ourselves another six months before any additional acreage expiring --

MR. CARROLL: Madame Commissioner, I've been very patient throughout this entire hearing, but it's just getting worse. Ms. Richardson is testifying for and is leading the witness to the point that we're no longer hearing what Mr. Phillips has to say, but he's just --

MS. RICHARDSON: I'll rephrase.

CHAIRMAN WROTENBERY: Thank you.

Q. (By Ms. Richardson) I'll rephrase, thank you.

What advantage would we get from being able to go ahead drill the Blue Fin with respect to the Stokes

Hamilton lease?

A. Had we been able to go ahead and drill the Blue Fin 25 well, we would have perpetuated the Stokes Hamilton lease for another six months.

Q. And in our permitting applications, in the spot where it says spud date, when did we indicate we would have spudded the Blue Fin 25 and the Leavelle 23?

A. In the permit applications --

Q. Right, Exhibits 4 and 5.

A. -- we had put September the 1st, 2001, as the anticipated spud date.

Q. All right. If you would look at Exhibit 2, which is the Arrington APD for Section 25, what does it indicate there would have been the spud date for Arrington?

A. In Exhibit 2 Arrington has ASAP as an anticipated spud date.

Q. Are you aware of any action on the part of Arrington to -- currently, to drill either Section 25 or 23?

A. No, I'm not. And Mr. Carroll has indicated they have no intention right now of drilling either one.

Q. Okay. You were aware -- or were you aware whether or not Ocean Energy had ever applied for and received any kind of application -- or, excuse me, permit to drill either Section 25 or 23?

A. I'm not aware of an application filed by Ocean for either location.

Q. But you received a well proposal from Ocean Energy, didn't you?

A. We did receive a well proposal from Ocean in January of this year.

Q. And Ocean identified the well they wanted to drill was the Triple-Hackle Dragon 25?

A. That's correct.

Q. And how does that compare to the APD applied for and received by Mr. Arrington?

A. That's the same well name as Mr. Arrington's permit that he received as the Triple-Hackle Dragon 25 Well Number 1.

Q. Is the well proposal by Ocean -- how does its well location it proposes compare to what Arrington wanted in his permit to drill the 25 well?

A. Ocean's well proposal has the same footage call location as Arrington's Triple-Hackle Dragon 25 Number 1.

Q. You heard Mr. Carroll's statements earlier about Section 23, and I want to see if we can get that one cleared up. And I advised you that my understanding of what Arrington Oil and Gas was willing to do with respect to Section was to agree to withdraw their permit to drill on Section 23, advise -- we would jointly advise the

Commission that our permit should be granted and that if we had a permit then we would proceed at some point, rig availability and other things all being equal, to drill that well. Did I advise you about that?

A. That's correct, you did.

Q. Okay. And were you willing to do that if Arrington was willing to withdraw his permit, ask the Commission to grant ours, and then we would have a permit to drill? Was that arrangement acceptable to TMBR/Sharp and its investors?

A. It is suitable to us that he withdraws his permit and that our permit is approved.

Q. Okay, one last area. A compulsory pooling proceeding was filed by TMBR/Sharp in January of 2002. Why did -- in light of your earlier testimony, why did TMBR/Sharp file a compulsory pooling request?

A. We filed a compulsory pooling request because it was, at the time, one of the only things we had available to us to get us to this hearing. Arrington has exhibited quite a bit of gamesmanship in all of these proceedings, and --

MR. CARROLL: I'm going to object to the characterizations of the witness. I think that's totally outside the scope of the question and it's just he's got the floor and he wants to bad-mouth David Arrington, and I

think that's improper, and I think the witness should be instructed to answer the question, period.

THE WITNESS: I'll rephrase.

CHAIRMAN WROTENBERY: Thank you.

THE WITNESS: We filed the pooling application because it was one of the only things left for us to do at the time. We also were cognizant of the fact that it was important to get the application in first, or early, because we were aware that Ocean was preparing to file a west-half pooling, force-pooling motion.

Q. (By Ms. Richardson) Was it TMBR/Sharp's desire and what TMBR/Sharp is asking the Commission to do with respect to Section 25, to vacate Arrington's permit -- the Division Office has already granted a Section 25 permit to us, so vacate Mr. Arrington, leave ours in place and let us drill the well?

A. That's correct. We have a permit that's been granted. Vacate Mr. Arrington's permit, we'll drill our well and pool afterwards as we had planned to do.

Q. And if the pooling occurs after the drilling, what additional information do you think will be obtained that might facilitate the pooling -- compulsory pooling process?

A. Well, the compulsory pooling process will be science and geological information. If we drill a well,

we'll have that much more science and geological information. We'll have logging, information about the thickness of the zone, we'll be able to tie it to our 3-D seismic. We'll just be that much better off.

Q. Okay. And one last question about Ocean Energy. To your knowledge, when did Ocean Energy even obtain any interest in Section 25?

A. It was -- November was our earliest knowledge that Ocean had obtained any interest in Section 25.

Q. And that was obtained on the basis of farmouts they got in July of 2001?

A. That's correct.

Q. Isn't it true that it was represented to Judge Clingman in Lea County that although Ocean had been assigned an interest by Arrington in the Stokes Hamilton leases, they had decided to reassign that acreage to Mr. Arrington because they no longer wanted any interest in the top leases?

A. Now, restate that for me, please.

Q. Sure. Do you recall that it was represented to the Court, Judge Clingman in Lea County, that Ocean Energy, who has farm-in acreage in 25 but also has alleged Stokes Hamilton top lease, that Ocean Energy represented to the Court that their intention was to dispose of that acreage, if you will, reconvey it to Mr. Arrington so that they no

longer claimed an interest in the Stokes Hamilton top leases?

A. That's correct, that was our understanding.

Q. Okay. To date we haven't seen that reassignment, but that's our understanding of what they intend to do?

A. That's correct.

MS. RICHARDSON: Nothing further, pass the witness.

CHAIRMAN WROTENBERY: Mr. Carroll?

CROSS-EXAMINATION

BY MR. CARROLL:

Q. Mr. Phillips, one of the things that an operator accomplishes when he does a force-pooling action is, he gets -- he can get the Division or the Commission to assess a penalty to those parties who do not join in and pay their share; is that correct?

A. That is correct.

Q. If an operator does as TMBR/Sharp is doing and fails to force pool prior to drilling of the well, the operator forgoes the opportunity to have a risk penalty assessed against any parties who do not join in and pay their share of the well up front?

A. I believe that, I take your word for that.

Q. All right. It's your testimony that TMBR/Sharp has waited some six months to file the force pooling on the

north half of Section 25, until just recently, and that was because you thought it was necessary to beat Ocean to the filing of a force-pooling action; is that correct?

A. That was one of the reasons, yes.

Q. Was there any other reasons?

A. The other reason is, it was one of the only actions or options we had available to us at the time. We could stand still and watch all of this go on, or we could engage and try to --

Q. Okay, as an option, you can file the force pooling, and you may be awarded operatorship and also be awarded the location of your choice; isn't that correct?

A. We had not permit at the time. It was my understanding that permits and pooling are two different tracts and that the operator holding the permit controlled the pooling process.

Q. The operator who holds the APD controls the pooling process; is that what you're saying?

A. Right.

Q. Then why did you even bother to file a pooling application?

A. We hoped to be able to get our APD at this hearing or one of these hearings. We hadn't given up on being granted an APD.

MR. CARROLL: I have nothing else.

CHAIRMAN WROTENBERY: Commissioners?

COMMISSIONER BAILEY: Tom, I'm fully confident that you know the Oil and Gas Act forwards and backwards. Is --

MR. KELLAHIN: May I have counsel?

(Laughter)

MR. KELLAHIN: Mr. Carr is back here.

CHAIRMAN WROTENBERY: He wants to take the Fifth.

COMMISSIONER BAILEY: Is there a provision that designates where filings have to be made in the county?

MR. KELLAHIN: In the Oil and Gas Act?

COMMISSIONER BAILEY: Yes.

MR. KELLAHIN: No, ma'am. It doesn't specify that.

COMMISSIONER BAILEY: That's an Oil Conservation Division regulation?

MR. KELLAHIN: Were you asking -- I'm sorry, I didn't hear.

COMMISSIONER BAILEY: Is there an OCD regulation, or is it in the Oil and Gas Act which declares that filings have to be made in the county?

MR. KELLAHIN: For the designation of a pool unit?

COMMISSIONER BAILEY: Right.

MR. KELLAHIN: You can find it in the forms in

terms of a declaration by the applicant, the operator, to the Division as to his spacing unit. We do that with the C-102, and that permitting process is a disclosure to the Division that I propose the dedication of a certain configuration.

Whether that satisfies your lease obligations -- and those lease obligations sometimes are differently phrased language -- some lease obligations specifically tell you that it must be a recorded instrument filed with the county clerk. This lease doesn't say that.

COMMISSIONER BAILEY: But a statute or an OCD regulation would supersede any kind of lease terms, wouldn't it?

MR. KELLAHIN: You can certainly make that argument.

COMMISSIONER BAILEY: Okay.

MR. CARROLL: Commissioner Bailey, if I may add, because the question you just asked or phrased is the issue that is before the District Court in Lea County, and I think Mr. Kellahin is correct, there is no -- the Oil and Gas Act does not specifically make a requirement, it is more a contractual requirement. You find it in the lease and you have to interpret the lease.

Now, there is one additional statute, and this is one of the issues that has been argued in the District

Court and which will be one of the issues that will be appealed to the Court of Appeals, is that there is a statute that says all filings that deal with the ownership of real property, of which minerals are one, have to be in the county. And that has been the argument of Arrington, is that this filing in the OCC is not sufficient.

We've also argued -- and again, this is the argument in the District Court, not here -- but the problem is, is if you look at the lease the contract says you shall file it in the county where the land is located.

Well, that lease provision -- what would it mean if you went to Chaves County, because there's no Oil Conservation Commission or Division office in Chaves County? There's one in Eddy County and there's one in Lea County, and there's one up in the northwest in San Juan County. There's only four offices outside -- or three offices outside of Santa Fe.

That is, in a nutshell, the problem before the court system right now. And so, that's the issue -- you've hit it right on the head -- as to what's troubling these parties as to what was the effect of filing the C-102 or not filing the designation of pooling in the county records.

COMMISSIONER BAILEY: Thank you both very much. I appreciate your help on that.

I do have another question, though.

EXAMINATION

BY COMMISSIONER BAILEY:

Q. In the lease, in the very -- paragraph 2, it says that the lease shall remain in effect for three years and so long as there is oil and gas produced in said land.

Is the Blue Fin 24 still producing?

A. It is.

Q. So is there truly an urgency for this six months between drilling, even though the lease is still perpetuated by production from the Blue Fin 24?

A. The primary term of the Blue Fin 24 lease had expired, so we're now under the continuous development phase of the lease.

COMMISSIONER BAILEY: Okay, thank you.

MS. RICHARDSON: If you could explain, just so it will be in the record clear. The continuous development phase of the lease means precisely what?

THE WITNESS: It means that every 180 days you have to have drilled a well or be producing hydrocarbons from a new location or horizon on the lease, in order for the lease to perpetuate. It is an extension of the lease outside the primary term.

MS. RICHARDSON: The lease will perpetuate as to the acreage held by the Blue Fin 24?

THE WITNESS: Correct.

MS. RICHARDSON: But the remaining acreage --

THE WITNESS: The remaining acreage --

MS. RICHARDSON: -- under 25 --

THE WITNESS: -- outside the proration unit held by the Blue Fin 24 is perpetuated by continuous drilling.

CHAIRMAN WROTENBERY: Thank you.

THE WITNESS: The Blue Fin 24 proration unit will be held so long as the well produces and it's not interrupted. And there's interruption language in there, every 60 days or something like that.

MS. RICHARDSON: And what is the Blue Fin -- I know you've checked on it today. What is it producing today?

THE WITNESS: We have -- In preparation to frac, fracture-stimulate the Blue Fin 24 in the primary zone, the chert detritus, we had acidized it on Monday, and we've cleaned up the acid. It's producing around a million cubic feet of gas a day right now, at a flowing tubing pressure of around 1000 pounds, and at a liquid or condensate rate of about 170 barrels of condensate a day.

We anticipate frac'ing that well in the morning.

MS. RICHARDSON: Okay, thank you. Nothing further.

CHAIRMAN WROTENBERY: Commissioner Lee, any

questions?

COMMISSIONER LEE: (Shakes head)

CHAIRMAN WROTENBERY: Mr. Ross?

MR. ROSS: Maybe one.

CHAIRMAN WROTENBERY: We may still have a few more questions for you, don't go away.

Okay.

EXAMINATION

BY MR. ROSS:

Q. Mr. Phillips, I understood Mr. Nearburg to say that at some point there was something, in fact, filed with the County Clerk; is that correct?

A. There was. After we drilled the well we filed a designation of pool unit with the County Clerk.

Q. When was that document -- We don't have it in front of us. When was that document filed or recorded, do you know?

A. It was -- Do you have that? It was in July, I'm not certain of the date. Our lease allows us to file that document before or after drilling the well.

MR. ROSS: Can we get that document? Is that possible?

MR. KELLAHIN: Be happy to submit that to you, sir.

MS. RICHARDSON: And may I say, there is no

question that Judge Clingman on the title has addressed all the concerns, all the arguments that Mr. Arrington has raised, and has concluded as a matter of law -- no fact questions -- as a matter of law, that our lease is valid, that we did what we needed to do to pool it and extend it beyond the primary term. So I think insofar as what the Commission does with this matter, that title matter has been decided by Judge Clingman. It is certainly subject to appeal.

But as of now the law of the case, if you will, is what Judge Clingman has said. And that is, our lease is good, the top lease is invalid and has been from the time we spudded and completed the well.

MR. ROSS: Judge Clingman's order is kind of terse.

MS. RICHARDSON: Yes.

MR. ROSS: It might help us if we had --

MS. RICHARDSON: If you had the motion.

MR. ROSS: -- the motions, right.

MS. RICHARDSON: It is in this stack of paper. I was hoping not to have to get down on my hands and knees to retrieve it, but maybe someone more agile than me can find it.

MR. ROSS: Well, we don't need it right now, but it would be nice to have a copy.

MS. RICHARDSON: No, we knew it was and we anticipated that when we were preparing yesterday. We thought this order doesn't make sense unless you can see the prayer. So that's a good point.

MR. ROSS: I have nothing further. Thanks.

MR. MONTGOMERY: Mr. Carroll, do you want one of these?

MR. CARROLL: I might as well have whatever you can give me.

MS. RICHARDSON: And I'll represent to the Commission, this is what was attached to our supplemental APD filing that -- you know, where we just received a permit on 25. And very frankly, we were surprised that it was granted. We thought that was what you all were going to be deciding today. But just to say it was an unusual, thick filing, and I'm not sure how it got under the radar screen. And we don't really know what the District thought, but we just wanted to bring that to your attention.

CHAIRMAN WROTENBERY: Thank you. Did you have anything further for --

MR. ROSS: Oh, no. Thanks.

CHAIRMAN WROTENBERY: -- for Mr. Phillips?

Thank you, Mr. -- Well, let me ask first, did you have any follow-up, Ms. Richardson?

MS. RICHARDSON: Nothing further, thank you.

CHAIRMAN WROTENBERY: Mr. Carroll?

MR. CARROLL: No.

CHAIRMAN WROTENBERY: Thank you very much for your testimony, Mr. Phillips.

THE WITNESS: Thank you.

MR. KELLAHIN: That concludes our presentation of witnesses.

CHAIRMAN WROTENBERY: Okay, and we need to take care of these exhibits, I think. What do you want to do with these?

MR. KELLAHIN: I've lost track of the next sequence.

MS. RICHARDSON: We would like to admit 1 through 17, which was the original ones we gave you, and then to make what we just handed you, which was our Motion for Summary Judgment, Number 18, and to ask that that be admitted also.

MR. CARROLL: There is no objection, and that was a prior agreement between counsel.

CHAIRMAN WROTENBERY: Okay.

MS. RICHARDSON: Thank you.

CHAIRMAN WROTENBERY: Then Exhibits 1 through 18 will be admitted as evidence.

And Mr. Ross has also asked for a copy of the

filing that was made --

MS. RICHARDSON: Yes.

CHAIRMAN WROTENBERY: -- with the county of the unit designation for the --

MS. RICHARDSON: Yes, why don't we designate that as Number 19, and we'll try to get that over to you as soon as possible?

CHAIRMAN WROTENBERY: Any objection, Mr. Carroll?

MR. CARROLL: No.

CHAIRMAN WROTENBERY: Okay, when we receive that we'll make that part of the record as well.

MS. RICHARDSON: Thank you.

CHAIRMAN WROTENBERY: Okay, thank you. Anything further, then?

MR. KELLAHIN: If you'd like a closing summary?

CHAIRMAN WROTENBERY: Well, we need to hear from Mr. Carroll, but I would like to take just a short break here for just five minutes before we --

MR. CARROLL: All we have to do is just put in our exhibits, and then we'll be through, because -- we sent our witnesses home, because they were going to identify these four exhibits --

CHAIRMAN WROTENBERY: Uh-huh.

MR. CARROLL: And that's all that remains --

CHAIRMAN WROTENBERY: Okay.

MR. CARROLL: -- Commissioner Wrotenbery.

CHAIRMAN WROTENBERY: Okay, so we should go ahead, then?

MR. CARROLL: Well, we could, and then we'll be through.

CHAIRMAN WROTENBERY: Okay, sounds good.

MR. CARROLL: Prior to today's hearing we have submitted Exhibits 1 through 4, they were sent -- and give the court reporter a copy and Mr. Ross a copy, I believe.

These four exhibits, by stipulation of counsel we've agreed to allow them to come in on behalf of David Arrington.

Those four exhibits are -- Exhibit 1 is the farmout agreement dated September 10, 2001, between David Arrington and Ocean Energy.

Exhibit 2 is the letter dated 2-11-02. This would be the letter from myself to Mr. Kellahin advising him of our offer to release Section 23 APD.

Exhibit 3 is the -- there has been some mention of an Ocean AMI agreement with David Arrington. That agreement predates a lot of this stuff. It goes back to -- if I can read my typing here, it was December 12th of 2000. That is Exhibit 3.

And then there has been one other order, and frankly I don't know that it has a lot of relevance. There

was a motion for summary judgment filed with respect to tortious interference claimed in the state court case. That motion was denied, and that's what Exhibit Number 4 is, just a denial of that.

And with that, I think there's been a tremendous amount of argument that has already preceded this case. I don't know that we need any further, but -- I would opt that we would not have any further, but I think all of this has been explained quite adequately by counsel prior to this point in the hearing.

CHAIRMAN WROTENBERY: Thank you, Mr. Carroll. We will admit Exhibits Number 1 through 4 into the record as evidence.

The Commissioners may have some questions for you.

Commissioner Bailey?

COMMISSIONER BAILEY: I can't think of any.

CHAIRMAN WROTENBERY: Commissioner Lee?

COMMISSIONER LEE: (Shakes head)

CHAIRMAN WROTENBERY: Mr. Ross?

MR. ROSS: No, I don't believe so. Thank you.

CHAIRMAN WROTENBERY: I may be the only one.

I did want to ask you --

MR. CARROLL: Certainly.

CHAIRMAN WROTENBERY: -- about Arrington's

position on the title question, now that the Court has entered a ruling on the motion for summary judgment. What does that do to Arrington's claim to title and the right to drill the well in Section 5 and -- 25 in particular?

MR. CARROLL: Well, first of all, the order is interlocutory. It's not a final order. And there will be no final order until such time as the whole case is decided.

I think Mr. Ross was quite apt and -- when he looked at that order he said it was quite terse. Well, it didn't say anything, and it didn't order that anything be done. It just said that the motion for summary judgment was granted with respect to their motion, the Plaintiff's motion, and it was denied with respect to the Defendant's motion.

With respect to that issue, David Arrington feels that that's totally incorrect, that the District Court misconstrued the law, it misconstrued the fact that there is a controlling state statute which says that no filing can affect a real property interest unless it's done with the county clerk. Judge Clingman ignored that statute.

So, you know, there are a number of good legal issues that are still out there that need to be resolved.

The Court was not inclined to grant the decree, the language would have -- which would have allowed an

interlocutory appeal. He kept it in-house, so to speak, he did not do that language. So we are now going to have to wait until the entire case is through before we can appeal it and get some finding as to the correctness of the District Court's ruling.

So in a nutshell, we think the District Court was absolutely wrong, and we won't back down from that position.

We still believe that there is a strong issue here as to the title questions about the Stokes Hamilton lease. Who owns it? That issue is not decided.

However, I think that you might guess from my earlier statements, that really is not that important when you look at what we have when we have a force-pooling statute. That will allow parties to move ahead and -- actually, if they have to -- you know, if there is a need to drill a well, what have you, that force-pooling statute sets up the -- in other words, a party in this state...

Now, Texas is different. As you are aware, there is no force-pooling statute. But in the State of New Mexico, Oklahoma and a few other states, there is a force-pooling statute which allows or keeps some holdout from keeping a well from being drilled. And that's the -- I guess, the main impetus behind a force-pooling statute. And if the parties want to -- You know, all they have to do

is file a force-pooling action, and you get it -- and of course we've had -- there's plenty of guidance in the statute itself and from prior hearings and orders that have been entered by the Commission and the Division as to what are the important issues?

CHAIRMAN WROTENBERY: Did Arrington have an interest in the Huff top leases at the time Arrington applied for drilling permits in Section 25 and Section 23?

MR. CARROLL: I think if you have to say equitable, yes, most definitely.

Mr. Huff was out there acquiring those top leases at the request of Mr. Arrington. The money that was used to pay for them was Mr. Arrington's money.

So it was -- This was a true situation where you had a contract landman doing your work for you. So -- It was always Mr. Arrington's interest that was being pursued out there in the process of acquiring the top leases.

CHAIRMAN WROTENBERY: Okay, I think that's all I have for Mr. Carroll.

Anybody else have anything?

Mr. Kellahin and Ms. Richardson --

MS. RICHARDSON: We'd just like to make a closing statement, but we surely would like that break, if you don't mind.

CHAIRMAN WROTENBERY: Okay, I could use one too,

so we'll take just five minutes. Thank you.

(Thereupon, a recess was taken at 3:20 p.m.)

(The following proceedings had at 3:25 p.m.)

CHAIRMAN WROTENBERY: Okay, I'm not sure who's going to do the closing statement. Ms. Richardson?

MS. RICHARDSON: Thank you.

May it please the Commission, we're really here today in these *de novo* hearings asking the same question and seeking the same relief as we did from the Division, and that is, we're asking for our permit to drill and that Mr. Arrington's permit be vacated.

The Division instructed us that there are two rules about permitting, or perhaps three. You have to fill out an appropriate APD, you have to have colorable title, and you have to have dedicated the acreage.

There is no question in this record but that when Mr. Arrington obtained his Section 25 permit in July of 2001, he had no title, no record title. Mr. Carroll has argued he had equitable title from Mr. Huff in the top leases, and in the same breath he says if you're going to affect title you've got to file it in the county records. When Mr. Arrington received his permit, there was nothing filed in the county records that gave him any interest in the Stokes Hamilton lease.

But even if you assumed you could link Huff's

interest in the top leases to Arrington when Arrington got his permit in July of 2001, the Court in Lea County has decided -- and the District said that was his job, to decide title. And he has done that.

He has said, based on all the evidence -- there are no fact questions, and as a matter of law, matter of law, our base lease is good and the top lease is not good. Therefore, we're at a crossroads.

Two permits have been granted on 25, one for us, one for Arrington. The Commission has said -- or the Division has said that you need to be first in time for your permit with colorable title. Colorable title has now been removed for Mr. Arrington. We're now the one with title, not just colorable title but title decided by a district judge.

What we would ask is that the Commission vacate his permit, honor our permit, let us drill and then let us pool, because that's the position we would have been in but for Arrington obtaining his permit at a time when he knew he didn't know whether his top lease was any good.

That's the only thing you know for sure about top leases. Unless you have a release or a court declaration, you can't be sure your leases become effective.

Based on Mr. Arrington's conversation with Mr. Phillips, Arrington never intended to drill. He only

intended to block us from obtaining our permits so that our lease would run out and we would lose our acreage in 25 and 23. That was his sole purpose. He didn't commit any money, any time, any effort. All he did was obtain his permits and block our drilling, which as of this time he has successfully done.

We would ask the Commission not to retrade what Judge Clingman had already done, because he said our title is good and the top lease is not good, but to do what the Commission has jurisdiction over, and we believe the fair and right thing to do: Validate our permit, withdraw his, let us drill and then pool.

As for protection of correlative rights for the promotion of drilling, for the production of oil and gas, our client has spent north of $7 million, not just in the area, but in these three sections, 23, 24 and 25.

I think the law is in our favor, I think the equities are in our favor. And we have been having to fight this battle several different places, in Lea County, in two different applications before the Division, pooling application, and now before the Commission. And we're not complaining about that, because that's the process it is. But I think that the Commission at this point has the power to shut this down if they vacate his, grant ours and let us drill and then pool.

The risk that we're wrong on our title and that he's right, we're taking on our shoulders. Mr. Carroll is extremely able counsel, and I know he is going to make compelling arguments to the Court of Appeals and the New Mexico Supreme Court about title later. But if we're wrong it will be answerable in damages, and that will be a matter for the court system to take up. All that this Commission can do here is to decide whose permit is good. If we can't get a permit, obviously we can't drill. And that's why we're here.

CHAIRMAN WROTENBERY: Thank you, Ms. Richardson.

Mr. Carroll?

MR. CARROLL: I think I could go on and on and on and bore the Commissioners to tears. I think my only comments in closing are directed towards two things.

One, remember the opening statements that were made in this case and do not allow your attention to be drawn away from the real issues here, and this is the applicability of the force-pooling statute and how it really controls this issue, because I think the issues about an APD are just side issues.

The other thing is, I think the Commission should discount Counsel's remarks about Mr. Arrington's motives, that he was doing -- he was out there, up to no good, and he was doing things just to hurt TMBR/Sharp. The problem

is, should the Court reverse -- the Court of Appeals reverse itself, then those statements are out the window. Arrington was doing what it was supposed to be doing, it was protecting its rights.

Those issues are not germane to this case. They're done to try to garner support where they don't belong. We have legal issues, and those are the force-pooling statute and its applicability and how you go about it and what it says.

And I think those are the things that this Commission must focus itself upon, is what is the real legal issues here? Not about the issues that someone wants to make up about how they've been hurt, how much money they've spent. We know Ocean's spent a tremendous amount of money, David Arrington's been in this area forever.

Oil and gas, when you pursue it, you've hitched yourself to that wagon, you're going to spend a tremendous amount of money. Some people make it back and make a profit, but not everyone does. That's just one of the -- That's what happens in the game that's played here.

So with that, I would ask that the Commission remember my representations as to what David Arrington's position is now because of what has happened in the District. It has made certain representations, and we stand by those representations.

Thank you.

CHAIRMAN WROTENBERY: Thank you, Mr. Carroll.

With that, I think we'll take this case under advisement.

I did want to clarify one item for the record. Ms. Davidson and I had promised Ms. Johnson that we would clarify one finding that was in my order ruling on the motion of Arrington to continue this case past today's date.

There was a finding in that order that Arrington's motion filed on this date just two business days prior to the hearing is untimely.

We learned after this order was issued that that motion had been filed earlier in the week, and we had inadvertently returned it to Mr. Carroll's office.

So just for the record, we had received that motion earlier the same week, and apologize for the confusion there. It wouldn't have changed the results of the decision on the motion, but we just wanted to clarify for the record.

MS. RICHARDSON: Madame Chairman, we just wanted the record to be clear that we are not denying the applicability of the pooling statutes. We understand that we are bound by them.

But since the pooling statutes talk about if

you're going to pool, you must dedicate lands -- and that's what you do when you file for an APD, you dedicate acreage. And because it also says you can utilize the pooling statute after you drill, our position simply is because the permitting process preceded the pooling processes by six months, that the first in time ought to be dominant and that the permitting, in effect, ought to trump the pooling prior to drilling. Post-drilling, if we have not gotten everybody's agreement to participate, then we must follow the compulsory pooling statutes.

Just to clarify that point. Thank.

CHAIRMAN WROTENBERY: Okay, at this time, then, we'll take this case under advisement. We'll do our very best to issue an order in this case at the next Commission meeting, which will be on April 26th, 2002.

MR. KELLAHIN: Thank you.

CHAIRMAN WROTENBERY: Thank you very much for your testimony and your presentations.

Thereupon, these proceedings were concluded at 3:36 p.m.)

* * *

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 Commission 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 April 6th, 2002.

STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002

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March 18, 2002

Ms. Lori Wrotenbery, Chair — **Hand Delivered**
Dr. Robert Lee, Member — **Federal Express**
Ms. Jamie Bailey, Member — **Hand Delivered**
Oil Conservation Commission
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Re: TMBR/Sharp Drilling, Inc.'s Pre-Hearing Statement
Order No. R-11700
NMOCD Case 12731
Application of TMBR/Sharp Drilling, Inc. for an order staying David H. Arrington Oil & Gas, Inc. from commencing operations, Lea County, New Mexico.

NMOCD Case 12744
Application of TMBR/Sharp Drilling, Inc. appealing the Hobbs District Supervisor's decision denying approval of two applications for permit to drill filed by TMBR/Sharp Drilling, Inc., Lea County, New Mexico

Dear Member of the Commission:

On behalf of TMBR/Sharp Drilling, Inc., and in accordance with correspondence from the Commission's attorney, please find enclosed TMBR/Sharp's Pre-Hearing Statement and Exhibits for the hearing scheduled for March 26, 2002.

Very truly yours,

W. Thomas Kellahin

cc: Steve Ross, Esq.
Attorney for the Commission
Earnest Carroll, Esq.
Attorney for Arrington
cc: TMBR/Sharp
Rick Montgomery, Esq.

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

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

APPLICATION OF TMBR/SHARP DRILLING, INC. APPEALING THE HOBBS 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

TMBR/SHARP DRILLING, INC.
PRE-HEARING STATEMENT

This pre-hearing statement is submitted by TMBR.Sharp Drilling Inc., as required by the Oil Conservation Commission.

APPEARANCE OF PARTIES

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OPPOSITION OR OTHER PARTY	ATTORNEY
David H. Arrington Oil & Gas Inc.	Earnest Carroll, Esq.

RELIEF REQUESTED

(1) There exists a dispute between TMBR/Sharp Drilling, Inc. ("TMBR/Sharp") and David H. Arrington Oil & Gas Inc. ("Arrington") over operations in Section 25 and the E/2 of Section 23, T16S, R35E, NMPM. Lea County, New Mexico:

(a) TMBR/Sharp seeks an APD for this Blue Fin "25" Well No. 1 for the N/2 of Section 25;

(b) Arrington ~~seeks~~ has an APD for this Triple Hackle Dragon "25" Well No. 1 for the W/2 of Section 25;

and

(c) Arrington's C-102 for Blue Drake 23 Well No.
E/2 Section 23, T16S, R35E

(d) TMBR/Sharp's C-102 for Leavelle 23 Well No. 1
E/2 Section 23, T16S, R35E

(2) Both TMBR/Sharp and Arrington have filed with the Division (OCD-Hobbs) competing Applications for Permit to Drill ("APD")

(3) The competing APDs are in conflict with each other in that the drilling of these two wells by one party will preclude the drilling of the other two wells by the other party.

(4) The Supervisor of the Hobbs Office of the Division has approved the two Arrington APDs and correspondingly denied the two TMBR/Sharp APDs. On March 26, 2002 - APD's were granted

(5) Arrington obtained approval of its applications for permits to drill predicated upon its assumption that two oil & gas leases held by TMBR/Sharp had expired and that two "top leases" now held by Arrington are in effect.

(6) Except for Arrington's actions in claiming the top lease interest it had no interest in the W/2 of Section 25 TMBR/Sharp's APD would have been approved.

(7) TMBR/Sharp appealed this action to the Division which held a hearing on September 20, 2001.

(8) On December 13, 2001, the Division entered Order R-11700 denied TMBR/Sharp's Applications for Permit to Drill ("APDs") because the Division had previously approved David H. Arrington's APDs and stated in this order that:

(a) "(22) "Arrington has demonstrated an least a colorable claim of title that would confer upon it a right to drill its proposed wells, no basis exists to reverse or overrule the action of the District Supervisor in approving the Arrington APDs."

(b) "(21) The Oil Conservation Division has no jurisdiction to determine the validity of any title, or the validity or continuation in force and effect of any oil and gas lease. Exclusive jurisdiction of such matters resides in the courts of the State of New Mexico"

(9) The Division also concluded in paragraph (25) of Order R-11700 that "...the Division has jurisdiction to revoke its approval of any APD in an appropriate case..."

(10) On August 21, 2001, TMBR/Sharp filed litigation in the Fifth Judicial District Court, Lea County, New Mexico seeking a judicial determination of, among other things, the validity of Arrington's claim of title.

(11) On December 27, 2001, the District Court entered a order holding that Arrington's assumptions were wrong and entered Summary Judgment in favor the TMBR/Sharp. Arrington's claim of interest in the top leases has failed and TMBR/Sharp's leases are still valid.

(12) Contrary to Division Order R-11700, Arrington failed to demonstrate "colorable title" at the time its APDs were approved.

(13) TMBR/Sharp is now entitled to have its APD issued by the Division without inference from Arrington.

EVIDENCE AND EXHIBITS

EXHIBIT 1:

(a) Arrington's C-102 for Triple Hackle Dragon 25 Well No. 1
W/2 Section 25, T16S, R35E dated 7/17/01

(b) TMBR/Sharp's C-102 for Bluefin 25 Well No. 1
N/2 Section 25, T16S, R35E dated 8/7/01

(c) Arrington's C-102 for Blue Drake 23 Well No. 1
E/2 Section 23, T16S, R35E dated 7/25/01

(d) TMBR/Sharp's C-102 for Leavelle 23 Well No. 1
E/2 Section 23, T16S, R35E dated 8/7/01

EXHIBIT 2:

On July 17, 2001, Arrington filed an application for permit to drill ("APD" including Division Form C-101 and Form C-102) and on the same day obtained approval from the OCD-Hobbs to drill the Triple Hackle Dragon 25 Well No. 1 in the W/2 of Section 25, T16S, R35E, Lea County, New Mexico.

EXHIBIT 3:

On July 30, 2001, Arrington filed an application for permit to drill ("APD" including Division Form C-1-1 and Form C-102) and on the same day obtained approval from the OCD-Hobbs to drill the Blue Drake 23 Well No. 1 in the E/2 of Section 23, T16S, R35E, Lea County, New Mexico.

EXHIBIT 4:

On August 8, 2001, TMBR/Sharp filed an APD to drill its Blue Fin 25 Well No. 1 to be dedicated to a 320-acre spacing unit consisting of the N/2 of Section 25, T16S, R35E stating that the permit granted to Arrington for his Triple Hackle Dragon Well No. 1 with a W/2 spacing unit orientation precluded the approval of TMBR/Sharp's application.

On August 8, 2001, the OCD-Hobbs issued a letter/order denying TMBR/Sharp's APD.

EXHIBIT 5:

On August 8, 2001, TMBR/Sharp filed an APD permit to drill its Leavelle 23 Well No. 1 to be dedicated to a 320-acre spacing unit consisting of the E/2 of Section 23, T16S, R35E stating that the permit granted to Arrington for his Blue Drake 23 Well No. 1 also with a E/2 spacing unit orientation precluded the approval of TMBR/Sharp's application.

On August 8, 2001, the OCD-Hobbs issued a letter/order denying TMBR/Sharp's APD

EXHIBIT 6:

Effective December 7, 1997, Madeline Stokes entered into an oil and gas lease with Ameristate Oil & Gas, Inc. ("Stokes Lease") covering, among other lands, the NW/4SW/4 and NW/4NE/4 of Section 24, T16S, R35E, Lea County, New Mexico.

Effective December 7, 1997, Erma Stokes Hamilton entered into an oil and gas lease with Ameristate Oil & Gas, Inc. ("Hamilton Lease") covering, among other lands, the NW/4SW/4 and NW/4NE/4 of Section 24, T16S, R35E, Lea County, New Mexico;

TMBR/Sharp is successor to Ameristate.

The primary term for both of these leases ended at midnight June 6, 2001;

EXHIBIT 7:

Effective July 1, 1998, TMBR/Sharp entered into an operating agreement covering lands in Lea County, New Mexico including the Hamilton and Stokes' lands.

TMBR/Sharp contends that the interest claim by Arrington in the NW/4 of Section 25 subject to a July 1, 1998 Operating Agreement and that its leases of the disputed lease acreage were perpetuated by TMBR/Sharp's drilling of the Blue Fin "24" Well No. 1 which was dedicated to a 320-acre gas spacing and proration unit consisting of the W/2 of Section 24, T16S, R35E.

EXHIBIT 8:

On November 17, 2000, TMBR/Sharp as operator under this operating agreement, filed an application for permit to drill its Blue Fin "24" Well No. 1 and to dedicate a 320-acre gas spacing and proration unit consisting of the W/2 of Section 24 to the well. The permit was approved on November 22, 2000 by the OCD.

On March 29, 2001 TMBR/Sharp commenced drilling and on June 29, 2001 completed its Blue Fin 24 Well No. 1 for production from the North Townsend Mississippian Gas Pool.

TMBR/Sharp contends that its drilling and completion of the Blue Fin 24 Well No. 1 was sufficient to extend the Hamilton and Stokes leases beyond their primary terms.

EXHIBIT 9:

On March 27, 2001, Madeline Stokes entered into an oil and gas lease with James D. Huff ("Stokes-Huff top lease") which covered the same lands as her lease to Ameristate.

On March 27, 2001, Erma Stokes Hamilton entered into an oil and gas lease with James D. Huff ("Hamilton-Huff top lease") which covered the same lands as her lease to Ameristate.

Arrington's right to drill and operate these wells is predicated upon his assumption that two oil & gas leases held by TMBR/Sharp had expired and that two "top leases" are now in effect.

In fact the two "top leases" were obtained on March 27, 2001 by James D. Huff and filed of record in Lea County on June 11, 2001. Huff's assignment of these "top leases" was not recorded until September 19, 2001, some 6 weeks after the Division had approved Arrington's APDs.

Arrington contends that controls some or all of the operating rights in the Hamilton-Huff top lease and the Stokes-Huff top lease.

Except for the Hamilton/Stokes top Lease Arrington has not interest in the W/.2 of Section 15.

Exhibits 10:

On September 10, 2001, Arrington and Ocean Energy, Inc. entered into a Letter Agreement that if Arrington was not successful in curing any title dispute for the W/2 of Section 25 for Arrington Triple Hackle Dragon 25 Well No. 1, the Ocean would initiate compulsory pooling proceeding for a spacing unit consisting of the W/2 of Section 25.

Exhibits 11;

Ocean has initiate such a proceeding in NMOCD Case 12841.

EXHIBIT 12:

On December 13, 2001, the Division entered Order R-11700 denied TMBR/Sharp's Applications for Permit to Drill ("APDs") because the Division had previously approved David H. Arrington's APDs.

EXHIBIT 13:

On August 21, 2001, TMBR/Sharp filed litigation in the Fifth Judicial District Court, Lea County, New Mexico seeking a judicial determination, among other things, of TMBR/Sharp's right to drill and operate wells on the disputed lease acreage.

On December 27, 2001, the District Court entered a order holding that Arrington's assumptions were wrong and entered Summary Judgment in favor the TMBR/Sharp. Arrington's claim of interest in the top leases has failed and TMBR/Sharp's leases are still valid.

As a result of this order Arrington has no operating interest in either the E/2 of Section 23 nor the W/2 of Section 25. This matter has been conclusively resolved against Arrington and demonstrates that Arrington wrongfully obtained the approval of its APDs from the Division. Based upon this District Court order, TMBR/Sharp is entitled to have its APDs approved and Arrington's revoked.

WITNESSES

WITNESSES	EST. TIME	EXHIBITS
Tom Bell		
Jeffrey D. Phillips		
Randy Watts (land)		

PROCEDURAL MATTERS

KELLAHIN AND KELLAHIN

By: _____
W. Thomas Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504
(505) 982-4285

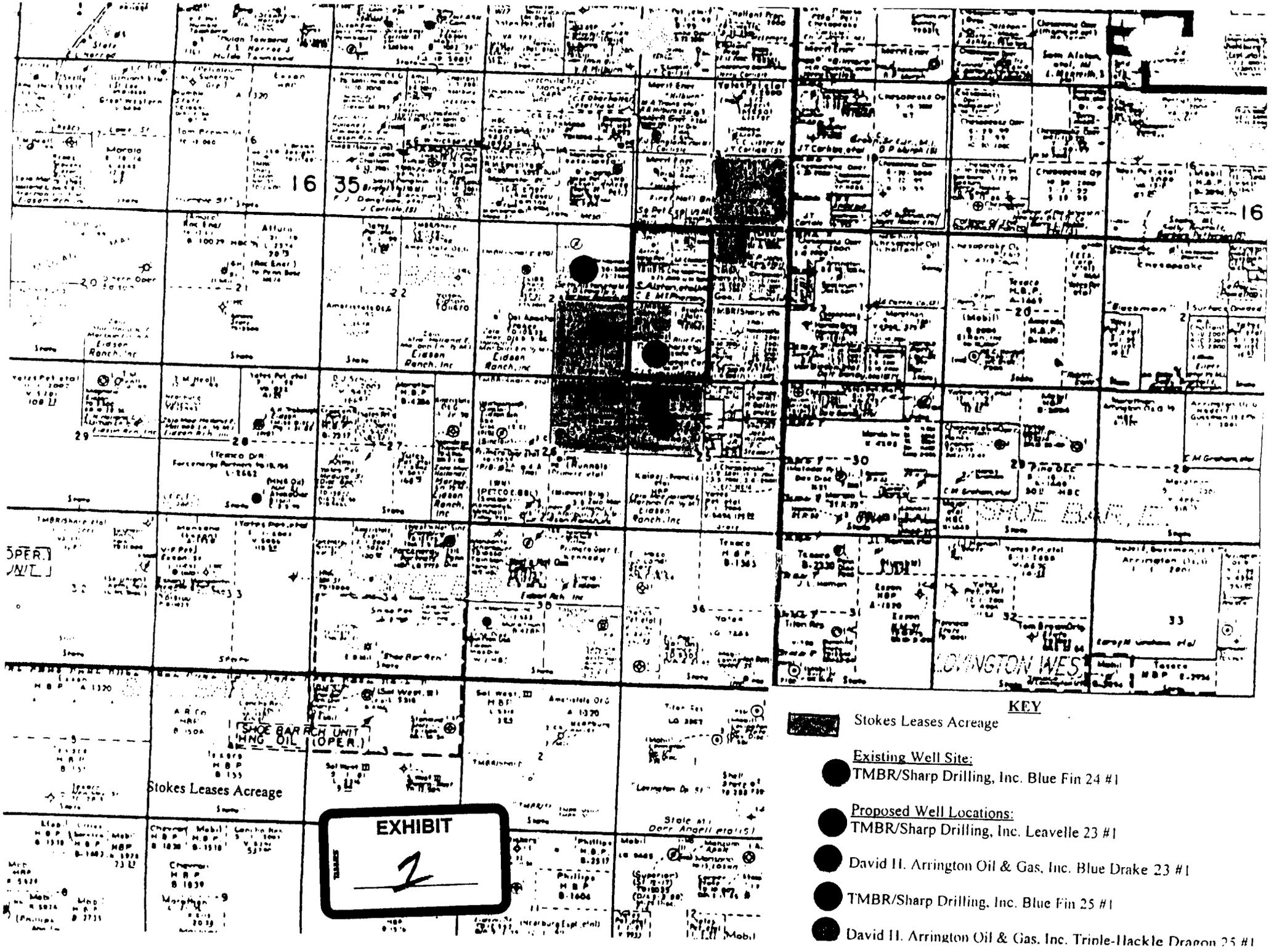
Stokes Leases Acreage
SHOE BARRICH UNIT (OPER.)
KEY
Stokes Leases Acreage
Existing Well Site:
TMBR/Sharp Drilling, Inc. Blue Fin 24 #1
Proposed Well Locations:
TMBR/Sharp Drilling, Inc. Leavelle 23 #1
David H. Arrington Oil & Gas, Inc. Blue Drake 23 #1
TMBR/Sharp Drilling, Inc. Blue Fin 25 #1
David H. Arrington Oil & Gas, Inc. Triple-Hackle Dragon 25 #1

EXHIBIT 2

C-102

DISTRICT I
P. O. Box 1980
Hobbs, NM 88241-1980

DISTRICT II
P. O. Drawer DD
Artesia, NM 88211-0719

DISTRICT III
1000 Rio Brazos Rd
Aztec, NM 87410

DISTRICT IV
P. O. Box 2088
Santa Fe, NM 87507-2088

State of New Mexico
Energy, Minerals, and Natural Resources Department

Form C
Revised 02-1

Instructions on

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Fee Lease - 3 copi

OIL CONSERVATION DIVISION
P. O. Box 2088
Santa Fe, New Mexico 87504-2088

☐ AMENDED REP

WELL LOCATION AND ACREAGE DEDICATION PLAT

API Number	Pool Code	Pool Name
30-025-35636	86380	Townsend Mississippian

Property Code	Property Name	Well Number
28458	TRIPLE-HACKLE DRAGON 25	1

OGRID No.	Operator Name	Elevation
005898	DAVID H. ARRINGTON OIL & GAS COMPANY	3958'

SURFACE LOCATION

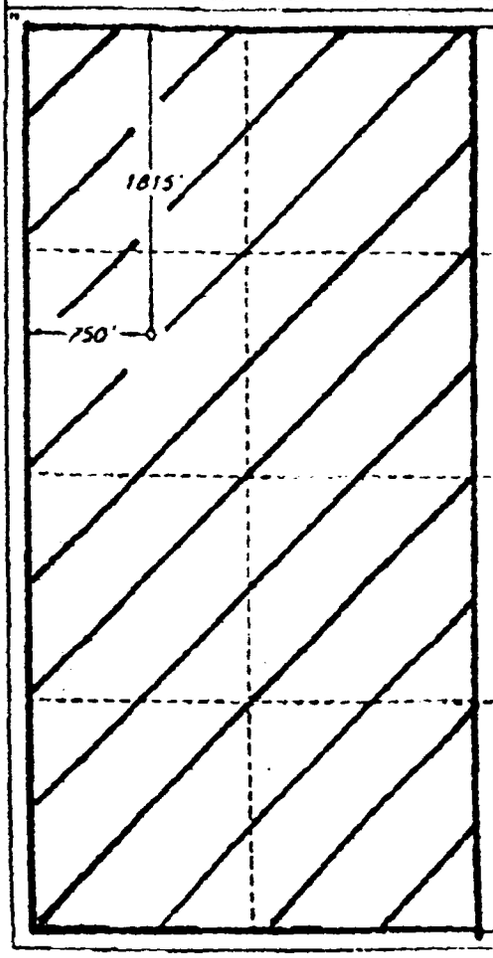
UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
E	25	16 SOUTH	36 EAST, N.M.P.M.		1815'	NORTH		WEST	LEA

BOTTOM HOLE LOCATION

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

Dedicated Acres	Joint or Infill	Consolidation Code
320		

NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION



OPERATOR CERTIFICATION

I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief.

Signature: D. Ledford
Printed Name: Danny Ledford
Title: Geologist
Date: 7/17/01

SURVEYOR CERTIFICATION

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my belief.

Date of Survey: JULY 13, 2001
Signature and Seal of Professional Surveyor:

STATE OF NEW MEXICO
V. LYNN BEZNER
NO. 9920

Certificate No. V. L. BEZNER 9792

JOB #776 / J.C.

EXHIBIT 7

State of New Mexico
Energy, Minerals and Natural Resources Department

Form C-102
Revised February 10, 1994
Submit to Appropriate District Office
State Lease - 4 Copies
Fee Lease - 3 Copies

DISTRICT I
P.O. Box 1980, Hobbs, NM 88241-1980

DISTRICT II
P.O. Drawer DD, Artesia, NM 88211-0719

DISTRICT III
1000 Rio Brazos Rd., Aztec, NM 87410

DISTRICT IV
P.O. Box 2088, Santa Fe, NM 87504-2088

OIL CONSERVATION DIVISION
P.O. Box 2088
Santa Fe, New Mexico 87504-2088

WELL LOCATION AND ACREAGE DEDICATION PLAT

☐ AMENDED REPORT

API Number	Pool Code	Pool Name
30-025-35653	86390	Townsend; Mississippian, N.

Property Code	Property Name	Well Number
28579	BLUEFIN 25	1

OGRID No.	Operator Name	Elevation
036554	TMBR/SHARP DRILLING, INC.	3959'

Surface Location

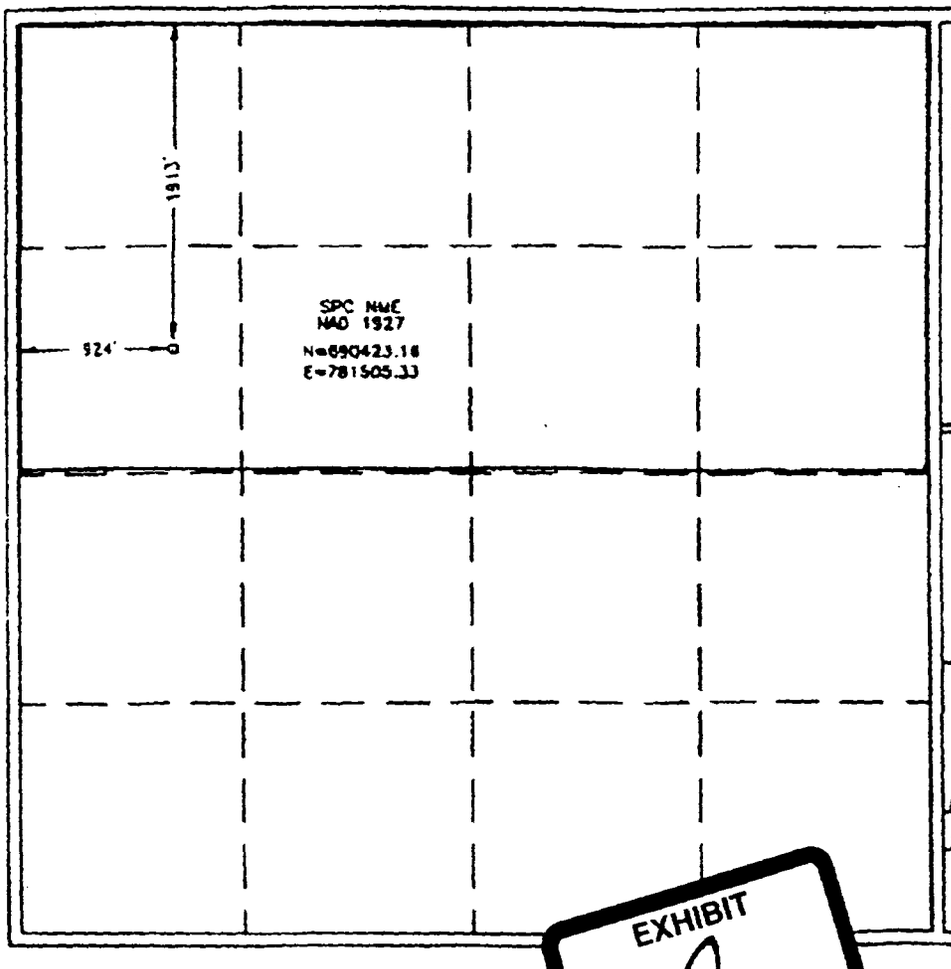
UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
E	25	16-S	35-E		1913	NORTH	924	WEST	LEA

Bottom Hole Location If Different From Surface

UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

Dedicated Acres	Joint or Infill	Consolidation Code	Order No.
320			

NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION



OPERATOR CERTIFICATION

I hereby certify the the information contained herein is true and complete to the best of my knowledge and belief.

L. M. Arnold
Signature

Lonnie Arnold
Printed Name

Production Manager
Title

8/7/01
Date

SURVEYOR CERTIFICATION

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my belief.

JULY 26, 2001

Date Surveyed AWS

Signature & Seal of Professional Surveyor

NEW MEXICO
01.11.0899
REGISTERED PROFESSIONAL

7/27/01

Certificate No. RONALD J. EIDSON 3239
GARY L. JONES 7977

EXHIBIT 7

DISTRICT I
P. O. Box 1980
Hobbs, NM 88241-1980

DISTRICT II
P. O. Drawer DD
Artesia, NM 88211-0719

DISTRICT III
1000 Rio Brazos Rd.
Aztec, NM 87410

DISTRICT IV
P. O. Box 2088
Santa Fe, NM 87504-2088

State of New Mexico
Energy, Minerals, and Natural Resources Department

Form C-102
Revised 02-10-94

Instructions on back

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OIL CONSERVATION DIVISION
P. O. Box 2088
Santa Fe, New Mexico 87504-2088

☐ AMENDED REPORT

WELL LOCATION AND ACREAGE DEDICATION PLAT

¹ API Number	² Pool Code	³ Pool Name	
30-025-35644	86390	Townsend Mississippian, North	
⁴ Property Code	⁵ Property Name		⁶ Well Number
28536	BLUE DRAKE 23		1
⁷ OGRID No.	⁸ Operator Name		⁹ Elevation
005698	DAVID H. ARRINGTON OIL & GAS COMPANY		3969'

¹⁰ SURFACE LOCATION

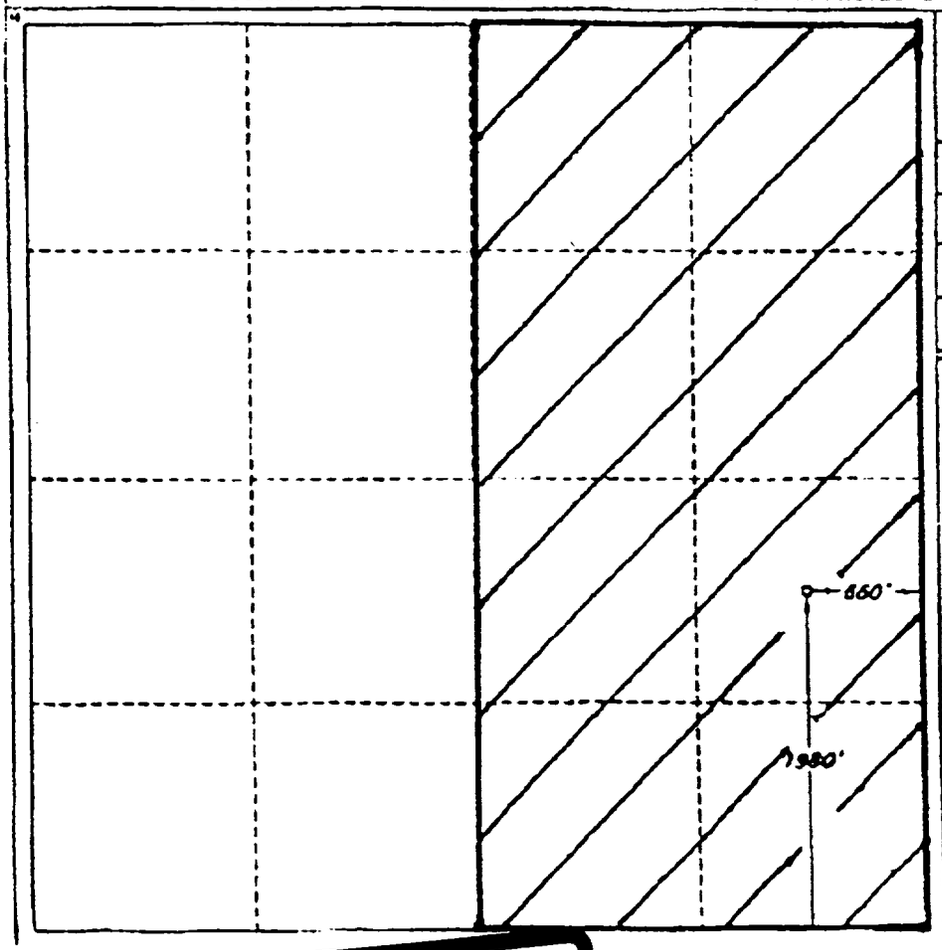
UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South Line	Feet from the	East/West Line	County
I	23	16 SOUTH	36 EAST, N.M.P.M.		1980'	SOUTH	660'	EAST	LEA

¹¹ BOTTOM HOLE LOCATION IF DIFFERENT FROM SURFACE

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South Line	Feet from the	East/West Line	County

¹² Dedicated Acres	¹³ Joint or Infill	¹⁴ Consolidation Code	¹⁵ Order No.
320			

NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION



OPERATOR CERTIFICATION

I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief.

Signature: Danny Ledford
Printed Name: Danny Ledford
Title: Geologist
Date: 7/25/01

SURVEYOR CERTIFICATION

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my belief.

Date of Survey: JULY 18, 2001
Signature and Seal of Professional Surveyor:
NEW MEXICO
V. L. BEZNER
NO. 7920
Certificate No. V. L. BEZNER NM LS #7920

EXHIBIT 2

State of New Mexico
Energy, Minerals and Natural Resources Department

Form C-10
Revised February 10, 1994
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DISTRICT II
811 South First, Artesia, NM 88210-2834

DISTRICT III
1000 Rio Brazos Rd., Aztec, NM 87410

DISTRICT IV
P.O. Box 2088, Santa Fe, N.M. 87504-2088

OIL CONSERVATION DIVISION
P.O. Box 2088
Santa Fe, New Mexico 87504-2088

WELL LOCATION AND ACREAGE DEDICATION PLAT

☐ AMENDED REPORT

API Number	Pool Code	Pool Name
30-025-35654	86390	Townsend; Mississippian, N.

Property Code	Property Name	Well Number
28580	LEAVELLE 23	1

OGRID No.	Operator Name	Elevation
036554	TMBR/SHARP DRILLING, INC.	3965'

Surface Location

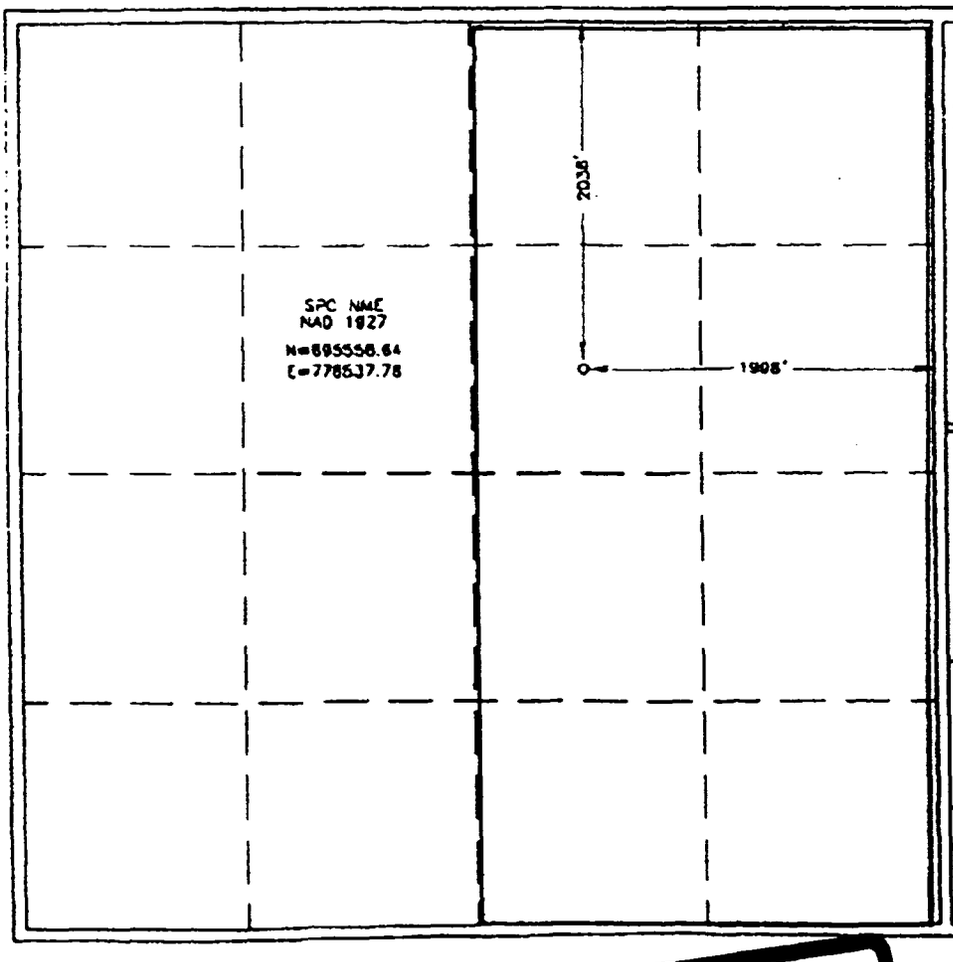
UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
G	23	16-S	35-E		2038	NORTH	1998	EAST	LEA

Bottom Hole Location If Different From Surface

UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

Dedicated Acres	Joint or Infill	Consolidation Code	Order No.
320			

NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION



OPERATOR CERTIFICATION

I hereby certify the the information contained herein is true and complete to the best of my knowledge and belief.

Signature

Lonnie Arnold
Printed Name

Production Manager
Title

8/6/01
Date

SURVEYOR CERTIFICATION

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my belief.

JULY 26, 2001
Date Surveyed AWB
Signature & Seal of Professional Surveyor

NEW MEXICO
Certificate No. RONALD J. EIDSON 3239
GARY L. JONES 7977
REGISTERED PROFESSIONAL SURVEYOR

EXHIBIT
1

District I
1625 N. French Dr., Hobbs, NM 88240
District II
811 South First, Artesia, NM 88210
District III
1000 Rio Brazos Road, Aztec, NM 87410
District IV
2040 South Pacheco, Santa Fe, NM 87505

State of New Mexico
Energy Minerals and Natural Resources

Oil Conservation Division
2040 South Pacheco
Santa Fe, NM 87505

Form C-101
Revised March 17, 1999

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☐ AMENDED REPORT

APPLICATION FOR PERMIT TO DRILL, RE-ENTER, DEEPEN, PLUGBACK, OR ADD A ZONE

[1] Operator Name and Address	[2] OGRID Number
David H. Arrington Oil & Gas, Inc P.O. Box 2071 Midland, Texas 79702	005898
	[3] API Number 30-025-35636

[4] Property Code	[5] Property Name	[6] Well No.
28458	Triple-Hackle Dragon "25"	1

[7] Surface Location

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
E	25	16S	35E		1815'	North	750'	West	Lea

[8] Proposed Bottom Hole Location If Different From Surface

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

[9] Proposed Pool 1	[10] Proposed Pool 2
Townsend Mississippian	

[11] Work Type Code	[12] Well Type Code	[13] Cable/Rotary	[14] Lease Type Code	[15] Ground Level Elevation
N	Gas	Rotary	Fee	3958'
[16] Multiple	[17] Proposed Depth	[18] Formation	[19] Contractor	[20] Spud Date
NO	13,400'	Mississippian	Patterson	ASAP

[21] Proposed Casing and Cement Program

Hole Size	Casing Size	Casing weight/foot	Setting Depth	Sacks of Cement	Estimated TOC
17 ½"	13 3/8"	54 ½#	450'	500 sxs	Circulate
11"	8 5/8"	32#	4900'	1300 sxs	Circulate
7 7/8"	5 ½"	17#	13,400'	1200 sxs	500' above uppermost pay

[22] Describe the proposed program. If this application is to DEEPEN or PLUG BACK, give the data on the present productive zone and proposed new productive zone. Describe the blowout prevention program, if any. Use additional sheets if necessary.

Set surface casing at 450'. Circulate cement to surface. Drill 11" hole to 4900'. Set 8 5/8" intermediate casing at 4900'. Circulate cement to surface. Install and test BOP's to 5000 psi. Drill 7 7/8" hole to 13,400'. DST any prospective pays. Run 5 ½" production casing through Mississippian if justified.

Permit Expires 1 Year From Approval Date Unless Drilling Underway

[23] I hereby certify that the information given above is true and complete to the best of my knowledge and belief.	OIL CONSERVATION DIVISION
Signature: Danny Ledford	Approved by: Paul F. Kautz
Printed name: Danny Ledford	Title: Geologist
Title: Geologist	Approval Date: JUL 17 2001 Expiration Date:
Date: 07/17/2001 Phone: (915) 682-6685	Conditions of Approval: Attached ☐

EXHIBIT 2

District I
1625 N. French Dr., Hobbs, NM 88240
District II
811 South First, Artesia, NM 88210
District III
1000 Rio Brazos Road, Aztec, NM 87410
District IV
2040 South Pacheco, Santa Fe, NM 87505

State of New Mexico
Energy Minerals and Natural Resources

Oil Conservation Division
2040 South Pacheco
Santa Fe, NM 87505

Form C-101
Revised March 17, 1999

Submit to appropriate District Office
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Fee Lease - 5 Copies

☐ AMENDED REPORT

APPLICATION FOR PERMIT TO DRILL, RE-ENTER, DEEPEN, PLUGBACK, OR ADD A ZONE

1 Operator Name and Address	2 OGRID Number
David H. Arrington Oil & Gas, Inc P.O. Box 2071 Midland, Texas 79702	005898 3 API Number 30-025-35636

4 Property Code	5 Property Name	6 Well No.
28458	Triple-Hackle Dragon "25"	1

7 Surface Location

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
E	25	16S	35E		1815'	North	750'	West	Lea

8 Proposed Bottom Hole Location If Different From Surface

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

9 Proposed Pool 1	10 Proposed Pool 2
Townsend Mississippian	

11 Work Type Code	12 Well Type Code	13 Cable/Rotary	14 Lease Type Code	15 Ground Level Elevation
N	Gas	Rotary	Fee	3958'
16 Multiple	17 Proposed Depth	18 Formation	19 Contractor	20 Spud Date
NO	13,400'	Mississippian	Patterson	ASAP

21 Proposed Casing and Cement Program

Hole Size	Casing Size	Casing weight/foot	Setting Depth	Sacks of Cement	Estimated TOC
17 ½"	13 3/8"	54 ½#	450'	500 sxs	Circulate
11"	8 5/8"	32#	4900'	1300 sxs	Circulate
7 7/8"	5 ½"	17#	13,400'	1200 sxs	500' above upper most pay*

22 Describe the proposed program. If this application is to DEEPEN or PLUG BACK, give the data on the present productive zone and proposed new productive zone. Describe the blowout prevention program, if any. Use additional sheets if necessary.

*UPPER MOST PAY WITHIN 1 MILE

Set surface casing at 450'. Circulate cement to surface. Drill 11" hole to 4900'. Set 8 5/8" intermediate casing at 4900'. Circulate cement to surface. Install and test BOP's to 5000 psi. Drill 7 7/8" hole to 13,400'. DST any prospective pays. Run 5 ½" production casing through Mississippian if justified.

Permit Expires 1 Year From Approval Date Unless Drilling Underway

23 I hereby certify that the information given above is true and complete to the best of my knowledge and belief.	OIL CONSERVATION DIVISION
Signature: Danny Ledford	Approved by: Orig. Signed Paul Kautz Geologist
Printed name: Danny Ledford	Title:
Title: Geologist	Approval Date: JUL 19 2001 / Expiration Date:
Date: 07/17/2001 / Phone: (915) 682-6685	Conditions of Approval: Attached ☐

DISTRICT I
P. O. Box 1980
Hobbs, NM 88241-1980

DISTRICT II
P. O. Drawer DD
Artesia, NM 88211-0719

DISTRICT III
1000 Rio Brazos Rd.
Aztec, NM 87410

DISTRICT IV
P. O. Box 2088
Santa Fe, NM 87507-2088

State of New Mexico
Energy, Minerals, and Natural Resources Department

OIL CONSERVATION DIVISION
P. O. Box 2088
Santa Fe, New Mexico 87504-2088

Form C-102
Revised 02-10-94
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Fee Lease - 3 copies

☐ AMENDED REPORT

WELL LOCATION AND ACREAGE DEDICATION PLAT

1 API Number	2 Pool Code	3 Pool Name
30-025-35636	86380	Townsend Mississippian

4 Property Code	5 Property Name	6 Well Number
28458	TRIPLE-HACKLE DRAGON 25	1

7 OGRID No.	8 Operator Name	9 Elevation
005898	DAVID H. ARRINGTON OIL & GAS COMPANY	3858'

10 SURFACE LOCATION

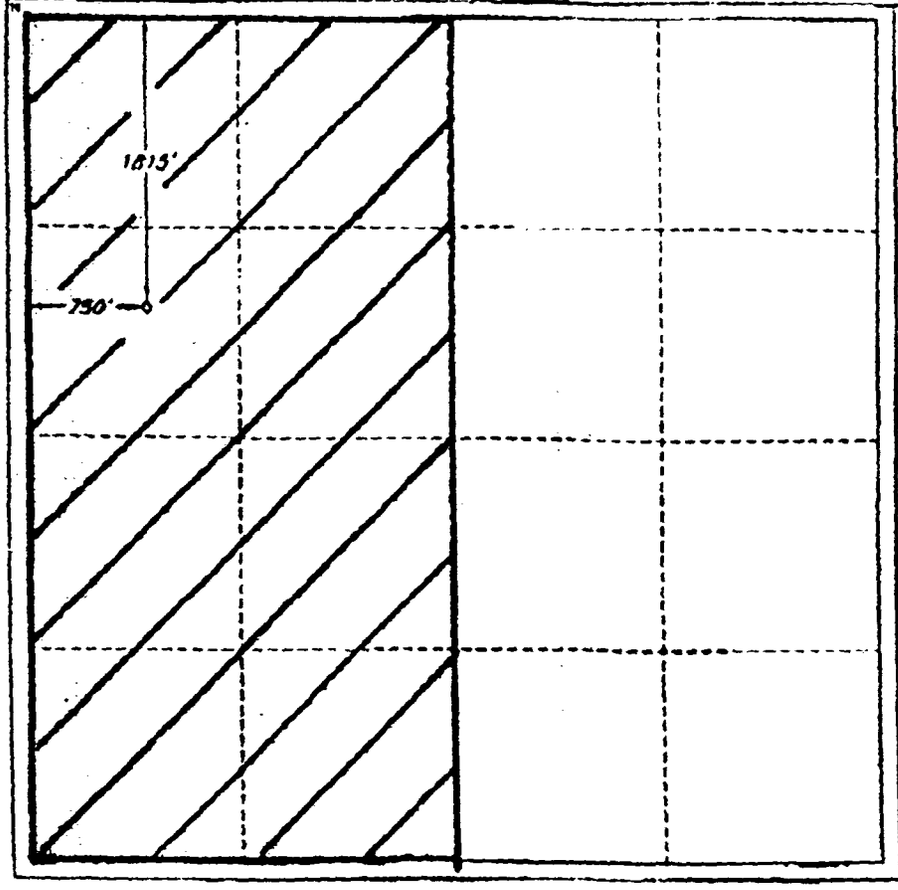
UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
E	25	16 SOUTH	35 EAST, N.M.P.M.		1815'	NORTH	760'	WEST	LEA

11 BOTTOM HOLE LOCATION IF DIFFERENT FROM SURFACE

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

12 Dedicated Acres	13 Joint or Infill	14 Consolidation Code	15 Order No.
320			

NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION



OPERATOR CERTIFICATION

I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief.

Signature: [signature]
Printed Name: Danny Ledford
Title: Geologist
Date: 7/17/01

SURVEYOR CERTIFICATION

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my belief.

Date of Survey: JULY 13, 2001
Signature & Seal of Professional Surveyor: STATE OF NEW MEXICO V. LYNN BEDNER NO. 7920
Certificate No. 7920

JOB [illegible] / J.C.P.

District I
1625 N. French Dr., Hobbs, NM 88240
District II
811 South First Artesia, NM 88210
District III
1000 Rio Brazos Road, Aztec, NM 87410
District IV
2040 South Pacheco, Santa Fe, NM 87505

State of New Mexico
Energy Minerals and Natural Resources

Oil Conservation Division
2040 South Pacheco
Santa Fe, NM 87505

Form C-101
Revised March 17, 1999

Submit to appropriate District Office
State Lease - 6 Copies
Fee Lease - 5 Copies

☐ AMENDED REPORT

APPLICATION FOR PERMIT TO DRILL, RE-ENTER, DEEPEN, PLUGBACK, OR ADD A ZONE

[1] Operator Name and Address	[2] OGRID Number
David H. Arrington Oil & Gas, Inc P.O. Box 2071 Midland, Texas 79702	005898 [3] API Number 30-025-35644

[4] Property Code	[5] Property Name	[6] Well No.
28536	Blue Drake "23"	1

[7] Surface Location

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
I	23	16S	35E		1980'	South	660'	~~West~~ East	Lea

[8] Proposed Bottom Hole Location If Different From Surface

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

[9] Proposed Pool 1	[10] Proposed Pool 2
Townsend Mississippian, north	

[11] Work Type Code	[12] Well Type Code	[13] Cable/Rotary	[14] Lease Type Code	[15] Ground Level Elevation
N	Gas	Rotary	Fee	3959'
[16] Multiple	[17] Proposed Depth	[18] Formation	[19] Contractor	[20] Spud Date
NO	13,400'	Mississippian	Patterson	ASAP

[21] Proposed Casing and Cement Program

Hole Size	Casing Size	Casing weight/foot	Setting Depth	Sacks of Cement	Estimated TOC
17 ½"	13 3/8"	54 ½#	450'	500 sxs	Circulate
11"	8 5/8"	32#	4900'	1300 sxs	Circulate
7 7/8"	5 ½"	17#	13,400'	1200 sxs	500' above
					upper most pay *

[22] Describe the proposed program. If this application is to DEEPEN or PLUG BACK, give the data on the present productive zone and proposed new productive zone. Describe the blowout prevention program, if any. Use additional sheets if necessary.

* upper most pay within 1 mile

Set surface casing at 450'. Circulate cement to surface. Drill 11" hole to 4900'. Set 8 5/8" intermediate casing at 4900'. Circulate cement to surface. Install and test BOP's to 5000 psi. Drill 7 7/8" hole to 13,400'. DST any prospective pays. Run 5 ½" production casing through Mississippian if justified.

Permit Expires 1 Year From Approval Date Unless Drilling Underway

[23] I hereby certify that the information given above is true and complete to the best of my knowledge and belief.

Signature: D. Ledford
Printed name: Danny Ledford
Title: Geologist
Date: 07/25/2001 Phone: (915) 682-6685

OIL CONSERVATION DIVISION

Approved by: Orig. Signed by Paul Kautz
Title: Geologist
Approval Date: JUL 30 2001 Expiration Date:
Conditions of Approval:
Attached ☐

EXHIBIT 3

DISTRICT I
P. O. Box 1980
Hobbs, NM 88241-1980

DISTRICT II
P. O. Drawer DD
Artesia, NM 88211-0719

DISTRICT III
1000 Rio Brazos Rd.
Aztec, NM 87410

DISTRICT IV
P. O. Box 2088
Santa Fe, NM 87504-2088

State of New Mexico
Energy, Minerals, and Natural Resources Department

Form C-102
Revised 02-10-94
Instructions on back
Submit to the Appropriate District Office
State Lease - 4 copies
Fee Lease - 3 copies

OIL CONSERVATION DIVISION
P. O. Box 2088
Santa Fe, New Mexico 87504-2088

☐ AMENDED REPORT

WELL LOCATION AND ACREAGE DEDICATION PLAT

1 API Number	2 Pool Code	3 Pool Name
30-025-35644	86390	Townsend Mississippian, North

4 Property Code	5 Property Name	6 Well Number
28536	BLUE DRAKE 23	1

7 OGRID No.	8 Operator Name	9 Elevation
005698	DAVID H. ARRINGTON OIL & GAS COMPANY	3969'

10 SURFACE LOCATION

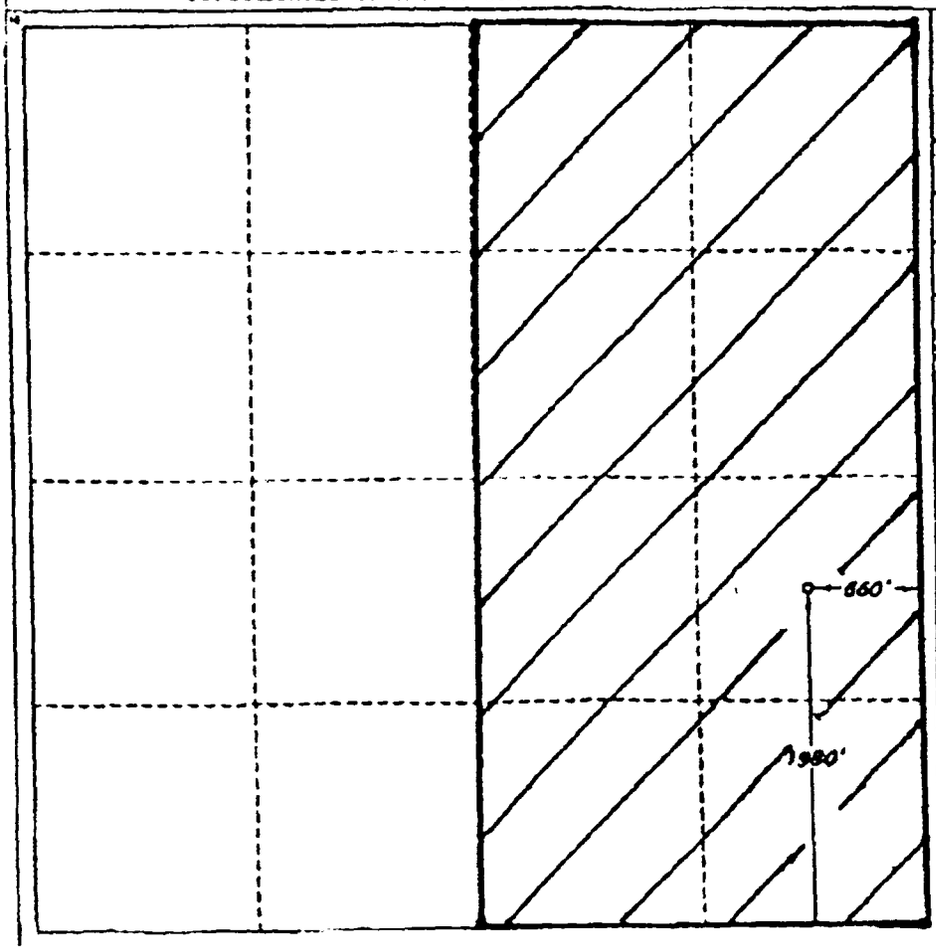
UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
I	23	16 SOUTH	35 EAST, N.M.P.M.		1980'	SOUTH	660'	EAST	LEA

11 BOTTOM HOLE LOCATION IF DIFFERENT FROM SURFACE

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

12 Dedicated Acres	13 Joint or Infill	14 Consolidation Code	15 Order No.
320			

NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION



OPERATOR CERTIFICATION

I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief.

Signature: D. Ledford
Printed Name: Danny Ledford
Title: Geologist
Date: 7/25/01

SURVEYOR CERTIFICATION

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my belief.

Date of Survey: JULY 19, 2001
Signature and Seal of Professional Surveyor:
NEW MEXICO BEZNER NO. 7920
Certificate No. V. L. BEZNER 7920

NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

GARY E. JOHNSON
Governor
Jennifer A. Salisbury
Cabinet Secretary

Lori Wrotenbery
Director
Oil Conservation Division

August 8, 2001

Jeff Phillips
TMBR/Sharp Drilling, Inc.
PO Drawer 10970
Midland, TX 79702

RE: 1) Application to drill TMBR/Sharp Drilling, Inc., Blue Fin 25 # 1, located in E-25,T16S,R35E 1913 FNL and 924 FWL, API number 30-025-35653
2) Voiding API Number 30-025-35653

Dear Mr. Jeff Phillips

We can not approve Form C-101 Application for permit to drill the above well do to the overlapping of the dedicated acreage in the NW/4 of Sec 25, T16s, R35E. The proposed completion interval for this application was a Wildcat;Mississippian (Gas) pool, with the N/2 of Sec 25, T16S, R35E comprising 320 acres dedicated to this well. On July 19, 2001 the Oil Conservation Division office in Hobbs approved an application to drill a well from David H Arrington Oil & Gas, Inc. This well was the David H Arrington Oil & Gas, Inc., Triple-Hackle Dragon 25 # 1, located in E-25,T16S,R35E 1815 FNL and 750 FWL and dedicated to this well was the W/2 of Sec 25, T16S, R35E comprising 320 acres for the proposed completion as a Wildcat;Mississippian (Gas) pool. Therefor API number 30-025-35653 is here by voided.

Since TMBR/Sharp Drilling believes that they are the only operator with the rights to drill this well, it is suggested that they take this mater up with David Arrington Oil & Gas Inc.

Yours very truly,

OIL CONSERVATION DIVISION

Chris Williams (MK)
Chris Williams
District I. Supervisor

PFK

Oil Conservation Division • 1625 French Drive • Hobbs, New Mexico 88240
Phone: (505) 393-6161 • Fax (505) 393-0720 • http://www.emnrd.state.nm.us

EXHIBIT 4

District I
PO Box 1980, Hobbs, NM 88241-1980
District II
811 South First, Artesia, NM 88210
District III
1000 Rio Brazos Rd., Aztec, NM 87410
District IV
2040 South Pacheco, Santa Fe, NM 87505

State of New Mexico
Energy, Minerals & Natural Resources Department

OIL CONSERVATION DIVISION
2040 South Pacheco
Santa Fe, NM 87505

Form C-101
Revised October 18, 1994
Instructions on back
Submit to Appropriate District Office
State Lease - 6 Copies
Fee Lease - 5 Copies

☐ AMENDED REPORT

APPLICATION FOR PERMIT TO DRILL, RE-ENTER, DEEPEN, PLUGBACK, OR ADD A ZONE

1 Operator Name and Address	2 OGRID Number
TMBR/Sharp Drilling, Inc. P. O. Drawer 10970 Midland, TX 79702	036554
	3 API Number 30-025-35653

4 Property Code	5 Property Name	6 Well No.
28579	Blue Fin "25"	1

7 Surface Location

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
E	25	16S	35E		1913	North	924	West	Lea

8 Proposed Bottom Hole Location If Different From Surface

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

9 Proposed Pool 1	10 Proposed Pool 2
Townsend; Mississippian, N.	Townsend; Morrow

11 Work Type Code	12 Well Type Code	13 Cable/Rotary	14 Lease Type Code	15 Ground Level Elevation
N	G	R	P	3959
16 Multiple	**17 Proposed Depth**	**18 Formation**	**19 Contractor**	**20 Spud Date**
No	13,200'	Mississippian	TMBR/Sharp	9/01/01

21 Proposed Casing and Cement Program

Hole Size	Casing Size	Casing weight/foot	Setting Depth	Sacks of Cement	Estimated TOC
17½	13⅜	54.5	420	500	Surface
12¼	9⅝	40	5,000	1800	Surface
8¾	7	23 & 26	12,000	1000	5,000
6¼	4½	11.6	13,200	135	11,900

22 Describe the proposed program. If this application is to DEEPEN or PLUG BACK give the data on the present productive zone and proposed new productive zone. Describe the blowout prevention program, if any. Use additional sheets if necessary.

It is proposed to drill a 17½" hole to ±420' with fresh water & set 13⅜" csg & cement to surface. A 12¼" intermediate hole will be drilled to ±5000' with cut-brine system & 9⅝" csg will be set & cemented back to surface. A 3000 psi annular preventer & 3000 psi dual ram BOP will be used on the intermediate hole. An 8¾" hole will be drilled to a TD of ±12,000' with FW mud where 7" csg will be set at TD & cemented back to the intermediate csg @ 5000'. We will drill a 6¼" hole to TD of ±13,200'. We plan to run a 4½" liner to TD with top of liner @ 11,900' & cement w/135 sacks. A 3000 psi annular preventer & a 5000 psi double ram BOP will be used on the 8¾" & 6¼" hole. Mud up will occur between 9000' & 10,000' & several DST's are planned.

23 I hereby certify that the information given above is true and complete to the best of my knowledge and belief.	OIL CONSERVATION DIVISION	
Signature: K. A. Arnold	Approved by:	
Printed name: Leonie Arnold	Title:	
Title: Production Manager	Approval Date:	Expiration Date:
Date: August 6, 2001 Phone: (915) 699-3856	Conditions of Approval: Attached ☐	

Permit Expires 1 Year From Approval Date Unless Drilling Underway

State of New Mexico
Energy, Minerals and Natural Resources Department

Form C-102
Revised February 10, 1994
Submit to Appropriate District Office
State Lease - 4 Copies
Fee Lease - 3 Copies

DISTRICT I
P.O. Box 1980, Hobbs, NM 88241-1980

DISTRICT II
P.O. Drawer DD, Artesia, NM 88211-0719

DISTRICT III
1000 Rio Brazos Rd., Aztec, NM 87410

DISTRICT IV
P.O. BOX 2088, SANTA FE, N.M. 87504-2088

OIL CONSERVATION DIVISION
P.O. Box 2088
Santa Fe, New Mexico 87504-2088

WELL LOCATION AND ACREAGE DEDICATION PLAT

☐ AMENDED REPORT

API Number	Pool Code	Pool Name
30-025-35653	86390	Townsend; Mississippian, N.

Property Code	Property Name	Well Number
28579	BLUEFIN 25	1

OGRID No.	Operator Name	Elevation
036554	TMBR/SHARP DRILLING, INC.	3959'

Surface Location

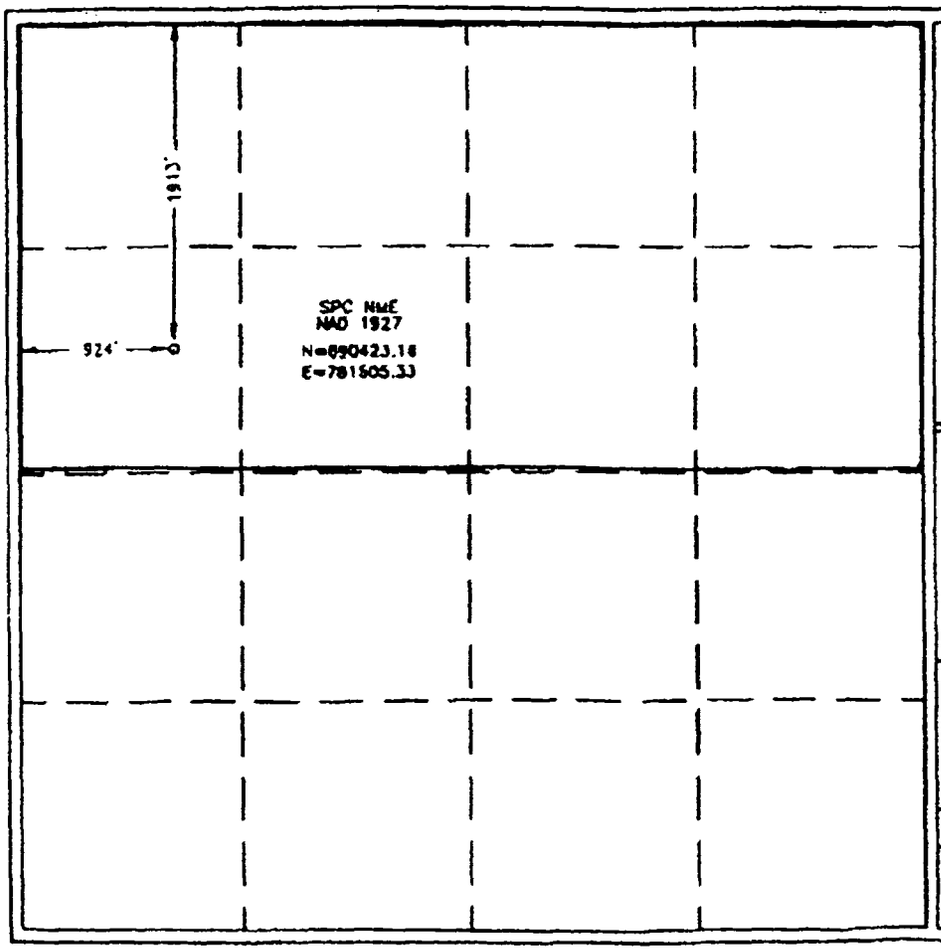
UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
E	25	16-S	35-E		1913	NORTH	924	WEST	LEA

Bottom Hole Location If Different From Surface

UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

Dedicated Acres	Joint or Infill	Consolidation Code	Order No.
320			

NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION



OPERATOR CERTIFICATION

I hereby certify the the information contained herein is true and complete to the best of my knowledge and belief.

L. N. Arnold
Signature

Lonnie Arnold
Printed Name

Production Manager
Title

8/7/01
Date

SURVEYOR CERTIFICATION

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my belief.

JULY 26, 2001

Date Surveyed AWB

Signature & Seal of Professional Surveyor

NEW MEXICO
01.11.0899
REGISTERED PROFESSIONAL SURVEYOR

7/27/01

Certificate No. RONALD J. EIDSON 3239
GARY L. JONES 7977

NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

GARY E. JOHNSON
Governor
Jennifer A. Salisbury
Cabinet Secretary

Lori Wrotenbery
Director
Oil Conservation Division

August 8, 2001

Jeff Phillips
TMBR/Sharp Drilling, Inc.
PO Drawer 10970
Midland, TX 79702

RE: 1) Application to drill TMBR/Sharp Drilling, Inc., BEAVELLE 23 # 1, located in G-23,T16S,R35E 2038 FNL and 1998 FEL, API number 30-025-35654
2) Voiding API Number 30-025-35654

Dear Mr. Jeff Phillips

We can not approve Form C-101 Application for permit to drill the above well do to the overlapping of the dedicated acreage in the E/2 of Sec 23, T16s, R35E. The proposed completion interval for this application was the Townsend;Mississippian, North (Gas) pool, with the E/2 of Sec 23, T16S, R35E comprising 320 acres dedicated to this well. On July 30, 2001 the Oil Conservation Division office in Hobbs approved an application to drill a well from David H Arrington Oil & Gas, Inc. This well was the David H Arrington Oil & Gas, Inc., Blue Drake 23 # 1, located in I-23,T16S,R35E , 1980 FSL and 660 FEL and dedicated to this well was the E/2 of Sec 23, T16S, R35E comprising 320 acres for the proposed completion in the Townsend;Mississippian, North (Gas) pool. Therefor API number 30-025-35654 is here by voided.

Since TMBR/Sharp Drilling believes that they are the only operator with the rights to drill this well, it is suggested that they take this mater up with David Arrington Oil & Gas Inc.

Yours very truly,

OIL CONSERVATION DIVISION

Chris Williams (FAX)
Chris Williams
District I Supervisor

PFK

EXHIBIT 5

District I
PO Box 1980, Hobbs, NM 88241-1980
District II
811 South First, Artesia, NM 88210
District III
1000 Rio Brazos Rd., Aztec, NM 87410
District IV
2040 South Pacheco, Santa Fe, NM 87505

State of New Mexico
Energy, Minerals & Natural Resources Department

OIL CONSERVATION DIVISION
2040 South Pacheco
Santa Fe, NM 87505

Form C-101
Revised October 18, 1994
Instructions on back
Submit to Appropriate District Office
State Lease - 6 Copies
Fee Lease - 5 Copies

☐ AMENDED REPORT

APPLICATION FOR PERMIT TO DRILL, RE-ENTER, DEEPEN, PLUGBACK, OR ADD A ZONE

1 Operator Name and Address	2 OGRID Number
TMBR/Sharp Drilling, Inc. P. O. Drawer 10970 Midland, TX 79702	036554
	3 API Number 30-025-35654

4 Property Code	5 Property Name	6 Well No.
28580	Leavelle "23"	1

7 Surface Location

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
G	23	16S	35E		2038	North	1998	East	Lea

8 Proposed Bottom Hole Location If Different From Surface

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

9 Proposed Pool 1	10 Proposed Pool 2
Townsend; Mississippian, N.	Townsend; Morrow

11 Work Type Code	12 Well Type Code	13 Cable/Rotary	14 Lease Type Code	15 Ground Level Elevation
N	G	R	P	3965
16 Multiple	**17 Proposed Depth**	**18 Formation**	**19 Contractor**	**20 Spud Date**
No	13,200'	Mississippian	TMBR/Sharp	9/01/01

21 Proposed Casing and Cement Program

Hole Size	Casing Size	Casing weight/foot	Setting Depth	Sacks of Cement	Estimated TOC
17½	13⅜	54.5	420	500	Surface
12¼	9⅝	40	5,000	1800	Surface
8¾	7	23 & 26	12,000	1000	5,000
6¼	4½	11.6	13,200	135	11,900

22 Describe the proposed program. If this application is to DEEPEN or PLUG BACK give the data on the present productive zone and proposed new productive zone. Describe the blowout prevention program, if any. Use additional sheets if necessary.

It is proposed to drill a 17½" hole to ±420' with fresh water & set 13⅜" csg & cement to surface. A 12¼" intermediate hole will be drilled to ±5000' with cut-brine system & 9⅝" csg will be set & cemented back to surface. A 3000 psi annular preventer & 3000 psi dual ram BOP will be used on the intermediate hole. An 8¾" hole will be drilled to a TD of ±12,000' with FW mud where 7" csg will be set at TD & cemented back to the intermediate csg @ 5000'. We will drill a 6¼" hole to TD of ±13,200'. We plan to run a 4½" liner to TD with top of liner @ 11,900' & cement w/135 sacks. A 3000 psi annular preventer & a 5000 psi double ram BOP will be used on the 8¾" & 6¼" hole. Mud up will occur between 9000' & 10,000' & several DST's are planned.

23 I hereby certify that the information given above is true and complete to the best of my knowledge and belief.	OIL CONSERVATION DIVISION
Signature: L N. Arnold	Approved by:
Printed name: Lonnie Arnold	Title:
Title: Production Manager	Approval Date: / Expiration Date:
Date: August 6, 2001 / Phone: (915) 699-5050	Conditions of Approval: Attached ☐

Permit Expires 1 Year From Approval Date Unless Drilling Underway

State of New Mexico
Energy, Minerals and Natural Resources Department

DISTRICT II
811 South First, Artesia, NM 88211-0719

DISTRICT III
1000 Rio Brazos Rd., Aztec, NM 87410

DISTRICT IV
P.O. Box 2088, Santa Fe, NM 87504-2088

OIL CONSERVATION DIVISION
P.O. Box 2088
Santa Fe, New Mexico 87504-2088

Form C-102
Revised February 10, 1994
Submit to Appropriate District Office
State Lease - 4 Copies
Fee Lease - 3 Copies

WELL LOCATION AND ACREAGE DEDICATION PLAT

☐ AMENDED REPORT

API Number	Pool Code	Pool Name
30-025-35654	86390	Townsend; Mississippian, N.

Property Code	Property Name	Well Number
28580	LEAVELLE 23	1

OGRID No.	Operator Name	Elevation
036554	TMBR/SHARP DRILLING, INC.	3965'

Surface Location

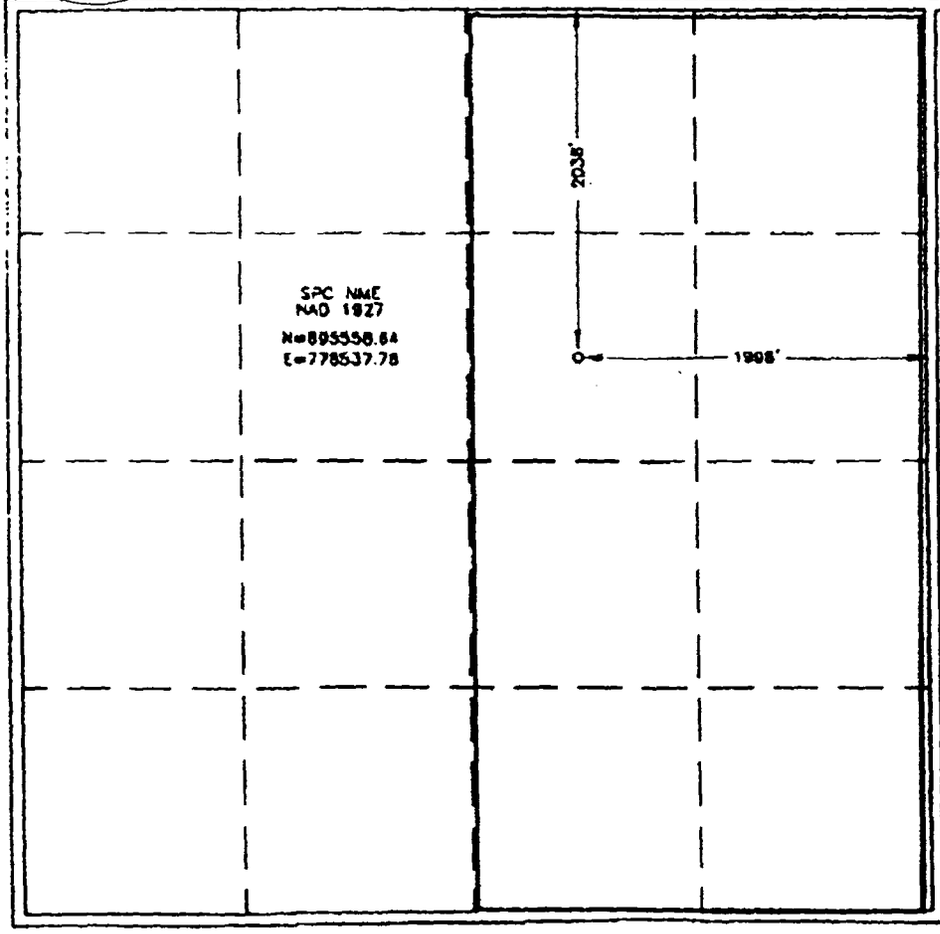
UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
G	23	16-S	35-E		2038	NORTH	1998	EAST	LEA

Bottom Hole Location If Different From Surface

UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

Dedicated Acres	Joint or Infill	Consolidation Code	Order No.
320			

NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION



OPERATOR CERTIFICATION

I hereby certify the the information contained herein is true and complete to the best of my knowledge and belief.

Signature

Lonnie Arnold
Printed Name

Production Manager
Title

8/6/01
Date

SURVEYOR CERTIFICATION

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my belief.

JULY 26, 2001

Date Surveyed AWS

Signature & Seal of Professional Surveyor

NEW MEXICO
REGISTERED PROFESSIONAL
11,11,09000

8/22/01

Certificate No. RONALD J. EIDSON 3239
GARY L. JONES 7977

EXHIBIT 6

Producer's 88-Paid-up

14263

OIL & GAS LEASE

THIS AGREEMENT made this August 25, 1997, but effective December 7, 1997, between Madeline Stokes, dealing in her sole and separate property, whose address is P.O. Box 1115, Ozona, Texas 76943, herein called lessor (whether one or more) and lessee: **AMERISTATE OIL & GAS, INC., 1211 WEST TEXAS STREET, MIDLAND, TEXAS 79701.**

1. Lessor, in consideration of TEN AND 00/100ths DOLLARS cash in hand paid, receipt and sufficiency of which is hereby acknowledged, and of the royalties herein provided and of the agreements of the lessee herein contained, hereby grants, leases and lets exclusively unto lessee for the purpose of investigating, exploring, prospecting, drilling, and operating for and producing oil and gas, injecting gas, waters, other fluids, and air into subsurface strata, laying pipe lines, storing oil, building tanks, roadways, telephone lines, and other structures and things thereon to produce, save, take care of, treat, process, store and transport said minerals, the following described land in **Lea County, New Mexico**, to wit:

<u>Township 16 South, Range 35 East, NMPM</u>
Section 13: SE¼
Section 23: SE¼
Section 24: NW¼SW¼, NW¼NE¼
Section 25: NW¼
Section 26: NE¼

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Said land is estimated to comprise **720.00** acres, whether it actually comprises more or less.

2. Subject to the other provisions herein contained, this lease shall remain in force for a term of three (3) years from December 7, 1997 (called "primary term"), and as long thereafter as oil or gas is produced from said land or from land with which said land is pooled.

3. The royalties to be paid by lessee are: (a) on oil, and other liquid hydrocarbons saved at the well, 3/16 of that produced and saved from said land, same to be delivered at the wells or to the credit of lessor in the pipeline to which the wells may be connected; (b) on gas, including casinghead gas or other gaseous substance produced from said land and sold off the premises or used in the manufacture of gasoline or other products, the market value at the well of 3/16 of the gas used, provided that on gas sold on or off the premises, the royalties shall be 3/16 of the amount realized from such sale; (c) and at any time when this lease is not validated by other provisions hereof and there is a gas and/or condensate well on said land, or land pooled therewith, but gas or condensate is not being so sold or used and such well is shut-in, either before or after production therefrom, then on or before 180 days after said well is shut in, and thereafter at annual intervals, lessee may pay or tender an advance shut-in royalty equal to $1.00 per net acre of lessee's gas acreage then held under this lease by the party making such payment or tender, and so long as said shut-in royalty is paid or tendered, this lease shall not terminate and it shall be considered under all clauses hereof that gas is being produced from the leased premises in paying quantities. Each such payment shall be paid or tendered to the party or parties who at the time of such payment would be entitled to receive the royalties which would be paid under this lease if the well were in fact producing. The payment or tender of royalties and shut-in royalties may be made by check or draft. Any timely payment or tender of shut-in royalty which is made in a bona fide attempt to make proper payment, but which is erroneous in whole or in part as to parties or amounts, shall nevertheless be sufficient to prevent termination of this lease in the same manner as though a proper payment had been made if lessee shall correct such error within 90 days after lessee has received written notice thereof by certified mail from the party or parties entitled to receive payment together with such written instruments (or certified copies thereof) as are necessary to enable lessee to make proper payment. The amount realized from the sale of gas on or off the premises shall be the price established by the gas sales contract entered into in good faith by lessee and gas purchaser for such term and under such conditions as are customary in the industry. "Price" shall mean the net amount received by lessee after giving effect to applicable regulatory orders and after application of any applicable price adjustments specified in such contract or regulatory orders.

4. This is a paid-up lease and lessee shall not be obligated during the primary term hereof to commence or continue any operations of whatsoever character or to make any payments hereunder in order to maintain this lease in force during the primary term; however, this provision is not intended to relieve lessee of the obligation to pay royalties on actual production pursuant to the provisions of Paragraph 3 hereof.

5. Lessee is hereby granted the right and power, from time to time, to pool or combine this lease, the land covered by it or any part or horizon thereof with any other land, leases, mineral estates or parts thereof for the production of oil or gas. Units pooled hereunder shall not exceed the standard proration unit fixed by law or by the Oil Conservation Division of the Energy and Minerals Department of the State of New Mexico or by any other lawful authority for the pool or area in which said land is situated, plus a tolerance of ten percent. Lessee shall file written unit designations in the county in which the premises are located and such units may be designated from time to time and either before or after the completion of wells. Drilling operations on or production from any part of any such unit shall be considered for all purposes, except the payment of royalty, as operations conducted upon or production from the land described in this lease. There shall be allocated to the land covered by this lease included in any such unit that portion of the total production of pooled minerals from wells in the unit, after deducting any used in lease or unit operations, which the net oil or gas acreage in the land covered by this lease included in the unit bears to the total number of surface acres in the unit. The production so allocated shall be considered for all purposes, including the payment or delivery of royalty, to be the entire production of pooled minerals from the portion of said land covered hereby and included in said unit in the same manner as though produced from said land under the terms of this lease. Any pooled unit designated by lessee, as provided herein, may be dissolved by lessee by recording an appropriate instrument in the county where the land is situated at any time after the completion of a dry hole or the cessation of production on said unit.

6. If at the expiration of the primary term there is no well upon said land capable of producing oil or gas, but lessee has commenced operations for drilling or reworking thereon, this lease shall remain in force so long as operations are prosecuted with no cessation of more than 180 consecutive days, whether such operations be on the same well or on a different or additional well or wells, and if they result in the production of oil or gas, so long thereafter as oil or gas is produced from said land. If after the expiration of the primary term, all wells upon said land should become incapable of producing for any cause, this lease shall not terminate if lessee commences operations for additional drilling or for reworking within 180 days thereafter. If any drilling, additional drilling, or reworking operations hereunder result in production, then this lease shall remain in full force so long thereafter as oil or gas is produced hereunder.

7. Lessee shall have free use of oil, gas and water from said land, except water from lessor's wells and tanks, for all operations hereunder, and the royalty shall be computed after deducting any so used. Lessee shall have the right at any time during or after the expiration of this lease to remove all property and fixtures placed by lessee on said land, including the right to draw and remove all casing. When required by lessor, lessee will bury all pipe lines on cultivated lands below ordinary plow depth, and no well shall be drilled within two hundred feet (200 ft.) of any residence or barn now on said land without lessor's consent. Lessor shall have the privilege, at his risk and expense, of using gas from any gas well on said land for stoves and inside lights in the principal dwelling thereon, out of any surplus gas not needed for operations hereunder.

8. The rights of either party hereunder may be assigned in whole or in part and the provisions hereof shall extend to their heirs, executors, administrators, successors and assigns; but no change in the ownership of the land or in the ownership of, or rights to receive, royalties or shut-in royalties, however accomplished, shall operate to enlarge the obligations or diminish the rights of lessee, and no such change or division shall be binding upon lessee for any purpose until 90 days after lessee has been furnished by certified mail at lessee's principal place of business with acceptable instruments or certified copies thereof constituting the chain of title from the original lessor. If any such change in ownership occurs through the death of the owner, lessee may, at its option, pay or tender any royalties or shut-in royalties in the name of the deceased or to his estate or to his heirs, executor or administrator until such time as lessee has been furnished with evidence satisfactory to lessee as to the persons entitled to such sums. An assignment of this lease in whole or in part shall, to the extent of such assignment, relieve and discharge lessee of any obligations hereunder and, if lessee or assignee of part or parts hereof shall fail or make default in the payment of the proportionate part of royalty or shut-in royalty due from such lessee or assignee or fail to comply with any of the provisions of this lease, such default shall not affect this lease insofar as it covers a part of said lands upon which lessee or any assignee thereof shall properly comply or make such payments.

9. Should lessee be prevented from complying with any express or implied covenant of this lease, or from conducting drilling or reworking operations hereunder, or from producing oil or gas hereunder by reason of scarcity or inability to obtain or use equipment or material, or by operation of force majeure, or by any federal or state law or any order, rule or regulation of governmental authority, then while so prevented, lessee's duty shall be suspended, and lessee shall not be liable for failure to comply therewith, and this lease shall be extended while and so long as lessee is prevented by any such cause from conducting drilling or reworking operations or from producing oil or gas hereunder, and the time while lessee is so prevented shall not be counted against lessee, anything in this lease to the contrary notwithstanding.

10. Lessor hereby warrants and agrees to defend the title to said land and agrees that lessee at its option may discharge any tax, mortgage or other lien upon said land, and in the event lessee does so it shall be subrogated to such lien with the right to enforce same and to apply royalties and shut-in royalties payable hereunder toward satisfying same. Without impairment of lessee's rights under the warranty, if this lease covers a less interest in the oil or gas in all or any part of said land than the entire and undivided fee simple estate (whether lessor's interest is herein specified or not) then the royalties, shut-in royalty, and other payments, if any, accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. Should any one or more of the parties named above as lessors fail to execute this lease, it shall nevertheless be binding upon the party or parties executing the same.

11. Lessee, its or his successors, heirs and assigns, shall have the right at any time to surrender this lease, as whole or in part, to lessor or his heirs, successors, and assigns by delivering or mailing a release thereof to the lessor, or by placing a release thereof of record in the county in which said land is situated, thereupon lessee shall be released from all obligations, expressed or implied, of this agreement as to acreage so surrendered, and thereafter the shut-in royalty payable hereunder shall be reduced in the proportion that the acreage covered hereby is reduced by said release or releases.

Madeline Stokes

STATE OF TEXAS)
) ss.
COUNTY OF Crockett)

This instrument was acknowledged before me on the 4th day of September, 1997, by Madeline Stokes, dealing in her sole and separate property.

Sarah Stewart Sarah Stewart
Notary Public

My commission expires: 03-29-01

EXHIBIT "A"

Attached to and made a part of that certain oil and gas lease dated August 25, 1997, but effective December 7, 1997, by and between Madeline Stokes, lessor, and Ameristate Oil & Gas, Inc., lessee

12. Notwithstanding anything contained hereinabove to the contrary, it is understood and agreed that at the expiration of the primary term, this lease shall terminate as to all lands covered hereby not included in or otherwise allocated to a "well unit" as hereinafter defined, unless lessee is producing oil, gas or other hydrocarbons from any well on the leased premises, or lands pooled therewith, or is drilling upon said lands across the expiration of the primary term as provided for in the body of this lease, and does not allow more than 180 days to elapse between the completion or abandonment of one well on such land and the commencement of another well thereon until the leased premises have been "fully developed," as hereinafter defined. Operations for drilling of the first such development well must be commenced (a) within 180 days after the expiration of the primary term if production is established under this lease prior to the expiration of the primary term, or (b) within 180 days of completion of the well which is being drilled, tested or completed across the expiration of the primary term. Should lessee fail to timely commence a well in accordance with aforesaid 180 days continuous drilling or development prior to the point in time the leased premises have fully developed then this lease shall terminate as to all lands not included in or otherwise allocated to a well unit. For the purpose hereof, the term "well unit" shall mean the proration or spacing unit created for a well capable of producing oil and/or gas or other hydrocarbons in paying quantities as in accordance with the applicable rules and regulations of the New Mexico Oil Conservation Division or other governmental authority having jurisdiction, and the term "fully developed" shall mean the point in time when the entirety of the leased premises has been included in a well unit or units as defined. The date of completion of a well shall be the date of a potential test if a producing well and the date of plugging if a dry hole or abandoned well. At the end of the continuous drilling program, if any, this lease will automatically terminate as to all lands covered hereby which have not been so fully developed and as to lands so fully developed shall terminate as to all depths lying more than 100' below the total depth drilled.

13. Payment of shut-in gas well royalties will not be permitted to maintain this lease in force for any period longer than two consecutive years, without the written consent of Lessor

Signed for identification purposes:

Madeline Stokes

Madeline Stokes

14263

COUNTY CLERK ... LEA COUNTY, NEW MEXICO

STATE OF NEW MEXICO
COUNTY OF LEA
FILED

OCT 1 1997

at 11:19 o'clock A M
and recorded in Book
Page
Pat Chappelle, Lea County Clerk
By Deputy

Produce: s 88-Paid-up

14262

OIL & GAS LEASE

THIS AGREEMENT made this August 25, 1997, but effective December 7, 1997, between Erma Stokes Hamilton, dealing in her sole and separate property, whose address is P.O. Box 1570, Big Spring, Texas 79721, herein called lessor (whether one or more) and lessee AMERISTATE OIL & GAS, INC., 1211 WEST TEXAS STREET, MIDLAND, TEXAS 79701.

1. Lessor, in consideration of TEN AND 00/100ths DOLLARS cash in hand paid, receipt and sufficiency of which is hereby acknowledged, and of the royalties herein provided and of the agreements of the lessee herein contained, hereby grants, leases and lets exclusively unto lessee for the purpose of investigating, exploring, prospecting, drilling, and operating for and producing oil and gas, injecting gas, waters, other fluids, and air into subsurface strata, laying pipe lines, storing oil, building tanks, roadways, telephone lines, and other structures and things thereon to produce, save, take care of, treat, process, store and transport said minerals, the following described land in Lea County, New Mexico, to wit:

Township 16 South, Range 35 East, NMPM
Section 13: SE¼
Section 23: SE¼
Section 24: NW¼SW¼, NW¼NE¼
Section 25: NW¼
Section 26: NE¼

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Said land is estimated to comprise 720.00 acres, whether it actually comprises more or less.

2. Subject to the other provisions herein contained, this lease shall remain in force for a term of three (3) years from December 7, 1997, (called "primary term"), and as long thereafter as oil or gas is produced from said land or from land with which said land is pooled.

3. The royalties to be paid by lessee are: (a) on oil, and other liquid hydrocarbons saved at the well, 3/16 of that produced and saved from said land, same to be delivered at the wells or to the credit of lessor in the pipeline to which the wells may be connected; (b) on gas, including casinghead gas or other gaseous substance produced from said land and used off the premises or used in the manufacture of gasoline or other products, the market value at the well of 3/16 of the gas used, provided that on gas sold on or off the premises, the royalties shall be 3/16 of the amount realized from such sale; (c) and at any time when this lease is not validated by other provisions hereof and there is a gas and/or condensate well on said land, or land pooled therewith, but gas or condensate is not being so sold or used and such well is shut-in, either before or after production therefrom, then on or before 180 days after said well is shut in, and thereafter at annual intervals, lessee may pay or tender an advance shut-in royalty equal to $1.00 per net acre of lessor's gas acreage then held under this lease by the party making such payment or tender, and so long as said shut-in royalty is paid or tendered, this lease shall not terminate and it shall be considered under all clauses hereof that gas is being produced from the leased premises in paying quantities. Each such payment shall be paid or tendered to the party or parties who at the time of such payment would be entitled to receive the royalties which would be paid under this lease if the well were in fact producing. The payment or tender of royalties and shut-in royalties may be made by check or draft. Any timely payment or tender of shut-in royalty which is made in a bona fide attempt to make proper payment, but which is erroneous in whole or in part as to parties or amounts, shall nevertheless be sufficient to prevent termination of this lease in the same manner as though a proper payment had been made if lessee shall correct such error within 90 days after lessee has received written notice thereof by certified mail from the party or parties entitled to receive payment together with such written instruments (or certified copies thereof) as are necessary to enable lessee to make proper payment. The amount realized from the sale of gas on or off the premises shall be the price established by the gas sales contract entered into in good faith by lessee and gas purchaser for such term and under such conditions as are customary in the industry. "Price" shall mean the net amount received by lessee after giving effect to applicable regulatory orders and after application of any applicable price adjustments specified in such contract or regulatory orders.

4. This is a paid-up lease and lessee shall not be obligated during the primary term hereof to commence or continue any operations of whatsoever character or to make any payments hereunder in order to maintain this lease in force during the primary term, however, this provision is not extended to relieve lessee of the obligation to pay royalties on actual production pursuant to the provisions of Paragraph 3 hereof.

5. Lessee is hereby granted the right and power, from time to time, to pool or combine this lease, the land covered by it or any part or horizon thereof with any other land, lease, mineral estate or parts thereof for the production of oil or gas. Units pooled hereunder shall not exceed the standard proration unit fixed by law or by the Oil Conservation Division of the Energy and Minerals Department of the State of New Mexico or by any other lawful authority for the pool or area in which said land is situated, plus a tolerance of ten percent. Lessee shall file written unit designations in the county in which the premises are located and such units may be designated from time to time and either before or after the completion of wells. Drilling operations on or production from any part of any such unit shall be considered for all purposes, except the payment of royalty, as operations conducted upon or production from the land described in this lease. There shall be allocated to the land covered by this lease included in any such unit that portion of the total production of pooled minerals from wells in the unit, after deducting any used in lease or unit operations, which the net oil or gas acreage in the land covered by this lease included in the unit bears to the total number of surface acres in the unit. The production so allocated shall be considered for all purposes, including the payment or delivery of royalty, to be the entire production of pooled minerals from the portion of said land covered hereby and included in said unit in the same manner as though produced from said land under the terms of this lease. Any pooled unit designated by lessee, as provided herein, may be dissolved by lessee by recording an appropriate instrument in the county where the land is situated at any time after the completion of a dry hole or the cessation of production on said unit.

6. If at the expiration of the primary term there is no well upon said land capable of producing oil or gas, but lessee has commenced operations for drilling or reworking thereon, this lease shall remain in force so long as operations are prosecuted with no cessation of more than 180 consecutive days, whether such operations be on the same well or on a different or additional well or wells, and if they result in the production of oil or gas, so long thereafter as oil or gas is produced from said land. If, after the expiration of the primary term, all wells upon said land should become incapable of producing for any cause, this lease shall not terminate if lessee commences operations for additional drilling or for reworking within 180 days thereafter. If any drilling, additional drilling or reworking operations hereunder result in production, then this lease shall remain in full force so long thereafter as oil or gas is produced hereunder.

7. Lessee shall have the use of oil, gas and water from said land, except water from lessor's wells and tanks, for all operations hereunder, and the royalty shall be computed after deducting any so used. Lessee shall have the right at any time during or after the expiration of this lease to remove all property and fixtures placed by lessee on said land, including the right to draw and remove all casing. When required by lessor, lessee will bury all pipe lines on cultivated lands below ordinary plow depth, and no well shall be drilled within one hundred feet (200 ft.) of any residence or barn now on said land without lessor's consent. Lessee shall have the privilege, at his sole and expense, of using gas from any gas well on said land for stoves and inside lights in the principal dwelling thereon, out of any surplus gas not needed for operations hereunder.

8. The rights of either party hereunder may be assigned in whole or in part and the provisions hereof shall extend to their heirs, successors, administrators, successors and assigns, but no change in the ownership of the land or in the ownership of, or rights to receive, royalties or shut-in royalties, however accomplished, shall operate to enlarge the obligations or diminish the rights of lessee, and no such change or division shall be binding upon lessee for any purpose until 90 days after lessee has been furnished by certified mail at lessee's principal place of business with acceptable instruments or certified copies thereof constituting the chain of title from the original lessor. If any such change in ownership occurs through the death of the owner, lessee may, at its option, pay or tender any royalties or shut-in royalties in the name of the deceased or to his estate or to his heirs, executor or administrator until such time as lessee has been furnished with evidence satisfactory to lessee as to the persons entitled to such sums. An assignment of this lease in whole or in part shall, to the extent of such assignment, relieve and discharge lessee of any obligations hereunder and, if lessee or assignee of part or parts hereof shall fail or make default in the payment of the proportionate part of royalty or shut in royalty due from such lessee or assignee or fail to comply with any of the provisions of this lease, such default shall not affect this lease insofar as it covers a part of said lands upon which lessee or any assignee thereof shall properly comply or make such payments.

9. Should lessee be prevented from complying with any express or implied covenant of this lease, or from conducting drilling or reworking operations hereunder, or from producing oil or gas hereunder by reason of scarcity or inability to obtain or use equipment or material, or by operation of force majeure, or by any federal or state law or any order, rule or regulation of governmental authority, then while so prevented, lessee's duty shall be suspended, and lessee shall not be liable for failure to comply therewith, and this lease shall be extended while and so long as lessee is prevented by any such cause from conducting drilling or reworking operations or from producing oil or gas hereunder; and the time while lessee is so prevented shall not be counted against lessee, anything in this lease to the contrary notwithstanding.

10. Lessor hereby warrants and agrees to defend the title to said land and agrees that lessee at its option may discharge any tax, mortgage or other lien upon said land, and in the event lessee does so it shall be subrogated to such lien with the right to enforce same and to apply royalties and shut-in royalties payable hereunder toward satisfying same. Without impairment of lessee's rights under the warranty, if this lease covers a less interest in the oil or gas in all or any part of said land than the entire and undivided fee simple estate (whether lessee's interest is herein specified or not) then the royalties, shut-in royalty, and other payments, if any, accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. Should any one or more of the parties named above as lessors fail to execute this lease, it shall nevertheless be binding upon the party or parties executing the same.

11. Lessee, its or his successors, heirs and assigns, shall have the right at any time to surrender this lease, in whole or in part, to lessor or his heirs, successors, and assigns by delivering or mailing a release thereof to the lessor, or by placing a release thereof of record in the county in which said land is situated, thereupon lessee shall be relieved from all obligations, expressed or implied, of this agreement as to acreage so surrendered, and thereafter the shut in royalty payable hereunder shall be reduced in the proportion that the acreage covered hereby is reduced by said release or releases.

Erma Stokes Hamilton

Erma Stokes Hamilton

STATE OF TEXAS)
) ss.
COUNTY OF HOWARD)

This instrument was acknowledged before me on the 5th day of September, 1997, by Erma Stokes Hamilton, dealing in her sole and separate property.

AMY RINEHART
MY COMMISSION EXPIRES
January 6, 1998

Amy Rinehart
Notary Public

My commission expires:
January 6, 1998

EXHIBIT "A"

Attached to and made a part of that certain oil and gas lease dated August 25, 1997, but effective December 7, 1997, by and between Erma Stokes Hamilton, lessor, and Ameristate Oil & Gas, Inc., lessee:

12. Notwithstanding anything contained hereinabove to the contrary, it is understood and agreed that at the expiration of the primary term, this lease shall terminate as to all lands covered hereby not included in or otherwise allocated to a "well unit" as hereinafter defined, unless lessee is producing oil, gas or other hydrocarbons from any well on the leased premises, or lands pooled therewith, or is drilling upon said lands across the expiration of the primary term as provided for in the body of this lease, and does not allow more than 180 days to elapse between the completion or abandonment of one well on such land and the commencement of another well thereon until the leased premises have been "fully developed," as hereinafter defined. Operations for drilling of the first such development well must be commenced (a) within 180 days after the expiration of the primary term if production is established under this lease prior to the expiration of the primary term, or (b) within 180 days of completion of the well which is being drilled, tested or completed across the expiration of the primary term. Should lessee fail to timely commence a well in accordance with aforesaid 180 days continuous drilling or development prior to the point in time the leased premises have fully developed then this lease shall terminate as to all lands not included in or otherwise allocated to a well unit. For the purpose hereof, the term "well unit" shall mean the proration or spacing unit created for a well capable of producing oil and/or gas or other hydrocarbons in paying quantities as in accordance with the applicable rules and regulations of the New Mexico Oil Conservation Division or other governmental authority having jurisdiction, and the term "fully developed" shall mean the point in time when the entirety of the leased premises has been included in a well unit or units as defined. The date of completion of a well shall be the date of a potential test if a producing well and the date of plugging if a dry hole or abandoned well. At the end of the continuous drilling program, if any, this lease will automatically terminate as to all lands covered hereby which have not been so fully developed and as to lands so fully developed shall terminate as to all depths lying more than 100' below the total depth drilled.

13. Payment of shut-in gas well royalties will not be permitted to maintain this lease in force for any period longer than two consecutive years, without the written consent of Lessor.

Signed for identification purposes:

Erma Stokes Hamilton

Erma Stokes Hamilton

14262

STATE OF NEW MEXICO
COUNTY OF LEA
FILED

OCT 1 1997

at 11:18 o'clock A M
and recorded in Book
Page
Pat Chappelle, County Clerk
By Deputy

EXHIBIT "A"
, Attached to that certain Let Agreement
dated July 1, 1998

A.A.P.L. FORM 610-1982

MODEL FORM OPERATING AGREEMENT

OPERATING AGREEMENT

DATED

July 1, 19 98,

OPERATOR TMBR/SHARP DRILLING, INC.

CONTRACT AREA Section 13: SE/4, Section 24: All, Section 25: NW/4,

all in T-16-S, R-35-E

COUNTY OR [redacted] OF LEA STATE OF NEW MEXICO

EXHIBIT
7

OPERATING AGREEMENT

THIS AGREEMENT, entered into by and between TMBR/SHARP DRILLING, INC., hereinafter designated and referred to as "Operator", and the signatory party or parties other than Operator, sometimes hereinafter referred to individually herein as "Non-Operator", and collectively as "Non-Operators".

WITNESSETH:

WHEREAS, the parties to this agreement are owners of oil and gas leases and/or oil and gas interests in the land identified in Exhibit "A", and the parties hereto have reached an agreement to explore and develop these leases and/or oil and gas interests for the production of oil and gas to the extent and as hereinafter provided,

NOW, THEREFORE, it is agreed as follows:

ARTICLE I.
DEFINITIONS

As used in this agreement, the following words and terms shall have the meanings here ascribed to them:

A. The term "oil and gas" shall mean oil, gas, casinghead gas, gas condensate, and all other liquid or gaseous hydrocarbons and other marketable substances produced therewith, unless an intent to limit the inclusiveness of this term is specifically stated.

B. The terms "oil and gas lease", "lease" and "leasehold" shall mean the oil and gas leases covering tracts of land lying within the Contract Area which are owned by the parties to this agreement.

C. The term "oil and gas interests" shall mean unleased fee and mineral interests in tracts of land lying within the Contract Area which are owned by parties to this agreement.

D. The term "Contract Area" shall mean all of the lands, oil and gas leasehold interests and oil and gas interests intended to be developed and operated for oil and gas purposes under this agreement. Such lands, oil and gas leasehold interests and oil and gas interests are described in Exhibit "A".

E. The term "drilling unit" shall mean the area fixed for the drilling of one well by order or rule of any state or federal body having authority. If a drilling unit is not fixed by any such rule or order, a drilling unit shall be the drilling unit as established by the pattern of drilling in the Contract Area or as fixed by express agreement of the Drilling Parties.

F. The term "drillsite" shall mean the oil and gas lease or interest on which a proposed well is to be located

G. The terms "Drilling Party" and "Consenting Party" shall mean a party who agrees to join in and pay its share of the cost of any operation conducted under the provisions of this agreement.

H. The terms "Non-Drilling Party" and "Non-Consenting Party" shall mean a party who elects not to participate in a proposed operation.

Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.

ARTICLE II.
EXHIBITS

The following exhibits, as indicated below and attached hereto, are incorporated in and made a part hereof:

☒ A. Exhibit "A", shall include the following information:
- (1) Identification of lands subject to this agreement,
- (2) Restrictions, if any, as to depths, formations, or substances,
- (3) Percentages or fractional interests of parties to this agreement,
- (4) Oil and gas leases and/or oil and gas interests subject to this agreement,
- (5) Addresses of parties for notice purposes.

☐ B. Exhibit "B", Form of Lease.

☒ C. Exhibit "C", Accounting Procedure.

☒ D. Exhibit "D", Insurance.

☒ E. Exhibit "E", Gas Balancing Agreement.

☐ F. Exhibit "F", Non-Discrimination and Certification of Non-Segregated Facilities.

☐ G. Exhibit "G", Tax Partnership.

If any provision of any exhibit, except Exhibits "E" and "G", is inconsistent with any provision contained in the body of this agreement, the provisions in the body of this agreement shall prevail.

TABLE OF CONTENTS

ARTICLE III.
INTERESTS OF PARTIES

A. Oil and Gas Interests:

If any party owns an oil and gas interest in the Contract Area, that interest shall be treated for all purposes of this agreement and during the term hereof as if it were covered by the form of oil and gas lease attached hereto as Exhibit "B", and the owner thereof shall be deemed to own both the royalty interest reserved in such lease and the interest of the lessee thereunder.

B. Interests of Parties in Costs and Production:

Unless changed by other provisions, all costs and liabilities incurred in operations under this agreement shall be borne and paid, and all equipment and materials acquired in operations on the Contract Area shall be owned, by the parties as their interests are set forth in Exhibit "A". In the same manner, the parties shall also own all production of oil and gas from the Contract Area subject to the payment of royalties to the extent of one-eighth (1/8) which shall be borne as hereinafter set forth.

Regardless of which party has contributed the lease(s) and/or oil and gas interest(s) hereto on which royalty is due and payable, each party entitled to receive a share of production of oil and gas from the Contract Area shall bear and shall pay or deliver, or cause to be paid or delivered, to the extent of its interest in such production, the royalty amount stipulated hereinabove and shall hold the other parties free from any liability therefor. No party shall ever be responsible, however, on a price basis higher than the price received by such party, to any other party's lessor or royalty owner, and if any such other party's lessor or royalty owner should demand and receive settlement on a higher price basis, the party contributing the affected lease shall bear the additional royalty burden attributable to such higher price.

Nothing contained in this Article III.B. shall be deemed an assignment or cross-assignment of interests covered hereby.

C. Excess Royalties, Overriding Royalties and Other Payments:

Unless changed by other provisions, if the interest of any party in any lease covered hereby is subject to any royalty, overriding royalty, production payment or other burden on production in excess of the amount stipulated in Article III.B., such party so burdened shall assume and alone bear all such excess obligations and shall indemnify and hold the other parties hereto harmless from any and all claims and demands for payment asserted by owners of such excess burden.

D. Subsequently Created Interests:

If any party should hereafter create an overriding royalty, production payment or other burden payable out of production attributable to its working interest hereunder, or if such a burden existed prior to this agreement and is not set forth in Exhibit "A", or was not disclosed in writing to all other parties prior to the execution of this agreement by all parties, or is not a jointly acknowledged and accepted obligation of all parties (any such interest being hereinafter referred to as "subsequently created interest" irrespective of the timing of its creation and the party out of whose working interest the subsequently created interest is derived being hereinafter referred to as "burdened party"), and:

1. If the burdened party is required under this agreement to assign or relinquish to any other party, or parties, all or a portion of its working interest and/or the production attributable thereto, said other party, or parties, shall receive said assignment and/or production free and clear of said subsequently created interest and the burdened party shall indemnify and save said other party, or parties, harmless from any and all claims and demands for payment asserted by owners of the subsequently created interest; and,

2. If the burdened party fails to pay, when due, its share of expenses chargeable hereunder, all provisions of Article VII.B. shall be enforceable against the subsequently created interest in the same manner as they are enforceable against the working interest of the burdened party.

ARTICLE IV.
TITLES

A. Title Examination:

Title examination shall be made on the drillsite of any proposed well prior to commencement of drilling operations or, if the Drilling Parties so request, title examination shall be made on the leases and/or oil and gas interests included, or planned to be included, in the drilling unit around such well. The opinion will include the ownership of the working interest, minerals, royalty, overriding royalty and production payments under the applicable leases. At the time a well is proposed, each party contributing leases and/or oil and gas interests to the drillsite, or to be included in such drilling unit, shall furnish to Operator all abstracts (including federal lease status reports), title opinions, title papers and curative material in its possession free of charge. All such information not in the possession of or made available to Operator by the parties, but necessary for the examination of the title, shall be obtained by Operator. Operator shall cause title to be examined by attorneys on its staff or by outside attorneys. Copies of all title opinions shall be furnished to each party hereto. The cost incurred by Operator in this title program shall be borne as follows:

☐ Option No. 1: Costs incurred by Operator in procuring abstracts and title examination (including preliminary, supplemental, shut-in gas royalty opinions and division order title opinions) shall be a part of the administrative overhead as provided in Exhibit "C", and shall not be a direct charge, whether performed by Operator's staff attorneys or by outside attorneys.

ARTICLE IV
continued

☒ Option No. 2: Costs incurred by Operator in procuring abstracts and fees paid outside attorneys for title examination (including preliminary, supplemental, shut-in gas royalty opinions and division order title opinions) shall be borne by the Drilling Parties in the proportion that the interest of each Drilling Party bears to the total interest of all Drilling Parties as such interests appear in Exhibit "A". Operator shall make no charge for services rendered by its staff attorneys or other personnel in the performance of the above functions.

Each party shall be responsible for securing curative matter and pooling amendments or agreements required in connection with leases or oil and gas interests contributed by such party. Operator shall be responsible for the preparation and recording of pooling designations or declarations as well as the conduct of hearings before governmental agencies for the securing of spacing or pooling orders. This shall not prevent any party from appearing on its own behalf at any such hearing.

No well shall be drilled on the Contract Area until after (1) the title to the drillsite or drilling unit has been examined as above provided, and (2) the title has been approved by the examining attorney or title has been accepted by all of the parties who are to participate in the drilling of the well.

B. Loss of Title:

~~1. Failure of Title: Should any oil and gas interest or lease, or interest therein, be lost through failure of title, which has results in a~~ reduction of interest from that shown on Exhibit "A", the party contributing the affected lease or interest shall have ninety (90) days from final determination of title failure to acquire a new lease or other instrument curing the entirety of the title failure, which acquisition will not be subject to Article VIII.B., and failing to do so, this agreement, nevertheless, shall continue in force as to all remaining oil and gas leases and interests; and,

(a) The party whose oil and gas lease or interest is affected by the title failure shall bear alone the entire loss and it shall not be entitled to recover from Operator or the other parties any development or operating costs which it may have theretofore paid or incurred, but there shall be no additional liability on its part to the other parties hereto by reason of such title failure;

(b) There shall be no retroactive adjustment of expenses incurred or revenues received from the operation of the interest which has been lost, but the interests of the parties shall be revised on an acreage basis, as of the time it is determined finally that title failure has occurred, so that the interest of the party whose lease or interest is affected by the title failure will thereafter be reduced in the Contract Area by the amount of the interest lost;

(c) If the proportionate interest of the other parties hereto in any producing well theretofore drilled on the Contract Area is increased by reason of the title failure, the party whose title has failed shall receive the proceeds attributable to the increase in such interest (less costs and burdens attributable thereto) until it has been reimbursed for unrecovered costs paid by it in connection with such well;

(d) Should any person not a party to this agreement, who is determined to be the owner of any interest in the title which has failed, pay in any manner any part of the cost of operation, development, or equipment, such amount shall be paid to the party or parties who bore the costs which are so refunded;

(e) Any liability to account to a third party for prior production of oil and gas which arises by reason of title failure shall be borne by the party or parties whose title failed in the same proportions in which they shared in such prior production; and,

(f) No charge shall be made to the joint account for legal expenses, fees or salaries, in connection with the defense of the interest claimed by any party hereto, it being the intention of the parties hereto that each shall defend title to its interest and bear all expenses in ~~connection therewith.~~

~~2. Loss by Non-Payment or Erroneous Payment of Amount Due: If, through mistake or oversight, any rental, shut-in well~~ payment, minimum royalty or royalty payment, is not paid or is erroneously paid, and as a result a lease or interest therein terminates, there shall be no monetary liability against the party who failed to make such payment. Unless the party who failed to make the required payment secures a new lease covering the same interest within ninety (90) days from the discovery of the failure to make proper payment, which acquisition will not be subject to Article VIII.B., the interests of the parties shall be revised on an acreage basis, effective as of the date of termination of the lease involved, and the party who failed to make proper payment will no longer be credited with an interest in the Contract Area on account of ownership of the lease or interest which has terminated. In the event the party who failed to make the required payment shall not have been fully reimbursed, at the time of the loss, from the proceeds of the sale of oil and gas attributable to the lost interest, calculated on an acreage basis, for the development and operating costs theretofore paid on account of such interest, it shall be reimbursed for unrecovered actual costs theretofore paid by it (but not for its share of the cost of any dry hole previously drilled or wells previously abandoned) from so much of the following as is necessary to effect reimbursement:

(a) Proceeds of oil and gas, less operating expenses, theretofore accrued to the credit of the lost interest, on an acreage basis, up to the amount of unrecovered costs;

(b) Proceeds, less operating expenses, thereafter accrued attributable to the lost interest on an acreage basis, of that portion of oil and gas thereafter produced and marketed (excluding production from any wells thereafter drilled) which, in the absence of such lease termination, would be attributable to the lost interest on an acreage basis, up to the amount of unrecovered costs, the proceeds of said portion of the oil and gas to be contributed by the other parties in proportion to their respective interests; and,

(c) Any monies, up to the amount of unrecovered costs, that may be paid by any party who is, or becomes, the owner of the interest lost, for the privilege of participating in the Contract Area or becoming a party to this agreement.

3. Other Losses: All losses incurred, ~~other than those set forth in Articles IV.B.1. and IV.B.2. above,~~ shall be joint losses and shall be borne by all parties in proportion to their interests. There shall be no readjustment of interests in the remaining portion of the Contract Area.

ARTICLE V.
OPERATOR

A. **Designation and Responsibilities of Operator:**

TMBR/SHARP DRILLING, INC. shall be the Operator of the Contract Area, and shall conduct and direct and have full control of all operations on the Contract Area as permitted and required by, and within the limits of this agreement. It shall conduct all such operations in a good and workmanlike manner, but it shall have no liability as Operator to the other parties for losses sustained or liabilities incurred, except such as may result from gross negligence or willful misconduct.

B. **Resignation or Removal of Operator and Selection of Successor:**

1. Resignation or Removal of Operator: Operator may resign at any time by giving written notice thereof to Non-Operators. If Operator terminates its legal existence, no longer owns an interest hereunder in the Contract Area, or is no longer capable of serving as Operator, Operator shall be deemed to have resigned without any action by Non-Operators, except the selection of a successor. Operator may be removed if it fails or refuses to carry out its duties hereunder, or becomes insolvent, bankrupt or is placed in receivership, by the affirmative vote of two (2) or more Non-Operators owning a majority interest based on ownership as shown on Exhibit "A" remaining after excluding the voting interest of Operator. Such resignation or removal shall not become effective until 7:00 o'clock A.M. on the first day of the calendar month following the expiration of ninety (90) days after the giving of notice of resignation by Operator or action by the Non-Operators to remove Operator, unless a successor Operator has been selected and assumes the duties of Operator at an earlier date. Operator, after effective date of resignation or removal, shall be bound by the terms hereof as a Non-Operator. A change of a corporate name or structure of Operator or transfer of Operator's interest to any single subsidiary, parent or successor corporation shall not be the basis for removal of Operator.

2. Selection of Successor Operator: Upon the resignation or removal of Operator, a successor Operator shall be selected by the parties. The successor Operator shall be selected from the parties owning an interest in the Contract Area at the time such successor Operator is selected. The successor Operator shall be selected by the affirmative vote of two (2) or more parties owning a majority interest based on ownership as shown on Exhibit "A"; provided, however, if an Operator which has been removed fails to vote or votes only to succeed itself, the successor Operator shall be selected by the affirmative vote of two (2) or more parties owning a majority interest based on ownership as shown on Exhibit "A" remaining after excluding the voting interest of the Operator that was removed.

C. **Employees:**

The number of employees used by Operator in conducting operations hereunder, their selection, and the hours of labor and the compensation for services performed shall be determined by Operator, and all such employees shall be the employees of Operator.

D. **Drilling Contracts:**

All wells drilled on the Contract Area shall be drilled on a competitive contract basis at the usual rates prevailing in the area. If it so desires, Operator may employ its own tools and equipment in the drilling of wells, but its charges therefor shall not exceed the prevailing rates in the area and the rate of such charges shall be agreed upon by the parties in writing before drilling operations are commenced, and such work shall be performed by Operator under the same terms and conditions as are customary and usual in the area in contracts of independent contractors who are doing work of a similar nature.

ARTICLE VI.
DRILLING AND DEVELOPMENT

A. **Initial Well:**

On or before the_____day of_____, 19____, Operator shall commence the drilling of a well for oil and gas at the following location:

to be determined in the contract area at a later date

and shall thereafter continue the drilling of the well with due diligence to

a depth to be determined at a later date,

unless granite or other practically impenetrable substance or condition in the hole, which renders further drilling impractical, is encountered at a lesser depth, or unless all parties agree to complete or abandon the well at a lesser depth.

Operator shall make reasonable tests of all formations encountered during drilling which give indication of containing oil and gas in quantities sufficient to test, unless this agreement shall be limited in its application to a specific formation or formations, in which event Operator shall be required to test only the formation or formations to which this agreement may apply.

ARTICLE VI
continued

If, in Operator's judgment, the well will not produce oil or gas in paying quantities, and it wishes to plug and abandon the well as a dry hole, the provisions of Article VI.E.1. shall thereafter apply.

B. Subsequent Operations:

1. Proposed Operations: Should any party hereto desire to drill any well on the Contract Area other than the well provided for in Article VI.A., or to rework, deepen or plug back a dry hole drilled at the joint expense of all parties or a well jointly owned by all the parties and not then producing in paying quantities, the party desiring to drill, rework, deepen or plug back such a well shall give the other parties written notice of the proposed operation, specifying the work to be performed, the location, proposed depth, objective formation and the estimated cost of the operation. The parties receiving such a notice shall have thirty (30) days after receipt of the notice within which to notify the party wishing to do the work whether they elect to participate in the cost of the proposed operation. If a drilling rig is on location, notice of a proposal to rework, plug back or drill deeper may be given by telephone and the response period shall be limited to forty eight (48) hours, exclusive of Saturday, Sunday and legal holidays. Failure of a party receiving such notice to reply within the period above fixed shall constitute an election by that party not to participate in the cost of the proposed operation. Any notice or response given by telephone shall be promptly confirmed in writing.

If all parties elect to participate in such a proposed operation, Operator shall, within ninety (90) days after expiration of the notice period of thirty (30) days (or as promptly as possible after the expiration of the forty eight (48) hour period when a drilling rig is on location, as the case may be), actually commence the proposed operation and complete it with due diligence at the risk and expense of all parties hereto; provided, however, said commencement date may be extended upon written notice of same by Operator to the other parties, for a period of up to thirty (30) additional days if, in the sole opinion of Operator, such additional time is reasonably necessary to obtain permits from governmental authorities, surface rights (including rights of way) or appropriate drilling equipment, or to complete title examination or curative matter required for title approval or acceptance. Notwithstanding the force majeure provisions of Article XI, if the actual operation has not been commenced within the time provided (including any extension thereof as specifically permitted herein) and if any party hereto still desires to conduct said operation, written notice proposing same must be resubmitted to the other parties in accordance with the provisions hereof as if no prior proposal had been made.

2. Operations by Less than All Parties: If any party receiving such notice as provided in Article VI.B.1. or VII.D.1. (Option No. 2) elects not to participate in the proposed operation, then, in order to be entitled to the benefits of this Article, the party or parties giving the notice and such other parties as shall elect to participate in the operation shall, within ninety (90) days after the expiration of the notice period of thirty (30) days (or as promptly as possible after the expiration of the forty eight (48) hour period when a drilling rig is on location, as the case may be) actually commence the proposed operation and complete it with due diligence. Operator shall perform all work for the account of the Consenting Parties; provided, however, if no drilling rig or other equipment is on location, and if Operator is a Non-Consenting Party, the Consenting Parties shall either: (a) request Operator to perform the work required by such proposed operation for the account of the Consenting Parties, or (b) designate one (1) of the Consenting Parties as Operator to perform such work. Consenting Parties, when conducting operations on the Contract Area pursuant to this Article VI.B.2., shall comply with all terms and conditions of this agreement.

If less than all parties approve any proposed operation, the proposing party, immediately after the expiration of the applicable notice period, shall advise the Consenting Parties of the total interest of the parties approving such operation and its recommendation as to whether the Consenting Parties should proceed with the operation as proposed. Each Consenting Party, within forty eight (48) hours (exclusive of Saturday, Sunday and legal holidays) after receipt of such notice, shall advise the proposing party of its desire to (a) limit participation to such party's interest as shown on Exhibit "A" or (b) carry its proportionate part of Non-Consenting Parties' interests, and failure to advise the proposing party shall be deemed an election under (a). In the event a drilling rig is on location, the time permitted for such a response shall not exceed a total of forty eight (48) hours (inclusive of Saturday, Sunday and legal holidays). The proposing party, at its election, may withdraw such proposal if there is insufficient participation and shall promptly notify all parties of such decision.

The entire cost and risk of conducting such operations shall be borne by the Consenting Parties in the proportions they have elected to bear same under the terms of the preceding paragraph. Consenting Parties shall keep the leasehold estates involved in such operations free and clear of all liens and encumbrances of every kind created by or arising from the operations of the Consenting Parties. If such an operation results in a dry hole, the Consenting Parties shall plug and abandon the well and restore the surface location at their sole cost, risk and expense. If any well drilled, reworked, deepened or plugged back under the provisions of this Article results in a producer of oil and/or gas in paying quantities, the Consenting Parties shall complete and equip the well to produce at their sole cost and risk,

ARTICLE VI
continued

and the well shall then be turned over to Operator and shall be operated by it at the expense and for the account of the Consenting Parties. Upon commencement of operations for the drilling, reworking, deepening or plugging back of any such well by Consenting Parties in accordance with the provisions of this Article, each Non-Consenting Party shall be deemed to have relinquished to Consenting Parties, and the Consenting Parties shall own and be entitled to receive, in proportion to their respective interests, all of such Non-Consenting Party's interest in the well and share of production therefrom until the proceeds of the sale of such share, calculated at the well, or market value thereof if such share is not sold, (after deducting production taxes, excise taxes, royalty, overriding royalty and other interests not excepted by Article III.D. payable out of or measured by the production from such well accruing with respect to such interest until it reverts) shall equal the total of the following:

(a) ~~100%~~ 500 of each such Non-Consenting Party's share of the cost of any newly acquired surface equipment beyond the wellhead connections (including, but not limited to, stock tanks, separators, treaters, pumping equipment and piping), plus 100% of each such Non-Consenting Party's share of the cost of operation of the well commencing with first production and continuing until each such Non-Consenting Party's relinquished interest shall revert to it under other provisions of this Article, it being agreed that each Non-Consenting Party's share of such costs and equipment will be that interest which would have been chargeable to such Non-Consenting Party had it participated in the well from the beginning of the operations; and

(b) 500 % of that portion of the costs and expenses of drilling, reworking, deepening, plugging back, testing and completing, after deducting any cash contributions received under Article VIII.C., and 500 % of that portion of the cost of newly acquired equipment in the well (to and including the wellhead connections), which would have been chargeable to such Non-Consenting Party if it had participated therein.

An election not to participate in the drilling or the deepening of a well shall be deemed an election not to participate in any reworking or plugging back operation proposed in such a well, or portion thereof, to which the initial Non-Consent election applied that is conducted at any time prior to full recovery by the Consenting Parties of the Non-Consenting Party's recoupment account. Any such reworking or plugging back operation conducted during the recoupment period shall be deemed part of the cost of operation of said well and there shall be added to the sums to be recouped by the Consenting Parties one hundred percent (100%) of that portion of the costs of the reworking or plugging back operation which would have been chargeable to such Non-Consenting Party had it participated therein. If such a reworking or plugging back operation is proposed during such recoupment period, the provisions of this Article VI.B. shall be applicable as between said Consenting Parties in said well.

During the period of time Consenting Parties are entitled to receive Non-Consenting Party's share of production, or the proceeds therefrom, Consenting Parties shall be responsible for the payment of all production, severance, excise, gathering and other taxes, and all royalty, overriding royalty and other burdens applicable to Non-Consenting Party's share of production not excepted by Article III.D.

In the case of any reworking, plugging back or deeper drilling operation, the Consenting Parties shall be permitted to use, free of cost, all casing, tubing and other equipment in the well, but the ownership of all such equipment shall remain unchanged; and upon abandonment of a well after such reworking, plugging back or deeper drilling, the Consenting Parties shall account for all such equipment to the owners thereof, with each party receiving its proportionate part in kind or in value, less cost of salvage.

Within sixty (60) days after the completion of any operation under this Article, the party conducting the operations for the Consenting Parties shall furnish each Non-Consenting Party with an inventory of the equipment in and connected to the well, and an itemized statement of the cost of drilling, deepening, plugging back, testing, completing, and equipping the well for production; or, at its option, the operating party, in lieu of an itemized statement of such costs of operation, may submit a detailed statement of monthly billings. Each month thereafter, during the time the Consenting Parties are being reimbursed as provided above, the party conducting the operations for the Consenting Parties shall furnish the Non-Consenting Parties with an itemized statement of all costs and liabilities incurred in the operation of the well, together with a statement of the quantity of oil and gas produced from it and the amount of proceeds realized from the sale of the well's working interest production during the preceding month. In determining the quantity of oil and gas produced during any month, Consenting Parties shall use industry accepted methods such as, but not limited to, metering or periodic well tests. Any amount realized from the sale or other disposition of equipment newly acquired in connection with any such operation which would have been owned by a Non-Consenting Party had it participated therein shall be credited against the total unrecouped costs of the work done and of the equipment purchased in determining when the interest of such Non-Consenting Party shall revert to it as above provided; and if there is a credit balance, it shall be paid to such Non-Consenting Party.

ARTICLE VI
continued

If and when the Consenting Parties recover from a Non-Consenting Party's relinquished interest the amounts provided for above, the relinquished interests of such Non-Consenting Party shall automatically revert to it, and, from and after such reversion, such Non-Consenting Party shall own the same interest in such well, the material and equipment in or pertaining thereto, and the production therefrom as such Non-Consenting Party would have been entitled to had it participated in the drilling, reworking, deepening or plugging back of said well. Thereafter, such Non-Consenting Party shall be charged with and shall pay its proportionate part of the further costs of the operation of said well in accordance with the terms of this agreement and the Accounting Procedure attached hereto.

Notwithstanding the provisions of this Article VI.B.2., it is agreed that without the mutual consent of all parties, no wells shall be completed in or produced from a source of supply from which a well located elsewhere on the Contract Area is producing, unless such well conforms to the then-existing well spacing pattern for such source of supply.

The provisions of this Article shall have no application whatsoever to the drilling of the initial well described in Article VI.A. except (a) as to Article VII.D.1. (Option No. 2), if selected, or (b) as to the reworking, deepening and plugging back of such initial well after it has been drilled to the depth specified in Article VI.A. if it shall thereafter prove to be a dry hole or, if initially completed for production, ceases to produce in paying quantities.

1 Stand-By Time: When a well which has been drilled or deepened has reached its authorized depth and all tests have been completed, and the results thereof furnished to the parties, stand-by costs incurred pending response to a party's notice proposing a reworking, deepening, plugging back or completing operation in such a well shall be charged and borne as part of the drilling or deepening operation just completed. Stand-by costs subsequent to all parties responding, or expiration of the response time permitted, whichever first occurs, and prior to agreement as to the participating interests of all Consenting Parties pursuant to the terms of the second grammatical paragraph of Article VI.B.2, shall be charged to and borne as part of the proposed operation, but if the proposal is subsequently withdrawn because of insufficient participation, such stand-by costs shall be allocated between the Consenting Parties in the proportion each Consenting Party's interest as shown on Exhibit "A" bears to the total interest as shown on Exhibit "A" of all Consenting Parties.

4 Sidetracking: Except as hereinafter provided, those provisions of this agreement applicable to a "deepening" operation shall also be applicable to any proposal to directionally control and intentionally deviate a well from vertical so as to change the bottom hole location (herein called "sidetracking"), unless done to straighten the hole or to drill around junk in the hole or because of other mechanical difficulties. Any party having the right to participate in a proposed sidetracking operation that does not own an interest in the affected well bore at the time of the notice shall, upon electing to participate, tender to the well bore owners its proportionate share (equal to its interest in the sidetracking operation) of the value of that portion of the existing well bore to be utilized as follows:

(a) If the proposal is for sidetracking an existing dry hole, reimbursement shall be on the basis of the actual costs incurred in the initial drilling of the well down to the depth at which the sidetracking operation is initiated.

(b) If the proposal is for sidetracking a well which has previously produced, reimbursement shall be on the basis of the well's salvable materials and equipment down to the depth at which the sidetracking operation is initiated, determined in accordance with the provisions of Exhibit "C", less the estimated cost of salvaging and the estimated cost of plugging and abandoning.

In the event that notice for a sidetracking operation is given while the drilling rig to be utilized is on location, the response period shall be limited to forty eight (48) hours, exclusive of Saturday, Sunday and legal holidays; provided, however, any party may request and receive up to eight (8) additional days after expiration of the forty-eight (48) hours within which to respond by paying for all stand-by time incurred during such extended response period. If more than one party elects to take such additional time to respond to the notice, stand-by costs shall be allocated between the parties taking additional time to respond on a day-to-day basis in the proportion each electing party's interest as shown on Exhibit "A" bears to the total interest as shown on Exhibit "A" of all the electing parties. In all other instances the response period to a proposal for sidetracking shall be limited to thirty (30) days.

C. TAKING PRODUCTION IN KIND:

Each party shall take in kind or separately dispose of its proportionate share of all oil and gas produced from the Contract Area, exclusive of production which may be used in development and producing operations and in preparing and treating oil and gas for marketing purposes and production unavoidably lost. Any extra expenditure incurred in the taking in kind or separate disposition by any party of its proportionate share of the production shall be borne by such party. Any party taking its share of production in kind shall be

ARTICLE VI
continued

required to pay for only its proportionate share of such part of Operator's surface facilities which it uses.

Each party shall execute such division orders and contracts as may be necessary for the sale of its interest in production from the Contract Area, and, except as provided in Article VII.B., shall be entitled to receive payment directly from the purchaser thereof for its share of all production.

In the event any party shall fail to make the arrangements necessary to take in kind or separately dispose of its proportionate share of the oil produced from the Contract Area, Operator shall have the right, subject to the revocation at will by the party owning it, but not the obligation, to purchase such oil or sell it to others at any time and from time to time, for the account of the non-taking party at the best price obtainable in the area for such production. Any such purchase or sale by Operator shall be subject always to the right of the owner of the production to exercise at any time its right to take in kind, or separately dispose of, its share of all oil not previously delivered to a purchaser. Any purchase or sale by Operator of any other party's share of oil shall be only for such reasonable periods of time as are consistent with the minimum needs of the industry under the particular circumstances, but in no event for a period in excess of one (1) year.

In the event one or more parties' separate disposition of its share of the gas causes split-stream deliveries to separate pipelines and/or deliveries which on a day-to-day basis for any reason are not exactly equal to a party's respective proportionate share of total gas sales to be allocated to it, the balancing or accounting between the respective accounts of the parties shall be in accordance with any gas balancing agreement between the parties hereto, whether such an agreement is attached as Exhibit "E", or is a separate agreement.

D. Access to Contract Area and Information:

Each party shall have access to the Contract Area at all reasonable times, at its sole cost and risk to inspect or observe operations, and shall have access at reasonable times to information pertaining to the development or operation thereof, including Operator's books and records relating thereto. Operator, upon request, shall furnish each of the other parties with copies of all forms or reports filed with governmental agencies, daily drilling reports, well logs, tank tables, daily gauge and run tickets and reports of stock on hand at the first of each month, and shall make available samples of any cores or cuttings taken from any well drilled on the Contract Area. The cost of gathering and furnishing information to Non-Operator, other than that specified above, shall be charged to the Non-Operator that requests the information.

E. Abandonment of Wells:

1. Abandonment of Dry Holes: Except for any well drilled or deepened pursuant to Article VI.B.2., any well which has been drilled or deepened under the terms of this agreement and is proposed to be completed as a dry hole shall not be plugged and abandoned without the consent of all parties. Should Operator, after diligent effort, be unable to contact any party, or should any party fail to reply within forty eight (48) hours (exclusive of Saturday, Sunday and legal holidays) after receipt of notice of the proposal to plug and abandon such well, such party shall be deemed to have consented to the proposed abandonment. All such wells shall be plugged and abandoned in accordance with applicable regulations and at the cost, risk and expense of the parties who participated in the cost of drilling or deepening such well. Any party who objects to plugging and abandoning such well shall have the right to take over the well and conduct further operations in search of oil and/or gas subject to the provisions of Article VI.B.

2. Abandonment of Wells that have Produced: Except for any well in which a Non-Consent operation has been conducted hereunder for which the Consenting Parties have not been fully reimbursed as herein provided, any well which has been completed as a producer shall not be plugged and abandoned without the consent of all parties. If all parties consent to such abandonment, the well shall be plugged and abandoned in accordance with applicable regulations and at the cost, risk and expense of all the parties hereto. If, within thirty (30) days after receipt of notice of the proposed abandonment of any well, all parties do not agree to the abandonment of such well, those wishing to continue its operation from the interval(s) of the formation(s) then open to production shall tender to each of the other parties its proportionate share of the value of the well's salvable material and equipment, determined in accordance with the provisions of Exhibit "C", less the estimated cost of salvaging and the estimated cost of plugging and abandoning. Each abandoning party shall assign the non-abandoning parties, without warranty, express or implied, as to title or as to quantity, or fitness for use of the equipment and material, all of its interest in the well and related equipment, together with its interest in the leasehold estate as to, but only as to, the interval or intervals of the formation or formations then open to production. If the interest of the abandoning party is or includes an oil and gas interest, such party shall execute and deliver to the non-abandoning party or parties an oil and gas lease, limited to the interval or intervals of the formation or formations then open to production, for a term of one (1) year and so long thereafter as oil and/or gas is produced from the interval or intervals of the formation or formations covered thereby, such lease to be on the form attached as Exhibit

ARTICLE VI
continued

"B". The assignments or leases so limited shall encompass the "drilling unit" upon which the well is located. The payments by, and the assignments or leases to, the assignees shall be in a ratio based upon the relationship of their respective percentage of participation in the Contract Area to the aggregate of the percentages of participation in the Contract Area of all assignees. There shall be no readjustment of interests in the remaining portion of the Contract Area.

Thereafter, abandoning parties shall have no further responsibility, liability, or interest in the operation of or production from the well in the interval or intervals then open other than the royalties retained in any lease made under the terms of this Article. Upon request, Operator shall continue to operate the assigned well for the account of the non abandoning parties at the rates and charges contemplated by this agreement, plus any additional cost and charges which may arise as the result of the separate ownership of the assigned well. Upon proposed abandonment of the producing interval(s) assigned or leased, the assignor or lessor shall then have the option to repurchase its prior interest in the well (using the same valuation formula) and participate in further operations therein subject to the provisions hereof.

3. Abandonment of Non-Consent Operations: The provisions of Article VI.E.1. or VI.E.2. above shall be applicable as between Consenting Parties in the event of the proposed abandonment of any well excepted from said Articles; provided, however, no well shall be permanently plugged and abandoned unless and until all parties having the right to conduct further operations therein have been notified of the proposed abandonment and afforded the opportunity to elect to take over the well in accordance with the provisions of this Article VI.E.

ARTICLE VII.
EXPENDITURES AND LIABILITY OF PARTIES

A. Liability of Parties:

The liability of the parties shall be several, not joint or collective. Each party shall be responsible only for its obligations, and shall be liable only for its proportionate share of the costs of developing and operating the Contract Area. Accordingly, the liens granted among the parties in Article VII.B. are given to secure only the debts of each severally. It is not the intention of the parties to create, nor shall this agreement be construed as creating, a mining or other partnership or association, or to render the parties liable as partners.

B. Liens and Payment Defaults:

Each Non-Operator grants to Operator a lien upon its oil and gas rights in the Contract Area, and a security interest in its share of oil and/or gas when extracted and its interest in all equipment, to secure payment of its share of expense, together with interest thereon at the rate provided in Exhibit "C". To the extent that Operator has a security interest under the Uniform Commercial Code of the state, Operator shall be entitled to exercise the rights and remedies of a secured party under the Code. The bringing of a suit and the obtaining of judgment by Operator for the secured indebtedness shall not be deemed an election of remedies or otherwise affect the lien rights or security interest as security for the payment thereof. In addition, upon default by any Non-Operator in the payment of its share of expense, Operator shall have the right, without prejudice to other rights or remedies, to collect from the purchaser the proceeds from the sale of such Non-Operator's share of oil and/or gas until the amount owed by such Non-Operator, plus interest, has been paid. Each purchaser shall be entitled to rely upon Operator's written statement concerning the amount of any default. Operator grants a like lien and security interest to the Non-Operators to secure payment of Operator's proportionate share of expense.

~~If any party fails or is unable to pay its share of expense within sixty (60) days after rendition of a statement thereof by~~ Operator, the non-defaulting parties, including Operator, shall, upon request by Operator, pay the unpaid amount in the proportion that the interest of each such party bears to the interest of all such parties. Each party so paying its share of the unpaid amount shall, to obtain ~~reimbursement thereof, be subrogated to the security rights described in the foregoing paragraph.~~

C. Payments and Accounting:

Except as herein otherwise specifically provided, Operator shall promptly pay and discharge expenses incurred in the development and operation of the Contract Area pursuant to this agreement and shall charge each of the parties hereto with their respective proportionate shares upon the expense basis provided in Exhibit "C". Operator shall keep an accurate record of the joint account hereunder, showing expenses incurred and charges and credits made and received.

Operator, at its election, shall have the right from time to time to demand and receive from the other parties payment in advance of their respective shares of the estimated amount of the expense to be incurred in operations hereunder during the next succeeding month, which right may be exercised only by submission to each such party of an itemized statement of such estimated expense, together with an invoice for its share thereof. Each such statement and invoice for the payment in advance of estimated expense shall be submitted on or before the 20th day of the next preceding month. Each party shall pay to Operator its proportionate share of such estimate within fifteen (15) days after such estimate and invoice is received. If any party fails to pay its share of said estimate within said time, the amount due shall bear interest as provided in Exhibit "C" until paid. Proper adjustment shall be made monthly between advances and actual expense to the end that each party shall bear and pay its proportionate share of actual expenses incurred, and no more.

D. Limitation of Expenditures:

1. Drill or Deepen: Without the consent of all parties, no well shall be drilled or deepened, except any well drilled or deepened pursuant to the provisions of Article VI.B.2. of this agreement. Consent to the drilling or deepening shall include

ARTICLE VII
continued

☐ Option No. 1: All necessary expenditures for the drilling or deepening, testing, completing and equipping of the well, including necessary tankage and/or surface facilities.

☒ Option No. 2: All necessary expenditures for the drilling or deepening and testing of the well. When such well has reached its authorized depth, and all tests have been completed, and the results thereof furnished to the parties, Operator shall give immediate notice to the Non-Operators who have the right to participate in the completion costs. The parties receiving such notice shall have forty eight (48) hours (exclusive of Saturday, Sunday and legal holidays) in which to elect to participate in the setting of casing and the completion attempt. Such election, when made, shall include consent to all necessary expenditures for the completing and equipping of such well, including necessary tankage and/or surface facilities. Failure of any party receiving such notice to reply within the period above fixed shall constitute an election by that party not to participate in the cost of the completion attempt. If one or more, but less than all of the parties, elect to set pipe and to attempt a completion, the provisions of Article VI.B.2. hereof (the phrase "reworking, deepening or plugging back" as contained in Article VI.B.2. shall be deemed to include "completing") shall apply to the operations thereafter conducted by less than all parties.

2. Rework or Plug Back: Without the consent of all parties, no well shall be reworked or plugged back except a well reworked or plugged back pursuant to the provisions of Article VI.B.2. of this agreement. Consent to the reworking or plugging back of a well shall include all necessary expenditures in conducting such operations and completing and equipping of said well, including necessary tankage and/or surface facilities.

3. Other Operations: Without the consent of all parties, Operator shall not undertake any single project reasonably estimated to require an expenditure in excess of Twenty-Five Thousand Dollars ($ 25,000.00) except in connection with a well, the drilling, reworking, deepening, completing, recompleting, or plugging back of which has been previously authorized by or pursuant to this agreement; provided, however, that, in case of explosion, fire, flood or other sudden emergency, whether of the same or different nature, Operator may take such steps and incur such expenses as in its opinion are required to deal with the emergency to safeguard life and property but Operator, as promptly as possible, shall report the emergency to the other parties. If Operator prepares an authority for expenditure (AFE) for its own use, Operator shall furnish any Non-Operator so requesting an information copy thereof for any single project costing in excess of Ten Thousand Dollars ($ 10,000.00) but less than the amount first set forth above in this paragraph.

E. Rentals, Shut-in Well Payments and Minimum Royalties:

Rentals, shut-in well payments and minimum royalties which may be required under the terms of any lease shall be paid by the party or parties who subjected such lease to this agreement at its or their expense. In the event two or more parties own and have contributed interests in the same lease to this agreement, such parties may designate one of such parties to make said payments for and on behalf of all such parties. Any party may request, and shall be entitled to receive, proper evidence of all such payments. In the event of failure to make proper payment of any rental, shut-in well payment or minimum royalty through mistake or oversight where such payment is required to continue the lease in force, any loss which results from such non-payment shall be borne in accordance with the provisions of Article IV.B.2.

Operator shall notify Non-Operator of the anticipated completion of a shut-in gas well, or the shutting in or return to production of a producing gas well, at least five (5) days (excluding Saturday, Sunday and legal holidays), or at the earliest opportunity permitted by circumstances, prior to taking such action, but assumes no liability for failure to do so. In the event of failure by Operator to so notify Non-Operator, the loss of any lease contributed hereto by Non-Operator for failure to make timely payments of any shut-in well payment shall be borne jointly by the parties hereto under the provisions of Article IV.B.3.

F. Taxes:

Beginning with the first calendar year after the effective date hereof, Operator shall render for ad valorem taxation all property subject to this agreement which by law should be rendered for such taxes, and it shall pay all such taxes assessed thereon before they become delinquent. Prior to the rendition date, each Non-Operator shall furnish Operator information as to burdens (to include, but not be limited to, royalties, overriding royalties and production payments) on leases and oil and gas interests contributed by such Non-Operator. If the assessed valuation of any leasehold estate is reduced by reason of its being subject to outstanding excess royalties, overriding royalties or production payments, the reduction in ad valorem taxes resulting therefrom shall inure to the benefit of the owner or owners of such leasehold estate, and Operator shall adjust the charge to such owner or owners so as to reflect the benefit of such reduction. If the ad valorem taxes are based in whole or in part upon separate valuations of each party's working interest, then notwithstanding anything to the contrary herein, charges to the joint account shall be made and paid by the parties hereto in accordance with the tax value generated by each party's working interest. Operator shall bill the other parties for their proportionate shares of all tax payments in the manner provided in Exhibit "C".

If Operator considers any tax assessment improper, Operator may, at its discretion, protest within the time and manner prescribed by law, and prosecute the protest to a final determination, unless all parties agree to abandon the protest prior to final determination. During the pendency of administrative or judicial proceedings, Operator may elect to pay, under protest, all such taxes and any interest and penalty. When any such protested assessment shall have been finally determined, Operator shall pay the tax for the joint account, together with any interest and penalty accrued, and the total cost shall then be assessed against the parties, and be paid by them, as provided in Exhibit "C".

Each party shall pay or cause to be paid all production, severance, excise, gathering and other taxes imposed upon or with respect to the production or handling of such party's share of oil and/or gas produced under the terms of this agreement.

ARTICLE VII
continued

G. Insurance:

At all times while operations are conducted hereunder, Operator shall comply with the workmen's compensation law of the state where the operations are being conducted; provided, however, that Operator may be a self-insurer for liability under said compensation laws in which event the only charge that shall be made to the joint account shall be as provided in Exhibit "C". Operator shall also carry or provide insurance for the benefit of the joint account of the parties as outlined in Exhibit "D", attached to and made a part hereof. Operator shall require all contractors engaged in work on or for the Contract Area to comply with the workmen's compensation law of the state where the operations are being conducted and to maintain such other insurance as Operator may require.

In the event automobile public liability insurance is specified in said Exhibit "D", or subsequently receives the approval of the parties, no direct charge shall be made by Operator for premiums paid for such insurance for Operator's automotive equipment.

ARTICLE VIII.
ACQUISITION, MAINTENANCE OR TRANSFER OF INTEREST

A. Surrender of Leases:

The leases covered by this agreement, insofar as they embrace acreage in the Contract Area, shall not be surrendered in whole or in part unless all parties consent thereto.

However, should any party desire to surrender its interest in any lease or in any portion thereof, and the other parties do not agree or consent thereto, the party desiring to surrender shall assign, without express or implied warranty of title, all of its interest in such lease, or portion thereof, and any well, material and equipment which may be located thereon and any rights in production thereafter secured, to the parties not consenting to such surrender. If the interest of the assigning party is or includes an oil and gas interest, the assigning party shall execute and deliver to the party or parties not consenting to such surrender an oil and gas lease covering such oil and gas interest for a term of one (1) year and so long thereafter as oil and/or gas is produced from the land covered thereby, such lease to be on the form attached hereto as Exhibit "B". Upon such assignment or lease, the assigning party shall be relieved from all obligations thereafter accruing, but not theretofore accrued, with respect to the interest assigned or leased and the operation of any well attributable thereto, and the assigning party shall have no further interest in the assigned or leased premises and its equipment and production other than the royalties retained in any lease made under the terms of this Article. The party assignee or lessee shall pay to the party assignor or lessor the reasonable salvage value of the latter's interest in any wells and equipment attributable to the assigned or leased acreage. The value of all material shall be determined in accordance with the provisions of Exhibit "C", less the estimated cost of salvaging and the estimated cost of plugging and abandoning. If the assignment or lease is in favor of more than one party, the interest shall be shared by such parties in the proportions that the interest of each bears to the total interest of all such parties.

Any assignment, lease or surrender made under this provision shall not reduce or change the assignor's, lessor's or surrendering party's interest as it was immediately before the assignment, lease or surrender in the balance of the Contract Area; and the acreage assigned, leased or surrendered, and subsequent operations thereon, shall not thereafter be subject to the terms and provisions of this agreement.

B. Renewal or Extension of Leases:

If any party secures a renewal of any oil and gas lease subject to this agreement, all other parties shall be notified promptly, and shall have the right for a period of thirty (30) days following receipt of such notice in which to elect to participate in the ownership of the renewal lease, insofar as such lease affects lands within the Contract Area, by paying to the party who acquired it their several proportionate shares of the acquisition cost allocated to that part of such lease within the Contract Area, which shall be in proportion to the interests held at that time by the parties in the Contract Area.

If some, but less than all, of the parties elect to participate in the purchase of a renewal lease, it shall be owned by the parties who elect to participate therein, in a ratio based upon the relationship of their respective percentage of participation in the Contract Area to the aggregate of the percentages of participation in the Contract Area of all parties participating in the purchase of such renewal lease. Any renewal lease in which less than all parties elect to participate shall not be subject to this agreement.

Each party who participates in the purchase of a renewal lease shall be given an assignment of its proportionate interest therein by the acquiring party.

The provisions of this Article shall apply to renewal leases whether they are for the entire interest covered by the expiring lease or cover only a portion of its area or an interest therein. Any renewal lease taken before the expiration of its predecessor lease, or taken or contracted for within six (6) months after the expiration of the existing lease shall be subject to this provision; but any lease taken or contracted for more than six (6) months after the expiration of an existing lease shall not be deemed a renewal lease and shall not be subject to the provisions of this agreement.

The provisions in this Article shall also be applicable to extensions of oil and gas leases.

C. Acreage or Cash Contributions:

While this agreement is in force, if any party contracts for a contribution of cash towards the drilling of a well or any other operation on the Contract Area, such contribution shall be paid to the party who conducted the drilling or other operation and shall be applied by it against the cost of such drilling or other operation. If the contribution be in the form of acreage, the party to whom the contribution is made shall promptly tender an assignment of the acreage, without warranty of title, to the Drilling Parties in the proportions

ARTICLE VIII
continued

said Drilling Parties shared the cost of drilling the well. Such acreage shall become a separate Contract Area and, to the extent possible, be governed by provisions identical to this agreement. Each party shall promptly notify all other parties of any acreage or cash contributions it may obtain in support of any well or any other operation on the Contract Area. The above provisions shall also be applicable to optional rights to earn acreage outside the Contract Area which are in support of a well drilled inside the Contract Area.

If any party contracts for any consideration relating to disposition of such party's share of substances produced hereunder, such consideration shall not be deemed a contribution as contemplated in this Article VIII.C.

D. **Maintenance of Uniform Interest:**

For the purpose of maintaining uniformity of ownership in the oil and gas leasehold interests covered by this agreement, no party shall sell, encumber, transfer or make other disposition of its interest in the leases embraced within the Contract Area and in wells, equipment and production unless such disposition covers either:

1. the entire interest of the party in all leases and equipment and production; or

2. an equal undivided interest in all leases and equipment and production in the Contract Area.

Every such sale, encumbrance, transfer or other disposition made by any party shall be made expressly subject to this agreement and shall be made without prejudice to the right of the other parties.

If, at any time the interest of any party is divided among and owned by four or more co-owners, Operator, at its discretion, may require such co-owners to appoint a single trustee or agent with full authority to receive notices, approve expenditures, receive billings for and approve and pay such party's share of the joint expenses, and to deal generally with, and with power to bind, the co-owners of such party's interest within the scope of the operations embraced in this agreement; however, all such co-owners shall have the right to enter into and execute all contracts or agreements for the disposition of their respective shares of the oil and gas produced from the Contract Area and they shall have the right to receive, separately, payment of the sale proceeds thereof.

E. **Waiver of Rights to Partition:**

If permitted by the laws of the state or states in which the property covered hereby is located, each party hereto owning an undivided interest in the Contract Area waives any and all rights it may have to partition and have set aside to it in severalty its undivided interest therein.

~~F. Preferential Right to Purchase:~~

~~Should any party desire to sell all or any part of its interests under this agreement, or its rights and interests in the Contract Area, it shall promptly give written notice to the other parties, with full information concerning its proposed sale, which shall include the name and address of the prospective purchaser (who must be ready, willing and able to purchase), the purchase price, and all other terms of the offer. The other parties shall then have an optional prior right, for a period of ten (10) days after receipt of the notice, to purchase on the same terms and conditions the interest which the other party proposes to sell; and, if this optional right is exercised, the purchasing parties shall share the purchased interest in the proportions that the interest of each bears to the total interest of all purchasing parties. However, there shall be no preferential right to purchase in those cases where any party wishes to mortgage its interests, or to dispose of its interests by merger, reorganization, consolidation, or sale of all or substantially all of its assets to a subsidiary or parent company or to a subsidiary of a parent company, or to any company in which any one party owns a majority of the stock.~~

ARTICLE IX.
INTERNAL REVENUE CODE ELECTION

This agreement is not intended to create, and shall not be construed to create, a relationship of partnership or an association for profit between or among the parties hereto. Notwithstanding any provision herein that the rights and liabilities hereunder are several and not joint or collective, or that this agreement and operations hereunder shall not constitute a partnership, if, for federal income tax purposes, this agreement and the operations hereunder are regarded as a partnership, each party hereby affected elects to be excluded from the application of all of the provisions of Subchapter "K", Chapter 1, Subtitle "A", of the Internal Revenue Code of 1954, as permitted and authorized by Section 761 of the Code and the regulations promulgated thereunder. Operator is authorized and directed to execute on behalf of each party hereby affected such evidence of this election as may be required by the Secretary of the Treasury of the United States or the Federal Internal Revenue Service, including specifically, but not by way of limitation, all of the returns, statements, and the data required by Federal Regulations 1.761. Should there be any requirement that each party hereby affected give further evidence of this election, each such party shall execute such documents and furnish such other evidence as may be required by the Federal Internal Revenue Service or as may be necessary to evidence this election. No such party shall give any notices or take any other action inconsistent with the election made hereby. If any present or future income tax laws of the state or states in which the Contract Area is located or any future income tax laws of the United States contain provisions similar to those in Subchapter "K", Chapter 1, Subtitle "A", of the Internal Revenue Code of 1954, under which an election similar to that provided by Section 761 of the Code is permitted, each party hereby affected shall make such election as may be permitted or required by such laws. In making the foregoing election, each such party states that the income derived by such party from operations hereunder can be adequately determined without the computation of partnership taxable income.

ARTICLE X.
CLAIMS AND LAWSUITS

Operator may settle any single uninsured third party damage claim or suit arising from operations hereunder if the expenditure does not exceed Fifteen Thousand Dollars ($ 15,000.00) and if the payment is in complete settlement of such claim or suit. If the amount required for settlement exceeds the above amount, the parties hereto shall assume and take over the further handling of the claim or suit, unless such authority is delegated to Operator. All costs and expenses of handling, settling, or otherwise discharging such claim or suit shall be at the joint expense of the parties participating in the operation from which the claim or suit arises. If a claim is made against any party or if any party is sued on account of any matter arising from operations hereunder over which such individual has no control because of the rights given Operator by this agreement, such party shall immediately notify all other parties, and the claim or suit shall be treated as any other claim or suit involving operations hereunder.

ARTICLE XI.
FORCE MAJEURE

If any party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, other than the obligation to make money payments, that party shall give to all other parties prompt written notice of the force majeure with reasonably full particulars concerning it; thereupon, the obligations of the party giving the notice, so far as they are affected by the force majeure, shall be suspended during, but no longer than, the continuance of the force majeure. The affected party shall use all reasonable diligence to remove the force majeure situation as quickly as practicable.

The requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts, or other labor difficulty by the party involved, contrary to its wishes; how all such difficulties shall be handled shall be entirely within the discretion of the party concerned.

The term "force majeure", as here employed, shall mean an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, blockade, public riot, lightning, fire, storm, flood, explosion, governmental action, governmental delay, restraint or inaction, unavailability of equipment, and any other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of the party claiming suspension.

ARTICLE XII.
NOTICES

All notices authorized or required between the parties and required by any of the provisions of this agreement, unless otherwise specifically provided, shall be given in writing by mail or telegram, postage or charges prepaid, or by telex or telecopier and addressed to the parties to whom the notice is given at the addresses listed on Exhibit "A". The originating notice given under any provision hereof shall be deemed given only when received by the party to whom such notice is directed, and the time for such party to give any notice in response thereto shall run from the date the originating notice is received. The second or any responsive notice shall be deemed given when deposited in the mail or with the telegraph company, with postage or charges prepaid, or sent by telex or telecopier. Each party shall have the right to change its address at any time, and from time to time, by giving written notice thereof to all other parties.

ARTICLE XIII.
TERM OF AGREEMENT

This agreement shall remain in full force and effect as to the oil and gas leases and/or oil and gas interests subject hereto for the period of time selected below; provided, however, no party hereto shall ever be construed as having any right, title or interest in or to any lease or oil and gas interest contributed by any other party beyond the term of this agreement.

☐ Option No. 1: So long as any of the oil and gas leases subject to this agreement remain or are continued in force as to any part of the Contract Area, whether by production, extension, renewal or otherwise.

☒ Option No. 2: In the event the well described in Article VI.A., or any subsequent well drilled under any provision of this agreement, results in production of oil and/or gas in paying quantities, this agreement shall continue in force so long as any such well or wells produce, or are capable of production, and for an additional period of 90 days from cessation of all production; provided, however, if, prior to the expiration of such additional period, one or more of the parties hereto are engaged in drilling, reworking, deepening, plugging back, testing or attempting to complete a well or wells hereunder, this agreement shall continue in force until such operations have been completed and if production results therefrom, this agreement shall continue in force as provided herein. In the event the well described in Article VI.A., or any subsequent well drilled hereunder, results in a dry hole, and no other well is producing, or capable of producing oil and/or gas from the Contract Area, this agreement shall terminate unless drilling, deepening, plugging back or reworking operations are commenced within 90 days from the date of abandonment of said well.

It is agreed, however, that the termination of this agreement shall not relieve any party hereto from any liability which has accrued or attached prior to the date of such termination.

ARTICLE XIV.
COMPLIANCE WITH LAWS AND REGULATIONS

A. Laws, Regulations and Orders:

This agreement shall be subject to the conservation laws of the state in which the Contract Area is located, to the valid rules, regulations, and orders of any duly constituted regulatory body of said state; and to all other applicable federal, state, and local laws, or ordinances, rules, regulations, and orders.

B. Governing Law:

This agreement and all matters pertaining hereto, including, but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties and interpretation or construction, shall be governed and determined by the law of the state in which the Contract Area is located. If the Contract Area is in two or more states, the law of the state of _____ shall govern.

C. Regulatory Agencies:

Nothing herein contained shall grant, or be construed to grant, Operator the right or authority to waive or release any rights, privileges, or obligations which Non-Operators may have under federal or state laws or under rules, regulations or orders promulgated under such laws in reference to oil, gas and mineral operations, including the location, operation, or production of wells, on tracts offsetting or adjacent to the Contract Area.

With respect to operations hereunder, Non-Operators agree to release Operator from any and all losses, damages, injuries, claims and causes of action arising out of, incident to or resulting directly or indirectly from Operator's interpretation or application of rules, rulings, regulations or orders of the Department of Energy or predecessor or successor agencies to the extent such interpretation or application was made in good faith. Each Non-Operator further agrees to reimburse Operator for any amounts applicable to such Non-Operator's share of production that Operator may be required to refund, rebate or pay as a result of such an incorrect interpretation or application, together with interest and penalties thereon owing by Operator as a result of such incorrect interpretation or application.

Non-Operators authorize Operator to prepare and submit such documents as may be required to be submitted to the purchaser of any crude oil sold hereunder or to any other person or entity pursuant to the requirements of the "Crude Oil Windfall Profit Tax Act of 1980", as same may be amended from time to time ("Act"), and any valid regulations or rules which may be issued by the Treasury Department from time to time pursuant to said Act. Each party hereto agrees to furnish any and all certifications or other information which is required to be furnished by said Act in a timely manner and in sufficient detail to permit compliance with said Act.

ARTICLE XV.
OTHER PROVISIONS

SEE PAGES 14a, 14b, & 14c ATTACHED:

ARTICLE XV.

OTHER PROVISIONS

The following provisions are intended to be cumulative, but in the event they conflict with the other provisions herein, then the following provisions shall control:

A. Definition of "holidays": The word "holidays" when used herein is defined as a legal holiday observed by National Banking Associations in Midland, Texas.

"Back-in after Payout" : Upon payout of each well drilled hereunder, on a well by well basis, Fuel Products, Inc., Ameristate Oil & Gas, Inc. and Louis Mazzullio, Inc. (hereinafter collectively referred to herein as "FPI"), shall collectively be entitled to an additional twenty-five percent (25%) working interest in each such well, proportionately reduced to the ninety-five percent (95%) interest of TMBR/Sharp Drilling, Inc. ("TMBR") hereunder (such back-in being an undivided twenty-three and seventy-five hundredths percent (21.75%) working interest in each such well as Payout occurs therein). If any of the parties comprising "FPI" elects not to receive its proportionate share of such back-in, each of the other such parties who desire to receive such back-in shall be entitled to the entire back-in in such well. For the purposes of this Agreement, "Payout" for each well drilled hereunder, shall occur at that point in time at which there is recouped out of the production (or other value received) which is attributable to the interest credited to TMBR in Exhibit "A" hereto (after deducting therefrom all royalties, overriding royalty interests and applicable severance, production, excise and gathering taxes) all costs incurred in drilling, completing, equipping and operating such well to the point in time that Payout occurs. The accounting procedure attached as Exhibit "C" hereto shall be used in determining payout on each well. TMBR/Sharp Drilling, Inc. et al (collectively "TMBR") shall give notification to FPI of the date said well(s) has paid out. Payout shall, for the purpose of this agreement, be deemed to have occurred at 8:00 a.m. on the day next following the date the well(s) actually pays out. Should FPI elect to back-in for said additional working interest, it will thereafter share proportionately the cost of operating, repairing and recompleting the well(s) and shall bear its proportionate part of any overriding royalty burdening the lease included within the producing unit formed for the well(s), it being clearly understood, however, that in no event shall FPI be liable for any drilling, completing, recompleting, equipping or operating cost incurred by or for TMBR's account prior to the time of payout of each well.

B In the event one or more of the parties hereto shall elect as follows:

1. not to pay a delay rental;
2. to abandon a lease; or
3. not to participate in a necessary well as defined in Article XV.N; and assigns its interest in a lease, or portion thereof, to and for the benefit of the participating parties hereto, or if some, but not all, of the parties hereto elect to acquire an interest in a lease or a contract affecting a lease pursuant to the provisions of Article XV.P., it is agreed that the lands covered by the contract rights shall no longer be subject to this agreement. In such event the lease or contract rights and the lands covered thereby shall be deemed to be subject to an operating agreement identical to this agreement changed only to reflect the proper owners and percentages and, if the parties so desire, to designate a new operator if the operator under this agreement is not a co-owner.

C. Dispute re: Proposed Depth: If during the drilling of any well being drilled hereunder other than the initial well provided for in Article VI.A., a bona fide dispute shall exist as to whether the proposed depth has been reached in such well (as for example, whether a well has been drilled to a depth sufficient to test a particular sand or formation or if the well has reached the stratigraphic equivalent of a particular depth), the opinion of the majority in interest, and not in numbers, of the owners as shown on Exhibit "A" shall control and be binding upon all parties. If the parties are equally divided, the opinion of the Operator will prevail.

D. Payment Obligations: All rentals, shut-in well payments and minimum royalties which may be required under the terms of any lease shall be administered and paid by Operator and charged to the Joint Account except where otherwise expressly provided to the contrary in this agreement. Any party may request and shall be entitled to receive proper evidence of all such payments. Operator shall make or cause to be made proper payment of any rentals and shut-in well payments and minimum royalties under the foregoing provisions.

Operator shall notify each Non-Operator of its recommendation concerning the payment of delay rentals or shut-in royalties under any leases as they may fall due in writing at least forty-five (45) days in advance of the day when such payment is due. Each Non-Operator shall have fifteen (15) days from the receipt of such notice to respond to such recommendation with payment, and failure by Non-Operator shall be deemed an election by Non-Operator to concur with Operator's recommendation. Operator will be responsible for non-payment of delay rentals or shut-in royalties only if it's actions constitute gross negligence or willful misconduct.

E. Acquisition of Leasehold Interest: Any party acquiring a new lease within the Contract Area shall furnish the other party or parties actual copies of the lease, leases in acquiring said instrument sufficient to verify the actual consideration for said interest, a plat or exact description of the location and any other documents pertinent to the other party evaluating the acquiring parties interest. The non-acquiring parties shall have thirty (30) days following receipt of the aforesaid notice in which to indicate the preference as to participation in said acquisition by written response to the acquiring party accompanied by a check covering its share of the acquisition.

F. Coincidental Operations: It is agreed by the parties hereto that unless otherwise agreed when any well provided for in this Agreement is drilling or testing, neither party shall propose the drilling of an additional well on the contract acreage unless the drilling of a well is necessary to perpetuate the Lease or for some other reason it is mutually agreed by the parties hereto that an additional well should be drilled prior to the completion of a well on the contract acreage.

G. Expenses Attributable to Transfers: In the event of transfer, sale, encumbrance or other disposition of interest within the Contract Area which creates the necessity of separate measurement of production, the party creating the necessity for such measurement shall alone bear the cost of purchase, installation and operation of such facilities.

H. Bankruptcy: If, following the granting of relief under the Bankruptcy Code to any party hereto as debtor thereunder, this Agreement should be held to be an executory contract within the meaning of 11 U.S.C. Section 365, then the Operator, or (if the Operator is the debtor in bankruptcy) any other party, shall be entitled to a determination by debtor or any trustee for debtor within thirty (30) days from the date an order for relief is entered under this Bankruptcy Code as to the rejection or assumption of this Operating Agreement. In the event of an assumption, Operator or said other party shall be entitled to adequate assurances as to future performance of debtor's obligation hereunder and the protection of the interest of all other parties.

I. Insurance (Non-Operators): With the exception of minimum limits set by State and Federal regulations Non Operator(s) may elect not to be covered by any of Operator's insurance coverage provided for the joint account by providing Operator with written notice and Certificate of Insurance.

J. Third Party Services: Regardless of any provision of this Operating Agreement or the Accounting Procedure to the contrary, the Operator may charge to the Joint Account for the Contract Area for fees and charges incurred for the outside engineers, geologists, consultants, brokers, title curative work attorneys, and other third-party services incurred in connection with leases owned by or acquired for the Joint Account or operations for the benefit of the Joint Account, all to be borne in the proportions specified on Exhibit "A".

K. Metering of Production: If a diversity of the working interest ownership in production from a lease subject to this agreement occurs as a result of operations by less than all parties pursuant to any provision of this agreement, it is agreed that the oil and other hydrocarbons produced from the well or wells completed by the consenting party or parties shall be separately measured by standard metering equipment to be properly tested periodically for accuracy, and the setting of a separate tank battery will not be required unless the purchaser of the production or governmental regulatory body having jurisdiction will not approve metering for separately measuring production.

L. Non-Discrimination: In the performance of this Agreement, Operator shall not engage in any conduct or practice which violates any law, order or regulation prohibiting discrimination against any person by reason of his or her race, religion, color, sex, national origin, or age; and Operator further agrees to comply fully with the non-discrimination provisions of Section 202 of Executive Order No. 11246 (30 F.R. 12319), as amended.

M. Priority of Operation: Whenever there is more than one proposal in connection with any well subject to this agreement, such proposals shall be considered and disposed of in the following order or priority:

1. Drilling the well to its authorized depth or attempting a completion including testing and logging of such well at such depth shall have first priority over all other operations and proposals;
2. A proposal to plug back a well shall prevail over a proposal to deepen or to sidetrack such well; if there is more than one proposal to plug back, the proposal to plug back to the next deepest prospective interval shall have priority over proposals to plug back to shallower prospective intervals.
3. A proposal to sidetrack a well in order to reach the authorized depth shall prevail over a proposal to deepen;
4. A proposal to deepen a well shall have last priority; and
5. Proposals of the same type and to the same depth shall be given precedence in the order in which they were made.

N. Non-Consent Penalties Applicable Necessary Operations: If during the term of this agreement, a well is required to be drilled, deepened, reworked, plugged back, sidetracked, or recompleted, or any other operation that may be required in order to:

(1) continue a lease or leases in force and effect;

(2) maintain a unitized area or any portion thereof in and to any oil and/or gas and other interest which may be owned by a third party or which, failing in such operation, may revert to a third party;

(3) comply with an order issued by a regulatory body having jurisdiction in the premises, failing in which certain rights would terminate;

such operation shall hereinafter be defined as a "Necessary Operation". Notwithstanding any other provisions contained in this agreement to the contrary, any party electing not to participate in a Necessary Operation which is proposed pursuant to Article VI.B.1. shall forfeit and assign to the participating parties, all of its right, title, and interest in the Contract Area except each well in which such party participated in all operations conducted thereon and the producing formation underlying the proration or spacing unit for each such well. Such forfeiting party's interest shall not be burdened except as authorized hereunder.

O. Subsequently Created Interest: If any party hereto shall create an overriding royalty production payment, net proceeds interest, or other similar interest, subsequent to the effective date of this Agreement, or if such interest was created prior to the effective date hereof but was neither recorded in the county in which the Contract Area is located nor disclosed to all parties hereto at the time of execution hereof (any such interest created under the circumstances herein mentioned shall hereafter be referred to as a "Subsequently Created Interest"), such Subsequently Created Interest shall be specifically subject to all of the terms and provisions of this Agreement, as follows:

1). If non-consent operations are conducted pursuant to any provision of this agreement, and the

party conducting such operations becomes entitled to receive the production attributable to the interest out of which the subsequently Created Interest is derived, such party shall receive same free and clear of such Subsequently Created Interest. The party creating same shall bear and pay all such Subsequently Created Interest and shall indemnify and hold the other parties hereto harmless from any and all liability resulting therefrom.

2). If the owner of the interest from which a Subsequently Created Interest is derived fails to pay, when due, its share of expenses chargeable hereunder, the lien granted the other parties hereto under the provisions of Article VII.B. or under the appropriate state statutes shall cover and affect the Subsequently Created Interest and the rights of the parties shall be the same as if the Subsequently Created Interest had not been created.

3). If the owner of the interest from which Subsequently Created Interest is derived (i) elects to abandon a well under the provisions of Article VI.E. hereof, (ii) elects to surrender a lease (or portion thereof) under the provisions of Article VIII.A. hereof, or (iii) elects not to pay rentals attributable to its interest in any lease and thereby is required to assign the lease or that portion or interest therein for which it elects not to pay rentals to those parties paying such rental, any assignment resulting from such election shall be free and clear of the Subsequently Created Interest.

4). The owner creating such interest shall indemnify and hold the other parties harmless from any claim or cause of action by the owner of the Subsequently Created Interest.

P. Workover Operations: It is agreed that without the mutual consent of all parties, no workover operations will be conducted under the provisions of Article VI so long as any completion in the well proposed to be worked over is producing in paying quantities.

Q. JOA SUBORDINATE: NOTWITHSTANDING ANYTHING ELSE HEREIN TO THE CONTRARY, THE PROVISIONS OF THE JOINT OPERATING AGREEMENT SHALL NOT CONFLICT WITH THE LETTER AGREEMENT DATED JULY 1, 1998 BETWEEN TMBR/SHARP DRILLING, INC., FUEL PRODUCTS, INC. ET AL. AND THE PARTIES HERETO. THE PROVISIONS OF SAID LETTER AGREEMENT SHALL SUPERSEDE AND HAVE PRECEDENCE OVER THE PROVISIONS HEREOF.

ARTICLE XVI.
MISCELLANEOUS

This agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, devisees, legal representatives, successors and assigns.

This instrument may be executed in any number of counterparts, each of which shall be considered an original for all purposes.

IN WITNESS WHEREOF, this agreement shall be effective as of 1st day of July 19 98.

OPERATOR

TMBR/SHARP Drilling, Inc.

BY: _____

NON-OPERATORS

FUEL PRODUCTS, INC.

BY: _____
Thomas M. Beall, President

AMERISTATE OIL & GAS, INC.

BY: _____
Mark K. Nearburg, President

LOUIS MAZZULLO, INC.

BY: _____
Louis J. Mazzullo, President

A.A.P.L. FORM 610 - MODEL FORM OPERATING AGREEMENT - 1982

ARTICLE XVI.
MISCELLANEOUS

This agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, devisees, legal representatives, successors and assigns.

This instrument may be executed in any number of counterparts, each of which shall be considered an original for all purposes.

IN WITNESS WHEREOF, this agreement shall be effective as of 1st day of July 19 98.

OPERATOR

THSR/SRARP Drilling, Inc.

BY: _____

NON-OPERATORS

FUEL PRODUCTS, INC.

BY: _____
Thomas H. Beall, President

AMERISTATE OIL & GAS, INC.

BY: _____
Mark K. Mearburg, President

LOUIS MAZZULLO, INC.

BY: _____
Louis J. Mazzullo, President

EXHIBIT "A"

Attached to and made a part of that certain Operating Agreement dated July 1, 1998 by and between TMBR/Sharp Drilling, Inc. as "Operator", and Fuel Products, Inc., et al as "Non-Operators".

I. Identification of lands subject to this agreement:

Section 13: SE/4, Section 24: All, Section 25: NW/4, Township 16 South, Range 35 East, Lea County, New Mexico

II. Restrictions, if any, as to depths, formations, or substances:

None.

III. Percentages or fractional interests of Parties to this Agreement:

	Working Interest B.P.O.	Working Interest A.P.O.*
TMBR/SHARP DRILLING, INC.	950000	0.712500
FUEL PRODUCTS, INC.	.022500	0.1115625
MARK K. NEARBURG	.022500	0.1115625
LOUIS MAZZULLO, INC.	.005000	0.064375
	1.00000	1.00000

*Back-in after pay-out on a well-by well basis

IV. Addresses of parties for notice purposes:

TMBR/SHARP Drilling, Inc.
P. O. Box 10970
Midland, Texas 79702
915-699-5050
915-699-5085 Fax

Fuel Products, Inc. Tax I.D. 73-0951191
P. O. Box 3098
Midland, Texas 79702
915-687-0008
915-687-0000 Fax

Ameristate Oil & Gas, Inc. Tax I.D. 75-2398302
1211 W. Texas
Midland, Texas 79701
915-683-6679
915-683-5935 Fax

Louis Mazzullo, Inc. Tax I.D. 85-0444285
P. O. Box 66657
Albuquerque, NM 87193-6657

V. Schedule of leases:

Date: November 20, 1997
Lessor: Gladys Chambers, a widow
Lessee: Ameristate Oil & Gas, Inc.
Recorded: Volume 845, Page 277
Description: Section 24: NE/4 NW/4
Township 16 South, Range 35 East,
NMPM, Lea County, New Mexico

Date: February 3, 1998
Lessor: Jones Robinson, Ltd.
Lessee: Ameristate Oil & Gas, Inc.
Recorded: Volume 864, Page 257
Description: Section 24: SE/4
Township 16 South, Range 35 East,
NMPM, Lea County, New Mexico

Date:	December 2, 1997
Lessor:	Edmund F. Ely
Lessee:	Ameristate Oil & Gas, Inc.
Recorded:	Volume 835, Page 568
Description:	Section 24: NE/4 NE/4 Township 16 South, Range 35 East, NMPM, Lea County, New Mexico

Date:	November 15, 1997
Lessor:	Laverne C. Levers
Lessee:	Ameristate Oil & Gas, Inc.
Recorded:	Volume 835, Page 570
Description:	Section 24: NE/4 NE/4 Township 16 South, Range 35 East, NMPM, Lea County, New Mexico

Date:	November 15, 1997
Lessor:	Alice Jane Sumruld
Lessee:	Ameristate Oil & Gas, Inc.
Recorded:	Volume 835, Page 566
Description:	Section 24: S/2 NE/4, NE/4 SW/4, S/2 SW/4 Township 16 South, Range 35 East, NMPM, Lea County, New Mexico

Date:	November 15, 2000
Lessor:	Alice Jane Sumruld
Lessee:	Ameristate Oil & Gas, Inc.
Recorded:	Volume 872, Page 490
Description:	Section 24: S/2 NE/4, NE/4 SW/4, S/2 SW/4 Township 16 South, Range 35 East, NMPM, Lea County, New Mexico

Date:	December 7, 1997
Lessor:	Erma Stokes Hamilton
Lessee:	Ameristate Oil & Gas, Inc.
Recorded:	Volume 827, Page 124
Description:	Insofar only as said lease covers: Section 13: SE/4 Section 24: NW/4 SW/4, NW/4 NE/4 Section 25: NW/4 Township 16 South, Range 35 East, NMPM, Lea County, New Mexico

Date:	December 7, 1997
Lessor:	Madeline Stokes
Lessee:	Ameristate Oil & Gas, Inc.
Recorded:	Volume 827, Page 127
Description:	Insofar as said lease covers: Section 13: SE/4 Section 24: NW/4 SW/4, NW/4 NE/4 Section 25: NW/4 Township 16 South, Range 35 East, NMPM, Lea County, New Mexico

COPAS - 1984 - ONSHORE
Recommended by the Council of Petroleum Accountants Societies
COPAS
601, BOX 800 TULSA OK 74101

EXHIBIT "C"

Attached to and made a part of that certain Operating Agreement dated July 1, 1998, with TMBR/Sharp Drilling, Inc. as Operator and Fuel Products, Inc., et al as Non-Operators.

ACCOUNTING PROCEDURE
JOINT OPERATIONS

I. GENERAL PROVISIONS

1. **Definitions**

"Joint Property" shall mean the real and personal property subject to the agreement to which this Accounting Procedure is attached.
"Joint Operations" shall mean all operations necessary or proper for the development, operation, protection and maintenance of the Joint Property.
"Joint Account" shall mean the account showing the charges paid and credits received in the conduct of the Joint Operations and which are to be shared by the Parties.
"Operator" shall mean the party designated to conduct the Joint Operations.
"Non-Operators" shall mean the Parties to this agreement other than the Operator.
"Parties" shall mean Operator and Non-Operators.
"First Level Supervisors" shall mean those employees whose primary function in Joint Operations is the direct supervision of other employees and/or contract labor directly employed on the Joint Property in a field operating capacity.
"Technical Employees" shall mean those employees having special and specific engineering, geological or other professional skills, and whose primary function in Joint Operations is the handling of specific operating conditions and problems for the benefit of the Joint Property.
"Personal Expenses" shall mean travel and other reasonable reimbursable expenses of Operator's employees.
"Material" shall mean personal property, equipment or supplies acquired or held for use on the Joint Property.
"Controllable Material" shall mean Material which at the time is so classified in the Material Classification Manual as most recently recommended by the Council of Petroleum Accountants Societies.

2. **Statement and Billings**

Operator shall bill Non-Operators on or before the last day of each month for their proportionate share of the Joint Account for the preceding month. Such bills will be accompanied by statements which identify the authority for expenditure, lease or facility, and all charges and credits summarized by appropriate classifications of investment and expense except that items of Controllable Material and unusual charges and credits shall be separately identified and fully described in detail.

3. **Advances and Payments by Non-Operators**

A. Unless otherwise provided for in the agreement, the Operator may require the Non-Operators to advance their share of estimated cash outlay for the succeeding month's operation within fifteen (15) days after receipt of the billing or by the first day of the month for which the advance is required, whichever is later. Operator shall adjust each monthly billing to reflect advances received from the Non-Operators.

B. Each Non-Operator shall pay its proportion of all bills within fifteen (15) days after receipt. If payment is not made within such time, the unpaid balance shall bear interest monthly at the prime rate in effect at Texas Commerce Bank on the first day of the month in which delinquency occurs plus 1% or the maximum contract rate permitted by the applicable usury laws in the state in which the Joint Property is located, whichever is the lesser, plus attorney's fees, court costs, and other costs in connection with the collection of unpaid amounts.

4. **Adjustments**

Payment of any such bills shall not prejudice the right of any Non-Operator to protest or question the correctness thereof; provided, however, all bills and statements rendered to Non-Operators by Operator during any calendar year shall conclusively be presumed to be true and correct after twenty-four (24) months following the end of any such calendar year, unless within the said twenty-four (24) month period a Non-Operator takes written exception thereto and makes claim on Operator for adjustment. No adjustment favorable to Operator shall be made unless it is made within the same prescribed period. The provisions of this paragraph shall not prevent adjustments resulting from a physical inventory of Controllable Material as provided for in Section V.

5. Audits

A. A Non-Operator, upon notice in writing to Operator and all other Non-Operators, shall have the right to audit Operator's accounts and records relating to the Joint Account for any calendar year within the twenty-four (24) month period following the end of such calendar year; provided, however, the making of an audit shall not extend the time for the taking of written exception to and the adjustments of accounts as provided for in Paragraph 4 of this Section I. Where there are two or more Non-Operators, the Non-Operators shall make every reasonable effort to conduct a joint audit in a manner which will result in a minimum of inconvenience to the Operator. Operator shall bear no portion of the Non-Operators' audit cost incurred under this paragraph unless agreed to by the Operator. The audits shall not be conducted more than once each year without prior approval of Operator, except upon the resignation or removal of the Operator, and shall be made at the expense of those Non-Operators approving such audit.

B. The Operator shall reply in writing to an audit report within 180 days after receipt of such report.

6. Approval By Non-Operators

Where an approval or other agreement of the Parties or Non-Operators is expressly required under other sections of this Accounting Procedure and if the agreement to which this Accounting Procedure is attached contains no contrary provisions in regard thereto, Operator shall notify all Non-Operators of the Operator's proposal, and the agreement or approval of a majority in interest of the Non-Operators shall be controlling on all Non-Operators.

II. DIRECT CHARGES

Operator shall charge the Joint Account with the following items:

1. Ecological and Environmental

Costs incurred for the benefit of the Joint Property as a result of governmental or regulatory requirements to satisfy environmental considerations applicable to the Joint Operations. Such costs may include surveys of an ecological or archaeological nature and pollution control procedures as required by applicable laws and regulations.

2. Rentals and Royalties

Lease rentals and royalties paid by Operator for the Joint Operations.

3. Labor

A. (1) Salaries and wages of Operator's field employees directly employed on the Joint Property in the conduct of Joint Operations.

(2) Salaries of First Level Supervisors in the field.

(3) Salaries and wages of Technical Employees directly employed on the Joint Property if such charges are excluded from the overhead rates.

(4) Salaries and wages of Technical Employees either temporarily or permanently assigned to and directly employed in the operation of the Joint Property if such charges are excluded from the overhead rates.

B. Operator's cost of holiday, vacation, sickness and disability benefits and other customary allowances paid to employees whose salaries and wages are chargeable to the Joint Account under Paragraph 3A of this Section II. Such costs under this Paragraph 3B may be charged on a "when and as paid basis" or by "percentage assessment" on the amount of salaries and wages chargeable to the Joint Account under Paragraph 3A of this Section II. If percentage assessment is used, the rate shall be based on the Operator's cost experience.

C. Expenditures or contributions made pursuant to assessments imposed by governmental authority which are applicable to Operators costs chargeable to the Joint Account under Paragraphs 3A and 3B of this Section II.

D. Personal Expenses of those employees whose salaries and wages are chargeable to the Joint Account under Paragraph 3A of this Section II.

4. Employee Benefits

Operator's current costs of established plans for employees' group life insurance, hospitalization, pension, retirement, stock purchase, thrift, bonus, and other benefit plans of a like nature, applicable to Operator's labor cost chargeable to the Joint Account under Paragraphs 3A and 3B of this Section II shall be Operator's actual cost not to exceed the percent most recently recommended by the Council of Petroleum Accountants Societies.

6. Material

Material purchased or furnished by Operator for use on the Joint Property as provided under Section IV. Only such Material shall be purchased for or transferred to the Joint Property as may be required for immediate use and is reasonably practical and consistent with efficient and economical operations. The accumulation of surplus stocks shall be avoided.

6. Transportation

Transportation of employees and Material necessary for the Joint Operations but subject to the following limitations:

A. If Material is moved to the Joint Property from the Operator's warehouse or other properties, no charge shall be made to the Joint Account for a distance greater than the distance from the nearest reliable supply store where like material is normally available or railway receiving point nearest the Joint Property unless agreed to by the Parties.

B. If surplus Material is moved to Operator's warehouse or other storage point, no charge shall be made to the Joint Account for a distance greater than the distance to the nearest reliable supply store where like material is normally available, or railway receiving point nearest the Joint Property unless agreed to by the Parties. No charge shall be made to the Joint Account for moving Material to other properties belonging to Operator, unless agreed to by the Parties.

C. In the application of subparagraphs A and B above, the option to equalize or charge actual trucking cost is available when the actual charge is $400 or less excluding accessorial charges. The $400 will be adjusted to the amount most recently recommended by the Council of Petroleum Accountants Societies.

7. Services

The cost of contract services, equipment and utilities provided by outside sources, except services excluded by Paragraph 10 of Section II and Paragraph i, ii, and iii, of Section III. The cost of professional consultant services and contract services of technical personnel directly engaged on the Joint Property if such charges are excluded from the overhead rates. The cost of professional consultant services or contract services of technical personnel not directly engaged on the Joint Property shall not be charged to the Joint Account unless previously agreed to by the Parties.

8. Equipment and Facilities Furnished By Operator

A Operator shall charge the Joint Account for use of Operator owned equipment and facilities at rates commensurate with costs of ownership and operation. Such rates shall include costs of maintenance, repairs, other operating expense, insurance, taxes, depreciation, and interest on gross investment less accumulated depreciation not to exceed eight percent (8% %) per annum. Such rates shall not exceed average commercial rates currently prevailing in the immediate area of the Joint Property.

B. In lieu of charges in paragraph 8A above, Operator may elect to use average commercial rates prevailing in the immediate area of the Joint Property less 20%. For automotive equipment, Operator may elect to use rates published by the Petroleum Motor Transport Association.

9. Damages and Losses to Joint Property

All costs or expenses necessary for the repair or replacement of Joint Property made necessary because of damages or losses incurred by fire, flood, storm, theft, accident, or other cause, except those resulting from Operator's gross negligence or willful misconduct. Operator shall furnish Non-Operator written notice of damages or losses incurred as soon as practicable after a report thereof has been received by Operator.

10. Legal Expense

Expense of handling, investigating and settling litigation or claims, discharging of liens, payment of judgements and amounts paid for settlement of claims incurred in or resulting from operations under the agreement or necessary to protect or recover the Joint Property, except that no charge for services of Operator's legal staff or fees or expense of outside attorneys shall be made unless previously agreed to by the Parties. All other legal expense is considered to be covered by the overhead provisions of Section III unless otherwise agreed to by the Parties, except as provided in Section I, Paragraph 3.

11. Taxes

All taxes of every kind and nature assessed or levied upon or in connection with the Joint Property, the operation thereof, or the production therefrom, and which taxes have been paid by the Operator for the benefit of the Parties. If the ad valorem taxes are based in whole or in part upon separate valuations of each party's working interest, then notwithstanding anything to the contrary herein, charges to the Joint Account shall be made and paid by the Parties hereto in accordance with the tax value generated by each party's working interest.

12. Insurance

Net premiums paid for insurance required to be carried for the Joint Operations for the protection of the Parties. In the event Joint Operations are conducted in a state in which Operator may act as self-insurer for Worker's Compensation and/or Employers Liability under the respective state's laws, Operator may, at its election, include the risk under its self-insurance program and in that event, Operator shall include a charge at Operator's cost not to exceed manual rates.

13. Abandonment and Reclamation

Costs incurred for abandonment of the Joint Property, including costs required by governmental or other regulatory authority.

14. Communications

Cost of acquiring, leasing, installing, operating, repairing and maintaining communication systems, including radio and microwave facilities directly serving the Joint Property. In the event communication facilities/systems serving the Joint Property are Operator owned, charges to the Joint Account shall be made as provided in Paragraph 8 of this Section II.

15. Other Expenditures

Any other expenditure not covered or dealt with in the foregoing provisions of this Section II, or in Section III and which is of direct benefit to the Joint Property and is incurred by the Operator in the necessary and proper conduct of the Joint Operations.

III. OVERHEAD

1. Overhead - Drilling and Producing Operations

i. As compensation for administrative, supervision, office services and warehousing costs, Operator shall charge drilling and producing operations on either:

(X) Fixed Rate Basis, Paragraph 1A, or
( ) Percentage Basis, Paragraph 1B

Unless otherwise agreed to by the Parties, such charge shall be in lieu of costs and expenses of all offices and salaries or wages plus applicable burdens and expenses of all personnel, except those directly chargeable under Paragraph 3A, Section II. The cost and expense of services from outside sources in connection with matters of taxation, traffic, accounting or matters before or involving governmental agencies shall be considered as included in the overhead rates provided for in the above selected Paragraph of this Section III unless such cost and expense are agreed to by the Parties as a direct charge to the Joint Account.

ii The salaries, wages and Personal Expenses of Technical Employees and/or the cost of professional consultant services and contract services of technical personnel directly employed on the Joint Property:

( ) shall be covered by the overhead rates, or
(X) shall not be covered by the overhead rates.

iii. The salaries, wages and Personal Expenses of Technical Employees and/or costs of professional consultant services and contract services of technical personnel either temporarily or permanently assigned to and directly employed in the operation of the Joint Property:

( ) shall be covered by the overhead rates, or
(X) shall not be covered by the overhead rates.

A. Overhead - Fixed Rate Basis

(1) Operator shall charge the Joint Account at the following rates per well per month:

Drilling Well Rate $ 4,500.00
(Prorated for less than a full month)

Producing Well Rate $ 450.00

(2) Application of Overhead - Fixed Rate Basis shall be as follows:

(a) Drilling Well Rate

(1) Charges for drilling wells shall begin on the date the well is spudded and terminate on the date the drilling rig, completion rig, or other units used in completion of the well is released, whichever

is later, except that no charge shall be made during suspension of drilling or completion operations for fifteen (15) or more consecutive calendar days.

(2) Charges for wells undergoing any type of workover or recompletion for a period of five (5) consecutive work days or more shall be made at the drilling well rate. Such charges shall be applied for the period from date workover operations, with rig or other units used in workover, commence through date of rig or other unit release, except that no charge shall be made during suspension of operations for fifteen (15) or more consecutive calendar days.

(b) Producing Well Rates

(1) An active well either produced or injected into for any portion of the month shall be considered as a one-well charge for the entire month.

(2) Each active completion in a multi-completed well in which production is not commingled down hole shall be considered as a one-well charge providing each completion is considered a separate well by the governing regulatory authority.

(3) An inactive gas well shut in because of overproduction or failure of purchaser to take the production shall be considered as a one-well charge providing the gas well is directly connected to a permanent sales outlet.

(4) A one-well charge shall be made for the month in which plugging and abandonment operations are completed on any well. This one-well charge shall be made whether or not the well has produced except when drilling well rate applies.

(5) All other inactive wells (including but not limited to inactive wells covered by unit allowable, lease allowable, transferred allowable, etc.) shall not qualify for an overhead charge.

(3) The well rates shall be adjusted as of the first day of April each year following the effective date of the agreement to which this Accounting Procedure is attached. The adjustment shall be computed by multiplying the rate currently in use by the percentage increase or decrease in the average weekly earnings of Crude Petroleum and Gas Production Workers for the last calendar year compared to the calendar year preceding as shown by the index of average weekly earnings of Crude Petroleum and Gas Production Workers as published by the United States Department of Labor, Bureau of Labor Statistics, or the equivalent Canadian index as published by Statistics Canada, as applicable. The adjusted rates shall be the rates currently in use, plus or minus the computed adjustment.

B. Overhead - Percentage Basis

(1) Operator shall charge the Joint Account at the following rates:

(a) Development

_____ Percent (____ %) of the cost of development of the Joint Property exclusive of costs provided under Paragraph 10 of Section II and all salvage credits.

(b) Operating

_____ Percent (____ %) of the cost of operating the Joint Property exclusive of costs provided under Paragraphs 2 and 10 of Section II, all salvage credits, the value of injected substances purchased for secondary recovery and all taxes and assessments which are levied, assessed and paid upon the mineral interest in and to the Joint Property.

(2) Application of Overhead - Percentage Basis shall be as follows:

For the purpose of determining charges on a percentage basis under Paragraph 1B of this Section III, development shall include all costs in connection with drilling, redrilling, deepening, or any remedial operations on any or all wells involving the use of drilling rig and crew capable of drilling to the producing interval on the Joint Property; also, preliminary expenditures necessary in preparation for drilling and expenditures incurred in abandoning when the well is not completed as a producer, and original cost of construction or installation of fixed assets, the expansion of fixed assets and any other project clearly discernible as a fixed asset, except Major Construction as defined in Paragraph 2 of this Section III. All other costs shall be considered as operating.

2. Overhead - Major Construction

To compensate Operator for overhead costs incurred in the construction and installation of fixed assets, the expansion of fixed assets, and any other project clearly discernible as a fixed asset required for the development and operation of the Joint Property, Operator shall either negotiate a rate prior to the beginning of construction, or shall charge the Joint

Account for overhead based on the following rates for any Major Construction project in excess of $ _____:

A. _____* % of first $100,000 or total cost if less, plus

B. _____* % of costs in excess of $100,000 but less than $1,000,000, plus

C. _____* % of costs in excess of $1,000,000.

*to be negotiated.

Total cost shall mean the gross cost of any one project. For the purpose of this paragraph, the component parts of a single project shall not be treated separately and the cost of drilling and workover wells and artificial lift equipment shall be excluded.

3. Catastrophe Overhead

To compensate Operator for overhead costs incurred in the event of expenditures resulting from a single occurrence due to oil spill, blowout, explosion, fire, storm, hurricane, or other catastrophes as agreed to by the Parties, which are necessary to restore the Joint Property to the equivalent condition that existed prior to the event causing the expenditures, Operator shall either negotiate a rate prior to charging the Joint Account or shall charge the Joint Account for overhead based on the following rates:

A. _____* % of total costs through $100,000; plus

B. _____* % of total costs in excess of $100,000 but less than $1,000,000; plus

C. _____* % of total costs in excess of $1,000,000.

*to be negotiated.

Expenditures subject to the overheads above will not be reduced by insurance recoveries, and no other overhead provisions of this Section III shall apply.

4. Amendment of Rates

The overhead rates provided for in this Section III may be amended from time to time only by mutual agreement between the Parties hereto if, in practice, the rates are found to be insufficient or excessive.

IV. PRICING OF JOINT ACCOUNT MATERIAL PURCHASES, TRANSFERS AND DISPOSITIONS

Operator is responsible for Joint Account Material and shall make proper and timely charges and credits for all Material movements affecting the Joint Property. Operator shall provide all Material for use on the Joint Property; however, at Operator's option, such Material may be supplied by the Non-Operator. Operator shall make timely disposition of idle and/or surplus Material, such disposal being made either through sale to Operator or Non-Operator, division in kind, or sale to outsiders. Operator may purchase, but shall be under no obligation to purchase, interest of Non-Operators in surplus condition A or B Material. The disposal of surplus Controllable Material not purchased by the Operator shall be agreed to by the Parties.

1. Purchases

Material purchased shall be charged at the price paid by Operator after deduction of all discounts received. In case of Material found to be defective or returned to vendor for any other reasons, credit shall be passed to the Joint Account when adjustment has been received by the Operator.

2. Transfers and Dispositions

Material furnished to the Joint Property and Material transferred from the Joint Property or disposed of by the Operator, unless otherwise agreed to by the Parties, shall be priced on the following basis exclusive of cash discounts:

A. New Material (Condition A)

(1) Tubular Goods Other than Line Pipe

(a) Tubular goods, sized 2⅜ inches OD and larger, except line pipe, shall be priced at Eastern mill published carload base prices effective as of date of movement plus transportation cost using the 80,000 pound carload weight basis to the railway receiving point nearest the Joint Property for which published rail rates for tubular goods exist. If the 80,000 pound rail rate is not offered, the 70,000 pound or 90,000 pound rail rate may be used. Freight charges for tubing will be calculated from Lorain, Ohio and casing from Youngstown, Ohio.

(b) For grades which are special to one mill only, prices shall be computed at the mill base of that mill plus transportation cost from that mill to the railway receiving point nearest the Joint Property as provided above in Paragraph 2.A.(1)(a). For transportation cost from points other than Eastern mills, the 30,000

pound Oil Field Haulers Association interstate truck rate shall be used.

(c) Special end finish tubular goods shall be priced at the lowest published out-of-stock price, f.o.b. Houston, Texas, plus transportation cost, using Oil Field Haulers Association interstate 30,000 pound truck rate, to the railway receiving point nearest the Joint Property.

(d) Macaroni tubing (size less than 2⅞ inch OD) shall be priced at the lowest published out-of-stock prices f.o.b. the supplier plus transportation costs, using the Oil Field Haulers Association interstate truck rate per weight of tubing transferred, to the railway receiving point nearest the Joint Property.

(2) Line Pipe

(a) Line pipe movements (except size 24 inch OD and larger with walls ⅜ inch and over) 30,000 pounds or more shall be priced under provisions of tubular goods pricing in Paragraph A.(1)(a) as provided above. Freight charges shall be calculated from Lorain, Ohio.

(b) Line pipe movements (except size 24 inch OD and larger with walls ⅜ inch and over) less than 30,000 pounds shall be priced at Eastern mill published carload base prices effective as of date of shipment, plus 20 percent, plus transportation costs based on freight rates as set forth under provisions of tubular goods pricing in Paragraph A.(1)(a) as provided above. Freight charges shall be calculated from Lorain, Ohio.

(c) Line pipe 24 inch OD and over and ⅜ inch wall and larger shall be priced f.o.b. the point of manufacture at current new published prices plus transportation cost to the railway receiving point nearest the Joint Property.

(d) Line pipe, including fabricated line pipe, drive pipe and conduit not listed on published price lists shall be priced at quoted prices plus freight to the railway receiving point nearest the Joint Property or at prices agreed to by the Parties.

(3) Other Material shall be priced at the current new price, in effect at date of movement, as listed by a reliable supply store nearest the Joint Property, or point of manufacture, plus transportation costs, if applicable, to the railway receiving point nearest the Joint Property.

(4) Unused new Material, except tubular goods, moved from the Joint Property shall be priced at the current new price, in effect on date of movement, as listed by a reliable supply store nearest the Joint Property, or point of manufacture, plus transportation costs, if applicable, to the railway receiving point nearest the Joint Property. Unused new tubulars will be priced as provided above in Paragraph 2.A.(1) and (2).

B. Good Used Material (Condition B)

Material in sound and serviceable condition and suitable for reuse without reconditioning:

(1) Material moved to the Joint Property

At seventy-five percent (75%) of current new price, as determined by Paragraph A.

(2) Material used on and moved from the Joint Property

(a) At seventy-five percent (75%) of current new price, as determined by Paragraph A, if Material was originally charged to the Joint Account as new Material or

(b) At sixty-five percent (65%) of current new price, as determined by Paragraph A, if Material was originally charged to the Joint Account as used Material.

(3) Material not used on and moved from the Joint Property

At seventy-five percent (75%) of current new price as determined by Paragraph A.

The cost of reconditioning, if any, shall be absorbed by the transferring property.

C. Other Used Material

(1) Condition C

Material which is not in sound and serviceable condition and not suitable for its original function until after reconditioning shall be priced at fifty percent (50%) of current new price as determined by Paragraph A. The cost of reconditioning shall be charged to the receiving property, provided Condition C value plus cost of reconditioning does not exceed Condition B value.

(2) Condition D

Material, excluding junk, no longer suitable for its original purpose, but usable for some other purpose shall be priced on a basis commensurate with its use. Operator may dispose of Condition D Material under procedures normally used by Operator without prior approval of Non-Operators.

(a) Casing, tubing, or drill pipe used as line pipe shall be priced as Grade A and B seamless line pipe of comparable size and weight. Used casing, tubing or drill pipe utilized as line pipe shall be priced at used line pipe prices.

(b) Casing, tubing or drill pipe used as higher pressure service lines than standard line pipe, e.g. power oil lines, shall be priced under normal pricing procedures for casing, tubing, or drill pipe. Upset tubular goods shall be priced on a non upset basis.

(3) Condition E

Junk shall be priced at prevailing prices. Operator may dispose of Condition E Material under procedures normally utilized by Operator without prior approval of Non-Operators.

D. Obsolete Material

Material which is serviceable and usable for its original function but condition and/or value of such Material is not equivalent to that which would justify a price as provided above may be specially priced as agreed to by the Parties. Such price should result in the Joint Account being charged with the value of the service rendered by such Material.

E. Pricing Conditions

(1) Loading or unloading costs may be charged to the Joint Account at the rate of twenty-five cents (25¢) per hundred weight on all tubular goods movements, in lieu of actual loading or unloading costs sustained at the stocking point. The above rate shall be adjusted as of the first day of April each year following January 1, 1985 by the same percentage increase or decrease used to adjust overhead rates in Section III, Paragraph I.A.(3). Each year, the rate calculated shall be rounded to the nearest cent and shall be the rate in effect until the first day of April next year. Such rate shall be published each year by the Council of Petroleum Accountants Societies.

(2) Material involving erection costs shall be charged at applicable percentage of the current knocked-down price of new Material.

3. Premium Prices

Whenever Material is not readily obtainable at published or listed prices because of national emergencies, strikes or other unusual causes over which the Operator has no control, the Operator may charge the Joint Account for the required Material at the Operator's actual cost incurred in providing such Material, in making it suitable for use, and in moving it to the Joint Property; provided notice in writing is furnished to Non-Operators of the proposed charge prior to billing Non-Operators for such Material. Each Non-Operator shall have the right, by so electing and notifying Operator within ten days after receiving notice from Operator, to furnish in kind all or part of his share of such Material suitable for use and acceptable to Operator.

4. Warranty of Material Furnished By Operator

Operator does not warrant the Material furnished. In case of defective Material, credit shall not be passed to the Joint Account until adjustment has been received by Operator from the manufacturers or their agents.

V. INVENTORIES

The Operator shall maintain detailed records of Controllable Material.

1. Periodic Inventories, Notice and Representation

At reasonable intervals, inventories shall be taken by Operator of the Joint Account Controllable Material. Written notice of intention to take inventory shall be given by Operator at least thirty (30) days before any inventory is to begin so that Non-Operators may be represented when any inventory is taken. Failure of Non-Operators to be represented at an inventory shall bind Non-Operators to accept the inventory taken by Operator.

2. Reconciliation and Adjustment of Inventories

Adjustments to the Joint Account resulting from the reconciliation of a physical inventory shall be made within six months following the taking of the inventory. Inventory adjustments shall be made by Operator to the Joint Account for

overages and shortages, but, Operator shall be held accountable only for shortages due to lack of reasonable diligence.

3. Special Inventories

Special inventories may be taken whenever there is any sale, change of interest, or change of Operator in the Joint Property. It shall be the duty of the party selling to notify all other Parties as quickly as possible after the transfer of interest takes place. In such cases, both the seller and the purchaser shall be governed by such inventory. In cases involving a change of Operator, all Parties shall be governed by such inventory.

4. Expense of Conducting Inventories

A. The expense of conducting periodic inventories shall not be charged to the Joint Account unless agreed to by the Parties.

B. The expense of conducting special inventories shall be charged to the Parties requesting such inventories, except inventories required due to change of Operator shall be charged to the Joint Account.

EXHIBIT "E" - Attached to and made a part of that certain Operating Agreement dated July 1, 1998 by and between TMBR/Sharp Drilling, Inc. as "Operator" and Fuel Products, Inc., et al. as "Non-Operators".

EXHIBIT "E"
GAS BALANCING AGREEMENT ("AGREEMENT")
ATTACHED TO AND MADE PART OF THAT CERTAIN
OPERATING AGREEMENT DATED _____

BY AND BETWEEN _____, _____, AND _____ _____ ("OPERATING AGREEMENT") RELATING TO THE _____ AREA, _____ COUNTY, STATE OF _____

1. DEFINITIONS

The following definitions shall apply to this Agreement:

1.01 "Arm's Length Agreement" shall mean any gas sales agreement with an unaffiliated purchaser or any gas sales agreement with an affiliated purchaser where the sales price and delivery conditions under such agreement are representative of prices and delivery conditions existing under other similar agreements in the area between unaffiliated parties at the same time for natural gas of comparable quality and quantity.

1.02 "Balancing Area" shall mean each well subject to the Operating Agreement that produces Gas or is allocated a share of Gas production. If a single well is completed in two or more producing intervals, each producing interval from which the Gas production is not commingled in the wellbore shall be considered a separate well or Balancing Area

1.03 "Full Share of Current Production" shall mean the Percentage Interest of each Party in the Gas actually produced from the Balancing Area during each month

1.04 "Gas" shall mean all hydrocarbons produced or producible from the Balancing Area, whether from a well classified as an oil well or gas well by the regulatory agency having jurisdiction in such matters, which are or may be made available for sale or separate disposition by the Parties, excluding oil, condensate and other liquids recovered by field equipment operated for the joint account. For the purposes of this Agreement, "Gas" does not include gas used in joint operations, such as for fuel, recycling or reinjection, or which is vented or lost prior to its sale or delivery from the Balancing Area.

1.05 "Makeup Gas" shall mean any Gas taken by an Underproduced Party from the Balancing Area in excess of its Full Share of Current Production, whether pursuant to Section 3.3 or Section 4.1 hereof.

1.06 "Mcf" shall mean one thousand cubic feet. A cubic foot of Gas shall mean the volume of gas contained in one cubic foot of space at a standard pressure base and at a standard temperature base.

1.07 "MMBtu" shall mean one million British Thermal Units. A British Thermal Unit shall mean the quantity of heat required to raise one pound avoirdupois of pure water from 58.5 degrees Fahrenheit to 59.5 degrees Fahrenheit at a constant pressure of 14.73 pounds per square inch absolute.

1.08 "Operator" shall mean the individual or entity designated under the terms of the Operating Agreement or, in the event this Agreement is not employed in connection with an operating agreement, the individual or entity designated as the operator of the well(s) located in the Balancing Area.

1.09 "Overproduced Party" shall meany any Party having taken a greater quantity of Gas from the Balancing Area than the Percentage Interest of such Party in the cumulative quantity of all Gas produced from the Balancing Area.

1.10 "Overproduction" shall mean the cumulative quantity of Gas taken by a Party in excess of its Percentage Interest in the cumulative quantity of all Gas produced from the Balancing Area

1.11 "Party" shall mean those individuals or entities subject to this Agreement, and their respective heirs, successors, transferees and assigns.

1.12 "Percentage Interest" shall mean the percentage or decimal interest of each Party in the Gas produced from the Balancing Area pursuant to the Operating Agreement covering the Balancing Area. For the purposes of applying the Oklahoma Production Revenue Standards Act hereto the terms "Percentage Interest", "Proportionate Production Interest, and "Working Interest Share of Production" shall be considered equivalent terms.

1.13 "Royalty" shall mean payments on production of Gas from the Balancing Area to all owners of royalties, overriding royalties, production payments or similar interests.

1.14 "Underproduced Party" shall mean any Party having taken a lesser quantity of Gas from the Balancing Area than the Percentage Interest of such Party in the cumulative quantity of all Gas produced from the Balancing Area.

1.15 "Underproduction" shall mean the deficiency between the cumulative quantity of Gas taken by a Party and its Percentage Interest in the cumulative quantity of all Gas produced from the Balancing Area.

1.16 "Winter Period" shall mean the months of November, December, January and February.

2. BALANCING AREA

2.1 If this Agreement covers more than one Balancing Area, it shall be applied as if each Balancing Area were covered by separate but identical agreements. All balancing hereunder shall be on the basis of Gas taken from the Balancing Area measured in MMBtus.

2.2 In the event that all or part of the Gas deliverable from a Balancing Area is or becomes subject to one or more maximum lawful prices, any Gas not subject to price controls shall be considered as produced from a single Balancing Area and Gas subject to each maximum lawful price category shall be considered produced from a separate Balancing Area.

3. RIGHT OF PARTIES TO TAKE GAS

3.1 Each Party desiring to take Gas will notify the Operator, or cause the Operator to be notified of the volumes nominated, the name of the transporting pipeline and the pipeline contract number (if available) and meter station relating to such delivery, sufficiently in advance for the Operator, acting with reasonable diligence, to meet all nomination and other requirements. Operator is authorized to deliver the volumes so nominated and confirmed (if confirmation is required) to the transporting pipeline in accordance with the terms of this Agreement.

3.2 Each Party shall make a reasonable, good faith effort to take its Full Share of Current Production each month, to the extent that such production is required to maintain leases in effect, to protect the producing capacity of a well or reservoir, to preserve correlative rights, or to maintain oil production.

3.3 When a Party fails for any reason to take its Full Share of Current Production (as such Share may be reduced by the right of the other Parties to make up for Underproduction as provided herein), the other Parties shall be entitled to take any Gas which such Party fails to take. To the extent practicable, such Gas shall be made available initially to each Underproduced Party in the proportion that its Percentage Interest in the Balancing Area bears to the total Percentage Interests of all Underproduced Parties desiring to take such Gas. If all such Gas is not taken by the Underproduced Parties, the portion not taken shall then be made available to the other Parties in the proportion that their respective Percentage Interests in the Balancing Area bear to the total Percentage Interests of such Parties.

3.4 All Gas taken by a Party in accordance with the provisions of this Agreement, regardless of whether such Party is underproduced or overproduced, shall be regarded as Gas taken for its own account with title thereto being in such taking Party.

3.5 Notwithstanding the provisions of Section 3.3 hereof, no Overproduced Party shall be entitled in any month to take any Gas in excess of three hundred percent (300%) of its Percentage Interest of the Balancing Area's then-current Maximum Monthly Availability; provided, however, that this limitation shall not apply to the extent that it would preclude production that is required to maintain leases in effect, to protect the producing capacity of a well or reservoir, to preserve correlative rights, or to maintain oil production. "Maximum Monthly Availability" shall mean the maximum average monthly rate of production at which Gas

can be delivered from the Balancing Area, as determined by the Operator, considering the maximum efficient well rate for each well within the Balancing Area, the maximum allowable(s) set by the appropriate regulatory agency, mode of operation, production facility capabilities and pipeline pressures.

3.6 In the event that a Party fails to make arrangements to take its Full Share of Current Production required to be produced to maintain leases in effect, to protect the producing capacity of a well or reservoir, to preserve correlative rights, or to maintain oil production, the Operator may sell any part of such Party's Full Share of Current Production that such Party fails to take for the account of such Party and render to such Party, on a current basis, the full proceeds of the sale, less any reasonable marketing, compression, treating, gathering or transportation costs incurred directly in connection with the sale of such Full Share of Current Production. In making the sale contemplated herein, the Operator shall be obligated only to obtain such price and conditions of the sale as are reasonable under the circumstances and shall not be obligated to share any of its markets. Any such sale by Operator under the terms hereof shall be only for such reasonable periods of time as are consistent with the minimum needs of the industry under the particular circumstances, but in no event for a period in excess of one year. Notwithstanding the provisions of article 3.4 hereof, Gas sold by Operator for a Party under the provisions hereof shall be deemed to be Gas taken for the account of such Party.

4. IN-KIND BALANCING

4.1 Effective the first day of any calendar month following at least thirty (30) days' prior written notice to the Operator, any Underproduced Party may begin taking, in addition to its Full Share of Current Production and any Makeup Gas taken pursuant to Section 3.3 of this Agreement, a share of current production determined by multiplying twenty-five percent (25%) of the Full Shares of Current Production of all Overproduced Parties by a fraction, the numerator of which is the Percentage Interest of such Underproduced Party and the denominator of which is the total of the Percentage Interests of all Underproduced Parties desiring to take Makeup Gas. In no event will an Overproduced Party be required to provide more than twenty-five percent (25%) of its Full Share of Current Production for Makeup Gas. The Operator will promptly notify all Overproduced Parties of the election of an Underproduced Party to begin taking Makeup Gas.

4.2 Notwithstanding the provisions of Section 4.1, no Overproduced Party will be required to provide [illegible] Makeup Gas during the Winter Period.

4.3 Notwithstanding anything herein to the contrary no Underproduced Party which is a Non-Consenting Party under the Operating Agreement and is not then entitled to participate in any operation regarding a Balancing Area shall be entitled to take gas from said Balancing Area for which it is a Non-Consenting Party.

5. STATEMENT OF GAS BALANCES

5.1 The Operator will maintain appropriate accounting on a monthly and cumulative basis of the volumes of Gas that each Party is entitled to receive and the volumes of Gas actually taken or sold for each Party's account. Within forty-five (45) days after the month of production, the Operator will furnish a statement for such month showing (1) each Party's Full Share of Current Production, (2) the total volume of Gas actually taken or sold for each Party's account, (3) the difference between the volume taken by each Party and that Party's Full Share of Current Production, (4) the Overproduction or Underproduction of each Party, and (5) other data as recommended by the provisions of the Council of Petroleum Accountants Societies Bulletin No. 24, as amended or supplemented hereafter. Each Party taking Gas will promptly provide to the Operator any data required by the Operator for preparation of the statements required hereunder.

5.2 If any Party fails to provide the data required herein for four (4) consecutive production months, the Operator, or where the Operator has failed to provide data, another Party, may audit the production and Gas sales and transportation volumes of the non-reporting Party to provide the required data. Such audit shall be conducted only after reasonable notice and during normal business hours in the office of the Party whose records are being audited. All costs associated with such audit will be charged to the account of the Party failing to provide the required data.

6. PAYMENTS ON PRODUCTION

6.1 Each Party taking Gas shall pay or cause to be paid all production and severance taxes due

on all volumes of Gas actually taken by such Party.

6.2 Each Party shall pay or cause to be paid all Royalty due with respect to Royalty owners to whom it is accountable as if such Party were taking its Full Share of Current Production, and only its Full Share of Current Production.

6.3 In the event that any governmental authority requires that Royalty payments be made on any other basis than that provided for in this Section 6, each Party agrees to make such Royalty payments accordingly, commencing on the effective date required by such governmental authority, and the method provided for herein shall be thereby superseded.

7. CASH SETTLEMENTS

7.1 Upon the earlier of the plugging and abandonment of the last producing interval in the Balancing Area, the termination of the Operating Agreement or any pooling or unit agreement covering the Balancing Area, or at any time no Gas is taken from the Balancing Area for a period of twelve (12) consecutive months, any Party may give written notice calling for cash settlement of the Gas production imbalances among the Parties. Such notice shall be given to all Parties in the Balancing Area.

7.2 Within sixty (60) days after the notice calling for cash settlement under Section 7.1, the Operator will distribute to each Party a Final Gas Settlement Statement detailing the quantity of Overproduction owed by each Overproduced Party to each Underproduced Party and identifying the month to which such Overproduction is attributed, pursuant to the methodology set out in Section 7.4.

7.3 Within sixty (60) days after receipt of the Final Gas Settlement Statement, each Overproduced Party will pay to each Underproduced Party entitled to settlement the appropriate cash settlement, accompanied by appropriate accounting detail. At the time of payment, the Overproduced Party will notify the Operator of the Gas imbalance settled by the Overproduced Party's payment.

7.4 The amount of the cash settlement will be based on the proceeds received by the Overproduced Party under an Arm's Length Agreement for the Gas taken from time to time by the Overproduced Party in excess of the Overproduced Party's Full Share of Current Production. Any Makeup Gas taken by the Underproduced Party prior to monetary settlement hereunder will be applied to offset Overproduction chronologically in the order of accrual.

7.5 The values used for calculating the cash settlement under Section 7.4 will include all proceeds received for the sale of the Gas by the Overproduced Party calculated at the Balancing Area, after deducting any production or severance taxes paid and any Royalty actually paid by the Overproduced Party to an Underproduced Party's Royalty owner(s), to the extent said payments amounted to a discharge of said Underproduced Party's Royalty obligation, as well as any reasonable marketing, compression, treating, gathering or transportation costs incurred directly in connection with the sale of the Overproduction.

7.5.1 For Overproduction sold under a gas purchase contract providing for payment based on a percentage of the proceeds obtained by the purchaser upon resale of residue gas and liquid or liquifiable hydrocarbons extracted at a gas processing plant, the values used for calculating cash settlement will include proceeds received by the Overproduced Party for both the liquid hydrocarbons (including liquifiable hydrocarbons) and the residue gas attributable to the Overproduction.

7.5.2 For Overproduction processed for the account of the Overproduced Party at a gas processing plant for the extraction of liquid hydrocarbons, where settlement for the gas so processed was on a basis other than percentage of the proceeds, the values used for calculating cash settlement will include the proceeds received by the Overproduced Party for the sale of the liquid hydrocarbons extracted from the Overproduction, less the actual reasonable costs incurred by the Overproduced Party to process the Overproduction and to transport, fractionate and handle the liquid hydrocarbons extracted therefrom prior to sale.

7.6 To the extent the Overproduced Party did not sell all Overproduction under an Arm's Length Agreement, the cash settlement will be based on the weighted average price received by the Overproduced Party for any gas sold from the Balancing Area under Arm's Length Agreements during the months to which such Overproduction is attributed. In the event that no sales under Arm's Length Agreements were made during any such month, the cash settlement for such month will be based on the spot sales prices published for the applicable geographic area during such month in a mutually acceptable pricing bulletin.

7.7 Interest compounded at the maximum lawful rate of interest applicable to the Balancing Area will accrue for all amounts due under Section 7.1, beginning the first day following the date payment is due pursuant to Section 7.3. Such interest shall be borne by the Operator or any Overproduced Party in the proportion that their respective delays beyond the deadlines set out in Section 7.2 and 7.3 contributed to the accrual of the interest.

7.8 In lieu of the cash settlement required by Section 7.3, an Overproduced Party may deliver to the Underproduced Party an offer to settle its Overproduction in-kind and at such rates, quantities, times and sources as may be agreed upon by the Underproduced Party. If the Parties are unable to agree upon the manner in which such in-kind settlement gas will be furnished within sixty (60) days after the Overproduced Party's offer to settle in kind, which period may be extended by agreement of said Parties, the Overproduced Party shall make a cash settlement as provided in Section 7.3 The making of an in-kind settlement offer under this Section 7.8 will not delay the accrual of interest on the cash settlement should the Parties fail to reach agreement on an in-kind settlement.

7.9 That portion of any monies collected by an Overproduced Party for Overproduction which is subject to refund by orders of the Federal Energy Regulatory Commission or other governmental authority may be withheld by the Overproduced Party until such prices are finally approved by such governmental authority, unless the Underproduced Party furnishes a corporate undertaking, acceptable to the Overproduced Party, agreeing to hold the Overproduced Party harmless from financial loss due to refund orders by such governmental authority.

8. TESTING

Notwithstanding any provision of this Agreement to the contrary, any Party shall have the right, from time to time, to produce and take up to one hundred percent (100%) of a well's entire Gas stream to meet the reasonable deliverability test(s) required by such Party's Gas purchaser, and the right to take any Makeup Gas shall be subordinate to the right of any Party to conduct such tests; provided, however, that such tests shall be conducted in accordance with prudent operating practices only after fifteen (15) day's prior written notice to the Operator and shall last no longer than seventy-two (72) hours.

9. OPERATING COSTS

Nothing in this Agreement shall change or affect any Party's obligation to pay its proportionate share of all costs and liabilities incurred in operations on or in connection with the Balancing Area, as its share thereof is set forth in the Operating Agreement, irrespective of whether any Party is at any time selling and using Gas or whether such sales or use are in proportion to its Percentage Interest in the Balancing Area.

10. LIQUIDS

The Parties shall share proportionately in and own all liquid hydrocarbons recovered with Gas by field equipment operated for the joint account in accordance with their Percentage Interests in the Balancing Area.

11. AUDIT RIGHTS

Notwithstanding any provision in this Agreement or any other agreement between the Parties hereto, and further notwithstanding any termination or cancellation of this Agreement, for a period of two (2) years from the end of the calendar year in which any information to be furnished under Section 5 or 7 hereof is supplied, any Party shall have the right to audit the records of any other Party regarding quantity, including but not limited to information regarding Btu-content. Any Underproduced Party shall have the right for a period of two (2) years from the end of the calendar year in which any cash settlement is received pursuant to Section 7 to audit the records of any Overproduced Party as to all matters concerning values, including but not limited to information regarding prices and disposition of Gas from the Balancing Area Any such audit shall be conducted at the expense of the Party or Parties desiring such audit, and shall be conducted, after reasonable notice, during normal business hours in the office of the Party whose records are being audited Each Party hereto agrees to maintain records as to the volumes and prices of Gas sold each month and the volumes of Gas used in its own operations, along with the Royalty paid on any such Gas used by a Party in its own operations. The audit rights provided for in this Section 11 shall be in addition to those provided for in Section 5.2 of this Agreement.

12. MISCELLANEOUS

12.1 As between the Parties, in the event of any conflict between the provisions of this Agreement and the provisions of any gas sales contract, or in the event of any conflict between the provisions of this Agreement and the provisions of the Operating Agreement, the provisions of this Agreement shall govern.

12.2 Each Party agrees to defend, indemnify and hold harmless all other Parties from and against any and all liability for any claims, which may be asserted by any third party which now or hereafter stands in a contractual relationship with such indemnifying Party and which arise out of the operation of this Agreement or any activities of such indemnifying Party under the provisions of this Agreement, and does further agree to save the other Parties harmless from all judgements or damages sustained and costs incurred in connection therewith.

12.3 Except as otherwise provided in this Agreement, Operator is authorized to administer the provisions of this Agreement, but shall have no liability to the other Parties for losses sustained or liability incurred which arise out of or in connection with the performance of Operator's duties hereunder, except such as may result from Operator's gross negligence or willful misconduct. Operator shall not be liable to any Underproduced Party for the failure of any Overproduced Party (other than Operator) to pay any amounts owed pursuant to the terms hereof.

12.4 This Agreement shall remain in full force and effect for as long as the Operating Agreement shall remain in force and effect as to the Balancing Area, and thereafter until the Gas accounts between the Parties are settled in full, and shall inure to the benefit of and be binding upon the Parties hereto, and their respective heirs, successors, legal representatives and assigns, if any. The Parties hereto agree to give notice of the existence of this Agreement to any successor in interest of any such Party and to provide that any such successor shall be bound by this Agreement, and shall further make any transfer of any interest subject to the Operating Agreement, or any part thereof, also subject to the terms of this Agreement.

12.5 Unless the context clearly indicates otherwise, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.

12.6 This Agreement shall bind the Parties in accordance with the provisions hereof, and nothing herein shall be construed or interpreted as creating any rights in any person or entity not a signatory hereto, or as being a stipulation in favor of any such person or entity.

12.7 If contemporaneously with this Agreement becoming effective, or thereafter, any Party requests that any other Party execute an appropriate memorandum or notice of this Agreement in order to give third parties notice of record of same and submits same for execution in recordable form, such memorandum or notice shall be duly executed by the Party to which such request is made and delivered promptly thereafter to the Party making the request. Upon receipt, the Party making the request shall cause the memorandum or notice to be duly recorded in the appropriate real property or other records affecting the Balancing Area.

12.8 With respect to accounting treatment of any gas imbalances as may exist, the parties agree to use the "cumulative method" [as defined in Income Tax Regulation §1.761-2 (d) (4)] of accounting for federal income tax purposes. The "entitlements method" shall not be used for reporting gas sales from the properties subject hereto.

13. ASSIGNMENT AND RIGHTS UPON ASSIGNMENT

13.1 Subject to the provisions of Section 13.2 hereof, and notwithstanding anything in this Agreement or in the Operating Agreement to the contrary, if any Party assigns (including any sale, exchange or other transfer) any of its working interest in the Balancing Area when such Party is an Underproduced or Overproduced Party, the assignment or other act of transfer shall, insofar as the Parties hereto are concerned, include all interest of the assigning or transferring Party in the Gas, all rights to receive or obligations to provide or take Makeup Gas and all rights to receive or obligations to make any monetary payment which may ultimately be due hereunder, as applicable. Operator and each of the other Parties hereto shall thereafter treat the assignment accordingly, and the assigning or transferring Party shall look solely to its assignee or other transferee for any interest in the Gas or monetary payment that such Party may have or to which it may be entitled, and shall cause its assignee or other transferee to assume its obligations hereunder.

13.2 The provisions of this Section 13 shall not be applicable in the event any Party mortgages its interest or disposes of its interest by merger, reorganization, consolidation or sale of substantially all of its assets to a subsidiary or parent company, or to any company in which any parent or subsidiary of such Party owns a majority of the stock of such company.

District I
PO Box 1980, Hobbs, NM 88241-1980
District II
811 South First, Artesia, NM 88210
District III
1000 Rio Brazos Rd., Aztec, NM 87410
District IV
2040 South Pacheco, Santa Fe, NM 87505

State of New Mexico
Energy, Minerals & Natural Resources Department

OIL CONSERVATION DIVISION
2040 South Pacheco
Santa Fe, NM 87505

Form C-101
Revised October 18, 1994
Instructions on back
Submit to Appropriate District Office
State Lease - 6 Copies
Fee Lease - 5 Copies

☐ AMENDED REPORT

APPLICATION FOR PERMIT TO DRILL, RE-ENTER, DEEPEN, PLUGBACK, OR ADD A ZONE

1 Operator Name and Address	2 OGRID Number
TMBR/Sharp Drilling, Inc. P. O. Drawer 10970 Midland, TX 79702	036554
	3 API Number 30-025-35257

4 Property Code	5 Property Name	6 Well No.
24469	Blue Fin "24"	1

7 Surface Location

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
M	24	16S	35E		660	West	760	South	Lea

8 Proposed Bottom Hole Location If Different From Surface

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

9 Proposed Pool 1	10 Proposed Pool 2
Townsend (Morrow)	

11 Work Type Code	12 Well Type Code	13 Cable/Rotary	14 Lease Type Code	15 Ground Level Elevation
N	G	R	P	3956-3941
16 Multiple	**17 Proposed Depth**	**18 Formation**	**19 Contractor**	**20 Spud Date**
No	12,800'	Morrow	TMBR/Sharp	11/19/00

21 Proposed Casing and Cement Program

Hole Size	Casing Size	Casing weight/foot	Setting Depth	Sacks of Cement	Estimated TOC
17½	13⅜	48	450	440	Surface
11	8⅝	32	5,600	1,800	Surface
7⅞	5½	17	12,800	1,200	4,800

22 Describe the proposed program. If this application is to DEEPEN or PLUG BACK give the data on the present productive zone and proposed new productive zone. Describe the blowout prevention program, if any. Use additional sheets if necessary.

It is proposed to drill a 17½" hole to ±450' with FW, set 13⅜" casing and cement casing back to surface. An 11" intermediate hole will then be drilled to ±5,600' w/brine-cut brine system and an 8⅝" casing string will be set and cemented back to surface. A 3000 psi annular preventer and 3000 psi dual ram BOP will be used on the intermediate hole. A 7⅞" hole will be drilled to an approximate TD of 12,800' w/FW mud. The 5½" casing will be set at TD and cemented back to the intermediate casing at 5,600'. A 3000 psi annular preventer and a 5000 psi dual ram BOP will be used on the 7⅞" hole. Mud up will occur between 9,000' and 11,000' and several DST's are planned.

23 I hereby certify that the information given above is true and complete to the best of my knowledge and belief.	OIL CONSERVATION DIVISION
Signature: Jeffrey D. Phillips	Approved by: ORIGINAL SIGNED BY GARY WINK
Printed Name: Jeffrey D. Phillips	Title: FIELD REP. II
Title: Vice President	Approval Date: NOV 22 2000 Expiration Date:
Date: November 16, 2000 Phone: (915) 699-0160	Conditions of Approval: Attached ☐

Permit Expires 1 Year From Approval Date Unless Drilling Underway

EXHIBIT 8

C-102

DISTRICT I
DISTRICT II
DISTRICT III
DISTRICT IV

State of New Mexico
Energy, Minerals and Natural Resources Department

Form C-102
Revised February 10, 1994
Submit to Appropriate District Office
State Lease - 4 Copies
Fee Lease - 3 Copies

OIL CONSERVATION DIVISION
P.O. Box 2088
Santa Fe, New Mexico 87504-2088

☐ AMENDED REPORT

WELL LOCATION AND ACREAGE DEDICATION PLAT

API Number	Pool Code	Pool Name
30-025-35257	86100	Townsend (Morrow)

Property Code	Property Name	Well Number
24469	BLUEFIN "24"	1
OGRID No.	Operator Name	Elevation
36554	TMBR/SHARP DRILLING, INC.	3964

Surface Location

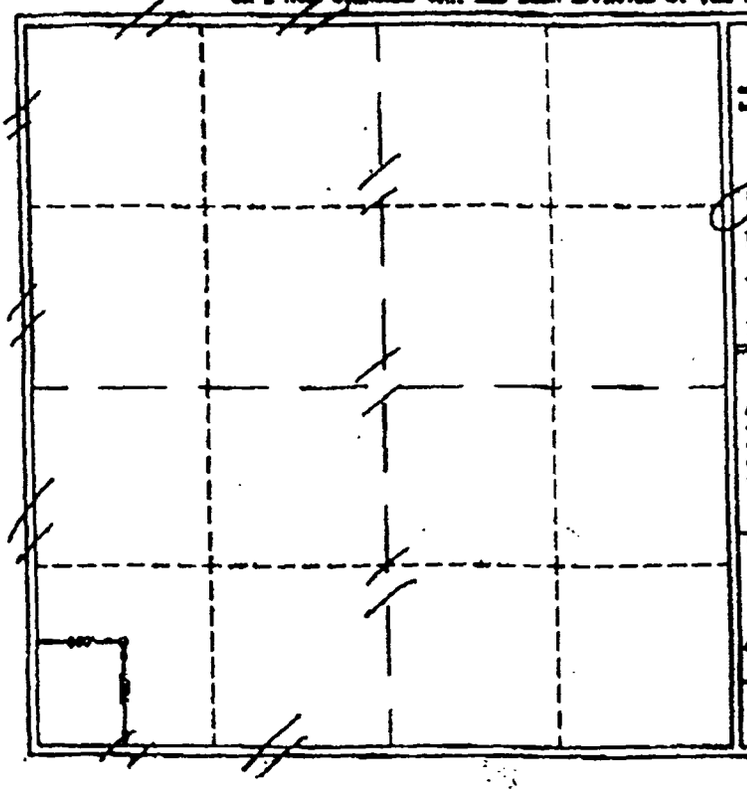
UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
M	24	16 S	35 E		760	SOUTH	660	WEST	LEA

Bottom Hole Location If Different From Surface

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

Dedicated Acres	Joint or Infill	Consolidation Code	Order No.
320			

NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION



OPERATOR CERTIFICATION

I hereby certify the the information contained herein is true and complete to the best of my knowledge and belief

Signature: Jeffrey D. Phillips
Printed Name: Jeffrey D. Phillips
Title: Vice President
Date: 11/17/00

SURVEYOR CERTIFICATION

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my belief.

NOVEMBER 16, 2000

Date Surveyed: JOHN L. EIDSON
Signature & Seal of Professional Surveyor: NEW MEXICO
Certificate No. 11/17/00 1487

07161

Producer's 88-Producer's Revised 1994 New Mexico Form 342P, Paid-up

OIL & GAS LEASE

THIS AGREEMENT made this 27th day of March, 2001 between Madeline Stokes, dealing with her sole and separate property, whose address is P. O. Box 1115, Ozona, Texas 76943 herein called lessor (whether one or more) and James D. Huff, P. O. Box 705, Mineola, Texas 75773, lessee;

1. Lessor, in consideration of TEN AND OTHER DOLLARS in hand paid, receipt of which is here acknowledged, and of the royalties herein provided and of the agreements of the lessee herein contained, hereby grants, leases and lets exclusively unto lessee for the purpose of investigating, exploring, prospecting, drilling, and operating for and producing oil and gas, injecting gas, waters, other fluids, and air into subsurface strata, laying pipelines, storing oil, building tanks, roadways, telephone lines, and other structures and things thereon to produce, save, take care of, treat, process, store and transport said minerals, the following described land in Lee County, New Mexico, to-wit:

Township 16 South, Range 35 East, N.M.P.M.
Section 13: SE/4
Section 23: SE/4
Section 24: NW/4SW/4, NW/4NE/4
Section 25: NW/4
Section 26: NE/4

Said land is estimated to comprise 720.00 acres, whether it actually comprises more or less.

2. Subject to the other provisions herein contained, this lease shall remain in force for a term of three (3) years from May 7th, 2001 (called "primary term") and as long thereafter as oil or gas is produced from said land or from land with which said land is pooled.

3. The royalties to be paid by lessee are: (a) on oil, and other liquid hydrocarbons saved at the well, three-sixteenths (3/16ths) of that produced and saved from said land, same to be delivered at the wells or to the credit of lessor in the pipeline to which the wells may be connected; (b) on gas, including casinghead gas or other gaseous substance produced from said land and used off the premises or used in the manufacture of gasoline or other products, the market value at the well of three-sixteenths (3/16ths) of the gas used, provided that on gas sold on or off the premises, the royalties shall be three-sixteenths (3/16ths) of the amount realized from such sale; (c) and at any time when this lease is not validated by other provisions hereof and there is a gas and/or condensate well on said land, or land pooled therewith, but gas or condensate is not being so sold or used and such well is shut in, either before or after production therefrom, then on or before 90 days after said well is shut in, and thereafter at annual intervals, lessee may pay or tender an advance shut-in royalty equal to $1.00 per net acre of lessor's gas acreage then held under this lease by the party making such payment or tender, and so long as said shut-in royalty is paid or tendered, this lease shall not terminate and it shall be considered under all clauses hereof that gas is being produced from the leased premises in paying quantities. Each such payment shall be paid or tendered to the party or parties who at the time of such payment would be entitled to receive the royalties which would be paid under this lease if the well were in fact producing. The payment or tender of royalties and shut-in royalties may be made by check or draft. Any timely payment or tender of shut-in royalty which is made in a bona fide attempt to make proper payment, but which is erroneous in whole or in part as to parties or amounts, shall nevertheless be sufficient to prevent termination of this lease in the same manner as though a proper payment had been made if lessee shall correct such error within 30 days after lessee has received written notice thereof by certified mail from the party or parties entitled to receive payment together with such written instruments (or certified copies thereof) as are necessary to enable lessee to make proper payment. The amount realized from the sale of gas on or off the premises shall be the price established by the gas sales contract entered into in good faith by lessee and gas purchaser for such term and under such conditions as are customary in the industry. "Price" shall mean the net amount received by lessee after giving effect to applicable regulatory orders and after application of any applicable price adjustments specified in such contract or regulatory orders. ~~In the event lessee compresses, treats, purifies, or dehydrates such gas (whether on or off the leased premises) or transports gas off the leased premises, lessee in computing royalty hereunder may deduct from such price a reasonable charge for each of such functions performed.~~

4. This is a paid-up lease and lessee shall not be obligated during the primary term hereof to commence or continue any operations of whatsoever character or to make any payments hereunder in order to maintain this lease in force during the primary term; however, this provision is not intended to relieve lessee of the obligation to pay royalties on actual production pursuant to the provisions of Paragraph 3 hereof.

5. Lessee is hereby granted the right and power, from time to time, to pool or combine this lease, the land covered by it or any part or horizon thereof with any other land, leases, mineral estates or parts thereof for the production of oil or gas. Units pooled hereunder shall not exceed the standard proration unit fixed by law or by the Oil Conservation Division of the Energy and Minerals Department of the State of New Mexico or by any other lawful authority for the pool or area in which said land is situated, plus a tolerance of ten percent. Lessee shall file written unit designations in the county in which the premises are located and such units may be designated from time to time and either before or after the completion of wells. Drilling operations on or production from any part of any such unit shall be considered for all purposes, except the payment of royalty, as operations conducted upon or production from the land described in this lease. There shall be allocated to the land covered by this lease included in any such unit that portion of the total production of pooled minerals from wells in the unit, after deducting any used in lease or unit operations, which the net oil or gas acreage in the land covered by this lease included in the unit bears to the total number of surface acres in the unit. The production so allocated shall be considered for all purposes, including the payment or delivery of royalty, to be the entire production of pooled minerals from the portion of said land covered hereby and included in said unit in the same manner as though produced from said land under the terms of this lease. Any pooled unit designated by lessee, as provided herein, may be dissolved by lessee by recording an appropriate instrument in the County where the land is situated at any time after the completion of a dry hole or the cessation of production on said unit.

6. If at the expiration of the primary term there is no well upon said land capable of producing oil or gas, but lessee has commenced operations for drilling or reworking thereon, this lease shall remain in force so long as operations are prosecuted with no cessation of more than 60 consecutive days, whether such operations be on the same well or on a different or additional well or wells, and if they result in the production of oil or gas, so long thereafter as oil or gas is produced from said land. If, after the expiration of the primary term, all wells upon said land should become incapable of producing for any cause, this lease shall not terminate if lessee commences operations for additional drilling or for reworking within 60 days thereafter. If any drilling, additional drilling, or reworking operations hereunder result in production, then this lease shall remain in full force so long thereafter as oil or gas is produced hereunder.

7. Lessee shall have free use of oil, gas and water from said land, except water from lessor's wells and tanks, for all operations hereunder, and the royalty shall be computed after deducting any so used. Lessee shall have the right at any time during or after the expiration of this lease to remove all property and fixtures placed by lessee on said land, including the right to draw and remove all casing. When required by lessor, lessee will bury all pipe lines on cultivated lands below ordinary plow depth, and no well shall be drilled within two hundred feet (200 ft.) of any residence or barn now on said land without lessor's consent. Lessee shall have the privilege, at his risk and expense, of using gas from any gas well on said land for stoves and inside lights in the principal dwelling thereon, out of any surplus gas not needed for operations hereunder.

8. The rights of either party hereunder may be assigned in whole or in part and the provisions hereof shall extend to their heirs, executors, administrators, successors and assigns; but no change in the ownership of the land

EXHIBIT 9

or in the ownership of, or rights to receive, royalties or shut-in royalties, however accomplished shall operate to enlarge the obligations or diminish the rights of lessee; and no such change or division shall be binding upon lessee for any purpose until 30 days after lessee has been furnished by certified mail at lessee's principal place of business with acceptable instruments or certified copies thereof constituting the chain of title from the original lessor. If any such change in ownership occurs through the death of the owner, lessee may, at its option, pay or tender any royalties or shut-in royalties in the name of the deceased or to his estate or to his heirs, executor or administrator until such time as lessee has been furnished with evidence satisfactory to lessee as to the persons entitled to such sums. An assignment of this lease in whole or in part shall, to the extent of such assignment, relieve and discharge lessee of any obligations hereunder and, if lessee or assignee of part or parts hereof shall fail or make default in the payment of the proportionate part of royalty or shut-in royalty due from such lessee or assignee or fail to comply with any of the provisions of this lease, such default shall not affect this lease insofar as it covers a part of said lands upon which lessee or any assignee thereof shall properly comply or make such payments.

9. Should lessee be prevented from complying with any express or implied covenant of this lease, or from conducting drilling or reworking operations hereunder, or from producing oil or gas hereunder by reason of scarcity or inability to obtain or use equipment or material, or by operation of force majeure, or by any Federal or state law or any order, rule or regulation of governmental authority, then while so prevented, lessee's duty shall be suspended, and lessee shall not be liable for failure to comply therewith; and this lease shall be extended while and so long as lessee is prevented by any such cause from conducting drilling or reworking operations or from producing oil or gas hereunder; and the time while lessee is so prevented shall not be counted against lessee, anything in this lease to the contrary notwithstanding.

10. Lessor hereby warrants and agrees to defend the title to said land and agrees that lessee at is option may discharge any tax, mortgage or other lien upon said land, and in the event lessee does so it shall be subrogated to such lien with the right to enforce same and to apply royalties and shut-in royalties payable hereunder toward satisfying same. Without impairment of lessee's rights under the warranty, if this lease covers a less interest in the oil and gas in all or any part of said land than the entire and undivided fee simple estate (whether lessor's interest is herein specified or not) then the royalties, shut-in royalty, and other payments, if any, accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. Should any one or more of the parties named above as lessors fail to execute this lease, it shall nevertheless be binding upon the party or parties executing the same.

11. Lessee, its or his successors, heirs and assigns, shall have the right at any time to surrender this lease, in whole or in part, to lessor or his heirs, successors, and assigns by delivering or mailing a release thereof to the lessor, or by placing a release thereof of record in the county in which said land is situated; thereupon lessee shall be relieved from all obligations, expressed or implied, of this agreement as to acreage so surrendered, and thereafter the shut-in royalty payable hereunder shall be reduced in the proportion that the acreage covered hereby is reduced by said release or releases.

ADDITIONAL PROVISIONS

12. Notwithstanding anything contained herein to the contrary, at the end of the primary term, this lease will terminate as to all said lands not then included in or allocated to a spacing or proration unit allocated to a producing well (which shall include shut-in wells) unless:

a) Lessee has drilled, deepened, reworked or recompleted a well on said lands above described or on lands pooled therewith and within one hundred eighty (180) days prior to the expiration of the primary term, completed said well as a producer of oil and/or gas, or plugged said well as a dry hole, or

b) At the expiration of the primary term, Lessee is engaged in drilling, deepening, reworking or recompletion operations on said lands or on lands pooled therewith;

and thereafter Lessee commences a continuous drilling program whereby operations for the drilling of a new well, or the deepening, reworking or recompletion of an existing well, are commenced within one hundred eighty (180) days after the latter to occur of (i) the expiration of the primary term, or (ii) the completion or plugging of any well drilled, deepened, reworked or recompleted across or subsequent to the expiration of the primary term. For the purposes hereof, "completion" shall be the date of the filing of the potential test report with the appropriate governmental authority having jurisdiction, if a producer, or, if a well is plugged as a dry hole, the "plugging" shall be the date of filing the plugging report with the appropriate governmental authority having jurisdiction.

13. When Lessee ceases said continuous drilling program, this lease shall terminate as to all acreage not then included in a spacing or proration unit allocated to a producing well (which shall include shut-in wells) under special field rules promulgated by the appropriate governmental authority having jurisdiction, at the time of termination; or, in the absence of special field rules established in the field for which any given well is located, then each gas well (which shall include shut-in wells) shall be allocated 320 acres plus a tolerance of 10%, for a spacing or proration unit, and each oil well (which shall include shut-in wells) shall be allocated 80 acres plus a tolerance of 10%, for a spacing or proration unit. Each such spacing or proration unit shall be as nearly as practicable in the shape of a square or rectangle surrounding such well.

14. Notwithstanding such termination, Lessee shall have a continuing right of way and easement on, over and across all the land covered hereby for the construction, use, maintenance, replacement, or removal of pipelines, roads, telephone lines, electric lines, tank and other facilities for its operations hereunder on land remaining covered by this lease following such termination.

15. This oil and gas lease is subordinate to that certain "Prior Lease" dated August 25, 1997, effective December 7, 1997, recorded in Book 827, page 127, Lea County Records, as amended by instrument dated ______________, 2000, recorded in Book _____, page _____, Lea County Records, but only to the extent that said Prior Lease is currently a valid and subsisting oil and gas lease. Notwithstanding any other provisions of this oil and gas lease, the end of the primary term hereof shall be extended until the third (3rd) anniversary date of this oil and gas lease next following expiration of the continuous development provision contained in added Paragraph No. 12 on Exhibit "A" attached to the Prior Lease, provided that in no event shall the primary term hereof expire later than the 20th anniversary date of this oil and gas lease. Execution of this oil and gas lease by Lessor shall never be construed as a ratification or revivor of the Prior Lease. Lessor specifically agrees not to enter into any agreement of any form that would extend or continue the primary term or the continuous development provision of the Prior Lease, or modify any of the existing provisions of the Prior Lease.

Executed the day and year first above written.

Madeline Stokes 452-90-4051
Madeline Stokes SS#

____

INDIVIDUAL ACKNOWLEDGMENT (New Mexico Short Form)

STATE OF Texas

COUNTY OF Crockett

This instrument was acknowledged before me on April 1, 2001, by Madeline Stokes.

RHONDA K. SHAW
NOTARY PUBLIC
STATE OF TEXAS
My Comm. Exp. 07-22-2001

Rhonda K. Shaw
Notary Public, State of Texas
My Commission Expires: 07-22-01

07161

STATE OF NEW MEXICO
COUNTY OF LEA
FILED

JUN 11 2001

at 10:50 o'clock A M
and recorded in Book
Page
Melinda Hughes, Lea County Clerk
By Deputy

COUNTY CLERK SEAL LEA COUNTY, NEW MEXICO

07162

Producer's 88-Producer's Revised 1994 New Mexico Form 342P, Paid-up

OIL & GAS LEASE

THIS AGREEMENT made this 27th day of March, 2001 between Erma Hamilton, dealing with her sole and separate property, whose address is P. O. Box 1470, Big Spring, Texas 79721 herein called lessor (whether one or more) and James D. Huff, P. O. Box 705, Mineola, Texas 75773, lessee:

1. Lessor, in consideration of TEN AND OTHER DOLLARS in hand paid, receipt of which is here acknowledged, and of the royalties herein provided and of the agreements of the lessee herein contained, hereby grants, leases and lets exclusively unto lessee for the purpose of investigating, exploring, prospecting, drilling, and operating for and producing oil and gas, injecting gas, waters, other fluids, and air into subsurface strata, laying pipelines, storing oil, building tanks, roadways, telephone lines, and other structures and things thereon to produce, save, take care of, treat, process, store and transport said minerals, the following described land in Lee County, New Mexico, to-wit:

Township 16 South, Range 35 East, N.M.P.M.
Section 13: SE/4
Section 23: SE/4
Section 24: NW/4SW/4, NW/4NE/4
Section 25: NW/4
Section 26: NE/4

Said land is estimated to comprise 720.00 acres, whether it actually comprises more or less.

2. Subject to the other provisions herein contained, this lease shall remain in force for a term of three (3) years from May 7th, 2001 (called "primary term") and as long thereafter as oil or gas is produced from said land or from land with which said land is pooled.

3. The royalties to be paid by lessee are: (a) on oil, and other liquid hydrocarbons saved at the well, three-sixteenths (3/16ths) of that produced and saved from said land, same to be delivered at the wells or to the credit of lessor in the pipeline to which the wells may be connected; (b) on gas, including casinghead gas or other gaseous substance produced from said land and used off the premises or used in the manufacture of gasoline or other products, the market value at the well of three-sixteenths (3/16ths) of the gas used, provided that on gas sold on or off the premises, the royalties shall be three-sixteenths (3/16ths) of the amount realized from such sale; (c) and at any time when this lease is not validated by other provisions hereof and there is a gas and/or condensate well on said land, or land pooled therewith, but gas or condensate is not being so sold or used and such well is shut in, either before or after production therefrom, then on or before 90 days after said well is shut in, and thereafter at annual intervals, lessee may pay or tender an advance shut-in royalty equal to $1.00 per net acre of lessor's gas acreage then held under this lease by the party making such payment or tender, and so long as said shut-in royalty is paid or tendered, this lease shall not terminate and it shall be considered under all clauses hereof that gas is being produced from the leased premises in paying quantities. Each such payment shall be paid or tendered to the party or parties who at the time of such payment would be entitled to receive the royalties which would be paid under this lease if the well were in fact producing. The payment or tender of royalties and shut-in royalties may be made by check or draft. Any timely payment or tender of shut-in royalty which is made in a bona fide attempt to make proper payment, but which is erroneous in whole or in part as to parties or amounts, shall nevertheless be sufficient to prevent termination of this lease in the same manner as though a proper payment had been made if lessee shall correct such error within 30 days after lessee has received written notice thereof by certified mail from the party or parties entitled to receive payment together with such written instruments (or certified copies thereof) as are necessary to enable lessee to make proper payment. The amount realized from the sale of gas on or off the premises shall be the price established by the gas sales contract entered into in good faith by lessee and gas purchaser for such term and under such conditions as are customary in the industry. "Price" shall mean the net amount received by lessee after giving effect to applicable regulatory orders and after application of any applicable price adjustments specified in such contract or regulatory orders. ~~In the event lessee compresses, treats, purifies, or dehydrates such gas (whether on or off the leased premises) or transports gas off the leased premises, lessee in computing royalty hereunder may deduct from such price a reasonable charge for each of such functions performed.~~ E

4. This is a paid-up lease and lessee shall not be obligated during the primary term hereof to commence or continue any operations of whatsoever character or to make any payments hereunder in order to maintain this lease in force during the primary term; however, this provision is not intended to relieve lessee of the obligation to pay royalties on actual production pursuant to the provisions of Paragraph 3 hereof.

5. Lessee is hereby granted the right and power, from time to time, to pool or combine this lease, the land covered by it or any part or horizon thereof with any other land, leases, mineral estates or parts thereof for the production of oil or gas. Units pooled hereunder shall not exceed the standard proration unit fixed by law or by the Oil Conservation Division of the Energy and Minerals Department of the State of New Mexico or by any other lawful authority for the pool or area in which said land is situated, plus a tolerance of ten percent. Lessee shall file written unit designations in the county in which the premises are located and such units may be designated from time to time and either before or after the completion of wells. Drilling operations on or production from any part of any such unit shall be considered for all purposes, except the payment of royalty, as operations conducted upon or production from the land described in this lease. There shall be allocated to the land covered by this lease included in any such unit that portion of the total production of pooled minerals from wells in the unit, after deducting any used in lease or unit operations, which the net oil or gas acreage in the land covered by this lease included in the unit bears to the total number of surface acres in the unit. The production so allocated shall be considered for all purposes, including the payment or delivery of royalty, to be the entire production of pooled minerals from the portion of said land covered hereby and included in said unit in the same manner as though produced from said land under the terms of this lease. Any pooled unit designated by lessee, as provided herein, may be dissolved by lessee by recording an appropriate instrument in the County where the land is situated at any time after the completion of a dry hole or the cessation of production on said unit.

6. If at the expiration of the primary term there is no well upon said land capable of producing oil or gas, but lessee has commenced operations for drilling or reworking thereon, this lease shall remain in force so long as operations are prosecuted with no cessation of more than 60 consecutive days, whether such operations be on the same well or on a different or additional well or wells, and if they result in the production of oil or gas, so long thereafter as oil or gas is produced from said land. If, after the expiration of the primary term, all wells upon said land should become incapable of producing for any cause, this lease shall not terminate if lessee commences operations for additional drilling or for reworking within 60 days thereafter. If any drilling, additional drilling, or reworking operations hereunder result in production, then this lease shall remain in full force so long thereafter as oil or gas is produced hereunder.

7. Lessee shall have free use of oil, gas and water from said land, except water from lessor's wells and tanks, for all operations hereunder, and the royalty shall be computed after deducting any so used. Lessee shall have the right at any time during or after the expiration of this lease to remove all property and fixtures placed by lessee on said land, including the right to draw and remove all casing. When required by lessor, lessee will bury all pipe lines on cultivated lands below ordinary plow depth, and no well shall be drilled within two hundred feet (200 ft.) of any residence or barn now on said land without lessor's consent. Lessor shall have the privilege, at his risk and expense, of using gas from any gas well on said land for stoves and inside lights in the principal dwelling thereon, out of any surplus gas not needed for operations hereunder.

8. The rights of either party hereunder may be assigned in whole or in part and the provisions hereof shall extend to their heirs, executors, administrators, successors and assigns; but no change in the ownership of the land

or in the ownership of, or rights to receive, royalties or shut-in royalties, however accomplished shall operate to enlarge the obligations or diminish the rights of lessee; and no such change or division shall be binding upon lessee for any purpose until 30 days after lessee has been furnished by certified mail at lessee's principal place of business with acceptable instruments or certified copies thereof constituting the chain of title from the original lessor. If any such change in ownership occurs through the death of the owner, lessee may, at its option, pay or tender any royalties or shut-in royalties in the name of the deceased or to his estate or to his heirs, executor or administrator until such time as lessee has been furnished with evidence satisfactory to lessee as to the persons entitled to such sums. An assignment of this lease in whole or in part shall, to the extent of such assignment, relieve and discharge lessee of any obligations hereunder and, if lessee or assignee of part or parts hereof shall fail or make default in the payment of the proportionate part of royalty or shut-in royalty due from such lessee or assignee or fail to comply with any of the provisions of this lease, such default shall not affect this lease insofar as it covers a part of said lands upon which lessee or any assignee thereof shall properly comply or make such payments.

9. Should lessee be prevented from complying with any express or implied covenant of this lease, or from conducting drilling or reworking operations hereunder, or from producing oil or gas hereunder by reason of scarcity or inability to obtain or use equipment or material, or by operation of force majeure, or by any Federal or state law or any order, rule or regulation of governmental authority, then while so prevented, lessee's duty shall be suspended, and lessee shall not be liable for failure to comply therewith; and this lease shall be extended while and so long as lessee is prevented by any such cause from conducting drilling or reworking operations or from producing oil or gas hereunder; and the time while lessee is so prevented shall not be counted against lessee, anything in this lease to the contrary notwithstanding.

10. Lessor hereby warrants and agrees to defend the title to said land and agrees that lessee at is option may discharge any tax, mortgage or other lien upon said land, and in the event lessee does so it shall be subrogated to such lien with the right to enforce same and to apply royalties and shut-in royalties payable hereunder toward satisfying same. Without impairment of lessee's rights under the warranty, if this lease covers a less interest in the oil and gas in all or any part of said land than the entire and undivided fee simple estate (whether lessor's interest is herein specified or not) then the royalties, shut-in royalty, and other payments, if any, accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. Should any one or more of the parties named above as lessors fail to execute this lease, it shall nevertheless be binding upon the party or parties executing the same.

11. Lessee, its or his successors, heirs and assigns, shall have the right at any time to surrender this lease, in whole or in part, to lessor or his heirs, successors, and assigns by delivering or mailing a release thereof to the lessor, or by placing a release thereof of record in the county in which said land is situated; thereupon lessee shall be relieved from all obligations, expressed or implied, of this agreement as to acreage so surrendered, and thereafter the shut-in royalty payable hereunder shall be reduced in the proportion that the acreage covered hereby is reduced by said release or releases.

ADDITIONAL PROVISIONS

12. Notwithstanding anything contained herein to the contrary, at the end of the primary term, this lease will terminate as to all said lands not then included in or allocated to a spacing or proration unit allocated to a producing well (which shall include shut-in wells) unless:

a) Lessee has drilled, deepened, reworked or recompleted a well on said lands above described or on lands pooled therewith and within one hundred eighty (180) days prior to the expiration of the primary term, completed said well as a producer of oil and/or gas, or plugged said well as a dry hole; or

b) At the expiration of the primary term, Lessee is engaged in drilling, deepening, reworking or recompletion operations on said lands or on lands pooled therewith;

and thereafter Lessee commences a continuous drilling program whereby operations for the drilling of a new well, or the deepening, reworking or recompletion of an existing well, are commenced within one hundred eighty (180) days after the latter to occur of (i) the expiration of the primary term, or (ii) the completion or plugging of any well drilled, deepened, reworked or recompleted across or subsequent to the expiration of the primary term. For the purposes hereof, "completion" shall be the date of the filing of the potential test report with the appropriate governmental authority having jurisdiction, if a producer; or, if a well is plugged as a dry hole, the "plugging" shall be the date of filing the plugging report with the appropriate governmental authority having jurisdiction.

13. When Lessee ceases said continuous drilling program, this lease shall terminate as to all acreage not then included in a spacing or proration unit allocated to a producing well (which shall include shut-in wells) under special field rules promulgated by the appropriate governmental authority having jurisdiction, at the time of termination; or, in the absence of special field rules established in the field for which any given well is located, then each gas well (which shall include shut-in wells) shall be allocated 320 acres plus a tolerance of 10%, for a spacing or proration unit, and each oil well (which shall include shut-in wells) shall be allocated 80 acres plus a tolerance of 10%, for a spacing or proration unit. Each such spacing or proration unit shall be as nearly as practicable in the shape of a square or rectangle surrounding such well.

14. Notwithstanding such termination, Lessee shall have a continuing right of way and easement on, over and across all the land covered hereby for the construction, use, maintenance, replacement, or removal of pipelines, roads, telephone lines, electric lines, tank and other facilities for its operations hereunder on land remaining covered by this lease following such termination.

15. This oil and gas lease is subordinate to that certain "Prior Lease" dated August 25, 1997, effective December 7, 1997, recorded in Book 827, page 124, Lea County Records, as amended by instrument dated _____, 2000, recorded in Book _____, page _____, Lea County Records, but only to the extent that said Prior Lease is currently a valid and subsisting oil and gas lease. Notwithstanding any other provisions of this oil and gas lease, the end of the primary term hereof shall be extended until the third (3rd) anniversary date of this oil and gas lease next following expiration of the continuous development provision contained in added Paragraph No. 12 on Exhibit "A" attached to the Prior Lease, provided that in no event shall the primary term hereof expire later than the 20th anniversary date of this oil and gas lease. Execution of this oil and gas lease by Lessor shall never be construed as a ratification or revivor of the Prior Lease. Lessor specifically agrees not to enter into any agreement of any form that would extend or continue the primary term or the continuous development provision of the Prior Lease, or modify any of the existing provisions of the Prior Lease.

Executed the day and year first above written.

Erma Hamilton 459-80-9359 SSN

4-4-01

INDIVIDUAL ACKNOWLEDGMENT (New Mexico Short Form)

STATE OF Texas

COUNTY OF Howard

This instrument was acknowledged before me on April 4 2001, by Erma Hamilton

NORMA A. GARCIA
Notary Public, State of Texas
My Comm. Expires May 15, 2004

Norma A. Garcia
Notary Public, State of Texas
My Commission Expires: 5-15-04

STATE OF NEW MEXICO
COUNTY OF LEA
FILED

JUN 11 2001

at 10:50 o'clock A M
and recorded in Book
Page
Melinda Hughes, Lea County Clerk
By Deputy

07162

COUNTY CLERK SEAL LEA COUNTY, NEW MEXICO

original agmt

214 West Texas
Suite 400, (Zip 79701)
P.O. Box 2071
Midland, Texas 79702

DAVID H. ARRINGTON OIL & GAS, INC.

Phone: (915) 682-6685
Fax: (915) 682-4139

September 10, 2001

Mr. Derold Maney
Ocean Energy, Inc.
1001 Fannin, Suite 1600
Houston, TX 77952

Re: Assignment Of Rights In And To Certain Farmout Agreements Concerning The SW/4 Of Section 25, T16S, R35E, Lea County, New Mexico
South Payday "25" Prospect

Gentlemen:

When executed by the parties hereto, this letter agreement (this "Agreement") shall set forth the agreement between Ocean Energy, Inc. a Louisiana corporation ("Ocean") and David H. Arrington Oil & Gas, Inc. ("Arrington") concerning the assignment of thirty percent (30%) of Ocean's right in and to those certain farmout agreements covering the SW/4 of Section 25, T16S, R35E, Lea County, New Mexico, more particularly described on Schedule 1 hereto (such agreement, as may be amended, supplemented, restated or otherwise modified from time to time, a "Farmout Agreement", and collectively, the "Farmout Agreements"). For good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. On or before July 1, 2002, but not earlier than January 10, 2002, time being of the essence, Arrington shall commence actual drilling of a test well (the "Test Well") to be located in the NW/4 of Section 25, T16S, R35E, Lea County, New Mexico, referred to as the Triple Hackle Dragon 25 #1 Well, and shall thereafter prosecute drilling of the Test Well to penetrate and test the lower Mississippian Lime formation (as hereinafter defined) or to a depth of approximately thirteen thousand two hundred feet (13,200'), whichever is the lesser depth (the "Contract Depth") and shall complete the Test Well as capable of producing oil and/or gas in paying quantities or plug and abandon the same. Ocean shall participate in the drilling of this Test Well for its proportionate share. The Lower Mississippian Lime formation is defined as that certain gas and condensate bearing zone encountered at the stratigraphic equivalent depth of twelve thousand four hundred and four feet (12,404'), as shown on that certain compensated neutron three detector density log measurement in the Mayfly "14" State Com # 1 Well, located in Section 14, Township 16 South, Range 35 East, Lea County, New Mexico.

EXHIBIT
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In the event that the drilling title opinion rendered by a law firm licensed to do business in the State of New Mexico shall contain title requirements such that Arrington or Ocean as a reasonable and prudent operator is unable to commence drilling operations on the Test Well prior to July 1, 2002, Arrington or Ocean shall no later than January 5, 2002, initiate force pooling proceeding for a 320 acre unit comprised of the W/2 of Section 25, T16S, R35E, Lea County, New Mexico. Arrington or Ocean shall diligently and expeditiously pool such lands in order to cure such title requirements so that the Test Well may be drilled prior to July 1, 2002.

Should Arrington or Ocean fail to successfully cure such title defects through force pooling proceeding or otherwise and fail to timely commence drilling operations on the Test Well by July 1, 2002, then Ocean shall have the right, but not the obligation, to become the designated Operator under the Operating Agreement for the drilling of the Test Well through the point of first production; subsequently, Ocean shall relinquish operations under said Test Well to Arrington, and Arrington shall be the designated Operator under the Operating Agreement. Notwithstanding anything contained in this Agreement to the contrary Ocean shall not be obligated to participate in the drilling of the Test Well for a share of costs greater than thirty-five percent (35%) and Ocean is satisfied in its sole discretion that the remainder of the costs for the Test Well will be paid, either by Arrington or another third party with title to the leasehold interest in the lands contained within the pooling order issued by the New Mexico Oil Conservation Division.

2. In the event any well is lost for any reason prior to being drilled to Contract Depth or Arrington has encountered, during the drilling of any well, mechanical difficulty or a formation or condition which would render further drilling impracticable or impossible, Arrington may plug and abandon that well and may continue its rights under this agreement by commencing a substitute well (or wells) ("Substitute Well(s)") for any such well which has been lost or abandoned within sixty (60) days from the date the drilling rig is removed from the location of the prior well. Any Substitute Well drilled shall be drilled subject to the same terms and conditions and to the same depth as provided for the well so lost or abandoned. Any reference in this agreement to the Test Well shall be deemed to be a reference to any well or wells, which may be drilled as a Substitute Well. In the event that either party elects to drill a Substitute Well as provided herein, the other party must participate in same, or forfeit to the participating party any interest which it would have otherwise earned by virtue of its participation in such Substitute Well.

3. Contemporaneously herewith, Arrington and Ocean shall have entered into that certain Operating Agreement attached hereto as Exhibit A (the "Operating Agreement"), covering the W/2 of Section 25, T16S, R35E, Lea County, New Mexico (the "Contract Area"). Exhibit "A" to the Operating Agreement shall be completed based upon the results of the drillsite title opinion being prepared covering the W/2 of said Section 25.

4. Subject to the terms and conditions (i) of this agreement, (ii) each Farmout Agreement and (iii) the Joint Operating Agreement, Ocean hereby assigns unto Arrington, an undivided

thirty percent (30%) of Ocean's right in and to each Farmout Agreement. In the event that any Farmout Agreement contains a requirement that the Farmor (as defined in such Farmout Agreement) thereunder consent to any such assignment, Ocean shall use its best efforts to obtain such consent; provided, however, that in the event that Ocean is unable to acquire such Farmor's consent to assign, then Ocean shall assign additional interest(s) from such other of the Farmout Agreements as Ocean may elect in its discretion such that the aggregate of Arrington's right to earn rights under all Farmout Agreements will entitle Arrington to an assignment of Ocean's interest in the Contract Area equal to an undivided thirty percent (30%), proportionately reduced to Ocean's interest in the Contract Area. The terms and conditions of this letter agreement shall apply to any extensions or renewals of each Farmout Agreement acquired by either Arrington or Ocean within 180 days of the expiration of the farmout agreement.

5. Arrington has acquired proprietary 3D seismic data across certain lands, including, without limitation, T16S, R35E, Lea County, New Mexico (i) Section 23: E/2E/2; (ii) Section 24: All that Arrington has in the SW/4, (iii) Section 25: W/2, W/2E/2; (iv) Section 26: E/2E/2; (v) Section 35: NE/4NE/4; and (vi) Section 36: N/2NW/4, NW/4NE/4 (such 3D seismic data, collectively, the "Arrington 3D Data"). Arrington agrees (and represents to Ocean that Arrington has the right to so agree) that Ocean shall (i) have access to the Arrington 3D Data in Arrington's offices during normal business hours, in order to work and interpret the Arrington 3D Data and (ii) have access to and copies of, Arrington's interpretations of the Arrington 3D Data (the Arrington 3D Data together with such interpretations thereof, the "Arrington Evaluation Material"). Arrington shall retain full ownership rights to the Arrington 3D Data, and no ownership or license to the Arrington 3D Data shall be conveyed to Ocean. Except as provided for in this Paragraph 5, Arrington makes no representations or warranties to Ocean (i) as to the Arrington 3D Data (ii) or in respect of Ocean's reliance upon the Arrington Evaluation Material. Ocean shall keep the Arrington Evaluation Material confidential; provided however, that such obligation of confidentiality shall not apply to information which (i) was or becomes available to the public other than as a result of a disclosure by Ocean, (ii) was or becomes available to Ocean on a non-confidential basis from a source other than Arrington, provided that such source is not known by Ocean to be bound by a confidentiality agreement with Arrington or otherwise prohibited from transmitting the information by a contractual, legal or fiduciary obligation, (iii) was within Ocean's possession prior to its being furnished by Arrington, (iv) is developed or derived without the aid, application or use of the Arrington Evaluation Material, (v) is disclosed following receipt of the written consent of Arrington to such disclosure being made, or (vi) is disclosed pursuant to Paragraph 6 hereof.

6. In the event that Ocean is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena civil investigative demand or other process) to disclose any of the Arrington Evaluation Material, Ocean agrees that it will provide Arrington with prompt notice of any such request or requirement (written if practical) so that Arrington may seek an appropriate protective order or waive compliance with the provisions of this Agreement. If, failing the entry of a protective order or the receipt of a waiver hereunder prior to the time such disclosure is required to be made, Ocean may disclose that

portion of the Arrington Evaluation Material which Ocean's counsel advises that it is compelled to disclose and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to that portion of the Arrington Evaluation Material which is being disclosed. Arrington agrees that Ocean shall have no liability hereunder for any disclosure of the Arrington Evaluation Material made in compliance with this Paragraph 6.

7. Ocean has acquired proprietary 3D seismic data across certain lands, including, without limitation, T15S, R35E, Lea County, New Mexico (i) Section 7: W/2, W/2NE/4, W/2SE/4, SE/4SE/4; (ii) Section 17: W/2NW/4, NW/4SW/4; and (iii) Section 18: N/2, N/2S/2 (such 3D seismic data, collectively, the "Ocean 3D Data"). Ocean agrees (and represents to Arrington that Ocean has the right to so agree) that Arrington shall (i) have access to the Ocean 3D Data in Ocean's offices during normal business hours, in order to work and interpret the Ocean 3D Data and (ii) have access to and copies of, Ocean's interpretations of the Ocean 3D Data (the Ocean 3D Data together with such interpretations thereof, the "Ocean Evaluation Material"). Ocean shall retain full ownership rights to the Ocean 3D Data, and no ownership or license to the Ocean 3D Data shall be conveyed to Arrington. Except as provided for in this Paragraph 7, Ocean makes no representations or warranties to Arrington (i) as to the Ocean 3D Data (ii) or in respect of Arrington's reliance upon the Ocean Evaluation Material. Arrington shall keep the Ocean Evaluation Material confidential; provided however, that such obligation of confidentiality shall not apply to shall not apply to information which (i) was or becomes available to the public other than as a result of a disclosure by Arrington, (ii) was or becomes available to Arrington on a non-confidential basis from a source other than Ocean, provided that such source is not known by Arrington to be bound by a confidentiality agreement with Ocean or otherwise prohibited from transmitting the information by a contractual, legal or fiduciary obligation, (iii) was within Arrington's possession prior to its being furnished by Ocean, (iv) is developed or derived without the aid, application or use of the Ocean Evaluation Material, (v) is disclosed following receipt of the written consent of Ocean to such disclosure being made, or (vi) is disclosed pursuant to Paragraph 8 hereof.

8. In the event that Arrington is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena civil investigative demand or other process) to disclose any of the Ocean Evaluation Material, Arrington agrees that it will provide Ocean with prompt notice of any such request or requirement (written if practical) so that Ocean may seek an appropriate protective order or waive compliance with the provisions of this Agreement. If, failing the entry of a protective order or the receipt of a waiver hereunder prior to the time such disclosure is required to be made, Arrington may disclose that portion of the Ocean Evaluation Material which Arrington's counsel advises that it is compelled to disclose and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to that portion of the Ocean Evaluation Material which is being disclosed. Ocean agrees that Arrington shall have no liability hereunder for any disclosure of the Ocean Evaluation Material made in compliance with this Paragraph 8.

9. It is not the intention of the parties to create a partnership, nor shall this agreement be construed as creating a mining or other partnership, joint venture, agency relationship or other association, or to render the parties liable as partners, co-venturers or principals. Unless provided for to the contrary in the Operating Agreement, (i) the liability of the parties shall be several, not joint or collective and (ii) each party shall be responsible only for its obligations, and shall be liable only for its proportionate share of the costs, if any, to be incurred hereunder. No party shall have any liability hereunder to third parties to satisfy the default of any other party in the payment of any expense or obligation.

10. This Agreement and all matters pertaining hereto, including, but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties and interpretation or construction, shall be governed and determined by the law of the State of Texas. **THE PARTIES HEREBY CONSENT TO THE EXCLUSIVE VENUE OF THE PROPER STATE OR FEDERAL COURT LOCATED IN MIDLAND COUNTY, TEXAS, AND HEREBY WAIVE ALL OTHER VENUES.**

11. This Agreement, the Exhibits and Schedules hereto and the Operating Agreement set forth all understandings between the parties respecting the subject matter of this transaction, and all prior agreements, understandings and representations, whether oral or written, respecting this transaction are merged into and superseded by this written agreement.

12. This agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns and the terms hereof shall be deemed to run with the lands described herein. If any transfer is effected by a party pursuant to the terms of this agreement, or by any of its successors or assigns, the transfer will be made expressly subject to this agreement, and the transferor shall remain responsible for the obligations of the transferee until the transferee expressly assumes in writing all of the existing duties and obligations of the transferor.

13. This agreement may not be altered or amended, nor any rights hereunder waived, except by an instrument, in writing, executed by the party to be charged with such amendment or waiver. No waiver of any other term, provision or condition of this agreement, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, other provision or condition or as a waiver of any other term, provision or condition of this agreement.

14. **EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT.**

15. If any provision of this agreement is invalid, illegal or incapable of being enforced, all other provisions of this agreement shall nevertheless remain in full force and effect, so long as the economic or legal substance of the transactions contemplated hereby is not affected in a materially adverse manner with respect to either party.

If this properly sets forth your understanding of our agreement, please so indicate by signing in the space provided below, and returning to my attention.

Yours truly,

DAVID H. ARRINGTON OIL & GAS, INC.

David H. Arrington
President

DD/trd

ACCEPTED AND AGREED THIS 14th DAY OF ~~SEPTEMBER~~ November, 2001

OCEAN ENERGY, INC.

By: _____
Hank Wood
Attorney-in-Fact

Schedule 1 to that certain Letter Agreement,
by and between Ocean Energy, Inc., a Louisiana corporation
and David H. Arrington Oil & Gas, Inc.,
dated as of September 10, 2001

1. Farmout Agreement, dated as July 23, 2001, by and between Ocean Energy, Inc., a Louisiana corporation, as Farmee, and Branex Resources, Inc., as Farmor, as amended by that certain Letter Agreement, dated as of August 14, 2001, attached hereto as Exhibits B-1 and B-2;

2. Farmout Agreement, dated as July 23, 2001, by and between Ocean Energy, Inc., a Louisiana corporation, as Farmee, and States, Inc. and B.B.L., Ltd., as Farmor, as amended by that certain Letter Agreement, dated as of August 22, 2001, attached hereto as Exhibits C-1 and C-2;

3. Farmout Agreement, dated as July 23, 2001, by and between Ocean Energy, Inc., a Louisiana corporation, as Farmee, and Judith White, Trustee[1], as Farmor, as amended by that certain Letter Agreement, dated as of August 15, 2001, attached hereto as Exhibit D-1 and D-2;

4. Farmout Agreement, dated as July 23, 2001, by and between Ocean Energy, Inc., a Louisiana corporation, as Farmee, and Slash Four Enterprises, Inc., as Farmor, as amended by that certain Letter Agreement, dated as of August 15, 2001, attached hereto as Exhibit D-1 and D-2;

5 Farmout Agreement, dated as July 23, 2001, by and between Ocean Energy, Inc., a Louisiana corporation, as Farmee, and Pabo Oil & Gas, as Farmor, as amended by that certain Letter Agreement, dated as of August 15, 2001, attached hereto as Exhibit D-1 and D-2;

6. Farmout Agreement, dated as July 23, 2001, by and between Ocean Energy, Inc., a Louisiana corporation, as Farmee, and Phelps White, III, as Farmor, attached hereto as Exhibit E;

7. Farmout Agreement, dated as July 23, 2001, by and between Ocean Energy, Inc., a Louisiana corporation, as Farmee, and David R. Gannaway, as Farmor, attached hereto as Exhibit F; and

8. Farmout Agreement, dated as July 23, 2001, by and between Ocean Energy, Inc. a Louisiana corporation, as Farmee, and ICA Energy, Inc., as Farmor, as amended by that certain Letter Agreement, dated as of August 15, 2001, attached hereto as Exhibit G-1 and G-2.

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:

APPLICATION OF TMBR/SHARP DRILLING, INC. FOR AN ORDER STAYING DAVID H. ARRINGTON OIL & GAS, INC. FROM COMMENCING OPERATIONS, LEA COUNTY, NEW MEXICO. CASE NO. 12731

APPLICATION OF TMBR/SHARP DRILLING, INC. APPEALING THE ARTESIA [*SIC*] 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

ORDER NO. R-11700

ORDER OF THE DIVISION

BY THE DIVISION:

Case No. 12731 came on for hearing at 8:15 a.m. on September 20, 2001, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

Case No. 12744 came on for hearing at 8:15 a.m. on October 18, 2001, at Santa Fe, New Mexico, before Examiner David K. Brooks

NOW, on this 11th day of December, 2001, the Division Director, having considered the testimony, the record and the recommendations of the Examiners,

FINDS THAT:

(1) Due public notice has been given, and the Division has jurisdiction of this case and of the subject matter.

(2) In Case No. 12731, TMBR/Sharp Drilling, Inc. ("TMBR/Sharp") seeks an order staying David H. Arrington Oil & Gas Inc. ("Arrington") from commencing

operations under two approved Applications for Permit to Drill (the "Arrington APDs") pending final determination of Cause No. CV-2001-315C, now pending in the Fifth Judicial District Court of Lea County, New Mexico, styled **"TMBR/Sharp Drilling, Inc. v. David H. Arrington Oil & Gas, Inc., *et al.*,"** ("the TMBR/Sharp suit").

(3) In Case No. 12744, TMBR/Sharp appeals the action of the Supervisor of District I of the Oil Conservation Division ("the District Supervisor") denying two Applications for Permit to Drill ("the TMBR/Sharp APDs") wherein TMBR/Sharp applied for permits to drill on the same spacing and proration units as the previously approved Arrington APDs.

(4) At the hearing in Case No. 12744, that case was consolidated with Case No. 12731, and was taken under advisement, to be determined on the basis of the record made in Case No. 12731. Since these cases involve the same units and subject matter, one order should be entered for both cases.

(5) On July 17, 2001, Arrington filed an Application for Permit to Drill (form C-101) for its proposed Triple-Hackle Dragon "25" Well No. 1, to be located in the W/2 of Section 25, Township 16 South, Range 35 East, Lea County, New Mexico, at a standard location in SW/4 NW/4 (Unit E), 750 feet from the west line and 1815 feet from the north line of the section. This APD was approved on July 17, 2001 by Paul Kautz, acting for the District Supervisor of the Division.

(6) On July 25, 2001, Arrington filed an Application for Permit to Drill (form C-101) for its proposed Blue Drake "23" Well No. 1, to be located in the E/2 of Section 23, Township 16 South, Range 35 East, Lea County, New Mexico, at a standard location in NE/4 SE/4 (Unit I), 660 feet from the east line and 1980 feet from the south line of the section. This APD was approved on July 30, 2001 by Paul Kautz, acting for the District Supervisor of the Division.

(7) The APDs described in findings (5) and (6) are the Arrington APDs that are the subject of the applications filed in these consolidated cases.

(8) On or about August 7, 2001, TMBR/Sharp filed an Application for Permit to Drill (form C-101) for its proposed Blue Fin "25" Well No. 1, to be located in the N/2 of Section 25, Township 16 South, Range 35 East, Lea County, New Mexico, at a standard location in SW/4 NW/4 (Unit E), 924 feet from the west line and 1913 feet from the north line of the section. On August 8, 2001, Paul Kautz, acting for the District Supervisor of the Division, denied this APD by reason of the previous issuance of the APD for Arrington's Triple-Hackle Dragon "25" Well No. 1.

(9) On or about August 6, 2001, TMBR/Sharp filed an Application for Permit to Drill (form C-101) for its proposed Leavelle "23" Well No. 1, to be located in the E/2 of Section 23, Township 16 South, Range 35 East, Lea County, New Mexico, at a standard location in SW/4 NE/4 (Unit F), 1998 feet from the east line and 2038 feet from the north line of the section. On August 8, 2001, Paul Kautz, acting for the District Supervisor of the Division, denied this APD by reason of the previous issuance of the APD for Arrington's Blue Drake "23" Well No. 1.

(10) The APDs described in findings (8) and (9) are the TMBR/Sharp APDs that are the subject of the applications filed in these consolidated cases.

(11) On August 21, 2001, TMBR/Sharp filed the TMBR/Sharp suit.

(12) In the TMBR/Sharp suit, TMBR/Sharp alleges that it is the owner of the oil and gas leasehold estate in all of the NW/4 of Section 25, and all of the SE/4 of Section 23, Township 16 South, Range 35 East, Lea County, New Mexico, along with other lands, pursuant to two oil and gas leases ("the TMBR/Sharp leases") dated August 25, 1997, from Madeline Stokes and Erma Stokes Hamilton, respectively, to Ameristate Oil & Gas, Inc., recorded respectively in Book 827 at Page 127, and in Book 827 at Page 124, Deed Records of Lea County, New Mexico.

(13) Although the primary terms of the TMBR/Sharp leases have expired, TMBR/Sharp contends that the TMBR/Sharp leases have been maintained in force and effect by the drilling of and production from its Blue Fin 24 Well No. 1, located in the SW/4 SW/4 of Section 24, Township 16 South, Range 35 East, Lea County, New Mexico, on lands allegedly pooled with the lands covered by the TMBR/Sharp leases.

(14) Arrington claims that no legally effective pooling of the SW/4 SW/4 of Section 24 with any lands covered by the TMBR/Sharp leases ever occurred, and that the TMBR/Sharp leases have expired.

(15) Arrington claims that it is the owner of the oil and gas leasehold estate in all of the NW/4 of Section 25, and all of the SE/4 of Section 23, Township 16 South, Range 35 East, Lea County, New Mexico, along with other lands, pursuant to two oil and gas leases ("the Arrington leases") dated March 27, 2001, from Madeline Stokes and Erma Hamilton, respectively, to James D. Huff, recorded respectively in Book 1084 at Page 282, and in Book 1084 at Page 285, Deed Records of Lea County, New Mexico.

(16) The Arrington APDs and the TMBR/Sharp APDs both identified the Townsend Mississippian North Gas Pool as the pool to which the well would be dedicated.

(17) The Townsend Mississippian North Gas Pool is governed by the spacing and well density requirements of Rule 104.C(2) [19 NMAC 15.C.104.C(2)].

(18) The Arrington APDs conformed to the requirements of Rule 104.C(2), and were properly approved.

(19) After approval of the Arrington APDs, the TMBR/Sharp APDs could not have been approved because:

(a) TMBR/Sharp's proposed Blue Fin "25" Well No. 1 was proposed to be located in NW/4 of Section 25, the same quarter section as Arrington's proposed Triple-Hackle Dragon "25" Well No. 1, in violation of Rule 104.C(2)(b).

(b) TMBR/Sharp's APD for its proposed Blue Fin "25" Well No. 1 proposed a N/2 dedication, whereas the previously approved Arrington APD established a W/2 spacing unit.

(c) The approval of APDs naming TMBR/Sharp as operator for wells proposed to be located in either the W/2 of Section 25 or the E/2 of Section 23, following the approval of the Arrington APDs, would contravene Rule 104.C(2)(c), which requires that any subsequent well drilled in a spacing unit be operated by the operator of the initial well.

(20) TMBR/Sharp did not present any geological or engineering testimony or evidence that the locations it proposed were in any way superior to the locations proposed in the Arrington APDs.

CONCLUSIONS OF LAW:

(21) The Oil Conservation Division has no jurisdiction to determine the validity of any title, or the validity or continuation in force and effect of any oil and gas lease. Exclusive jurisdiction of such matters resides in the courts of the State of New Mexico.

(22) Since the Arrington APDs were filed at a time when no conflicting APDs had been filed affecting the subject units, the APDs conformed to applicable OCD Rules, and Arrington has demonstrated at least a colorable claim of title that would confer upon it a right to drill its proposed wells, no basis exists to reverse or overrule the action of the District Supervisor in approving the Arrington APDs.

(23) The approval of the Arrington APDs *ipso facto* precludes approval of the TMBR/Sharp APDs.

(24) If TMBR/Sharp has better title to the lands in question, it has a fully adequate remedy in the 5th Judicial District Court of Lea County, New Mexico, which is clothed with equitable power to restrain operations authorized by the Arrington APD, or to order Arrington to withdraw the Arrington APDs, if such court determines either such action to be warranted.

(25) Since the Division has jurisdiction to revoke its approval of any APD in an appropriate case, Arrington's Motions to Dismiss TMBR/Sharp's Applications for want of jurisdiction should be denied.

(26) The Application of TMBR/Sharp for an order staying operations under the Arrington APDs until the conclusion of the TMBR/Sharp suit should be denied. However, in the interest of protecting correlative rights, commencement of operations under the Arrington APDs should be stayed for a brief time after issuance of this order to allow TMBR/Sharp to petition the 5th Judicial District Court of Lea County for temporary relief, should it elect to do so.

IT IS THEREFORE ORDERED THAT:

(1) Arrington's Motions to Dismiss TMBR/Sharp's Applications for want of jurisdiction are denied.

(1) TMBR/Sharp's Application appealing the denial of the TMBR/Sharp APDs is denied.

(2) TMBR/Sharp's Application for an order staying approval of the Arrington APDs until final conclusion of the TMBR/Sharp suit is denied.

(3) Approval of the Arrington APDs is hereby suspended for a period of ten (10) days after the date of issuance of this order, to afford TMBR/Sharp an opportunity to petition the 5th Judicial District Court of Lea County, New Mexico for relief in this matter should it elect to do so.

(4) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

LORI WROTENBERY
Director

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF LEA
STATE OF NEW MEXICO

[illegible] DISTRICT
[illegible] OFFICE
01 DEC 27 AM 9:33
[illegible] COURT CLERK

TMBR/SHARP DRILLING, INC.,
Plaintiff,

vs.

No. CV2001-315C

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, and TOM STOKES,
Defendants.

ORDER GRANTING PARTIAL SUMMARY JUDGMENT REGARDING FILING OF UNIT DESIGNATIONS

THIS MATTER having come before the Court upon Motion of the Plaintiff's TMBR/Sharp Drilling Company's Motion for Partial Summary Judgment regarding Filing of Unit Designations and the Defendant Arrington Oil and Gas Inc.'s and Defendant Huff's Motion for Summary Judgment Regarding Filing of Unit Designations and the Court being fully advised FINDS that the Plaintiff's Motion is well taken and should be and IS GRANTED and the Defendant's Motion is not well taken and should be and IS DENIED.

Gary L. Clingman
District Judge

CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice was mailed to all parties on the 27th day of December, 2001:

Richard Montgomery, Esquire
P.O. Box 2776
Midland, Texas 79702-2776

Phil Brewer, Esquire
P.O. Box 298
Roswell, NM 88202-0298

Ernest L. Carroll, Esquire
P.O. Box 1720
Artesia, NM 88221-1720

Michael J. Canon, Esquire
303 W. Wall, Suite 1100
Midland, Texas 79701

By: Diana A. Hernandez
Trial Court Administrative Assistant

EXHIBIT 10