

**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 13th 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.

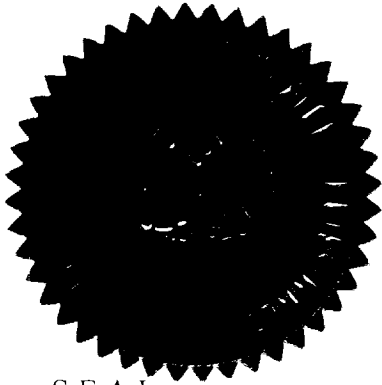
(1) TMBR/Sharp's Application appealing the denial of the TMBR/Sharp APDs is denied.

(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

A handwritten signature in cursive script, reading "Lori Wrotenbery".

LORI WROTENBERY
Director