

Correspondence

Renovo

Case No. 12744

April 2002

JAMES BRUCE
Attorney at Law
Post Office Box 1056
Santa Fe, New Mexico 87504
Telephone: (505) 982-2043
Fax: (505) 982-2151

FAX COVER SHEET

DELIVER TO: Stephen C. Ross
COMPANY: Oil Conservation Commission
CITY: Santa Fe, New Mexico
FAX NUMBER: (505) 476-3220
NUMBER OF PAGES: 4 (Including Cover Sheet)
DATE SENT: 4/30/02
MEMO:

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATION OF TMBR/SHARP DRILLING, INC. FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.	No. 12816
APPLICATION OF OCEAN ENERGY, INC. FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.	No. 12841
APPLICATION OF OCEAN ENERGY, INC. FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.	No. 12860
APPLICATION OF DAVID H. ARRINGTON OIL & GAS, INC. FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.	No. 12859

**RESPONSE OF OCEAN ENERGY, INC. IN OPPOSITION TO
TMBR/SHARP DRILLING, INC.'S MOTION TO DISMISS**

TMBR/Sharp Drilling, Inc. ("TMBR/Sharp") has filed a motion to dismiss the Case Nos. 12841, 12859, and 12860. Ocean Energy, Inc. ("Ocean") opposes the motion, and requests that it be denied.

I. ARGUMENT.

The Division is well aware of the facts in these cases, and Ocean will not reiterate them herein. TMBR/Sharp's position is that it has an approved APD, and thus no one can challenge its right to drill a well with a unit comprising the N $\frac{1}{2}$ of Section 25, Township 16 South, Range 35 East, N.M.P.M. However, TMBR/Sharp's motion ignores the terms of the very order of the Commission which it uses as the basis for its argument. The order states in part:

Issuance of the [APD] 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.

Order No. R-11700-B, Finding Paragraph 34. The order continues:

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 [APD] furthers administrative expedience. Once the application is approved, no further proceedings are necessary.¹

Order No. R-11700-B, Finding Paragraph 35 (emphasis added). The order further states:

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

Order No. R-11700-B, Finding Paragraph 36 (emphasis added).

In the present case, "further proceedings are necessary:" Acreage must be pooled, whether there is a standup or laydown unit. Under the Commission's order, the approval of TMBR/Sharp's APD "does not prejudice" the four pooling proceedings, and they must proceed to a determination on their merits.

II. CONCLUSION.

For the reasons stated above, the Division must deny TMBR/Sharp's motion. In addition, Ocean requests that the cases proceed to hearing no later than mid-May due to Ocean's expiring farmout agreement.

Respectfully submitted,



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

Attorney for Ocean Energy, Inc.

¹The last sentence applies only where pooling is not required.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record via facsimile transmission this 30th day of April, 2002:

David K. Brooks
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
Fax No. (505) 476-3462

Stephen C. Ross
Oil Conservation Commission
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
Fax No. (505) 476-3220

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

William F. Carr
Holland & Hart LLP
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Santa Fe, New Mexico 87504
Fax No. (505) 983-6043

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


James Bruce

Oil Conservation Division

April 29, 2002

-Page 2-

cc: David H. Brooks, Esq.
Attorney the Division

Michael E. Stogner, Examiner

James Bruce, Esq.
Attorney for Ocean Energy. Inc.

William F. Carr. Esq.
Attorney for Yates Petroleum Corporation

Ernest Carroll, Esq.
Attorney for David H. Arrington Oil & Gas, Inc.

Scott Hall, Esq.
Attorney for David H. Arrington Oil & Gas, Inc

TMBR/Sharp
Rick Montgomery, Esq.
Susan Richardson, Esq.

INTRODUCTION

(1) On August 6, 2001, TMBR/Sharp filed two application for permit to drill ("APD") with the Hobbs Office of the Division requesting approval to drill:

(a) its Blue Fin "25" Well No. 1 in Unit E and to dedicated it to the N/2 of Section 25, T16S, R35E.

(b) its Leavelle "23" Well No. 1 in Unit G and to dedicated it to the E/2 of Section 23, T16S, R35E.

(2) The Division, in Order R-11700, refused to approve TMBR/Sharp's APD because on July 19, 2001, the Division's District Supervisor (Hobbs) approved APDs for David H. Arrington Oil & Gas Inc. ("Arrington") for:

(a) its Triple Hackle Dragon "25" Well No. 1 for a spacing unit consisting of the W/2 of Section 25

(b) its Blue Drake "23" Well No. 1 for a spacing unit consisting of the E/2 of Section 23

(3) On March 26, 2002, the Commission held a De Novo hearing concerning Order R-117000.

(4) On April 26, 2002, the Commission entered Order R-11700-B which rescinded the Division's approved of the Arrington's APD and ordered that the Division's district supervisor approve TMBR/Sharp's two APD filed in August 6, 2002.

(5) The following four (4) compulsory pooling applications which involved Section 25, T16S, R35E, are current set for hearing before the Division's Examiner on May 2, 2002:

(a) TMBR/Sharp's application for compulsory pooling of the N/2 of Section 25 for a well in Unit E of that section. Cases 12816 filed January 25, 2002

(b) Ocean Energy, Inc. ("Ocean") application for compulsory pooling of the W/2 of Section 25 for a well in Unit E of that section. Case 12841 filed February 2, 2002

(c) Ocean Energy, Inc. ("Ocean") application for compulsory pooling of the W/2 of Section 25 for a well in Unit K of that section. Case 12860 filed April 9, 2002

(d) Arrington's application for compulsory pooling of the E/2 of Section 25 for a well in Unit E of that section. Cases 12859 filed April 9, 2002

(6) TMBR/Sharp has voluntarily consolidated 82% of the working interest owner in the N/2 of Section 25 and intends to commence drilling its Blue Fin "25" Well No. 1 in Unit E to be dedicated to the N/2 of Section 25, T16S, R35E.

(7) In accordance with NMSA (1979) Section 70-2-17, TMBR/Sharp intend to drill the Blue Fin 25 Well No. 2 prior to the compulsory pooling of the remaining working interest owners in the N/2 of Section 25.

ARGUMENT

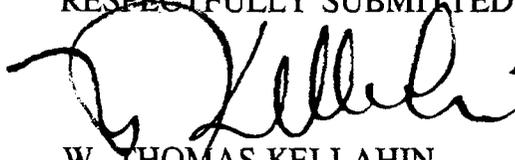
Cases 12859, 12860 and 12841 have been made moot by the Commission's decision approving TMBR/Sharp's APDs for the N/2 of Section 25 and the E/2 of Section 23. The Commission decision in favor of TMBR/Sharp eliminates the need for the Division to decide the Ocean and Arrington compulsory pooling case all of which attempts to pool spacing units in conflict with TMBR/Sharp's spacing unit.

Ocean and Arrington's application are inconsistent with and contrary to the Commission determination that TMBR/Sharp has the prior right to drill the wells which it sought to drill in August 2001 until Arrington interfered with that right. But for Arrington's blocking of TMBR/Sharp's permit, TMBR/Sharp would have received its permits to drill and would have already drilled its well in the N/2 of Section 25 and the E/2 of Section 23. The Commission has agreed with TMBR/Sharp who is now entitled to proceed with the drilling of its wells without further interference by Ocean and Arrington.

A failure by the Division to now dismiss the Arrington application and the two Ocean application amounts to a violation of TMBR/Sharp's constitutional protected rights.

The "New Mexico Oil and Gas Act" allows for to the pooling of interest in a spacing unit after the well has been drill. TMBR/Sharp, has obtained the voluntary agreement 82% of the interest owners, intend to drill this well first and then pool the remaining interest owners who either have refused to participate on a voluntary basis or who have not yet been contracted.

RESPECTFULLY SUBMITTED:



W. THOMAS KELLAHIN
KELLAHIN & KELLAHIN
P. O. Box 2265
Santa Fe, New Mexico 87501
Phone 505-982-4285
FAX 505-982-2047

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was sent by facsimile this 29th day of April, 2002 to:

David K. Brooks, Esq.
Division Attorney

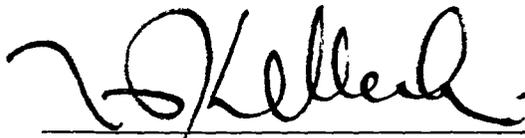
Steve Ross, Esq.
Commission Attorney

James Bruce, Esq.,
Attorney for Ocean Energy, Inc.

Ernest Carroll, Esq.
Attorney for David H. Arrington Oil & Gas Inc.

J. Scott Hall, Esq.
Attorney for David H. Arrington Oil & Gas Inc.

William F. Carr, Esq.
Attorney for Yates Petroleum Corporation.



W. Thomas Kellahin

MEMORANDUM

To: Michael E. Stogner
From: David Brooks

Date: April 22, 2002

**Re: Cases Nos. 12816 and 12841
Ocean Energy - David H. Arrington - TMBR/Sharp Drilling**

The referenced compulsory pooling cases (subject of attached FAX) are currently set for May 2, having been continued to that date in anticipation of a ruling on April 26 by the Commission on the case heard in March involving Arrington and TMBR/Sharp.

David informs me that you will be the examiner on May 2. If these cases are to go forward, I believe you or David should be the examiner because technical issues will be paramount. However, I would want to continue to be involved as legal adviser. This is certainly a knotty legal problem.

The underlying situation is that title is disputed to the NW1/4 of Section 25 between Arrington and TMBR/Sharp. Ocean is a working interest owner in the SW 1/4. TMBR/Sharp prevailed in the district court on the title dispute, but the decision is still subject to appeal. TMBR/Sharp wants a N/2 unit. Ocean wants a W/2 unit. Each wants to operate. Both have time constraints affecting their respective titles. We will know more when we receive the Commission's order on Friday.

There are two reasons for this memo. (1) There is a pending motion to dismiss which is addressed in Mr. Bruce's FAX. I agree with Mr. Bruce that the Commission's order on the APD issue will not control the separate pooling issue, and the Motion to Dismiss should be denied. Of course my opinion may change when I read the Commission's order. (2) There is a request for a special hearing that will need to be addressed by the examiner. When I continued this case, I deferred decision on that matter. If a special hearing is set, it should not be set on Friday, May 3 or during the week of May 6, as I will be on vacation.

I suggest that after the Commission order is issued, you take over as examiner on these cases and convene a pre-hearing conference, at which I would be included, to resolve these questions.

cc: Steve Ross

JAMES BRUCE
Attorney at Law
Post Office Box 1056
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FAX COVER SHEET

DELIVER TO: Stephen C. Ross
COMPANY: Oil Conservation Division
CITY: Santa Fe, New Mexico
FAX NUMBER: (505) 476-3220
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MEMO:

JAMES BRUCE
ATTORNEY AT LAW

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(505) 982-2043
(505) 982-2151 (FAX)

April 20, 2002

Via Fax and U.S. Mail

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

Re: Case Nos. 12731 and 12744 de novo; TMBR/Sharp Drilling,
Inc. ("TMBR/Sharp") and David H. Arrington Oil & Gas,
Inc. ("Arrington")

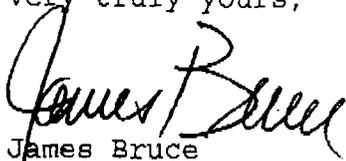
Dear Ms. Wrotenbery:

This letter constitutes the response of Ocean Energy, Inc. ("Ocean") to TMBR/Sharp's motion to supplement the record. Ocean opposes the motion. The materials contained therein add nothing to the matters stated at the Commission's hearing on March 26th.

TMBR/Sharp's motion implies that Arrington has confessed judgment. However, the materials in the motion simply reiterate the position of Arrington and ocean in these cases: An APD is, and must be, subsidiary to a compulsory pooling order issued by the Division. An APD issued by a District Office cannot supersede a pooling order entered by the Division Director. Different APD's have been issued, and it is now up to the Division to hear and decide the competing pooling applications.

It is the duty of the Division and the Commission to prevent waste and protect correlative rights. **NMSA 1978 §70-2-11**. Allowing the matters at issue in the competing pooling cases to be trumped merely by the issuance of an APD, without a review of the land, geological, and engineering evidence, does not satisfy the Division's and the Commission's duty.

Very truly yours,

A handwritten signature in cursive script, appearing to read "James Bruce".

James Bruce

Attorney for Ocean Energy, Inc.

cc: Steven C. Ross (via fax)
Ernest L. Carroll (via fax)
W. Thomas Kellahin (via fax)



NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

GARY E. JOHNSON
Governor
Betty Rivera
Cabinet Secretary

Lori Wrotenbery
Director
Oil Conservation Division

April 16, 2002

Via Facsimile and First Class Mail

Ernest L. Carroll
Losee, Carson, Haas & Carroll, P.A.
P.O. Box 1720
Artesia, New Mexico 88211-1720

James G. Bruce
P.O. Box 1056
Santa Fe, New Mexico 87504-1056

Re: Case No. 12,731, Application of TMBR/Sharp Drilling Inc. for an Order Staying
Division Approval of Applications to Drill, Lea County

Case No. 12744, Application of TMBR/Sharp Drilling Inc. appealing an Order of the
Artesia District Supervisor Denying Approval of Applications to Drill, Lea County

Gentlemen,

I have before me TMBR/Sharp's Motion to Supplement the Record in this matter. The Motion appears to argue that the developments referred to in the motion permit the Commission to immediately grant the relief requested by TMBR/Sharp, obviating the need for further proceedings in this matter. I perceive this would be in the nature of a settlement of the matters presently before the Commission.

Because the arguments were presented by way of a motion instead of a stipulated dismissal, I don't expect this be an unopposed motion. Therefore, I would appreciate a written response concerning the pending Motion as soon as convenient, keeping in mind that the Commission has indicated its willingness to issue an order on this matter during its meeting of April 26.

If you have any questions, please do not hesitate to give me a call at (505) 476-3451.

Sincerely,

Stephen C. Ross
Assistant General Counsel
Counsel to the New Mexico Oil Conservation Commission

Cc: W. Thomas Kellahin

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

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W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

April 15, 2002

Ms. Lori Wrotenbery, Chair
Dr. Robert Lee, Member
Ms. Jamie Bailey, Member
Oil Conservation Commission
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Hand Delivered
Federal Express
Hand Delivered

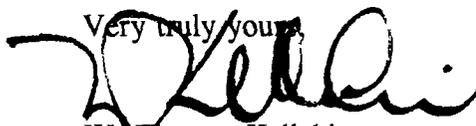
Re: *TMBR/Sharp Drilling, Inc.'s Motion to Supplement the Record*
Order No. R-11700
NMOCD Case 12731
Application of TMBR/Sharp Drilling, Inc.
for an order staying David H. Arrington
Oil & Gas, Inc. from commencing
operations, Lea County, New Mexico.

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

02 APR 15 PM 1:38
CL. OFF. 11:00 AM

Dear Member of the Commission:

On behalf of TMBR/Sharp Drilling, Inc., please find enclosed our Motion to Supplement the Record of the hearing held on March 26, 2002.

Very truly yours,

W. Thomas Kellahin

cc: Steve Ross, Esq.
Attorney for the Commission
David K. Brooks, Esq.
Attorney for the Division
Earnest Carroll, Esq.
Attorney for Arrington
James Bruce, Esq.
Attorney for Ocean Energy, Inc.
TMBR/Sharp
Rick Montgomery, Esq.
Susan Richardson

**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

**MOTION OF TMBR/SHARP DRILLING, INC.' S
TO
SUPPLEMENT THE RECORD**

Comes now TMBR/Sharp Drilling, Inc. ("TMBR/Sharp") by its attorneys, Kellahin & Kellahin, and requests that the New Mexico Oil Conservation Commission ("Commission") allow TMBR/Sharp to supplement the record in the captioned cases to demonstrate that subsequent to the Commission's hearing held on March 26, 2002, David H. Arrington Oil & Gas, Inc. ("Arrington") has withdrawn its opposition to the Commission approving TMBR/Sharp's two applications for permits for drill ("APD") and receding Arrington's two conflicting APD's;

And in support states:

INTRODUCTION

On March 26, 2002, the Commission held a hearing for the two captioned cases. During that hearing, counsel for Arrington argued despite the fact that Arrington has two approved applications for permits to drill ("APD") dated from July, 2002, it had no intention of drill its wells at the present time. **See transcript at pages 19 lines 19-22, page 22, lines 22-21**

On April 10, 2002, in the District Court case, David H. Arrington Oil & Gas Inc. ("Arrington") in an attempt to minimize damages for tortious inference, filed its Supplemental Response to Plaintiffs' Motion for Reconsideration in Case CV-2001-315C¹ which includes the following:

(1) For the Section 23 well: A letter dated April 10, 2002, from David H, Arrington Oil & Gas Inc. to the Division District Supervisor, advised that Arrington has agreed to release its APD for the Blue Drake 23 Well No. 1 to allow the Division to approve TMBR/Sharp's APD for the E/2 of Section 23, T16S, R35E. **See Exhibit "A"**

(2) For the Section 25 well: A representation to the court that in Arrington's opinion TMBR/Sharp is now free to drill its Blue Fin 25 Well No. 1 in the N/2 of Section 25, T16S, R35E. and that the compulsory pooling of the spacing unit can take place after the well is drilled. **See Exhibit "B"**

RELIEF REQUESTED

The Commission, based upon Arrington's withdrawal of its opposition, can now revoke Arrington's APDs and can correspondingly reverse the Hobbs District Supervisor's denial of the TMBR/Sharp APDs. The Commission should do so without further hearing or delay.

¹ TMBR/Sharp Drilling, Inc, et al vs. David H. Arrington Oil & gas, Inc. et al which seeks in part, a judicial determination of title dispute between the parties for the Stoke/Hamilton top leases.

NMOCC CASES 12731 AND 12744

Motion of TMBR/Sharp Drilling Inc.'s to supplement the record

-Page 3-

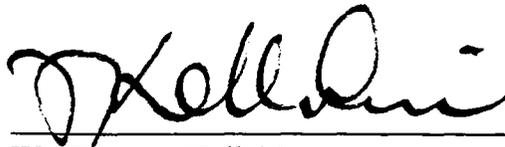
RESPECTFULLY SUBMITTED:



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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was sent Federal Express this ___th day of April, 2002 to Earnest Carroll, Esq., attorney for Arrington Oil & Gas, Inc, and James Bruce, Esq. attorney for Ocean Energy, Inc.



W. Thomas Kellahin

APR-10-2002 15:45

LOSEE CARSON ATTY

15057466316 P. 21/25

DAVID H. ARRINGTON OIL & GAS, INC.

P.O. BOX 3071 . MIDLAND, TEXAS 79702
OFF (915) 682-6685
FAX (915) 682-4139

April 10, 2002

Mr. Paul Kautz
Oil Conservation Division
District I
P. O. Box 1980
Hobbs, NM 88241

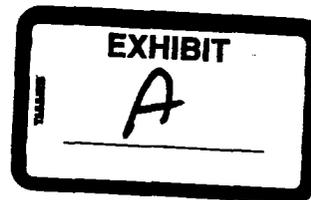
Re: Blue Draka "23" Well No. 1
Section 23: E/2
Township 16 South, Range 35 East, N.M.P.M.
Lea County, New Mexico
API No. 30-025-35644

Dear Mr. Kautz:

Please be advised that pursuant to correspondence with TMBR/Sharp Drilling, Inc. and in testimony before the Oil Conservation Commission on March 26, 2002, David H. Arrington Oil & Gas, Inc. has agreed to release the above captioned drilling permit to allow for the approval of TMBR/Sharp Drilling, Inc.'s drilling permit in the same spacing unit.

Very truly yours,

Bill Baker
Bill Baker



APR-10-2002 15:40

LOSEE CARSON ATTY

15057466316 P.04/25

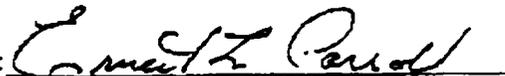
Arrington has done everything it can to effect the release of the drilling permit in Section 23. If TMBR/Sharp believes other actions are necessary it should advise so Arrington.

With respect to the drilling permit in Section 25, TMBR/Sharp has been granted an approved drilling permit for their proposed well in Section 25. See copy of the approved drilling permit attached hereto as Exhibit "5". TMBR/Sharp's drilling permit was granted without the benefit of Arrington's drilling permit having been released or relinquished.

Pursuant to TMBR/Sharp's approved drilling permit, TMBR/Sharp is now free to drill a well, however, the well will not be allowed to be produced until such time as the leases underlying the proration unit have been properly pooled. TMBR/Sharp currently has a pooling application pending before the Oil Conservation Division with respect to its approved drilling permit for Section 25.

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

By:



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

Richard E. Olson
Hinkle, Hensley, Shanor & Martin, LLP
P. O. Box 10
Roswell, New Mexico 88202-0010
(505) 622-6510

Attorneys for Defendants, David H. Arrington Oil
Gas, Inc. and James D. Huff



KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

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W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

FACSIMILE COVER SHEET

DATE: April 15, 2002

TIME: 9:10 AM

NUMBER OF PAGES: 6

TO: Susan Richardson, Esq.
Rick Montgomery, Esq.
OF: Cotton Bledsoe
FAX NO: (915) 682-3672

CONFIDENTIAL ATTORNEY WORK PRODUCT

RE: TMBR/Sharp-Arrington dispute

Dear Susan and Rick:

Susan, based on our phone conversation this morning attached is a redraft of the Motion to supplement the record based on Carroll's District Court filing.

Regards,



This information contained in this Facsimile Message and Transmission is ATTORNEY PRIVILEGED AND CONFIDENTIAL information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this Facsimile in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.