Exhibit 18

FIFTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF LEA

TMBR/SHARP DRILLING, INC.,

Plaintiff,

v. **No. CV-**

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, and TOM STOKES,

Defendants.

PLAINTIFF'S COMPLAINT FOR DECLARATORY JUDGMENT, TORTIOUS INTERFERENCE, REPUDIATION, DAMAGES, AND INJUNCTIVE RELIEF

TMBR/SHARP DRILLING, INC. ("TMBR/Sharp"), Plaintiff, for cause of action against DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, AND ERMA STOKES HAMILTON would show the Court as follows:

THE PARTIES

1. Plaintiff is TMBR/Sharp Drilling, Inc. ("TMBR/Sharp") which is a Texas corporation doing business in the State of New Mexico and with offices in Midland, Texas.

2. Defendant David H. Arrington Oil & Gas, Inc. ("Arrington O&G") is a Texas corporation doing business in New Mexico and is a resident of Midland, Texas. It may be served Certified Mail, Return Receipt Requested, through its registered agent, Lewis Cox, III, at 311 North First Street, Lovington, New Mexico, 88260.

3. James D. Huff ("Huff") is an individual doing business in New Mexico and is a resident of Mineola, Texas. He may be served by Certified Mail, Return Receipt Requested, at P. O. Box 705, Mineola, Texas 75773.

4. Defendant Madeline Stokes is an individual owning real property in New Mexico and residing in Ozona, Texas and may be served by Certified Mail, Return Receipt Requested, at Box 1115, Ozona, Texas 76943.

5. Defendant Erma Stokes Hamilton is an individual owning real property in New Mexico and residing in Big Spring, Texas and may be served by Certified Mail, Return Receipt Requested, at 408 W. Washington, Big Spring, Texas 79720.

6. Defendant John David Stokes is an individual owning real property in New Mexico and residing in Ozona, Texas and may be served by Certified Mail, Return Receipt Requested, at P. O. Box 1739, Ozona, Texas 76943.

7. Defendant Tom Stokes is an individual owning real property in New Mexico and residing in Ozona, Texas and may be served by Certified Mail, Return Receipt Requested, at Box 932, Ozona, Texas 76943.

VENUE AND JURISDICTION

8. Pursuant to New Mexico Statute 38-3-1(D), venue is mandatory in Lea County, New Mexico because the real property, ownership of which is at issue, is located there.

9. This Court has jurisdiction over the parties and the subject matter of this action.

FACTUAL BACKGROUND

ORIGINAL LEASES

10. Effective July 1, 1998, TMBR/Sharp entered into an operating agreement ("Operating Agreement") covering oil and gas properties in Lea County, New Mexico.

11. Exhibit "A" to the Operating Agreement described lands covered by the agreement including Section 24, T-16-S, R-35-E, in Lea County, New Mexico, and more specifically described two oil and gas leases, each of which cover, among other lands, the NW/4 SW/4 and NW/4 NE/4 of said Section 24.

THE LEASES

12. The first lease ("First Lease") is an oil and gas lease made effective December 7, 1997 between Madeline Stokes and Ameristate Oil & Gas, Inc. ("Ameristate").

13. The First Lease is recorded in Book 827, page 128 of the Deed Records of Lea County, New Mexico, as amended by instrument dated August 10, 2000.

14. The second lease ("Second Lease") is a lease made effective December 7, 1997 between Erma Stokes Hamilton and Ameristate. It is filed in Book 827, page 124 of the Deed Records of Lea County, New Mexico as amended by instrument dated August 14, 2000.

15. By Quitclaim Deed with Reservation of Life Estate and executory rights, Emma Stokes Hamilton granted John David Stokes and Tom Stokes her remaining interest in the Second Lease.

16. These two leases, as amended, are herein referred to as the "Original Stokes Leases" or the "First Lease" and "Second Lease," and copies thereof are attached hereto as Exhibits "A" and "B"

17. TMBR/Sharp is a successor in interest to Ameristate by assignment of the First Lease and Second Lease.

THE POOLED UNIT

18. On November 17, 2000, TMBR/Sharp Drilling as operator under the Operating Agreement, filed an application for permit to drill (Form C-101) with the Oil Conservation Division ("OCD") of the State of New Mexico, a copy of which is attached as Exhibit "C."

19. On the same date TMBR/Sharp filed a well location and acreage dedication plat describing the pooled unit dedicated to the proposed well, the Blue Fin "24" No. 1 Well (Form C-102) with the OCD and outlined thereon the 320 pooled acres in Township 16 South, Range 35 East, NMPM, Section 24: W/2, Lea County, New Mexico. A copy of this instrument is attached as Exhibit "D."

20. The permit to drill was approved by the OCD on November 22, 2000.

21. The Blue Fin "24" No. 1 Well was spudded in March 29, 2001 and a drill stem test was run on May 15, 2001.

22. On June 3, 2001 casing was placed in the hole.

23. On June 28, 2001 the well was perforated and on June 29, 2001 hydrocarbons were produced from the well.

24. The well, which is capable of producing hydrocarbons in paying quantities, is presently waiting for a pipeline connection.

25. The Original Stokes Leases each provides in Paragraph 5 in pertinent part: "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 .... Lessee shall file a written unit designation 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." (emphasis added).

26. A portion of the lands covered by each of the Original Stokes Leases, namely the NW/4 SW/4 of Section 24, was included in the unit designation filed in Lea County, New Mexico with the OCD of the State of New Mexico during the primary term of such leases. Therefore, during the primary term, there was a well being drilled on a pooled unit which included Original Stokes Lease Acreage. Those activities were sufficient to preserve the leases beyond the primary terms. The First and Second Leases and all acreage described therein are now held by the Blue Fin "24" No. 1 Well, subject to continuous development by TMBR/Sharp as described below.

TOP LEASES

27. On or about March 27, 2001, Huff acquired an oil and gas lease from Defendant Madeline Stokes covering the same lands and minerals covered by the Original Stokes Leases. This lease is herein referred to as the "Stokes Top Lease."

28. The Stokes Top Lease purports to be for a primary term of three (3) years from June 7, 2001, and as long thereafter as oil or gas is produced from said land or from land with which said land is pooled.

29. On the same date, Huff acquired an oil and gas lease from Defendant Erma Stokes Hamilton also covering the same lands described in the Original Stokes Leases. This lease is herein referred to as the "Hamilton Top Lease."

30. The Hamilton Top Lease is for the same primary term as the Stokes Top Lease. The Stokes Top Lease and Hamilton Top Lease are herein collectively referred to as the "Huff Top Leases," and copies thereof are attached hereto as Exhibits "E" and "F."

31. The Huff Top Leases each provide in pertinent part: "This oil and gas lease is subordinate to that certain 'Prior Lease' [Original Stokes Leases] recorded in... Lea County Records, as amended by instrument dated ... recorded ... Lea County Records, but only to the extent that said prior lease is currently a valid and subsisting oil and gas lease."

32. On or about July 12, 2001 Michael J. Canon, an attorney in Midland, Texas contacted Randy V. Watts an independent landman working for TMBR/Sharp and Ameristate and other parties to the Operating Agreement.

33. Mr. Canon advised Mr. Watts that his clients – the Stokes Family – questioned the continued validity of the Original Stokes Leases, in that no pooling designation had been filed in the County Clerk's office of Lea County prior to the expiration of the primary term of the Original Stokes Leases.

34. Mr. Phil Brewer, an attorney for TMBR/Sharp and other parties to the Operating Agreement, responded to Mr. Canon's inquiry by letter advising of TMBR/Sharp's position that the Original Stokes Leases were in full force and effect.

35. Mr. Canon replied to Mr. Brewer's letter in writing indicating that the "Stokes Family had questions with respect to whether or not the lease [Original Stokes Leases] is in effect and whether Ameristate has taken the necessary and appropriate action to perpetuate its lease beyond the expiration of its primary term, June 17[sic], 2001."

36. On information and belief, Huff has taken the position that the Original Stokes Leases have expired and that the Huff Top Leases are in effect.

37. On July 19, 2001 Arrington O&G filed an application for and obtained a permit to drill the Triple Hackle Dragon 25 No. 1. Well on the W/2 of Section 25, T-16-S, R-35-E, Lea County, New Mexico. The OCD approved the application on July 19, 2001.

38. The unit designated by Arrington O&G for this permit covered lands described in the Original Stokes Leases and the Huff Top Leases.

39. On information and belief, Arrington O&G obtained this permit to drill on the basis of ownership rights claimed to be held pursuant to the Huff Top Leases.

40. On July 30, 2001,Arrington O&G filed an application for and obtained a permit to drill the Blue Drake 23 No. 1. Well on the E/2 Section 23, T-16-S, R-35-E, Lea County, New Mexico. The OCD approved the application

41. The unit designated by Arrington O&G for this permit covered lands described in the Original Stokes Leases and the Huff Top Leases.

42. On information and belief, Arrington O&G obtained this permit to drill on the basis of ownership rights claimed to be held pursuant to the Huff Top Leases.

43. David H. Arrington ("Arrington"), President of Arrington O&G, made statements to a TMBR/Sharp representative that the leases held by TMBR/Sharp had terminated and his company intended to move forward with development.

44. On August 8, 2001, TMBR/Sharp was denied a permit to drill the Blue Fin "25" No. 1 Well on the E/2 of Section 25, by letter from Chris Williams, District I Supervisor for the Oil Conservation Division of the State of New Mexico, stating that the permit granted to Arrington O&G precluded the permit applied for by TMBR/Sharp.

45. On August 8, 2001, TMBR/Sharp was denied a permit to drill the Leavelle "23" No. 1 Well on the E/2 of Section 23, also on the basis of a letter from Chris Williams with like statement that the permit granted Arrington O&G precluded the granting of the permit sought by TMBR/Sharp.

46. The Original Stokes Leases are in full force and effect. However, each of these leases contains a "continuous development clause." Specifically, in Paragraph 12 of Exhibit A of each such lease provides in pertinent part: "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."

47. TMBR/Sharp attempted to drill two additional wells in accordance with the provisions of Paragraph 12 of the Original Stokes Lease, but was denied drilling permits by the OCD on its leasehold property because those lands are claimed to be subject to the Huff Top Leases.

48. The drilling applications filed by Arrington O&G have prevented TMBR/Sharp from exercising its rights and fulfilling its obligations under the Original Stokes Leases.

COUNT I
DECLARATORY JUDGMENT: ORIGINAL STOKES LEASES ARE PROPERLY POOLED

49. TMBR/Sharp incorporates by reference the factual information contained in paragraphs 1 through 44 of this Complaint.

50. TMBR/Sharp is an interested party under a written contract whose rights, status or other legal relations should be determined by the Court pursuant to the New Mexico Declaratory Judgment Act 44-6-1 through 44-6-15.

51. TMBR/Sharp seeks a declaratory judgment from the Court that the Original Stokes Leases are in full force and effect because TMBR/Sharp was drilling upon lands properly pooled with the lands covered by the Original Stokes Leases across the expiration of the primary term as provided for in Paragraph 5 of the lease.

52. Specifically, TMBR/Sharp seeks a declaratory judgment that its written unit designation filed in Lea County with the Oil Conservation Division of the State of New Mexico on

November 17, 2000 satisfied the obligations of Paragraph 5 of the Original Stokes Leases to properly pool the NW/4 SW/4 of Section 25, T-16-S, R-35-E, into a unit comprised of the W/2 of said Section 25.

COUNT II
DECLARATORY JUDGMENT: HUFF TOP LEASES NOT EFFECTIVE

53. Plaintiff incorporates by reference the factual information contained in paragraphs 1 through 44 of this Complaint.

54. TMBR/Sharp seeks a declaratory judgment from the Court that the Huff Top Leases are not effective because the Original Stokes Leases are currently valid and subsisting oil and gas leases covering the lands described therein and superior in all respects to the Huff Top Leases.

COUNT III
TORTIOUS INTERFERENCE

55. Plaintiff incorporates by reference the factual information contained in paragraphs 1 through 44 of this Complaint.

56. Arrington, Arrington O&G's and Huff's solicitation and acceptance of the Huff Top Leases, constitute deliberate and malicious tortious interference with the contractual relationships between TMBR/Sharp on the one hand and each of Madeline Stokes and Erma Stokes Hamilton on the other.

57. Huff's knowledge of the Original Stokes Lease is undisputed and clearly evidenced by the fact that Huff took a top lease that would not be viable until the expiration of the Original Stokes Leases.

58. TMBR/Sharp has been denied its right to perform continued drilling operations on the Original Stokes Leases.

59. Huff, Arrington and/or Arrington O&G have asserted that the Original Stokes Leases expired, that the Huff Top Leases were valid and subsisting oil and gas leases, and requested and received permits from the OCD to drill wells on lands and minerals covered by the Original Stokes Leases.

60. Arrington O&G obtained drilling permits, told TMBR/Sharp employees that the Original Stokes Leases were expired, and performed operations on the lands covered by the Huff Top Leases.

61. Huff, Arrington and Arrington O&G further knew and understood that TMBR/Sharp could not utilize its contractual rights if it could not obtain permits from the Oil Conservation Division of the State of New Mexico to drill on acreage covered by the Original Stokes Leases.

62. Huff's, Arrington's and Arrington O&G's willfully and intentionally committed acts calculated to cause damage to TMBR/Sharp and its lawful business and ownership of the property pursuant to the Original Stokes Leases.

63. Huff's, Arrington's and Arrington O&G's acts were the proximate cause of damage to TMBR/Sharp in that TMBR/Sharp lost the opportunity or lost time in which to drill wells

on the pre-selected sites, and deprived TMBR/Sharp of the benefit of the Original Stokes Leases.

64. TMBR/Sharp has suffered actual damage and loss by virtue of Huff's, Arrington's and Arrington O&G's conduct by losing drilling opportunities in that drilling rigs are now reasonably available and gas prices remain high. If drilling is delayed, either rigs may become unavailable or gas prices may drop. Further, TMBR/Sharp has been damages by its loss of future production from the two wells it intended to drill but was denied permits for.

COUNT IV
TMBR/SHARP'S DUTY TO DRILL SHALL BE SUSPENDED

65. Plaintiff incorporates by reference the factual information contained in paragraphs 1 through 44 of this Complaint.

66. Paragraph 9 of each of the Original Stokes Leases provides in pertinent part: "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 that time while Lessee is

so prevented shall not be counted against Lessee, anything in this lease to the contrary notwithstanding."

67. The conduct of Arrington O&G, acting on behalf of or in concert with Huff, in applying for and receiving permits to drill from the Oil Conservation Division on lands and minerals covered by the Original Stokes Leases, has caused the Oil Conservation Division to withhold the applied for drilling permits for the Blue Fin "25" No. 1 Well and the Leavelle "23" No. 1 Well, thereby resulting in circumstances which have triggered Paragraph 9 of the Original Stokes Leases.

68. Pursuant to the terms of Paragraph 9 of the Original Stokes Leases TMBR/Sharp seeks a declaratory judgment that its duty "shall be suspended" and it "shall not be liable for failure to comply therewith [the lease] and the leases "shall be extended while and so long as lessee is prevented . . . . from conducting drilling or reworking operations or from producing oil or gas hereunder," as a result of it being unable to obtain OCD permits for the drilling of the referenced wells.

COUNT V
EQUITABLE CLAIM: LEASE REPUDIATION

69. Plaintiff TMBR/Sharp incorporates by reference the factual information contained in paragraphs 1 through 44 of this Complaint.

70. Madeline Stokes and Erma Stokes Hamilton have, acting through their attorney, Michael J. Canon, wrongfully repudiated the Original Stokes Leases by asserting that the actions of the Lessee/Plaintiff are not sufficient, pursuant to the Original Stokes Leases, to perpetuate such leases beyond the specified primary term.

71. Further, their assertions that the Huff Top Leases are valid and subsisting oil and gas leases and permitting Huff and Arrington to obtain the interfering permits, precluding the exercise by TMBR/Sharp of its rights pursuant to the Original Stokes Leases, constitute a clear and unequivocal challenge to TMBR/Sharp's title to the Original Stokes Leases.

72. For such time as TMBR/Sharp is precluded from obtaining permits and pursuing its rights pursuant to the Original Stokes Leases, TMBR/Sharp requests this court exercise its equitable powers and suspend the running of any time period for performance by TMBR/Sharp pursuant to the Original Stokes Leases.

PRAYER FOR RELIEF

69. WHEREFORE, PREMISES CONSIDERED, Plaintiff TMBR/Sharp, Inc. respectfully requests the Court enter judgment awarding TMBR/Sharp the following relief:

a. All direct and consequential damages of Defendants' breaches of their duties as described herein;

b. An award of damages for Arrington's and Huff's tortious interference;

c. A declaration that TMBR/Sharp's written unit designation filed in Lea County with the Oil Conservation Division of the State of New Mexico on November 17, 2000, satisfied the obligations of Paragraph 5 of the Original Stokes Leases to properly pool the N/4 SW/4 of Section 25, T-16-S, R-35-E, into a unit comprised of the W/2 of said Section 25;

d. A declaration that the Huff Top Leases are not effective because the Original Stokes Leases are currently valid and subsisting oil and gas leases covering the lands described in this Complaint;

e. A finding that Madeline Stokes and Erma Stokes have repudiated the Original Stokes Leases;

f. Equitable relief relieving TMBR/Sharp from any obligation to conduct further drilling operations required under the Original Stokes Leases pending a judicial resolution as to the validity of the Original Stokes Leases;

g. A temporary restraining order and injunctive relief ordering Arrington O&G and/or Huff refrain from drilling any wells on and acreage covered by the Original Stokes Leases;

h. Awarding TMBR/Sharp costs, reasonable attorney's fees and pre-judgment and post-judgment interest at the highest lawful statutory or contractual rate; and

i. Awarding TMBR/Sharp such other and further relief at law or in equity to which it may be justly entitled.

Respectfully submitted,

COTTON, BLEDSOE, TIGHE & DAWSON, P.C.
500 West Illinois, Suite 300
P.O. Box 2776
Midland, Texas 79702-2776
(915) 684-5782
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By: _____
SUSAN R. RICHARDSON
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and

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P. O. Box 298
Roswell, NM 88202-0298
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ATTORNEYS FOR PLAINTIFF

EXHIBIT A

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, water, 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 substances 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 sales; (c) and at any time when this lease is not validated by other provisions hereof and there is a gas well 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 has been made. 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 (and in good faith by lessee and gas purchaser for such term and under such conditions as are customary in the industry. There 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. Lessor 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 (100 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, successor 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 right to 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, 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.

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: 05-28-01

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

14263

COUNTY CLERK SEAL 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 827
Page 129
Pat Chappelle, Lea County Clerk
By _____ Deputy

EXHIBIT B

Producer'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 1470, 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. LEASE, 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, water, 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 substances 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 contracts 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, 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 in 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, 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 as 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, 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

COUNTY CLERK SEAL LEA COUNTY

14262

STATE OF NEW MEXICO
COUNTY OF LEA
FILED

OCT 1 1997

at 11:12 o'clock A M
and recorded in Book 827
Page 126
Pat Chappelle, Lea County Clerk
By _____ Deputy

EXHIBIT C

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 ~~30-0~~

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~~ 3964
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	5,000	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 ±5,000' 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 5,000'. 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) 699-8680	Conditions of Approval: Attached ☐

Permit Expires 1 Year From Approval Date Unless Drilling Underway

SEC 5

EXHIBIT D

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 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

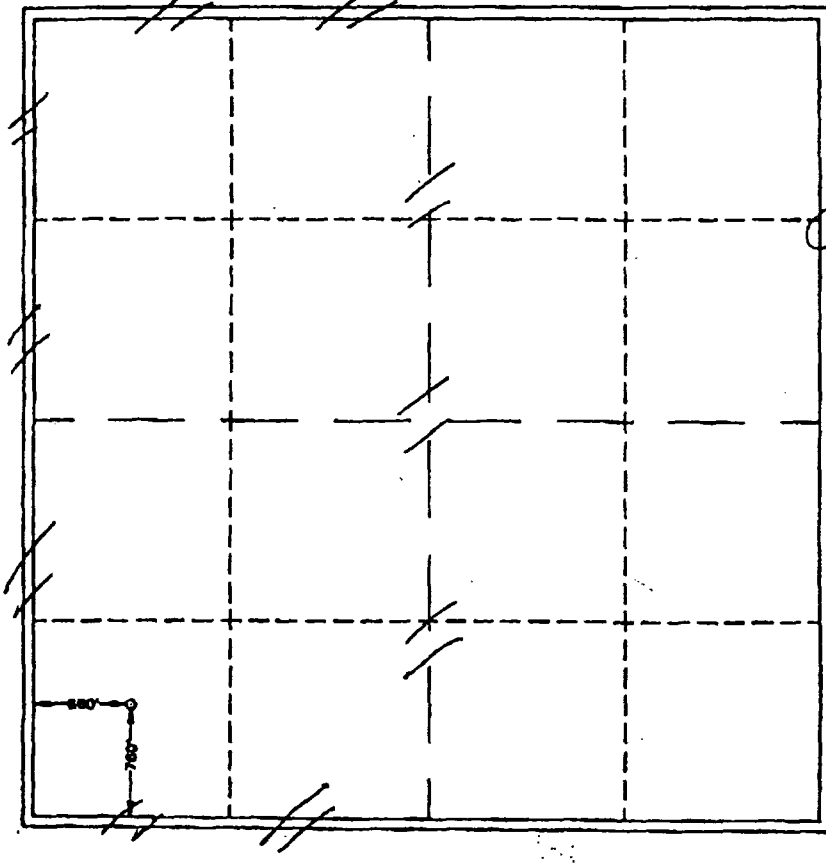
UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South Line	Feet from the	East/West Line	County
M	24	16 S	35 E		760	SOUTH	660	WEST	LEA

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 that 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: JLP
Signature & Seal of Professional Surveyor: RONALD J. EIDSON, NEW MEXICO, 3239, PROFESSIONAL SURVEYOR
11/17/00
Certificate No. RONALD J. EIDSON, 3239
GARY L. EIDSON, 12641

EXHIBIT E

07161 ILLEGIBLE

Producer's 88-Producer's Revised 1984 New Mexico Form 342P, Paid-up

OIL & GAS LEASE

THIS AGREEMENT made this [illegible] day of March, 2001 between [illegible], dealing with her sole and separate property, whose address is P. O. Box [illegible], [illegible], Texas [illegible] herein called lessor (whether one or more) and [illegible], P. O. Box [illegible], [illegible], Texas [illegible], 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 Lea County, New Mexico, to-wit:

Township 14 South, Range 36 East, N.M.P.M.
Section 13: [illegible]/4
Section 23: [illegible]/4
Section 24: [illegible]/4[illegible]/4, [illegible]/4[illegible]/4
Section 25: [illegible]/4
Section 26: [illegible]/4

Said land is estimated to comprise [illegible] 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 [illegible] 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. ~~[illegible]~~

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 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

37-1-1

ILLEGIBLE

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 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 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 [illegible] 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 40 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, 1987, effective December 7, 1987, recorded in Book 427, 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. 11 on Exhibit "A" attached to the Prior Lease, provided that in no event shall the primary term hereof expire later than the 10th 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. Lessee 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.

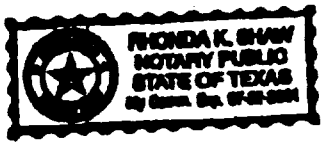
[illegible] 442-20-4021 ______________________
[illegible]
SSN

INDIVIDUAL ACKNOWLEDGMENT (New Mexico Short Form)

STATE OF Texas

COUNTY OF Cochran

This instrument was acknowledged before me on April 4, 2001, by Rebekka Bailey



Notary Public, State of Texas
My Commission Expires: 01-31-03

ILLEGIBLE

07161

STATE OF NEW MEXICO
COUNTY OF LEA
FILED

JUN 11 2001

at 10:50 o'clock A.M.
and recorded in Book
Page
Bobbie Hughes, Lea County Clerk
By Deputy

BOOK 1064 PAGE 284

EXHIBIT F

07162

Producer's 88-Producer's Revised 1956 New Mexico Form 342P, Paid-up

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OIL & GAS LEASE

THIS AGREEMENT made this [illegible] day of March, 2001 between [illegible] dealing with her sole and separate property, whose address is P. O. Box [illegible], [illegible], Texas [illegible] herein called lessor (whether one or more) and [illegible], P. O. Box [illegible], [illegible], Texas [illegible], 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 Lea County, New Mexico, to-wit:

Township [illegible] South, Range [illegible] East, N.M.P.M.
Section [illegible]: [illegible]/4
Section [illegible]: [illegible]/4
Section [illegible]: [illegible]/4[illegible]/4, [illegible]/4[illegible]/4
Section [illegible]: [illegible]/4
Section [illegible]: [illegible]/4

Said land is estimated to comprise [illegible] 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.~~ [illegible]

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

37-1-2

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 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 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, 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 on 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 for the field for which any given well is located, then each gas well (which shall include shut-in wells) shall be allocated [illegible] 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 [illegible] 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 23, 1997, effective December 7, 1997, recorded in Book [illegible], page [illegible], 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. 13 on Exhibit "A" attached to the Prior Lease, provided that in no event shall the primary term hereof expire later than the [illegible] 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.

Vernon Hamilton [illegible] — 4-4-01

[illegible] Hamilton SSN

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 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 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 at 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 spud 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 for the field in 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 13, 1997, effective December 7, 1997, recorded in Book 927, page 124, Lee County Records, as amended by instrument dated ____________, 2000, recorded in Book _____, page _____, Lee 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.

Evonne Hamilton [illegible] ____________ 4-4-01

[illegible]

INDIVIDUAL ACKNOWLEDGMENT (New Mexico Short Form)

STATE OF Texas
COUNTY OF Howard

This instrument was acknowledged before me on April 4, 2001, by [illegible]
[illegible]

NORMA A. GARCIA
Notary Public, State of Texas
My Commission Expires: 5-15-2001

Norma A. Garcia
Notary Public, State of Texas
My Commission Expires: 5-15-2001

ILLEGIBLE

STATE OF NEW MEXICO
COUNTY OF LEA
FILED

JUN 11 2001

at 10:50 o'clock A M
and recorded in Book
Page
Nichelle Hughes, Lea County Clerk
By Deputy

07162

COUNTY CLERK SEAL LEA COUNTY, NEW MEXICO

ILLEGIBLE

07163

RATIFICATION

STATE OF NEW MEXICO }
COUNTY OF LEA }

KNOW ALL MEN BY THESE PRESENTS:

For and in consideration of the premises and for other good and valuable consideration the sufficiency of which is hereby acknowledged, Tom Stokes and John David Stokes (hereinafter referred to as "Lessor") whose mailing address is PO Box 932, Ozona, Texas 76943 does hereby adopt, ratify and confirm that certain oil and gas lease dated March 27, 2001, executed by Erma Hamilton covering the following described property in Lea 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

a copy of which is recorded at Bk 1084 Pg 285, Lea County, New Mexico (the "Lease"). In all its terms and conditions and acknowledge and agree that as of the execution of this instrument that the Lease is a valid and subsisting oil and gas lease binding upon Lessor to the same extent as if Lessor had executed the Lease in the capacity herein stated.

For the same consideration, Lessor does hereby grant, lease and let exclusively unto James D. Huff, whose mailing address is PO Box 706, Mineola, Texas 75773, the lands covered by the lease on the same terms and conditions as contained in the Lease.

This instrument shall inure to the benefit of the parties hereto, there respective heirs, successors, and assigns.

EXECUTED as of the date set forth in the acknowledgment below, but EFFECTIVE for all purposes March 27, 2001.

LESSOR:

Tom Stokes

John David Stokes

JANIE CHANDLER NOTARY PUBLIC STATE OF TEXAS EXPIRES 09-21-2004

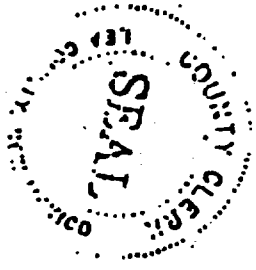
ACKNOWLEDGEMENT

STATE OF TEXAS }
COUNTY OF Crockett }

This instrument was acknowledged before me this 3rd day of March 2001 by Tom Stokes and John David Stokes.

Janie Chandler
Notary Public in and for the State of TX
Printed Name: Janie CHANDLER
Commission expires: 9-21-2004

ILLEGIBLE



STATE OF NEW MEXICO
COUNTY OF LEA
FILED

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By Deputy

- 07163

BOOK 1084 PAGE 269

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF LEA
STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC.

Plaintiff,

v.

CV-2001- 315 C

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, AND TOM STOKES

Defendants.

SUMMONS

TO: Defendant **John David Stokes,** P.O. Box 1739, Ozona, Texas 76943, or his physical residence.

Greetings:

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys for Plaintiff: SUSAN R. RICHARDSON
Address of Attorney for Plaintiff: P.O. Box 2776
Midland, Texas 79702

WITNESS the Honorable Gary Clingman District Judge of Fifth Judicial District Court of the State of New Mexico and Seal of the District Court of Said County, this 2nd day of August, 2001.

(SEAL)

JANIE G. HERNANDEZ
CLERK OF THE DISTRICT COURT
By Lajuan Hayes
Deputy

Mid: SRICHARDSON\004370\000021\298280.1

STATE OF TEXAS)
)
COUNTY OF _____)

I, being duly sworn, on oath, say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served the within Summons in said County on the ___ day of _____, 2001, by delivering a copy thereof, with a copy of Complaint attached, together with a copy of Demand for Trial by 12 Member Jury, in the following manner:

[ ] To Defendant _____ (used when Defendant receives copy of Summons or refuses to receive Summons).

[ ] To _____, a person over the age of fifteen (15) years of age and residing at the usual place of abode of Defendant, who at the time of such service was absent therefrom.

[ ] By posting a copy of the Summons and Complaint in the most public part of the premises of Defendant (used if no person found at dwelling house or usual place of abode).

[ ] To _____, an agent authorized to receive service of process for Defendant.

[ ] To _____, (parent) (guardian) of Defendant (used when Defendant is a minor or an incompetent person).

[ ] To _____, (name of person) _____, (title of person authorized to receive service) (used when Defendant is a corporation or association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees:

_____
Signature of Person Making Service

_____
Title (if any)

*Subscribed and sworn to before me this __ day of _____, 2001.

_____
Judge, Notary or Other Officer
Authorized to Administer Oaths

My Commission Expires:
_____

_____
Official Title

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF LEA
STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC.

Plaintiff,

v. CV-2001-

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, AND TOM STOKES

Defendants.

SUMMONS

TO: Defendant **Tom Stokes,** P.O. Box 932, Ozona, Texas 76943, or his physical residence.

Greetings:

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys for Plaintiff: SUSAN R. RICHARDSON
Address of Attorney for Plaintiff: P.O. Box 2776
Midland, Texas 79702

WITNESS the Honorable Gary Clingman, District Judge of Fifth Judicial District Court of the State of New Mexico and Seal of the District Court of Said County, this 21 day of August, 2001.

(SEAL)

JANIE G. HERNANDEZ
CLERK OF THE DISTRICT COURT

By _____
Deputy

Mid: SRICHARDSON\004370\000021\298280.1

STATE OF TEXAS)
)
COUNTY OF _____)

I, being duly sworn, on oath, say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served the within Summons in said County on the ___ day of _____, 2001, by delivering a copy thereof, with a copy of Complaint attached, together with a copy of Demand for Trial by 12 Member Jury, in the following manner:

[ ] To Defendant _____ (used when Defendant receives copy of Summons or refuses to receive Summons).

[ ] To _____, a person over the age of fifteen (15) years of age and residing at the usual place of abode of Defendant, who at the time of such service was absent therefrom.

[ ] By posting a copy of the Summons and Complaint in the most public part of the premises of Defendant (used if no person found at dwelling house or usual place of abode).

[ ] To _____, an agent authorized to receive service of process for Defendant.

[ ] To _____, (parent) (guardian) of Defendant (used when Defendant is a minor or an incompetent person).

[ ] To _____, (name of person) _____, (title of person authorized to receive service) (used when Defendant is a corporation or association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees:

_____
Signature of Person Making Service

_____
Title (if any)

*Subscribed and sworn to before me this __ day of _____, 2001.

_____
Judge, Notary or Other Officer
Authorized to Administer Oaths

My Commission Expires:
_____

_____
Official Title

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF LEA
STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC.

Plaintiff,

v.

CV-2001-315C

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, AND TOM STOKES

Defendants.

SUMMONS

TO: **Defendant David H. Arrington Oil & Gas, Inc.**, through its registered agent, Lewis Cox, III, at 311 North First Street, Lovington, New Mexico, 88260.

Greetings:

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys for Plaintiff: SUSAN R. RICHARDSON
Address of Attorney for Plaintiff: P.O. Box 2276
Midland, Texas 79702

WITNESS the Honorable Gary Clingman, District Judge of Fifth Judicial District Court of the State of New Mexico and Seal of the District Court of Said County, this 31st day of August, 2001.

(SEAL)

JANIE G. HERNANDEZ
CLERK OF THE DISTRICT COURT

By Andy Lang
Deputy

Mid: SRICHARDSON\004370\000021\298201.1

STATE OF NEW MEXICO)
)
COUNTY OF _____)

I, being duly sworn, on oath, say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served the within Summons in said County on the __ day of _____, 2001, by delivering a copy thereof, with a copy of Complaint attached, together with a copy of Demand for Trial by 12 Member Jury, in the following manner:

[ ] To Defendant _____ (used when Defendant receives copy of Summons or refuses to receive Summons).

[ ] To _____, a person over the age of fifteen (15) years of age and residing at the usual place of abode of Defendant, who at the time of such service was absent therefrom.

[ ] By posting a copy of the Summons and Complaint in the most public part of the premises of Defendant (used if no person found at dwelling house or usual place of abode).

[ ] To _____, an agent authorized to receive service of process for Defendant.

[ ] To _____, (parent) (guardian) of Defendant (used when Defendant is a minor or an incompetent person).

[ ] To _____, (name of person) _____, (title of person authorized to receive service) (used when Defendant is a corporation or association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees:

_____
Signature of Person Making Service

_____
Title (if any)

*Subscribed and sworn to before me this __ day of _____, 2001.

_____
Judge, Notary or Other Officer
Authorized to Administer Oaths

My Commission Expires:
_____

_____
Official Title

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF LEA
STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC.

Plaintiff,

v.

CV-2001- 315C

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, AND TOM STOKES

Defendants.

SUMMONS

TO: **Defendant James D. Huff,** P. O. Box 705, Mineola, Texas 75773, or his physical residence.

Greetings:

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys for Plaintiff: SUSAN R. RICHARDSON
Address of Attorney for Plaintiff: P.O. Box 2776
Midland, Texas 79702

WITNESS the Honorable Gary Clingman, District Judge of Fifth Judicial District Court of the State of New Mexico and Seal of the District Court of Said County, this 21st day of August, 2001.

(SEAL)

JANIE G. HERNANDEZ
CLERK OF THE DISTRICT COURT

By _____
Deputy

Mid: SRICHARDSON\004370\000021\298202.1

STATE OF TEXAS)
)
COUNTY OF _____)

I, being duly sworn, on oath, say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served the within Summons in said County on the ___ day of _____, 2001, by delivering a copy thereof, with a copy of Complaint attached, together with a copy of Demand for Trial by 12 Member Jury, in the following manner:

[ ] To Defendant _____ (used when Defendant receives copy of Summons or refuses to receive Summons).

[ ] To _____, a person over the age of fifteen (15) years of age and residing at the usual place of abode of Defendant, who at the time of such service was absent therefrom.

[ ] By posting a copy of the Summons and Complaint in the most public part of the premises of Defendant (used if no person found at dwelling house or usual place of abode).

[ ] To _____, an agent authorized to receive service of process for Defendant.

[ ] To _____, (parent) (guardian) of Defendant (used when Defendant is a minor or an incompetent person).

[ ] To _____, (name of person) _____, (title of person authorized to receive service) (used when Defendant is a corporation or association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees:

_____
Signature of Person Making Service

_____
Title (if any)

*Subscribed and sworn to before me this __ day of _____, 2001.

_____
Judge, Notary or Other Officer
Authorized to Administer Oaths

My Commission Expires:
_____

_____
Official Title

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF LEA
STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC.

Plaintiff,

v.

CV-2001-305C

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, AND TOM STOKES

Defendants.

SUMMONS

TO: Defendant **Madeline Stokes,** Box 1115, Ozona, Texas 76943, or her physical residence.

Greetings:

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys for Plaintiff: SUSAN R. RICHARDSON
Address of Attorney for Plaintiff: P.O. Box 2776
Midland, Texas 79702

WITNESS the Honorable Gary Clingman, District Judge of Fifth Judicial District Court of the State of New Mexico and Seal of the District Court of Said County, this 31st day of August, 2001.

(SEAL)

JANIE G. HERNANDEZ
CLERK OF THE DISTRICT COURT
By Janie G. Hernandez

Deputy

Mid: SRICHARDSON\004370\000021\298203.1

STATE OF TEXAS)
)
COUNTY OF _____)

I, being duly sworn, on oath, say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served the within Summons in said County on the ___ day of _____, 2001, by delivering a copy thereof, with a copy of Complaint attached, together with a copy of Demand for Trial by 12 Member Jury, in the following manner:

[ ] To Defendant _____ (used when Defendant receives copy of Summons or refuses to receive Summons).

[ ] To _____, a person over the age of fifteen (15) years of age and residing at the usual place of abode of Defendant, who at the time of such service was absent therefrom.

[ ] By posting a copy of the Summons and Complaint in the most public part of the premises of Defendant (used if no person found at dwelling house or usual place of abode).

[ ] To _____, an agent authorized to receive service of process for Defendant.

[ ] To _____, (parent) (guardian) of Defendant (used when Defendant is a minor or an incompetent person).

[ ] To _____, (name of person) _____, (title of person authorized to receive service) (used when Defendant is a corporation or association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees:

_____
Signature of Person Making Service

_____
Title (if any)

*Subscribed and sworn to before me this __ day of _____, 2001.

_____
Judge, Notary or Other Officer
Authorized to Administer Oaths

My Commission Expires:
_____

_____
Official Title

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF LEA
STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC.

Plaintiff,

v.

CV-2001- 315 C

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, AND TOM STOKES

Defendants.

SUMMONS

TO: Defendant **Erma Stokes Hamilton**, 408 W. Washington, Big Spring, Texas 79720, or her physical residence.

Greetings:

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys for Plaintiff: SUSAN R. RICHARDSON
Address of Attorney for Plaintiff: P.O. Box 2776
Midland, Texas 79702

WITNESS the Honorable Gary Clingman, District Judge of Fifth Judicial District Court of the State of New Mexico and Seal of the District Court of Said County, this 21st day of August, 2001.

(SEAL)

JANIE G. HERNANDEZ
CLERK OF THE DISTRICT COURT
By Carolyn Mora
Deputy

Mid: SRICHARDSON\004370\000021\298204.1

STATE OF TEXAS)
)
COUNTY OF _____)

I, being duly sworn, on oath, say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served the within Summons in said County on the ___ day of _____, 2001, by delivering a copy thereof, with a copy of Complaint attached, together with a copy of Demand for Trial by 12 Member Jury, in the following manner:

[ ] To Defendant _____ (used when Defendant receives copy of Summons or refuses to receive Summons).

[ ] To _____, a person over the age of fifteen (15) years of age and residing at the usual place of abode of Defendant, who at the time of such service was absent therefrom.

[ ] By posting a copy of the Summons and Complaint in the most public part of the premises of Defendant (used if no person found at dwelling house or usual place of abode).

[ ] To _____, an agent authorized to receive service of process for Defendant.

[ ] To _____, (parent) (guardian) of Defendant (used when Defendant is a minor or an incompetent person).

[ ] To _____, (name of person) _____, (title of person authorized to receive service) (used when Defendant is a corporation or association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees:

_____
Signature of Person Making Service

_____
Title (if any)

*Subscribed and sworn to before me this __ day of _____, 2001.

_____
Judge, Notary or Other Officer
Authorized to Administer Oaths

My Commission Expires:
_____

_____
Official Title

FIFTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF LEA

TMBR/SHARP DRILLING, INC.,

Plaintiff,

v. **No. CV- 2001-315C**

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, and TOM STOKES,

Defendants.

CLAIMANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING FILING OF UNIT DESIGNATION

TMBR/SHARP DRILLING, INC. ("TMBR/Sharp"), Claimant for cause of action against DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES and TOM STOKES and pursuant to New Mexico Rule of Civil Procedure 1-056, moves for Summary Judgment.

I. SUMMARY OF MOTION

TMBR/Sharp seeks a declaration that drilling across the primary term of the Original Stokes Leases, as described herein, perpetuated the Leases beyond the primary term because TMBR/Sharp had pooled acreage from the Leases with other acreage to obtain a drilling permit

from the OCD. Therefore, drilling on the pooled acreage, which began before the expiration of the primary term and extended across expiration of the primary term, to obtain a productive well was drilling on the Leases which was an act saving the Leases according to their terms. TMBR/Sharp satisfied the remaining requirement of the Leases, i.e., filing a unit designation, twice. First, it filed Form C-102 with the OCD to obtain its permit. Second, it filed a unit designation in the County Clerk's Records of Lea County, New Mexico after completion of the Well.

II. STATEMENT OF FACTS

A. THE LEASES

1. The first lease ("First Lease") is an oil and gas lease made effective December 7, 1997 between Madeline Stokes and Ameristate Oil & Gas, Inc. ("Ameristate"), and is recorded in Book 827, page 127 of the County Clerk's Records of Lea County, New Mexico, as amended by instrument dated August 10, 2000. *A certified copy of the First Lease is attached hereto as Exhibit "A".*

2. The second lease ("Second Lease") is a lease made effective December 7, 1997 between Erma Stokes Hamilton and Ameristate, and is filed in Book 827, page 124 of the County Clerk's Records of Lea County, New Mexico as amended by instrument dated August 14, 2000. *A certified copy of the Second Lease is attached hereto as Exhibit "B".*

3. The First and Second Leases (collectively referred to herein as the "Original Stokes Leases" or the "First Lease" and "Second Lease" or the "Leases") were amended on

August 10, 2000 and August 14, 2000, respectively, by Lessors and Ameristate[1] to create a primary term expiration date of June 6, 2001. *Certified copies of the amendments are attached hereto as Exhibit "C".*

B. THE POOLED UNIT

4. On November 17, 2000, TMBR/Sharp as operator under the Operating Agreement, filed an application for permit to drill (Form C-101) with the Oil Conservation Division of the State of New Mexico ("OCD") in its District I Office in Hobbs, Lea County, New Mexico. *A certified copy of Form C-101 is attached as Exhibit "E." The certification of Forms C-101 and C-102 is filed in this pleading under Exhibit "E".*

5. On the same date TMBR/Sharp filed a Well location and acreage dedication plat (Form C-102) describing the pooled unit dedicated to the proposed well, the Blue Fin "24" No. 1 Well (the "Well") with the OCD in its District I Office in Hobbs, Lea County, New Mexico and outlined thereon the 320 pooled acres in Township 16 South, Range 35 East, NMPM, Section 24: W/2, Lea County, New Mexico. *A certified copy of Form C-102 is attached as Exhibit "F." The certification of Forms C-101 and C-102 is filed in this pleading under Exhibit "E".*

6. The pooled 320 acres dedicated to the unit included 40 acres out of the Leases, including the NW/4 SW/4 of Section 24.

7. The OCD approved TMBR/Sharp's permit to drill on November 22, 2000. *See Affidavit of Jeffrey D. Phillips attached as Exhibit "D".*

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[1] TMBR/Sharp is a successor in interest to Ameristate by assignment of the First Lease and Second Lease effective in September of 1999. *See Affidavit of Jeffrey D. Phillips attached hereto as Exhibit "D".*

8. TMBR/Sharp spudded the Well on March 29, 2001, ran a drill stem test on May 15, 2001, and placed casing in the hole on June 3, 2001. *See Exhibit "D".*

9. On June 29, 2001, production in paying quantities was obtained from the Well and on August 6, 2001, first production was sold. *See Exhibit "D".*

10. The Well currently produces approximately 15 barrels of oil and 500 mcf of gas per day. *See Exhibit "D".*

11. The Well cost over $1,000,000.00 to drill and complete. *See Exhibit "D".*

12. There has been no cessation of operations on the lease for 180 consecutive days since drilling began on March 29, 2001. *See Exhibit "D".*

13. On July 20, 2001, a unit designation describing the same acreage covered by the unit plat dedication on Form C-102 previously filed with the OCD was filed in the County Clerk's Records of Lea County, New Mexico. It included 40 acres under the Original Stokes Leases. *A certified copy of the Unit Designation is attached as Exhibit "G".*

14. The Original Stokes Leases each provides in Paragraph 5 in pertinent part:

> "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 . . . . Lessee shall file a written unit designation 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."

See Exhibits "A" & "B" at Paragraph 5.

15. The Original Stokes Leases also provide:

> If at the expiration of the primary term...lessee has commenced operations for drilling...thereon, this lease shall remain in force so long as operations are prosecuted with no cessation of more than 180 consecutive days....and, if they result in production of oil or gas so long thereafter as oil or gas is produced from said land.

16. Further, the Original Stokes Leases state:

> 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...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 the lease, and does not allow more than 180 days to elapse between the completion...of one well on such land and the commencement of another well thereon ....

See Exhibits "A" and "B" at paragraph 12.

17. A portion of the lands covered by each of the Original Stokes Leases, namely the NW/4 SW/4 of Section 24, was included in the C-102 unit designation filed in Lea County, New Mexico with the OCD during the primary term of such leases. *See Exhibit "E".*

18. During the primary term, there was a well being drilled on a pooled unit which included Original Stokes Lease acreage. Those activities were sufficient to preserve the Original Stokes Leases beyond their primary terms. The Original Stokes Leases and all acreage described therein are now held by production from the Well.

III.

STANDARD OF REVIEW

A summary judgment provides a method whereby it is possible to determine whether a genuine claim for relief for defense exists and whether there is a genuine issue of fact to warrant the submission of the case to the jury. *Meeker v. Walker*, 80 N.M. 280, 454 P.2d 762 (1969). Trial courts are to bring litigation to an end at an early stage when it clearly appears that one of the parties is entitled to a judgment as a matter of law in the case as made out by the pleadings and the admissions of the parties. *Buffington v. Continental Casualty Co.*, 69 N.M. 365, 367 P.2d 539 (1961). Further, summary judgment is proper even though other disputed issues remain before the court. *Tapia v. Springer Transf. Co.*, 106 N.M. 461, 744 P.2d 1264 (Court App. 1987). In the present matter, the undisputed facts and the language of Paragraph 5 of the Original Stokes Leases show that TMBR/Sharp is entitled to summary judgment as a matter of law that said Leases were perpetuated beyond their respective primary terms and are still valid today.

IV.

ARGUMENTS AND AUTHORITIES

The issue for partial summary judgment is whether TMBR/Sharp and the other working interest owners did "that thing" which perpetuated the Original Stokes Leases?[2] The New

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2 Oil and gas authors and case law indicate that pooling is a matter of contract law and the exercise of the pooling powers is governed by the terms of the lease. For instance, Kuntz states: "Many pooling clauses contain no provision whatever as to the formality required in the exercise of the pooling power, whereas others contain specific provisions that vary from lease to lease. . ., if the pooling clause provides

Mexico Supreme Court has stated that the issue of lease termination revolves around the question "...[D]id the [Lessee] do that thing permitted by the lease to save it." *Owens v. Superior Oil Co.*, 105 N.M. 155; 730 P.2d 458 (1986) (*citing Humble Oil & Refining Co. v. Kunkle*, 366 S.W.2d 236 (Tex. Civ. App. 1963)). What did TMBR/Sharp have to do to perpetuate the Original Stokes Leases beyond their primary terms. Simply stated, given the undisputed facts of this case, TMBR/Sharp had to drill a productive well on lands covered by the Original Stokes Leases, or on land properly pooled with such lands.

The terms of the Original Stokes Leases are unambiguous. "[C]ourts will give effect to the intent of the parties, and when the terms of the Agreement are clear and unambiguous, Courts try to ascertain the intent of the parties from the *ordinary meaning* of the language in the Agreement." *Continental Potash v. Freeport-McMoran, Inc.*, 115 NM 690, 704; 858 P.2d 66 (1993) (emphasis added). "The purposes, meaning and intent of the parties to a contract is to be deduced from the language employed by them; and where such language is not ambiguous, it is conclusive. The Courts duty is confined to interpretation of the contract which the parties made for themselves and may not alter or make a new agreement for the parties." *Id.* (quoting *Davies v. Boyd*, 73 N.M. 85, 87-88, 385 P.2d 950, 951 (1963).

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that 'lessee shall execute in writing an instrument identifying and describing the pooled acreage,' an effective power of the exercise does not require that the instrument be filed for record." 4 Eugene Kuntz, Treatise on the Law of Oil and Gas § 48.3, at 200 (1972) (*citing Tiller v. Fields*, 301 S.W.2d 185 (Tex. Civ. App. - Texarkana 1957, no writ). Therefore, "that thing" TMBR/Sharp had to do to preserve the Original Stokes Leases is governed by the terms of those leases.

The Leases provide in pertinent part:

> If at the expiration of the primary term...lessee has commenced operations for drilling...thereon, this lease shall remain in force so long as operations are prosecuted with no cessation of more than 180 consecutive days....and, if they result in production of oil or gas so long thereafter as oil or gas is produced from said land.

Exhibits "A" and "B" at Paragraph 6.

TMBR/Sharp commenced drilling operations during the primary term, completed a producing well thereafter, and is currently producing oil and gas. *See supra Section II.* There has been no cessation of operations for more than 180 consecutive days. *See supra Section II.*

The Original Stokes Leases provide in Paragraph 5:

> "Lessee is granted the right and power, from time to time, to pool or combine this lease, and the land covered by it or any part of the 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...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.....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."

See Exhibits "A" and "B" at paragraph 5 (emphasis added).

The Original Stokes Leases further provide:

> "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...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 the lease, and does not allow more than 180 days to elapse between the completion...of one well on such land and the commencement of another well thereon ...."

See Exhibits "A" and "B" at paragraph 12.

A. The Original Stokes Leases Are Properly Pooled

The Original Stokes Leases are perpetuated because TMBR/Sharp was drilling upon lands properly pooled with the lands covered by the Original Stokes Leases across the expiration of the primary term as provided for in Paragraph 5 of the Original Stokes Leases. "Pooling is defined as 'the bringing together of small tracts sufficient for the granting of a well permit under the applicable spacing rules'." *Uhden v. New Mexico Oil Conservation Commission*, 112 N.M. 528; 817 P.2d 721, 723 (1991) (*quoting* 8 H. Williams and C. Meyers, *Oil and Gas Law* 727 (1987)). The written unit designation filed in Lea County with the District I Office of the OCD on November 17, 2000, brought together small tracts sufficient for the granting of a well permit, therefore, satisfying both the definition of "pooling" and the contractual pooling requirements of Paragraph 5 of the Original Stokes Leases to properly pool the NW/4 SW/4 of Section 25, T-16-S, R-35-E, into a unit comprised of the W/2 of said Section 25.

Although the Original Stokes Leases are not the drill site location for the Well, forty (40) acres of the Original Stokes Leases are within the unit designation filed with the District I Office of the OCD in Lea County prior to drilling during the primary term **and** in the County Clerk's Records of Lea County, New Mexico after completion of the Well beyond the primary term. *See Exhibits "E, "F," and "G".* Therefore, in order to obtain its drilling permit, TMBR/Sharp

pooled the required 320 acres (including 40 acres out of the Original Stokes Leases) to form a unit. *See Exhibits "E", "F," and "G".* Because TMBR/Sharp conducted drilling operations on lands pooled with the Original Stokes Leases, production was obtained, and there has been no cessation of operations on the pooled Leases for more than 180 consecutive days. Therefore, the Original Stokes Leases are still valid. *See supra Section II.B.* In short, "that thing" permitted by the Original Stokes Leases to save them was the pooling, which as prescribed by the Leases must be evidenced by a written unit designation filed in the county where the land is situated, and TMBR/Sharp clearly did "that thing."

TMBR/Sharp exercised its power "to pool or combine" forty (40) acres of the Original Stokes Leases with other acreage to form a 320-acre pooled unit, which is the size unit required for a gas well by the OCD,[3] in the Townsend; Mississippian, North (Gas) Pool. *See Exhibits "F" and "G".* TMBR/Sharp exercised its pooling power by filing a plat designation outlining the pooled acreage with the OCD District I Office in Lea County, New Mexico, the county of the premises covered by the Leases. *See Exhibit "F".* The OCD approved the requested drilling permit and drilling commenced before the expiration of the primary term and continued thereafter. *See supra Section II.B.* After the completion of the Well, a reconfirming unit designation was filed in the County Clerk's Records of Lea County, New Mexico. *See Exhibit*

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3 *See 19 NMAC 15.C.104.B(1)(a)* which provides, in pertinent part, ". . . .any such wildcat gas well which is projected to the Wolfcamp or older formations shall be located on a drilling tract consisting of 320 surface contiguous acres, more or less, ...". The Well is a wildcat well as defined in New Mexico Oil Conservation Division Rule 104.A. *See Exhibit "D".* The Well was drilled to the Mississippian Formation, which is older than the Wolfcamp Formation as provided in New Mexico Oil Conservation Division Rule 104.B(1)(a). *See Exhibit "D".*

"G". Thus, TMBR/Sharp "filed" a "written unit designation" in "Lea County, New Mexico" evidencing its pooling of the Original Stokes Leases both before and after the drilling of the Well. Under New Mexico law, and as expressly permitted by the Original Stokes Leases, drilling on the pooled unit was equivalent to drilling on the lands covered by the Original Stokes Leases and, therefore, such leases are perpetuated by the drilling and completion of the Well.

This case is very similar to *Owens v. Superior Oil Co. supra*. In that case, the question was whether drilling on a pooled unit within the grace period provided in the lease effectuated a valid extension of an oil and gas lease so long as production was maintained. *Owens*, 730 P.2d at 458. In *Owens*, the primary term of the lease expired on April 8, 1984. However, the lease provided a grace period of 60 days after the cessation of operations to begin "additional drilling". *Id.* On April 25, 1984, the operator ceased drilling a well it had begun during the primary term because it was a dry hole. *Id.* On April 28, 1984, the operator began drilling a second well and on May 9, 1984 filed its Unit Designation purporting to pool forty (40) acres of the lease (non drill-site land) with forty (40) acres on which the second well was located. Production was obtained on June 26, 1984. *Id.*

The controversy arose because Owens, Fedric and Peters obtained mineral or leasehold interests in the dispute acreage and demanded that the Operator, Superior, release the acreage. *Id.* Superior refused and suit resulted. The New Mexico Supreme Court held that Superior "saved" its lease because a continuous operations clause in an oil and gas lease keeps the entire lease in full force and effect if, within the grace period, drilling occurs on the leased land or any land with which it is pooled when pooling is permitted by the lease. *Id.* Specifically, the Court

found that "...[B]y exercising that right [to pool] within sixty days of drilling the dry hole on the leased premises, Superior saved the lease for as long as production is maintained." *Id.*

By exercising its right to pool and by drilling prior to the expiration of the primary term, TMBR/Sharp, like Superior in Owens, perpetuated the Original Stokes Leases. There is no question that TMBR/Sharp exercised its right to pool by filing the plat designation with the OCD District I Office in Lea County, New Mexico during the primary term. *Exhibit "F"*. Without OCD's approval of the pooled acreage designation which included 40 acres of the Original Stokes Leases, TMBR/Sharp could not have drilled. Drilling operations were commenced on the pooled acreage prior to the expiration of the primary term of the Leases, and the Well once completed has produced oil and gas without a cessation of production or operations for more than 180 days (the grace period provided for in the Original Stokes Leases), and the pooled unit was reconfirmed by filing a Unit Designation in the County Clerk's Records of Lea County, New Mexico after the completion of the Well. *See Exhibit "G"*. TMBR/Sharp, like Superior, has done the things it needed to do, e.g. pool, drill, and file, to extend the Original Stokes Leases beyond the primary term and to keep them in full force and effect as of this date.

Filing with the OCD to obtain a drilling permit is an unequivocal act of pooling. The OCD rules set out the procedure for permitting for the drilling of wells. The Division Rules promulgated by the OCD are authorized by NMSA, 1979, Section 70-2-11-A which states:

> The division is hereby empowered and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided. To that end, the division is empowered to make and enforce rules, regulations and orders, and to do whatever may

> be reasonably necessary to carry out the purposes of this act, whether or not indicated or specified in any section hereof.

19 NMAC 15.

Rule 10 NMAC 15.N.1101.A requires that "before commencing drilling...the operator must **file** a permit to do so." (emphasis added) (This is a Form C-101 and it must be accompanied by a Form C-102 - Well Location and Acreage Dedication Plat). Form C-102 filed by TMBR/Sharp designated the West half of Section 24, Township 16S, Range 35E, being 320 acres, as the acreage dedicated to the Well. *See Exhibit "F".* The acreage included 40 acres under the Original Stokes Leases. Division Rule 19 NMAC 15.N.1102.A states: "Form C-102 is a dual purpose form used to show the exact location of the well and **the acreage dedicated thereto**...". Rule 19 NMAC 15.N.1102.B says all information required on Form C-102 shall be filled out and certified by the operator of the well except for the well location on this plat which is certified by a professional surveyor or engineer. Thus, Form C-102 is a public filing describing the acreage dedicated to the Well. *See Exhibit "F".*

Under the definition of pooling adopted by the New Mexico Supreme Court in *Uhden*, a written dedication of acreage filed with the OCD was an unequivocal act of pooling or combining leases with other lands to form a unit which satisfied the OCD rules and regulations and the Original Stokes Leases' requirement to pool into a unit that was within the standard unit size authorized by the OCD. So long as drilling commenced on that dedicated pooled acreage prior to the expiration of the primary term and continued thereafter, TMBR/Sharp has satisfied the terms of the Original Stokes Leases' terms, thus perpetuating the Leases. The only other requirement which is also satisfied by Form C-102 is a "filing" of the unit designation.

B. TMBR/Sharp Filed a Written Unit Designation Both Before and After Drilling a Well; Either of Which Satisfy the Terms of the Original Stokes Leases.

In the matter before this Court, the Original Stokes Leases, i.e., the contract, required TMBR/Sharp as part of the pooling process to "...file written unit designations in the county in which the premises are located..." *See Exhibits "A" and "B" at paragraph 5.* In the present matter, it is undisputed that the TMBR/Sharp filed a written unit designation in Lea County with the District I Office of the OCD on November 17, 2000. *See Exhibit "F".* Therefore, TMBR/Sharp has satisfied Paragraph 5 of the Original Stokes Leases as a matter of law by filing Form C-102 in Lea County. However, TMBR/Sharp's subsequent filing in the County Clerk's Records of Lea County, New Mexico after the well was completed also, independently, satisfies the "filing" requirements of the Original Stokes Leases.

The language of the Original Stokes Leases, Paragraph 5, is clear:

> . . .Lessee shall file a written unit designation 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. . .

See Exhibits "A" and "B" at Paragraph 5. (emphasis added).

It is undisputed that TMBR/Sharp properly filed a Notice of Unit Designation with the District I Office of the OCD prior to the drilling of the Well. This alone would have satisfied the filing requirements of the Original Stokes Leases. However, this provision is also satisfied in that TMBR/Sharp filed a Unit Designation in the County Clerk's Records of Lea County, New Mexico after it drilled the Well. *See Exhibit "G".* As such, TMBR/Sharp has satisfied both possible means, i.e. before or after the well was drilled, of filing its Unit Designation.

The Original Stokes Leases allow for filing any time before or after the completion of wells. *Id.* TMBR/Sharp does not contend it could file whenever it wanted. Rather, if the filing was within a "reasonable time" TMBR/Sharp has satisfied the Original Stokes Leases' terms. *See Imes v. Globe Oil & Ref. Co.*, 184 Okla. 79, 84 P.2d 1106 (1938) (holding that the phrase "at any time" in the pooling clause means within a "reasonable time" which is determined with reference to the existing circumstances bearing on the foreseeability of pooling).

In the matter before the Court, TMBR/Sharp began drilling on March 29, 2001. *See Exhibit "D"*. First production in paying quantities was obtained on June 29, 2001. *Id.* The Unit Designation was filed in the County Clerk's Records of Lea County, New Mexico on July 20, 2001. *See Exhibit "G"*. First production was sold from the Well on August 6, 2001. *See Exhibit "D"*. Given the language of the Original Stokes Leases and the fact that drilling on the pooled unit extends the Original Stokes Leases beyond the primary term, filing the Unit Designation within one month of production and before any sale of production, TMBR/Sharp has filed in the Lea County Records within a reasonable time, thereby satisfying the terms of the Original Stokes Leases.

Because New Mexico law requires the Court to give the terms of contracts the ordinary meaning at the time of formation and the Original Stokes Leases require filing of the unit designation either before or after the drilling of a well, TMBR/Sharp has satisfied the "filing" terms of the Original Stokes Leases as a matter of law.

C. Paragraph 5 is a Covenant Regarding Formation of a Pooled Unit, Not a Conveyance of Property.

In the matter before the Court, TMBR/Sharp and the Lessors of the Original Stokes Leases have a contract with a covenant that requires TMBR/Sharp to file unit designations in the county where the property is located. *See Exhibits "A" and "B" at Paragraph 5.* This covenant is not an act of changing ownership in the property, but rather, a means to satisfy the OCD well permitting requirements and by which all parties to the Original Stokes Leases may ascertain with certainty what lands will be included in the unit designation. *See Uhden v. New Mexico Oil Conservation Commission*, 112 N.M. 528; 817 P.2d 721 (1981) (holding OCD's order authorizing 320 acre spacing was a condition precedent to pooling tracts).[4] Such filing memorializes TMBR/Sharp's pooling of the Stokes acreage with other lands and informs the Lessors of the property covered by the unit designation. The filing does not affect ownership of the property subject to the unit designation, but instead, effectuates TMBR/Sharp's pooling

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4 Defendant may argue that the pooling is a conveyance of real property and, therefore, subject to various requirements of New Mexico law, including certain filing requirements in the Lea County Records. Such a position is contrary to the holding of numerous courts. For instance, the Tenth Circuit held that the rule of perpetuities does not apply to the power to pool because such power does not accomplish a cross-transfer of property. *See Phillips Petroleum Co. v. Peterson,* 218 F.2d 926, 931 (10th Cir. 1954). In Kansas, the court held that the power to pool does not violate the rule against perpetuities because all the estates in interests are vested upon execution of the lease and that the rights thereunder are capable of definite ascertainment. *Kenoyer v. Magnolia Petroleum Co.*, 245 P.2d 176 (Kan. 1952). As noted by Kuntz, "a lessor does not acquire property interest in other land included in the unit created by an exercise of the pooling power. Instead of modifying the respective property rights of lessors in the unit, an exercise of the pooling power serves to modify only the rights that exist between each lessor and his lessee." 4 Eugene Kuntz, Treatise on the Law of Oil and Gas § 48.3(3), at 216 (1972). Kuntz goes on to state that "instead of modifying property rights of lessors in the unit, the exercise of the pooling power modifies only the rights between each lessor and his lessee by modifying the covenants and special limitations contained in the lease." *Id.*

rights under the express lease terms. *See supra Footnote* 4. Further, any interested party could also determine what lands were included in the pooled unit by checking the records of the OCD.

V.

CONCLUSION

In the matter before this Court, it is undisputed that TMBR/Sharp and the other working interest owners did "that thing" which perpetuated the Original Stokes Leases. More specifically, the Original Stokes Leases are in full force and effect because TMBR/Sharp drilled upon lands properly pooled with the acreage covered by the Original Stokes Leases before expiration of the primary term as provided for in Paragraph 5 of the Original Stokes Leases. Further, TMBR/Sharp satisfied the requirements of the Original Stokes Leases by filing a written unit designation in the county in which the acreage subject to the Original Stokes Leases is located prior to drilling the Well. The filing requirement of Paragraph 5 is also independently satisfied in that TMBR/Sharp filed a written unit designation in the County Clerk's Records of Lea County, New Mexico after the Well was completed. For these reasons, as a matter of law, the Original Stokes Leases have been properly pooled and production thereon perpetuates the Leases into the secondary term.

VI.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Claimant TMBR/Sharp, Inc. respectfully requests the Court enter partial summary judgment awarding TMBR/Sharp the following relief:

a. A declaration that TMBR/Sharp's written unit designation filed in Lea County with the Oil Conservation Division of the State of New Mexico on November 17, 2000, satisfied the obligations of Paragraph 5 of the Original Stokes Leases to file written unit designation in the county in which the premises are located;

b. A declaration that TMBR/Sharp's written unit designation filed in County Clerk's Records of Lea County satisfied the obligations of Paragraph 5 of the Original Stokes Leases to file unit designation in the county in which the premises are located;

c. A declaration that the Original Stokes Leases were properly pooled prior to the expiration of the primary term with acreage on which the Well is located;

d. A declaration that commencing drilling on acreage pooled with the Original Stokes Leases satisfied the requirements in the Original Stokes Leases to extend the Leases into the secondary term;

e. An award of reasonable attorney's fees, pre-judgment interest, post-judgment interest, and court costs; and

f. An award of such other and further relief at law or in equity to which it may be justly entitled.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on this the ____ day of November, 2001, a copy of the above and foregoing instrument has been forwarded by certified U.S. mail, return receipt requested to attorney for Defendants Mr. Ernest L. Carroll, P.O. Drawer 1720, Artesia, New Mexico 88211-1720.

_____
Susan R. Richardson

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF LEA
STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC., et al,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**No. CV-2001-315C**
	)	
DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, and TOM STOKES	)	
	)	
Defendant.	)	

RESPONSE OF DAVID H. ARRINGTON OIL & GAS, INC. AND JAMES D. HUFF TO CLAIMANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING FILING OF UNIT DESIGNATION

COME NOW the Defendants, DAVID H. ARRINGTON OIL & GAS, INC., ("Arrington") and JAMES D. HUFF ("Huff") by and through their attorneys of record, Losee, Carson, Haas & Carroll (Ernest L. Carroll), and submit this Response to Claimant's Motion for Partial Summary Judgment Regarding the Filing of Unit Designation and would state as follows:

I. Introduction

Claimants, TMBR/Sharp Drilling, Inc., et al. ("TMBR/Sharp" or "Claimants") have sought a declaration that drilling across the primary term of the original Stokes Leases as described in TMBR/Sharp's motion perpetuated the Stokes Leases[1] beyond their primary term.

[1] For purposes of this response, the term "Stokes Leases" shall refer to the oil and gas lease between Madeline Stokes and Ameristate Oil & Gas, Inc., dated effective December 7, 1997, recorded in Book 827, page 127 of the Lea County Records, Lea County, New Mexico, and the oil and gas lease between Erma Stokes

Claimants seek this declaration on the basis that it properly pooled the acreage covered by the Stokes Leases with the acreage upon which an oil and gas well had been spudded and drilled to completion prior to the expiration of the primary terms of the Stokes Leases. Arrington and Huff assert that the Stokes Leases were not legally or effectively pooled prior to the expiration of their primary terms by the actions of Claimants and therefore the Stokes Leases expired at the end of their primary terms. The issue of whether or not Claimants legally and effectively pooled the Stokes Leases prior to the expiration of their primary terms is the sole issue for this Court to decide. It should be noted that Arrington and Huff have filed their own motion for summary judgment on this same issue. Arrington and Huff make this response particularly directed at arguments raised in Claimants motion but point out that the Court should consider Arrington and Huff's motion for summary judgment as an additional response or rebuttal to the issues raised in Claimants' motion for summary judgment.

A key issue to be considered by the Court deals with the allegation of Claimants that the filing of Oil Conservation Division Form C-102 ("Form C-102") with the Oil Conservation Division in Lea County is sufficient under the terms of the Stokes Leases to legally effectuate the pooling of such leases. Claimants allege that their filing of the Form C-102 was intended to be a unit dedication pursuant to the terms of the Stokes Leases. However, the undisputed facts of this case actually show that such is an after thought raised by Claimants after the fact to bootstrap an argument that the Stokes Leases had not expired by their own terms.

Hamilton and Ameristate Oil & Gas, Inc., dated effective December 7, 1997, recorded in Book 827, page 124, Lea County Records, Lea County, New Mexico. For purposes of Arrington and Huff's motion for summary judgment the Stokes Leases were defined as the "Madeline Stokes/Ameristate Lease" and the "Erma Stokes Hamilton/Ameristate Lease."

II. Statement of Undisputed Facts

Arrington and Huff adopt in their entirety the statement of undisputed facts contained in Defendants David H. Arrington Oil & Gas, Inc. and James D. Huff's Statement Of Undisputed Facts, Memorandum Of Law and Argument In Support Of Its Motion For Summary Judgment filed on November 21, 2001. Arrington and Huff will respond at this point specifically to the statement of facts contained in Claimants' Statement of Facts. Arrington and Huff will use the same numbering of facts for this response that is contained in Claimants' Statement of Facts.

1. Arrington and Huff admit the truth of fact number 1.

2. Arrington and Huff admit the truth of fact number 2.

3. Arrington and Huff admit the truth of fact number 3.

4. Arrington and Huff admit the truth of fact number 4.

5. Arrington and Huff admit that TMBR/Sharp filed a Form C-102 Well Location and Acreage Dedication Plat on November 17, 2000, and that such dedication plat outlined a 320 acre area being the W/2, Section 24, Township 16 South, Range 35 East, N.M.P.M.. However the issue as to whether such filing constitutes a legally effective pooling is a legal conclusion which this Court is being asked to decide. Arrington and Huff disagree with TMBR/Sharp's use of the term "pooled" in paragraph number 5. Arrington and Huff dispute that the acreage dedication plat or Form C-102 described a "pooled" unit dedicated to the Blue Fin "24" No. 1 Well. **See Exhibits A, B, E and F to Claimant's Memorandum.**

6. Arrington and Huff admit that 320 acres described in the Form C-102 includes 40 acres of the Stokes Leases, being the NW/4 SW/4, Section 24. However, Arrington and Huff disagree with TMBR/Sharp's use of the term "pooled" in paragraph number 6. The issue as to

whether such filing constitutes a legally effective pooling is a legal conclusion which this Court is being asked to decide. Arrington and Huff disagree that there were ever 320 acres "pooled" as stated in paragraph number 6. **See Exhibits A and B to Claimant's Memorandum.**

7 Arrington and Huff admit the truth of fact number 7.

8. Arrington and Huff admit the truth of fact number 8.

9. Arrington and Huff admit the truth of fact number 9.

10. Arrington and Huff admit the truth of fact number 10.

11. Arrington and Huff are unable to admit fact number 11 as Exhibit D, which is the Affidavit of Jeffrey D. Phillipps, does not state that the well cost $1,000,000.00 to drill and complete but in fact states a "Well cost" in excess of $100,000.00 to drill. Arrington and Huff would further state that fact number 11 is not a material fact with respect to the issues raised by either TMBR/Sharp's motion for summary judgment or the motion for summary judgment filed by Arrington and Huff.

12. Arrington and Huff do not deny the fact that there has been no cessation of operations for 180 consecutive days since drilling of the Blue Fin "24" No. 1 Well began on March 29, 2001. However Arrington and Huff disagree as to the legal conclusion which is being inferred in paragraph number 12. Arrington and Huff believe that the reference to "lease" in paragraph number 12 refers to the Stokes Leases which are Exhibits A and B to Claimants' memorandum. Arrington and Huff assert that no acreage covered by either of the Stokes Leases shown in Exhibits A or B was ever legally or effectively pooled prior to the expiration of their primary terms and therefore no operations have been conducted on either of the leases.

13. It is admitted that on July 20, 2001, a "Designation of Pooled Unit" was filed in

the County Clerk's Records of Lea County, New Mexico, by TMBR/Sharp and that such "Designation of Pooled Unit" included the Stokes Leases by reference. The legal effect of such filing is the issue which is before the Court. Arrington and Huff disagree with the use of the term "unit" as they believe it is meant in the context of paragraph number 13. Arrington and Huff believe that the use of the term "unit" in paragraph number 13 is an attempt to draw a legal conclusion that a pooled unit was legally and effectively created; a legal conclusion with which Arrington and Huff disagree. Arrington and Huff contend that there was no legally effective pooled unit created which included the Stokes Leases prior to the expiration of the primary term of those leases.

14. Arrington and Huff admit the truth of paragraph number 14.

15. Arrington and Huff admit that the language shown in paragraph number 15 is a portion of the language contained in paragraph 6 of the Stokes Leases as shown in Exhibits A and B to the Memorandum filed by Claimants.

16. Arrington and Huff admit that the language shown in paragraph number 16 is a portion of the language contained in paragraph 12 of the Stokes Leases as shown in Exhibits A and B to the Claimants' Memorandum.

17. Arrington and Huff admit that a portion of the lands covered by the Stokes Leases is shown on the Form C-102 acreage dedication plat which was filed by TMBR/Sharp. The legal effect of such filing is the issue which is before the Court. Arrington and Huff disagree with the use of the term "unit" as they believe it is meant in the context of paragraph number 17. Arrington and Huff believe that the use of the term "unit" in paragraph number 17 is an attempt to draw a legal conclusion that a pooled unit was legally and effectively created; a legal conclusion

with which Arrington and Huff disagree. Arrington and Huff contend that there was no legally effective pooled unit created which includes the Stokes Leases prior to the expiration of the primary term of such leases. Form C-102 does establish a proration unit for production to be assigned to the Blue Fin "24" No. 1 Well. It is not a designation of pooled unit as Claimants would like the Court to conclude. **See Exhibit F not Exhibit E as stated in Fact 17 of Claimants' Memorandum.**

18. Arrington and Huff agree that the Blue Fin "24" #1 Well was being drilled during the primary term of the Stokes Leases. The issue as to whether the Blue Fin "24" #1 Well was drilled on a legally effective pooled unit which includes the Stokes Leases and whether such activity was sufficient to extend the Stokes Leases beyond their primary term and whether the Stokes Leases are now held by production from the Blue Fin "24" #1 Well are conclusions of law which the Court has been asked to decide. Arrington and Huff contend that there was no legally effective pooled unit created which includes the Stokes Leases prior to the expiration of the primary term of such leases. Therefore the Stokes Leases are not held by production from the Blue Fin "24" #1 Well.

Arrington and Huff assert that Claimants have overlooked a critically determinative fact which exists in the laws of the State of New Mexico which, once considered, destroys Claimants conclusions. Section 14-9-1 NMSA, 1978, states:

> *Instruments affecting real estate; recording*. All deeds, mortgages, leases of an initial term plus option terms in excess of five years, or memoranda of the material terms of such leases, assignments, or amendments to such leases, leasehold mortgages, United States patents and other writings affecting the title to real estate **shall** be recorded in the office of the county clerk of the county or counties in which real estate affected thereby is situated. Leases of any term

> or memoranda of the material terms thereof, assignments or amendments thereto may be recorded in the manner provided in this section. As used in this section, "memoranda of the material terms of a lease" means a memorandum containing the names and mailing addresses of all lessors, lessees or assignees; if known, a description of the real property subject to the lease; and the terms of the lease, including the initial term and the term or terms of all renewal options, if any. *(Emphasis Added.)*

III. STANDARD OF REVIEW

Claimants cite no cases with respect to the proper Standard of Review. A more correct statement of the Standard of Review in a summary judgment situation in New Mexico is contained in the Argument of Authorities of Arrington and Huff's Memorandum in support of their Motion for Summary Judgment. Arrington and Huff would further cite to the Court the case of CIUP v. Chevron U.S.A., Inc. 122 N.M. 537, 928 P.2d 263 (1996). In the CIUP case it is noted that summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The Supreme Court in that case further stated that a party cannot rely on allegations contained in its complaint or upon argument or contention of counsel to support its arguments, but rather must rely upon admissible evidence. In the present case there are no undisputed facts which support Claimants position. The undisputed facts, however, coupled with the language of Paragraph 5 of the Stokes Leases show that Claimants are not entitled to summary judgment as a matter of law as the Stokes leases expired by their own terms due to the failure of Claimants to properly pool the Stokes leases with leases upon which drilling operations were being conducted.

IV. ARGUMENTS AND AUTHORITIES

Arrington and Huff agree with Claimants that the key issue for Summary Judgment is

whether Claimants did "that thing" which perpetuated the original Stokes leases. In Claimant's brief after acknowledging this as the issue, it is argued in footnote number 2 that "that thing" that the Claimants were required to do was solely governed by the terms of those leases. That is an incorrect statement of the law in New Mexico. In New Mexico all contracts are considered to incorporate relevant law. In State ex rel. Udall v. Colonial Penn Ins. Co., 112 N.M. 123, 812 P.2d 777 (1991), the Supreme Court stated, "A contract incorporates the relevant law, whether or not it is referred to in the agreement". In Durham v. Southwest Developers Joint Venture, 128 N.M. 648, 996 P.2d 911, (Ct. App. 1999), it is stated, "The provisions of applicable statutes are part of every contractual commitment. See Wright v. Union Cent. Life Ins. Co., 304 U.S. 502, 516, 82 L.Ed. 1490, 58 S. Ct. 1025 (1938). Thus contractual agreements are deemed to have incorporated relevant state law. See State ex rel. Udall v. Colonial Penn Ins. Co., 112 N.M. 123, 130, 812 P.2d 777, 784 (1991)".

The relevant state law which Claimants conveniently overlooked is Section 14-9-1 NMSA 1978 which states "other writings affecting the title to real estate shall be recorded in the office of the county clerk of the county or counties in which the real estate affected thereby is situated". *[Emphasis added].*

There can be no doubt that for pooling to be accomplished according to the specific terms of each of the Stokes Leases, the written unit designation had to be filed in Lea County, New Mexico. The critical question then becomes, does the lease language mean in the county clerk's records or somewhere else as advanced by Claimants such as the Lea County office of the Oil Conservation Division. It is likewise undeniable that the sole purpose behind the filing of a unit designation is to affect the title to the minerals covered by the leases by keeping the

leases from terminating according to their own terms. Section 14-9-1 NMSA 1978 categorically speaks to that situation by requiring that writings "affecting the title to real estate shall be recorded in the office of the county clerk of the county or counties in which the real estate affected thereby is situated" *[Emphasis added.]* This has always been the law in New Mexico, as the History of that section dates back to the Laws of 1886-1887 Ch. 10, § 1.

A case squarely on point is that of Sauder v. Frye, 613 S.W.2d 63 (Ct. App. Ft. Worth 1981). In that case the oil and gas lease expired on May 24, 1979. A Designation of Pooled Unit was executed by the lessee on May 23, 1979. A well was commenced drilling on the pooled unit in question commencing April 15, 1979 and was completed capable of producing gas in commercial quantities on May 26, 1979. On May 31, 1979 the Designation of Pooled Unit was recorded by the county clerk in the county of the wells location. The question in Sauder then became was the Designation of Pooled Unit executed by the lessee effective as to the lease as of the date it was executed and acknowledged or was it effective only when it was filed for record in the required county. The Court held that the lease evidenced the intent of the parties that for unitization to be effective, one of its required conditions was a recordation of the designation of pooling. Only at that point would the unitization validly come into being under the terms of the lease. The Fort Worth, Texas Court of Appeals held that the lease terminated by its own terms. The holding in Sauder v. Frye was followed in Pampell Interests, Inc. v. Wolle, 797 S.W.2d 392 (Ct. App. Austin 1990).

The New Mexico Supreme Court has had to deal with these issues though under a slightly different factual situation. However, the New Mexico Supreme Court ruled using the very principles espoused hereinabove. In Owens v. The Superior Oil Company, 105 NM 155, 730 P2d

458 (1986) the Court focused on the following facts. Prior to the expiration of the primary term, a well was begun upon the actual lands covered by the lease in question, but it resulted in a dry hole which was completed after the end of the primary term. Since the primary term had expired the continuous operation clause of the lease provided for termination 60 days after the cessation of operations, unless the lessee commenced additional drilling or reworking operations within that time period. Superior Oil Company began drilling operations on another well within that 60 day period but such well was not located on the actual leased lands. Superior filed its Designation of Pooled Unit prior to the expiration of the 60 day continuous operations clause. A producing well was obtained by those efforts. The Supreme Court, in its opinion, stated the following:

> Superior urges us to adopt the Federal District Courts interpretation of the similar provision in Harper. The Harper Court, noting that the primary purpose of a continuous operations clause "is to give a lessee who has incurred the expense of drilling a well an opportunity to save his lease in the event the well is a dry hole," held that the clause kept the entire lease including the pooling clause, in full force and effect for a 60 day period after the cessation of operations. Harper v. Hudson Gas and Oil Company, 189 F.Supp. 787 (quoting Stanolind Oil and Gas Co. v. Newman Brothers Drilling Co., 157 Tex 489, 497, 305 S.W.2d 169, 174 (1957)). We are persuaded by this reasoning, and hold that a continuous operations clause in an oil and gas lease keeps the entire lease in full force and effect within a period of 60 days after the cessation of drilling or production, drilling or reworking occurs on the leased land or any land with which it is pooled when pooling is permitted by the lease. *[Emphasis added.]*

The factual situation in Owens is exactly the opposite of the facts here,[2] that is the pooling designation was filed prior to the expiration of the primary term of the lease in that case and in

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[2] Claimants try to argue the similarity of the facts in Owens to the facts in this case. However that is not the case. In Owens it was undisputed that Superior had filed a proper pooling designation. The controversy was over whether or not the 60 day continuous drilling clause was operative to keep the lease alive. Claimant's position is not supported by Owens.

this case it was not. This case does establish the fact that it is the law in New Mexico that a pooling designation must be filed according to the terms of the lease prior to the expiration of the lease.

Claimants also cite 4 Eugene Kuntz, Treatise on the Law of Oil and Gas § 48.3 as authority for their position. However, if one looks at the proper part of § 48.3 being found at page 202, it states,

> "In order to be effective, the pooling power must be exercised while the lease is in effect in accordance with all of its terms. If the lease is terminated by application of other provisions of the lease, the authority granted by the pooling clause likewise terminates, unless an intention can be found that the lease is to remain alive for the purpose of permitting an exercise of the pooling power. Further, the lease may remain alive for a limited purpose other than pooling in which case an exercise of the pooling power will be ineffective if the lease otherwise terminated. Thus, if the lessee was in the process of drilling at the end of the primary term and the drilling operation results in a dry hole, the lease is extended solely for the purpose of permitting the lessee to comply with the dry hole clause, and an exercise of the pooling power to pool the lease with productive land will be ineffective if the lease is not otherwise sustained."

With the respect to the undisputed facts of this case, the pooling designation had to be exercised prior to June 7, 2001, or the primary terms of both of the Stokes Leases would expire and no activities, whether began prior to that time or continued thereafter, could sustain or revive the leases as maintained by Claimants.

Claimants argument is also suspicious. Arrington and Huff would ask the Court to pay particular attention to the fact that Claimants start out with a conclusion that "the original Stokes Leases are properly pooled". The Claimants then begin to use various terms interchangeably.

The terms used interchangeably are "pooling designation", "unit designation", "proration unit" and "acreage dedication plat." It is undisputed that the Stokes Leases required a pooling designation to be filed in the county where the premises are located. In the opening paragraph of Claimants argument they state that the "written unit designation" filed in Lea County with the District 1 Office of the OCD on November 17, 2000, brought together small tracts sufficient for the granting of a well permit. There was no written unit designation filed with the OCD. The only document filed with the OCD was an "acreage dedication plat." **See Exhibit F to Claimants' Memorandum.** It is also interesting to note that the space where they could have shown how the acreage was consolidated (i.e. by pooling or unitization) was left blank.

Claimants continue their shell game when they then change their argument from using unit designation to using the term a plat designation, again neither plat designation or unit designation complies with the terminology of the leases which require a pooling designation. Claimants argue at page 10 of their brief that, "TMBR/Sharp exercised its pooling power by filing a plat designation outlining the pooled acreage with the OCD District I Office in Lea County, New Mexico. . . ." The leases do not authorize a plat to be filed in the OCD showing the acreage, the lease requires a written pooling designation. The plain and simple meaning of those terms indicate that the parties desired that a writing setting forth the fact that this acreage was being pooled with additional acreage be filed. Section 14-9-1. NMSA, 1978, requires that filing to be made in the County Clerks records of Lea County, New Mexico. The C-102 Form fails completely in those respects.

Claimants then argue that after the completion of the Blue Fin "24" No. 1 Well a reconfirming unit designation was filed in the County Clerk's Records of Lea County, New

Mexico. This argument alone underscores the weakness that is recognized by Claimants in their argument. A reconfirming writing was never required by the Stokes Leases. It has no legal effect whatsoever. Again Claimants are trying to shotgun sympathy for their position. The fact that Claimants felt a reconfirming designation was required illustrates the fact that they were aware of the problem with the Stokes Lease acreage and the fact that it was not pooled. As was pointed out in Arrington and Huff's Memorandum of Law accompanying its Motion for Summary Judgment, through discovery it was learned that a drilling title opinion was not secured by TMBR/Sharp prior to the spudding of the Blue Fin "24" No.1 Well and that the attorney who authored the title opinion made note of the problem concerning the necessity of filing a pooling designation with respect to not only the Stokes Leases but one additional lease.

The arguments of Claimants give rise to a second and subsidiary issue that should be considered by the Court which deals squarely with the claim by Claimants that the filing of Form C-102 with the OCD in Lea County was intended to be a unit dedication pursuant to the terms of the Stokes Leases. The undisputed facts of this case actually show that such argument is an after thought raised by Claimants to bootstrap some kind of a case albeit weak, that the Stokes Leases had not expired by their own terms.

Claimants cite the case of Uhden v. New Mexico Oil Cons. Com'n., 112 N.M. 528, 817 P.2d 721 (1991) for the proposition that "a written dedication of acreage filed with the OCD was an unequivocal act of pooling or combining leases with other lands to form a unit which satisfied the OCD rules and regulations and the Original Stokes Leases' requirement to pool into a unit that was within the standard unit size authorized by the OCD." The Uhden case does not stand for that proposition nor does it give any guidance to the type of writing that is required to validly

pool the acreage covered by the Stokes Leases with other acreage. That case is the landmark case dealing with the proposition of whether or not an owner in fee of an oil and gas estate was entitled to actual notice of a state proceeding on a lessee's application for an increase in well spacing. That case can be reviewed in its entirety and no guidance can be found from such a review with respect to the issues as presented by this case. It should be further pointed out that the New Mexico Supreme Court did not adopt a definition of pooling and what it takes, all it did as an ancillary part of its discussion give a description of what pooling was with respect to the facts of the Uhden case which are no way similar to the facts of this case. Again the attempt to cite this case and to bootstrap an argument where none exist is evident from this almost seemingly careless use of citations.

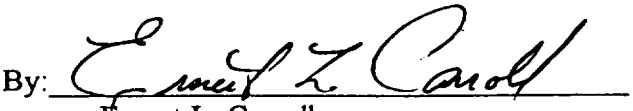
The last important issue that was raised by Claimants that must be addressed is a quotation by Claimants from the language from Paragraph 5 of the Stokes Leases which states, "and such units may be designated from time to time and either before or after the completion of the wells." It is not denied that that language exists in the both of the Stokes Leases. However, as was held in the Owens case a written pooling designation must be filed prior to the expiration of the lease or any clause therein which extends for some time the primary term of the lease. Here the written unit designation filed on July 20, 2001, came after the lease had expired and therefore was of no effect. The Blue Fin "24" No. 1 Well was spudded and/or completed prior to June 7, 2001, and had a proper pooling designation been filed in the County Clerk's Records of Lea County prior to the date of June 7, 2001, there could be no contention made that the leases had expired, however that is not the state of the record. No pooling designation was filed prior to the expiration of both of the Stokes Leases on June 7, 2001, therefore even though a well had been spudded upon

acreage that could have been pooled with the Stokes acreage such is of no effect, and the Stokes Leases have expired and therefore Claimants arguments must fail.

V. CONCLUSION

Under the undisputed facts before this Court, Claimants did not do "that thing" which would have caused the Stokes Leases to be perpetuated beyond the expiration of their primary term of June 7, 2001. Therefore those leases have expired, the top leases taken by Huff are therefore valid and have come to life by virtue of the expiration of the precedent leases held by Claimants. For these reasons, as a matter of law, the Stokes Leases were not properly pooled and therefore no production was obtained within their primary term and Claimants' Motion for Summary Judgment should be denied in all respects.

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

By: 

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CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing pleading to be mailed on this 6 day of December, 2001 to the following:

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FIFTH JUDICIAL DISTRICT COURT
COUNTY OF LEA
STATE OF NEW MEXICO

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:

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By: Ann C. Hernandez
Trial Court Administrative Assistant

FIFTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF LEA

TMBR/SHARP DRILLING, INC., AMERISTATE OIL & GAS, INC., THOMAS BEALL, MARK NEARBURG, LOUIS MAZZALLO, F. HOWARD WALSH, JR., JADE RESOURCES, INC., CHI ENERGY, INC. and THOMAS C. BROWN,

Plaintiffs,

v. No. CV- 2001-315C

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, and TOM STOKES,

Defendants.

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DAVID H. ARRINGTON OIL & GAS REGARDING TORTIOUS INTERFERENCE AND BRIEF IN SUPPORT THEREOF

TMBR/SHARP DRILLING, INC. ("TMBR/Sharp"), AMERISTATE OIL & GAS, INC. ("Ameristate"), THOMAS BEALL, MARK NEARBURG, LOUIS MAZZALLO, F. HOWARD WALSH, JR., JADE RESOURCES, INC., CHI ENERGY, INC. and THOMAS C. BROWN (collectively "Plaintiffs" or TMBR/Sharp, et al.) Claimants for cause of action against DAVID

H. ARRINGTON OIL & GAS, INC. ("Arrington"), move for Summary Judgment against Arrington for tortious interference pursuant to New Mexico Rule of Civil Procedure 1-056.

I.

SUMMARY OF MOTION

TMBR/Sharp and the other named Plaintiffs are the Lessees of two oil and gas leases located in Lea County, New Mexico. While those leases were in full force and effect, Arrington filed an application for and obtained a permit to drill two wells on acreage covered by these leases. The filing of these permits prevented TMBR/Sharp, the operator, from obtaining its own permits to drill wells. TMBR/Sharp and the other owners maintain, and the evidence contained herein will show this Court, that Arrington wrongfully obtained permits thereby tortiously interfering with Plaintiffs' rights and benefits under such leases.

II.

STATEMENT OF UNDISPUTED MATERIAL FACTS

A. THE LEASES

1. The first lease ("First Lease") is an oil and gas lease made effective December 7, 1997 between Madeline Stokes and Ameristate Oil & Gas, Inc. ("Ameristate"), and is recorded in Book 827, page 127 of the Records of Lea County, New Mexico, as amended by instrument dated August 10, 2000. *A certified copy of the First Lease is on file with this Court, a copy of which is attached hereto as Exhibit "A."*

2. The second lease ("Second Lease") is a lease made effective December 7, 1997 between Erma Stokes Hamilton and Ameristate, and is filed in Book 827, page 124 of the Records of Lea County, New Mexico as amended by instrument dated August 14, 2000. *A*

certified copy of the Second Lease is on file with this Court, a copy of which is attached hereto as Exhibit "B."

3. The First and Second Leases (collectively referred to herein as the "Original Stokes Leases" or the "First Lease" and "Second Lease" or the "Leases") were amended on August 10, 2000 and August 14, 2000, respectively, by Lessors and Ameristate[1] to create a primary term expiration date of June 6, 2001. *Copies of the amendments are on file and attached hereto as Exhibit "D."*

4. This Court has ruled that the Original Stokes Leases were properly pooled by TMBR/Sharp and remain in full force and effect. *See Claimant's Motion for Summary Judgment and the Court's Order granting same which are on file with this Court and incorporated herein by reference.*

B. THE TOP LEASES

5. On or about March 27, 2001, James D. Huff ("Huff") acquired an oil and gas lease from Defendant Madeline Stokes covering the same lands and minerals covered by the Original Stokes Leases. This lease is herein referred to as the "Stokes Top Lease." *A certified copy of the Stokes Top Lease is on file with this Court, a copy of which is attached hereto as Exhibit "E."*

6. The Stokes Top Lease purports to be for a primary term of three (3) years from June 7, 2001, and as long thereafter as oil or gas is produced from said land or from land with which said land is pooled. *See Exhibit "E."*

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[1] TMBR/Sharp is a successor in interest to Ameristate by assignment of the First Lease and Second Lease effective in September of 1999. *See Affidavit of Jeffrey D. Phillips, attached hereto as Exhibit "C."*

7. On the same date, Huff acquired an oil and gas lease from Defendant Erma Stokes Hamilton also covering the same lands described in the Original Stokes Leases. This lease is herein referred to as the "Hamilton Top Lease." *A certified copy of the Hamilton Top Leases is on file with this Court, a copy of which is attached hereto as Exhibit "F."*

8. The Hamilton Top Lease is for the same primary term as the Stokes Top Lease. *See Exhibit "F."* The Stokes Top Lease and Hamilton Top Lease are collectively referred to herein as the "Huff Top Leases," and copies thereof are on file with this Court and incorporated herein by reference.

9. The Huff Top Leases each provide in pertinent part: "This oil and gas lease is subordinate to that certain 'Prior Lease' [Original Stokes Leases] recorded in ... Lea County Records, as amended by instrument dated ... recorded ... Lea County Records, but only to the extent that said prior lease is currently a valid and subsisting oil and gas lease. *See Exhibits "E" and "F" (Huff Top Leases).*

10. This Court has ruled that the Original Stokes Leases are in full force and effect as the result of TMBR/Sharp's pooling and drilling a well across the expiration of the primary term. *See supra.*

C. ASSIGNMENT OF HUFF TOP LEASES

11. On September 17, 2001, Huff assigned Arrington his entire interest in the Huff Top Leases. *A certified copy of the Assignment from Huff to Arrintgon is attached hereto and referenced herein as Exhibit "G."*

D. THE PERMITS

12. On July 19, 2001 Arrington filed an application for and obtained a permit to drill the Triple Hackle Dragon "25" No. 1 Well on the W/2 of Section 25, T-16-S, R-35-E, Lea County, New Mexico. *See a certified copy of the OCD's Order of the Division dated December 11, 2001 attached hereto as Exhibit "H".* The OCD approved the application on July 19, 2001. *Id. at p. 2.*

13. On July 30, 2001, Arrington filed an application for and obtained a permit to drill the Blue Drake "23" No. 1 Well on the E/2 Section 23, T-16-S, R-35-E, Lea County, New Mexico. *Id at p.2.* The OCD approved the application. *Id at p. 2.*

14. On August 8, 2001, the OCD denied TMBR/Sharp's application for a permit to drill the Blue Fin "25" No. 1 Well on the E/2 of Section 25 stating that the permit granted to Arrington precluded the permit applied for by TMBR/Sharp. *Id at p. 2.*

15. On August 8, 2001, TMBR/Sharp was denied a permit to drill the Leavelle "23" No. 1 Well on the E/2 of Section 23 because the permit granted to Arrington precluded the granting of the permit sought by TMBR/Sharp. *Id. at p. 3.*

16. The Original Stokes Leases are in full force and effect. However, each of these leases contains a "continuous development clause." Specifically, in Paragraph 12 of Exhibit "A" of each such lease provides in pertinent part: "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." *See Exhibits "A" and "B."*

17. TMBR/Sharp attempted to drill two additional wells in accordance with the provisions of Paragraph 12 of the Original Stokes Lease, but was denied drilling permits by the OCD on its leasehold property because Arrington wrongfully obtained drilling permits covering the same acreage based on the Huff Top Leases. *See Exhibit "H."* Since the Huff Top Leases have not become effective, the drilling permits obtained from the OCD by Arrington were based on untrue representations of leasehold ownership. *See supra.*

18. The drilling applications filed by Arrington have prevented Plaintiffs from exercising their rights and fulfilling their obligations under the Original Stokes Leases. Further, the drilling permits obtained wrongfully with the OCD are preventing TMBR/Sharp from drilling additional wells for which it had requested permits, but were denied.

19. TMBR/Sharp filed an application for an order staying drilling operations by Arrington on the acreage subject to the Original Stokes Leases challenging the permits granted to Arrington. *See a true and correct copy of the Application of TMBR/Sharp Drilling, Inc. for an Order Staying David H. Arrington from Commencing Operations attached hereto as Exhibit "I".*

20. On September 20, 2001, the OCD heard arguments regarding TMBR/Sharp's challenge. *See Exhibit "H" at p. 1.*

21. The OCD held that Arrington had a colorable right of title and, therefore, its permits remained valid and refused to issue permits to TMBR/Sharp. *See Exhibit "H" at pages 4-6.* The OCD did not make a determination as to the continued validity of the Original Stokes Leases.

22. The order issued by the OCD stating that Arrington had colorable title was issued prior to the Court in this suit granting Plaintiff's Motion for Partial Summary Judgment which,

in effect, declared that Arrington had no present possessory interest in the Hamilton/Stokes acreage. *Id.*

23. It is important to note that Arrington obtained his permits to drill the Triple Hackel Dragon "25" No. 1 Well and the Blue Drake "23" No. 1 Well in July of 2001. *See supra.* This is important because he did not obtain any interest in the Huff Top Leases until they were assigned to him on September 17, 2001. *See supra.*

E. DAMAGES

24. Arrington obtained two permits to drill on the property subject to the Huff Top Leases without actual or colorable title to such leases. *See supra.* Arrington has failed or refused to release those permits and has thus continued to obstruct TMBR/Sharp's entitlement to the drilling permits it previously requested.

25. As a result of Arrington acquiring the permits and refusing to release them, TMBR/Sharp has been denied permits thus preventing it from drilling on the acreage subject to the Original Stoke Leases. *See Exhibit "H" at pages 4-6.*

26. To challenge the actions by Arrington, TMBR/Sharp filed a Complaint for Declaratory Judgment, Tortious Interference, Repudiation, Damages and Injunctive Relief. *A true and correct copy of TMBR/Sharp's Complaint is on file with this court.*

27. In support of its Complaint, TMBR/Sharp has engaged the counsel of Cotton, Bledsoe, Tighe & Dawson and Phil Brewer to represent their interest.

28. TMBR/Sharp was also forced to file an application with the OCD to prevent Arrington from drilling on the acreage subject to the Original Stokes Leases which cause was denied because the OCD believed Arrington had "colorable title". However, since the ruling by

the OCD, this Court has entered an order effectively removing any color of title in Arrington on the subject properties covered by the Original Stokes Leases. *See supra.*

29. Arrington did not actually have any title at all when he obtained the permits in that he did not receive an assignment from Huff until almost two months after the permits were granted.

30. As a result of the litigation caused by Huff and Arrington, TMBR/Sharp, et al has incurred in excess of $90,000.00 in attorney's fees. *See Affidavit of Jeffrey D. Phillips attached hereto and referenced herein as Exhibit "C".*

31. TMBR/Sharp has also been unable to drill at least two wells on acreage subject to the Original Stokes Leases thereby causing damages including loss of production, the time value of money, and decreased prices on the oil and gas that would have been produced. *See Exhibit "C."*

III.

STANDARD OF REVIEW

A summary judgment provides a method whereby it is possible to determine whether a genuine claim for relief for defense exists and whether there is a genuine issue of fact to warrant the submission of the case to the jury. *Meeker v. Walker*, 80 N.M. 280, 454 P.2d 762 (1969). Trial courts are to bring litigation to an end at an early stage when it clearly appears that one of the parties is entitled to a judgment as a matter of law in the case as made out by the pleadings and the admissions of the parties. *Buffington v. Continental Casualty Co.*, 69 N.M. 365, 367 P.2d 539 (1961). Further, summary judgment is proper even though other disputed issues remain before the court. *Tapia v. Springer Transf. Co.*, 106 N.M. 461, 744 P.2d 1264 (Ct. App.

-1987). In the present matter, the undisputed facts and the language of paragraph 5 of the Original Stokes Leases show that TMBR/Sharp is entitled to summary judgment as a matter of law on its claim of tortious interference.

IV.

ARGUMENTS AND AUTHORITIES

The issue for partial summary judgment is whether Arrington tortiously interfered with the Original Stokes Leases. To establish tortious interference with a contract, Plaintiffs have to prove that Arrington had: (1) knowledge of a contract [*e.g.* the leases] between TMBR/Sharp, Madeline Stokes, and Erma Stokes Hamilton; (2) performance of some aspect of the contract was refused [*e.g.* a top lease was granted and Arrington obtained drilling permits that thwarted TMBR/Sharp's ability to obtain permits]; (3) Arrington played an active and substantial part in causing TMBR/Sharp to lose the benefits of its contract; and (4) damages flowed from the breach of the contract. *Ettenson v. Burke*, 130 N.M. 67, 17 P.3rd 440 (Ct. App. 2000) (*citing Wolf v. Perry*, 65 N.M. 47, 461-62, 339 P.2d 679, 681-82 (1959)).

Clearly, Arrington had knowledge of the Original Stokes Leases between TMBR/Sharp and the lessors; the Huff Top Leases specifically reference the Original Stokes Leases. In addition, it is undisputed that TMBR/Sharp cannot perform the contracts in question because Arrington wrongfully obtained permits to drill on acreage covered by the Original Stokes Leases which blocked TMBR/Sharp's ability to obtain it own drilling permits. *See supra.* Arrington's failure and refusal to release the permits has resulted in Plaintiff's continued inability to obtain its own permits. The only remaining issue, therefore, is whether or not damages flowed from TMBR/Sharp's inability to drill wells on its leases.

Arrington's tortious conduct damaged Plaintiffs in two ways. First, Plaintiffs have been unable to produce the oil and gas from the Original Stokes Leases as they would have been if TMBR/Sharp were able to obtain the permits. *See Exhibit "C."* Secondly, Plaintiffs have incurred attorney's fees as consequential damages in order to establish the validity of the Original Stokes Leases and their right to drill thereon.

TMBR/Sharp has been unable to obtain permits to drill on the acreage covered by the Original Stokes Leases because Arrington obtained its permits wrongfully. *See Exhibit "A" at pages 4-6.* Such inability has caused TMBR/Sharp to incur significant damages. TMBR/Sharp would have completed both of the wells that it sought a permit for in 2001. *See Exhibit "C."* Further, production would have been obtained from those wells. As a result of Arrington and Huff's tortious interference, Plaintiffs have suffered damages including the following: (1) loss of production; (2) time value of money; (3) decrease in prices that Plaintiffs would have received for any production if wells could have been drilled; (4) attorneys' fees; and (5) costs. *See Exhibit "C."* These damages are in excess of $500,000.00 at the time this Motion for Summary Judgment was filed. *See Exhibit "C."*

Incurring attorneys' fees as a result of the tortuous interference satisfies the damage element of a tortious interference with a contract claim. In *Dinkle v. Dunton*, the New Mexico Supreme Court stated: "it is generally held that where the wrongful act of defendant has involved the plaintiff in litigation with others or placed him in such relation with others that makes it necessary to incur expense to protect his interest, such costs and expenses, including attorney's fees, should be treated as legal consequences of the original wrongful act and may be recovered as damages." 68 N.M. 108, 114, 359 P.2d 345, 349 (1961) (*citing* 15 Am. Jur.

(Damages) § 144, p. 552. In *LaMure v. Peters*, 122 N.M. 367, 924 P.2d 1379, 1382 (Ct. App. 1996), the court held that "consequential or incidental damages, such as attorney's fees are costs incurred as a result of the alleged malpractice satisfies the prerequisite injury to bring a malpractice claim." The attorneys' fees incurred by Plaintiffs are consequential damages sustained as a result of Arrington's tortious conduct and, therefore, are recoverable. Such damages for attorneys' fees total in excess of $90,000.00. *See Exhibit "C."*

V.

CONCLUSION

Arrington has tortiously interfered with the Original Stokes Leases and Plaintiffs' rights under them. More specifically, Arrington had knowledge of the Original Stokes Leases, TMBR/Sharp has been unable to obtain permits to drill on the acreage subject to the Original Stokes Leases, TMBR/Sharp's inability to drill was caused by Arrington wrongfully obtaining permits for the acreage covered by the Original Stokes Leases and Plaintiffs have suffered damages as a result of their inability to drill the wells. Therefore, as a matter of law, Plaintiff have satisfied all of the elements of tortious interference with a contract with respect to Arrington and are entitled to summary judgment as a matter of law.

VI.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff TMBR/Sharp, Inc. respectfully requests the Court enter a judgment awarding TMBR/Sharp the following relief:

1. A judgment that Arrington has tortiously interfered with the Original Stokes Leases; and

2. Such other relief, at law or equity to which Plaintiffs are justly entitled.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this the 28th day of January, 2002, 2001, a copy of the above and foregoing instrument has been hand delivered to attorney for Defendants Mr. Ernest L. Carroll, Lea County Courthouse, Lovington, New Mexico and Michael J. Canon, 303 West Wall, Suite 1100, Midland, Texas.

_____
Susan R. Richardson

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF LEA
STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC., et al,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. CV-2001-315C
	)	
DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, and TOM STOKES	)	
	)	
Defendant.	)	

RESPONSE OF DAVID H. ARRINGTON OIL & GAS, INC. TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING TORTIOUS INTERFERENCE

COMES NOW the Defendant, DAVID H. ARRINGTON OIL & GAS, INC., ("Arrington") by and through its attorneys of record, Losee, Carson, Haas & Carroll (Ernest L. Carroll), and submits this Response to Plaintiff's Motion for Partial Summary Judgment Against David H. Arrington Oil & Gas Regarding Tortious Interference and states as follows:

I. *Introduction*

Based upon this Court's interlocutory order granting partial summary judgement against Arrington, Plaintiffs TMBR/Sharp Drilling, Inc., Ameristate Oil & Gas, Inc., Thomas Beall, Mark Nearburg, Louis Mazzallo, F. Howard Walsh, Jr., Jade Resources, Inc. CHI Energy, Inc. and Thomas C. Brown ("TMBR/Sharp") now seek a summary judgment against Arrington for tortious interference alleging that Arrington wrongfully

obtained permits to drill two wells and that as a result TMBR/Sharp was damaged. Arrington disputes that it wrongfully obtained the permits and further disputes that TMBR/Sharp was prevented from continuously drilling upon the leasehold acreage in question. Further Arrington asserts that TMBR/Sharp has alleged improper and highly speculative and unsubstantiated damages and that TMBR/Sharp has based its motion on immaterial and disputed facts.

II. Statement of Material Facts

Arrington hereby responds to the statement of facts contained in TMBR/Sharp's Statement of Undisputed Material Facts as follows:

A. THE LEASES

1. Arrington admits the truth of TMBR/Sharp's fact number 1[1].

2. Arrington admits the truth of TMBR/Sharp's fact number 2.

3. Arrington admits the truth of TMBR/Sharp's fact number 3.

4. Arrington admits that the Court has ruled with respect to the Original Stokes Leases, however, Arrington asserts that the fact contained in paragraph number 4 is not a material fact with respect to TMBR/Sharp's motion for summary judgment. TMBR/Sharp's fact number 4 references the Court's December 27, 2001, ruling. The Court's December 27, 2001, Order Granting Partial Summary Judgment Regarding Filing of Unit Designations (the "Order") is an interlocutory order and as such is subject to be overturned, modified or changed at any time prior to the issuance of

[1] Arrington adopts the defined terms contained in the Motion.

a final order in this matter and is thereafter subject to appeal.[2] Although the Order establishes the law of the case, that law did not exist prior to the issuance of the Order, therefore the Order is not material to the actions of Arrington prior to the issuance of the order. The only actions of Arrington upon which TMBR/Sharp may base its instant motion are actions which occurred prior to the issuance of the Order and knowledge that the Court would so rule. Interlocutory orders may be revisited at any time prior to final judgment. Sims v. Sims, 1996-NMSC-078, 122 N.M. 681; Barker v. Barker, 94 N.M. 162, 165-166, 608 P.2d 138, 141-142 (1980); Universal Constructors, Inc. v. Fielder, 118 N.M. 657, 659, 884 P.2d 813, 815 (Ct. App. 1994).

B. THE TOP LEASES

5. Arrington admits the truth of TMBR/Sharp's fact number 5, and further states that the Stokes Top Lease was executed by Madeline Stokes on April 4, 2001. **See Exhibits E to Plaintiff's Motion for Partial Summary Judgment Against David H. Arrington Oil & Gas Regarding Tortious Interference and Brief in Support Thereof** (the "Motion").

6. Arrington denies the allegations in paragraph number 6 and asserts that such fact, even if it were true, is immaterial to the allegations of tortious

[2] Arrington has already placed the Court and the Plaintiff's on notice of its intention to appeal the Order.

interference in this matter. Paragraph number 15 of the Stokes Top Lease states:

> "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 the 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." **See Exhibit "E" attached to the Motion.**

7. Arrington admits the truth of TMBR/Sharp's fact number 7, and further states that the Hamilton Top Lease was executed by Erma Hamilton on April 4, 2001. **See Exhibits "F" to the Motion**.

8. Arrington asserts that the Hamilton Top Lease is for the same primary term as the Stokes Top Lease as was hereinabove recited in paragraph number 6 of this response.

9. Arrington admits the truth of TMBR/Sharp's fact number 9

10. Arrington asserts that the fact contained in paragraph number 10 is not a material fact. Fact number 10 is based upon an interlocutory order which is subject to be overturned, modified or changed at any time prior to the issuance of a final order in this matter and is thereafter subject to appeal. Although the Order establishes the law of the case, that law did not exist prior to the issuance of the Order, therefore the Order is not material to the actions of Arrington prior to the issuance of the order. The actions of Arrington upon which TMBR/Sharp must base the instant motion are

actions which occurred prior to the issuance of the Order and knowledge that the Court would so rule.

C. ASSIGNMENT OF HUFF TOP LEASES

11. Arrington admits the truth of TMBR/Sharp's fact number 11 and further states that the Assignment from Huff to Arrington recites that the assignment is "EFFECTIVE for all purposes as of March 27, 2001."

D. THE PERMITS

12. Arrington denies the allegations contained in paragraph number 12. Arrington asserts that on *July 17, 2001,* Arrington filed its application for permit to drill the Triple Hackle Dragon "25" No. 1 Well in the W/2 of Section 25, Township 16 South, Range 35 East, Lea County, New Mexico and that the OCD approved the application on *July 19, 2001.* **See paragraph (5) of Exhibit "H" to the Motion.**

13. Arrington denies the allegations contained in paragraph number 13. Arrington asserts that on *July 25, 2001,* Arrington filed it application for permit to drill the Blue Drake "23" No. 1 Well in the E/2 of Section 23, Township 16 South, Range 35 East, Lea County, New Mexico and that the OCD approved the application on *July 30, 2001.* **See paragraph (6) of Exhibit "H" to the Motion.**

14. Arrington denies the allegations contained in paragraph number 14. Arrington asserts that on August 8, 2001, the OCD denied TMBR/Sharp's application for a permit to drill the Blue Fin "25" No. 1 Well in the *N/2* of

Section 25, Township 16 South, Range 35 East, Lea County, New Mexico, rather than the E/2 as alleged. Arrington further admits that the OCD denied the application by reason of the previous issuance of the permit for Arrington's Triple Hackle Dragon "25" Well No. 1. **See paragraph (8) of Exhibit "H" to the Motion.**

15. Arrington admits the truth of TMBR/Sharp's fact number 15.

16. Arrington denies that the Original Stokes Leases are in full force and effect. The statement that the Original Stokes Leases are in full force and effect is based on an interlocutory order which is subject to be overturned, modified or changed at any time prior to the issuance of a final order in this matter and is thereafter subject to appeal. Although the Order establishes the law of the case, that law did not exist prior to the issuance of the Order, therefore the Order is not material to the actions of Arrington prior to the issuance of the order. The actions of Arrington, upon which TMBR/Sharp must base the instant motion, are actions which occurred prior to the issuance of the Order and knowledge that the Court would so rule. Further Arrington asserts that although the Original Stokes Leases contain a continuous development clause such a fact is immaterial to the issue of tortious interference as alleged in this case. On December 27, 2001, the Court issued an Order Granting Partial Summary Judgment Regarding Force Majeure (the "Force Majeure Order"). The Force Majeure Order effectively prevents the termination of

the Original Stokes Leases for any failure to timely commence a well pursuant to the continuous development clause. Further each of the Original Stokes Leases cover additional acreage upon which no conflicting APD existed and upon which TMBR/Sharp could have fulfilled its continuous drilling obligations.

17. Arrington denies the truth of TMBR/Sharp's fact number 17. With respect to the facts alleged in paragraph 17, Arrington asserts that TMBR/Sharp is attempting to mislead the Court into the wrongful belief that lease ownership automatically grants the lessee the "right" to drill a well and that Arrington "wrongfully" obtained drilling permits based on untrue representations of leasehold ownership. Contrary to TMBR/Sharp's suggestion, the rights granted under the Original Stokes Leases do not necessarily entitle TMBR/Sharp to drill and operate wells upon the leased lands. The Original Stokes Leases did not cover one hundred percent of the mineral or operating rights in the proration units in which TMBR/Sharp proposed to drill the Blue Fin "25 No. 1 Well and the Leavelle "23" No. 1 Well. Any one owning a mineral or operating right in the proration unit dedicated to the Blue Fin "25" No. 1 Well and the Leavelle "23" No. 1 Well has an equal right to drill and operate a well. One of the tasks assigned to the OCD is to determine who among those owning a mineral or operating right will be the operator and will drill and operate the well.

Pursuant to certain farmout agreements with Ocean Energy, Arrington has an undivided 15% of the operating rights in the proration unit designated for the Triple Hackle Dragon "25" No. 1 Well. The leases, with respect to the farmout agreements with Ocean Energy, are not at issue in this lawsuit.[3] Arrington's acquisition of these operating rights gave Arrington an independent right to seek a permit to drill a well and to be the operator of such well. At the time that Arrington sought and was granted the permits for the Triple Hackle Dragon "25" No. 1 Well and the Blue Drake "23" No. 1 Well, Arrington had a reasonable belief that it owned operating rights in the proration units to which the wells were dedicated. Arrington continues to believe that he owns operating rights in the proration units to which the wells were dedicated and that its actions in seeking the permits were not "wrongful" or "based on untrue representations of leasehold ownership. Arrington sought and was granted the permits at a time prior to the issuance of the Court's December 27, 2001, Order. The issuance of the Order is the only basis upon which TMBR/Sharp relies to assert that Arrington wrongfully obtained the drilling permit or that the issuance of the permits to Arrington were based upon untrue representations of leasehold interest. The issuance of the permits to Arrington was in July,

[3] Arrington also owns leases in the NE/4 of Section 25. Ownership of the leases in the NE/4 of Section 25 would allow Arrington to rightfully seek a permit to drill a well in either the E/2 or the N/2 of Section 25. The Blue Fin "25" No. 1 Well proposed by TMBR/Sharp was dedicated to the N/2 of Section 25. With respect to the Blue Fin "25" No. 1 Well, Arrington had an equal independent right to drill a well with TMBR/Sharp.

2001, five months before the Order became the law of the case. The Order is an interlocutory order which is subject to be overturned, changed or modified prior to the issuance of a final order and is subject to appeal after the issuance of the final order. **See Affidavit of Jeffrey G. Bane attached hereto as Exhibit "1".**

18. Arrington denies the allegations contained in paragraph number 18. Arrington's approved drilling applications have not prevented TMBR/Sharp from exercising its rights and fulfilling its obligations under the Original Stokes Leases and Arrington is not preventing TMBR/Sharp from drilling additional wells. The Original Stokes Leases covered the following:

Township 16 South, Range 35 East, N.M.P.M.

Section 13: SE/4
Section 23: SE/4
Section 24: NW/4 SW/4, NW/4 NE/4
Section 25: NW/4
Section 26: NE/4

TMBR/Sharp drilled the Blue Fin "24" No. 1 Well in the W/2 of Section 24, Township 16 South, Range 35 East. Arrington has approved drilling permits for the Triple Hackle Dragon "25" Well No. 1 to be located in the W/2 of Section 25, Township 16 South, Range 35 East and the Blue Drake "23" Well No. 1 to be located in the E/2 of Section 23, Township 16 South, Range 35 East. No other wells have been drilled on the leased premises and no other permits have been issued which cover the leased

premises. Therefore, TMBR/Sharp has always had the opportunity to seek and obtain drilling permits covering the remaining lands covered by the leases, specifically the Section 13 and Section 26 acreage. Furthermore, with respect to the two permits which Arrington was granted, TMBR/Sharp has always been free to commence a forced pooling action before the OCD and have themselves declared the operator under the permits which Arrington has been granted.[4] TMBR/Sharp is attempting to create the illusion that as the lessee of the Original Stokes Leases, TMBR/Sharp had an exclusive right to drill on the leasehold acreage or on lands pooled therewith. TMBR/Sharp is wrong. TMBR/Sharp's rights under the Original Stokes Lease are subject to the rights of all other undivided mineral owners, who have an equal right to drill a well and develop the minerals. Additionally, TMBR/Sharp's rights under the Original Stokes Leases are also subject to the authority granted to the OCD. Moreover, the Original Stokes Leases do not require that the lessee must be the entity to drill and operate a well upon the leased premises. The fact of the matter is that anyone, including Arrington, who

[4] The situation where two completing owners of operating rights want to drill and operate a well on the same lands is fairly common. In such situations one or both of the competing owners will petition the OCD for an order force pooling the other owners and the OCD is typically asked to make the determination as to which owner of operating rights should drill and operate the proposed well. NMSA 1978, Section 70-2-1 through 70-2-38, (2001) grants the OCD the jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas, the protection of correlative rights, and the disposition of wastes resulting from oil and gas operations. The OCD is the proper authority to make a determination with respect to the forced pooling of the minerals and to determine which completing entity should drill and operate the well.

drilled a well on the leased premises would have satisfied the requirements of the Original Stokes Leases to obtain production. **See Exhibits "A" and "B" attached to the Motion. See also Exhibit "1", hereto.**

19. Arrington admits the truth of TMBR/Sharp's fact number 19.

20. Arrington admits the truth of TMBR/Sharp's fact number 20.

21. Arrington admits that the OCD found that Arrington had "demonstrated at least a colorable claim of title" and, therefore, Arrington's permits remained valid and that the OCD refused to issue conflicting permits to TMBR/Sharp. Arrington further admits that the OCD did not make a determination as to the continued validity of the Original Stokes Leases. **See Exhibit "H" to the Motion.**

22. Arrington admits that the order issued by the OCD stating that Arrington "has demonstrated at least a colorable claim of title" was issued prior to the Court's issuance of its Order. Arrington further admits that the Court's Order, in effect, declared that the Original Stokes Leases were in full force and effect. However, Arrington denies that the Order makes a determination as to Arrington's present possessory interest in the Huff Top Leases. The Order does not diminish Arrington's rights under the Huff Top Leases. Further, Arrington asserts that the Order addressed only the continuing nature of the Original Stokes Leases and did not

address a possessory interest in *acreage*. **See Exhibit "H" to the Motion.**

23. Arrington denies the facts asserted in paragraph 23. From the date of the Huff Top Leases, Arrington has had an equitable right in such leases. Huff, acting as agent for Arrington, negotiated and contracted for the Huff Top Leases and Arrington paid for the leases. **See Affidavit of Jeffrey G. Bane attached hereto as Exhibit "1".**

E. DAMAGES

24. Arrington denies the facts asserted in paragraph 24. Arrington asserts that at the time it obtained the two permits to drill, Arrington had a reasonable belief that the Original Stokes Leases had expired and that Arrington could demonstrate a claim of colorable title to the Huff Top Leases, and which was so held by the OCD. Arrington further asserts that it has not failed or refused to release those permits and has not obstructed TMBR/Sharp's entitlement to the drilling permits it has requested. Arrington has offered to release the permit to drill the Blue Drake Well No. 1 located in the E/2 Section 23, Township 16 South, Range 35 East. Arrington has not offered to release the permit to drill the Triple Hackle Dragon "25" Well No. 1, because Arrington's ownership of operating rights, which are not at issue herein, give Arrington an equal right to drill and operate the well. Further TMBR/Sharp could have sought

operatorship of any well drilled through a forced pooling action, which TMBR/Sharp apparently declined to do. **See Affidavit of Jeffrey G. Bane attached hereto as Exhibit "1".**

25. Arrington denies the facts alleged in paragraph number 25. Arrington asserts that TMBR/Sharp has not been prevented from drilling on the other acreage covered by the Original Stokes Leases. If TMBR/Sharp truly believed the Original Stokes Leases were in full force and effect, it could have met its obligations by drilling wells in Section 13 and Section 26 or lands pooled therewith. Arrington has not prevented TMBR/Sharp from drilling wells in Section 13 and Section 26. Furthermore, as stated in paragraph 24 above, Arrington has agreed to release the permit for the Blue Drake "23" No. 1 Well. TMBR/Sharp has always been free to met its obligations under the Original Stokes Leases. **See Affidavit of Jeffrey G. Bane attached hereto as Exhibit "1".**

26. Arrington admits the truth of paragraph number 26, but asserts that it is irrelevant and immaterial to the claim of tortious interference.

27. Arrington admits the truth of paragraph 17, but asserts that it is irrelevant and immaterial to the claim of tortious interference. Moreover, Arrington asserts that attorneys fees incurred in a tortious interference action are not recoverable as special damages in the same tortious interference action.

28. Arrington denies the facts contained in paragraph 28. Arrington asserts that TMBR/Sharp was not "forced" to file an application with the OCD to prevent Arrington from drilling on the acreage subject to the Original Stokes Leases. Arrington affirmatively asserts that had TMBR/Sharp really been serious about drilling an additional well it would have filed a forced pooling application with the OCD and sought operatorship of the well. The effect on the Original Stokes Leases is the same regardless of who drills a well on the leased premises or lands pooled therewith. Additionally, TMBR/Sharp could have satisfied its obligations under the Original Stokes Leases by drilling wells in Section 13 and Section 26. Arrington further asserts that although the Order may presently reinstate the Original Stokes Leases, the Order is an interlocutory order which is subject to be overturned, changed or modified by a final order and is thereafter subject to appeal. **See Affidavit of Jeffrey G. Bane attached hereto as Exhibit "1".**

29. Arrington denies the truth of the allegations contained in paragraph 29. Arrington asserts that from the date of the Huff Top Leases, Arrington had an equitable right in the Huff Top Leases. At the time Huff negotiated and contracted for the Huff Top Leases, Huff was acting as agent for Arrington and the Huff Top Leases were paid for by Arrington. **See Affidavit of Jeff Bane attached hereto as Exhibit "1".**

30. Arrington does not deny that TMBR/Sharp has incurred attorney's fees in the prosecution of this litigation, however Arrington denies that such attorney's fees incurred in a tortious interference action are recoverable as special damages in the same tortious interference action. In New Mexico, absent statutory authority or rule of court, attorneys fees are not recoverable as an item of damages. Aboud v. Adams, 84 N. M. 683, 507 P.2d 430 (1973). Special damages must be pleaded as well as proved. Garver v. Public Service Company of New Mexico, 77 N. M. 262, 421 P.2d 788 (1966).

31. Arrington denies that TMBR/Sharp has been damaged as the result of Arrington having obtained the two permits to drill. TMBR/Sharp could have drilled other wells which would have included lands covered by the Original Stokes Leases and TMBR/Sharp could have petitioned the OCD for a forced pooling order granting TMBR/Sharp the right to drill and operate the wells under permit to Arrington. TMBR/Sharp did nothing to mitigate any potential damages it might have suffered. Moreover, Arrington denies that TMBR/Sharp incurred damages of $500,000 as the result of lost production, the time value of money, and decreased prices on the oil and gas that could have been produced if Arrington had not obtained the two permits. TMBR/Sharp has not alleged a single fact to support a damage award of $500,000. The damages contemplated in TMBR/Sharp's damage calculation requires economic, engineering and

geological facts which have not been alleged and even if alleged would not be undisputed. TMBR/Sharp's calculation of damages is highly speculative, not supportable and must be proved at trial.

III. ARGUMENTS AND AUTHORITIES

Summary Judgment will be granted only when the moving party is entitled to a judgment as a matter of law upon clear and undisputed facts. The purpose of a hearing on the motion for such a judgment is not to resolve factual issues but to determine whether there is any genuine issue of material fact in dispute and if not, to render judgment in accordance with the law applied to the established facts or, if there be a genuine factual issue, to deny the motion for summary judgment. Great W Construction Company v. N.C. Ribble Co., 77 NM 725, 427 P2d 246 (1967). In the case of Tapia v. Springer Transfer Co., 106 NM 461, 744 P2d 1264 (Ct. App. 1987), the Court of Appeals held concerning a motion for summary judgment, "Summary Judgment is proper when there is no genuine issue as to a material fact and the moving party is entitled to judgment as a matter of law. Matkins v. Zero Refrigerated Lines, Inc., 92 NM 511, 602 P2d 195 (Ct. App. 1979)." The Motion as presented by TMBR/Sharp contains numerous disputed material facts which must be resolved and the motion should therefore be denied.

The Restatement of Torts 2d, §766A defines the act of "Intentional Interference with Another's Performance of His Own Contract," as follows:

> "One who intentionally and improperly interferes with the performance of a contract (except a contract to marry)

> between another and a third person, by preventing the other from performing the contract or causing his performance to be more expensive or burdensome, is subject to liability to the other for the pecuniary loss resulting to him." [Emphasis added.]

TMBR/Sharp has not met its burden of proof with respect to establishing that Arrington intentionally and improperly interfered with the performance of its contract. To prevail TMBR/Sharp must prove not only that Arrington's actions were done intentionally but also that Arrington's actions were improper. Arrington's actions were neither intentional nor improper.

Intent is a question of fact and summary judgment must be denied if there are disputed issues of fact. In this case, TMBR/Sharp alleges that Arrington's actions in seeking the permits to drill wells were done with the intention to prevent TMBR/Sharp from fulfilling its contractual obligations under the Original Stokes Lease. Arrington denies that it acted with such intention and asserts that its actions with respect to seeking the permits to drill were done in performance of the terms of the Huff Top Leases and based upon Arrington's reasonable belief that the Original Stokes Leases had expired by their own terms. Given Arrington's reasonable belief that the Original Stokes Leases had expired by their own terms and that Arrington was operating under the terms of the Huff Top Leases, TMBR/Sharp has not meet its burden of proof with respect to establishing that Arrington's actions were taken with the intent to harm TMBR/Sharp.

TMBR/Sharp has crafted its Motion from the point of view that Arrington's belief that the Original Stokes Leases had expired by their own terms was not reasonable

because the Order which the Court issued on December 27, 2001, found that the Original Stokes Leases were still valid. TMBR/Sharp's reliance on the Order is misplaced. The Order became the law of the case upon its issuance on December 27, 2001. Until the issuance of the Order Arrington was entitled to its reasonable belief that the Original Stokes Leases had expired by their own terms. The Court's December 27, 2001, Order is the only ruling in New Mexico as to the question at issue and the only case on point found, with respect to the filing of a unit designation, is Sauder v. Frye, 613 S.W.2d 63 (Ct. App. Ft. Worth 1981). In the Sauder case, given similar facts, the Fort Worth, Texas Court of Appeals held that the lease terminated by its own terms.

Therefore, Arrington was justified in its belief that the Original Stokes Leases had expired. Furthermore, it was not improper for Arrington to seek permits to drill wells on leasehold acreage which it either owned or reasonably believed it owned the requisite operating rights. TMBR/Sharp has not met its burden of proof with respect to establishing that Arrington's actions were improper. At the very least there is a question of fact as to that issue.

TMBR/Sharp cites Ettenson v. Burke, 2001-NMCA-003, 130 N. M. 67, 17 P.3d 440, as a statement of the elements necessary to establish tortious interference with a contract. Arrington agrees that the elements set forth in Ettenson are what TMBR/Sharp must prove. The Ettenson court said:

> "Establishing tortious interference with contract is not easy. Ettenson had to prove that (1) Burke had "knowledge of the contract" between Ettenson and the corporation, (2) performance of the contract was refused, (3) Burke "played an active and substantial part in causing [Ettenson] to lose

> the benefits of his contract," (4) damages flowed from the breached contract, and (5) Burke induced the breach "without justification or privilege to do so." **Wolf v. Perry**, 65 N.M. 457, 461-62, 339 P.2d 679, 681-82 (1959). Not every interference leading to a breach of contract amounts to an unlawful act or a civil action; tort liability attaches only when the interference is without "justification or privilege." **Williams v. Ashcraft,** 72 N.M. 120, 121, 381 P.2d 55, 56, (1963). In causing one to lose the benefits of a contract, the tort-feaor must act either with an improper motive or by use of improper means." *[Emphasis added.]*

TMBR/Sharp has failed to establish the elements of tortious interference required under Ettenson. TMBR/Sharp alleges that the first element of tortious interference is met because Arrington had knowledge of the existence of the Original Stokes Leases. Such is true, Arrington knew of Original Stokes Leases and had a reasonable belief that they had expired by there own terms.

TMBR/Sharp alleges that the second element of tortious interference is met because Hamilton and Stokes issued a top lease to Arrington and Arrington obtained drilling permits that thwarted TMBR/Sharp's ability to obtain permits. TMBR/Sharp's position is unsupportable. The fact that Stokes and Hamilton issued top leases to Arrington which were made specifically subject to the Original Stokes Leases does not improperly interfere with the Original Stokes Lease. Furthermore, the second element in Ettenson requires that performance of the contract be refused. TMBR/Sharp's allegation that Arrington "thwarted" its ability to obtain drilling permits does not rise to the level of refusing to perform under the contract. Arrington did nothing which caused Stokes and Hamilton to refuse performance of the contract. In fact it was TMBR/Sharp who refused to perform. TMBR/Sharp had the ability to seek drilling permits on

leasehold acreage other than that which Arrington had under permit and TMBR/Sharp failed to do so. Also, TMBR/Sharp had the ability to seek and be granted operatorship of the Arrington permits pursuant to a force pooling order from the OCD but TMBR/Sharp refused to even attempt to obtain such an order.

TMBR/Sharp was not even "thwarted" from fulfilling its obligations under the Original Stokes Leases because Arrington obtained the two drilling permits. TMBR/Sharp could have fulfilled its obligations under the Original Stokes Leases by drilling wells on other of the leased premises or lands pooled therewith or TMBR/Sharp could have petitioned the OCD for a forced pooling order with respect to Arrington's permits to drill and been granted the right to operate those wells. TMBR/Sharp did neither.

The Original Stokes Leases did not give TMBR/Sharp an exclusive right to drill and operate a well on acreage covered by the Original Stokes Leases. The right to drill and operate a well is owned equally by all of the mineral owners or lessees in the proration unit. Therefore, any of the mineral owners or lessees may apply to the OCD to drill and operate a well. The terms of the Original Stokes Leases would be perpetuated regardless of which mineral owner or lessee drilled and operated the well. If the Original Stokes Leases were valid and Arrington drilled the wells which were permitted, the actions of Arrington would have perpetuated the leases. Furthermore, had TMBR/Sharp drilled a well on Section 13 or 26, the Original Stokes Leases would have been perpetuated.

TMBR/Sharp can not establish the third element of tortious interference by stating that Arrington played and active and substantial part in causing TMBR/Sharp to lose the benefits of its contract. As more fully discussed in the preceding paragraph, TMBR/Sharp has failed to establish that it lost the benefits of its contract with respect to the Original Stokes Leases solely by actions of Arrington. If TMBR/Sharp lost anything it was because of its own failure to act.

With respect to the forth element of tortious interference, TMBR/Sharp argues that damages flowed from the breach of contract as a result of Arrington's actions. As support for such damages TMBR/Sharp alleges that it suffered damages including; (1) loss of production; (2) time value of money; (3) decrease in prices that it would have received for any production if wells could have been drilled; (4) attorneys' fees; and (5) costs. If TMBR/Sharp lost money as a result of loss of production, Arrington is not responsible. TMBR/Sharp had the opportunity to drill wells on other of the leased lands or lands pooled therewith. TMBR/Sharp also had the option of force pooling the wells which Arrington had permitted and seeking operatorship of such wells. Furthermore, the damages as recited in the Affidavit of Jerry Phillips (see Exhibit "C" to the Motion) are based upon engineering, geologic and economic estimates which have not and can not be proven to a reasonable degree of certainty. No one can be certain that a well, which has not yet been drilled, once drilled will be capable of production.

The Restatement of Torts 2d, §774A requires that damages resulting from a tort be proven with a "reasonable degree of certainty." The Restatement of Torts 2d, § 912 states:

> "One to whom another has tortiously caused harm is entitled to compensatory damages for the harm if, but only if, he establishes by proof the extent of the harm and the amount of money representing adequate compensation with as much certainty as the nature of the tort and the circumstances permit." *[Emphasis added.]*

NM case on this?

In order to prove its damages with respect to the production which it argues was lost, TMBR/Sharp must provide the engineering, geologic and economic facts sufficient to form the basis of its statement that it suffered damages in excess of $500,000. TMBR/Sharp has failed to allege any such facts. Because an issue of fact to be determined exists, summary judgment is improper.

TMBR/Sharp also alleges that incurring attorneys' fees as a result of the tortious interference satisfies the damage element of a tortious interference claim. TMBR/Sharp is wrong. In New Mexico, absent statutory authority or rule of court, attorneys fees incurred in the same action are not recoverable as an item of damages. Aboud v. Adams, supra.; Jemez Properties, Inc. v. Lucero, 94 N.M. 181, 608 P.2d 157 (Ct. App. 1979) There is no statutory authority allowing attorneys fees as an item recoverable as damages in this case and TMBR/Sharp has cited none. Additionally, special damages must be pleaded as well as proven. Garver v. Public Service Company of New Mexico, supra.; Jemez Properties, Inc. v. Lucero, supra. TMBR/Sharp has neither plead nor proven a claim for special damages.

As support for its notion that attorneys fees are recoverable as damages and that incurring attorneys fees satisfies the damage element of a tortious interference with a contract claim, TMBR/Sharp cites Dinkle v. Denton, 68 N.M. 108, 359 p.2d 345

(S. Ct. 1961) and LaMure v. Peters, 122 N.M. 367, 924 P.2d 1379 (Ct. App. 1996). Although these cases do provide that attorneys fees were recoverable, the attorneys fees which were being referred to were attorneys fees incurred in defending other independent actions and not the attorneys fees incurred in bringing the immediate suit. The attorneys fees which TMBR/Sharp has referenced appear to be the attorneys fees for bringing the instant action and as such are not the type of attorneys fees contemplated in Dinkle v. Denton, supra and LaMure v. Peters, supra.

With respect to the last element which must be satisfied to establish a claim for tortious interference, it is significant that TMBR/Sharp failed to even mention the fifth element. As discussed in Ettenson v. Burke, supra., the fifth element is critical. Not every interference leading to a breach of contract amounts to an unlawful act or one without justification or privilege; tort liability attaches only when the interference is without "justification or privilege." It is undeniable that Arrington was justified in his belief that the Original Stokes Leases had expired by their own terms and that the Huff Top Leases were in effect. The fact that it is undeniable is supported by the fact that TMBR/Sharp ultimately filed its designation of pooled unit in the Lea County records. If TMBR/Sharp were convinced that its filing of the Form C-102 in the Lea County OCD office was sufficient there would have been no need for it to also make a filing in the Lea County records. Additionally, there was no New Mexico law for either Arrington or TMBR/Sharp to rely upon and the only case on point was the Texas case which held that the prior lease had expired due to the failure of the lessee to properly record a unit designation prior to the expiration of the primary term of the lease. Therefore, up until

the Court entered its December 27, 2001, Order, Arrington has as much right to believe that the Original Stokes Leases had expired as TMBR/Sharp had to believe that they had not.

IV. CONCLUSION

WHEREFORE, Arrington prays the Court for an Order denying TMBR/Sharp's Motion for Partial Summary Judgment Against David H. Arrington Oil & Gas Regarding Tortious Interference.

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

By: _____

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CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing pleading to be mailed on this 11 day of February, 2002 to the following:

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Ernest L. Carroll

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF LEA
STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC., et al.	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**No. CV-2001-315C**
	)	
DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, and TOM STOKES	)	
	)	
Defendants.	)	

AFFIDAVIT OF JEFFREY G. BANE

STATE OF NEW MEXICO)
: ss.
COUNTY OF LEA)

EXHIBIT
tabbies
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I, JEFFREY G. BANE, being duly sworn, state:

1. I am a resident of Midland, Texas.

2. I employed with David H. Arrington Oil & Gas, Inc. ("Arrington") as a General Manager, in charge of land management as well as other supervisory duties.

3. The facts set forth herein are personally known to be to be true, and if called as a witness, I could competently testify thereto under oath.

4. James Huff regularly negotiates and contracts for oil and gas leases in the capacity of agent for Arrington.

5. The Stokes and Hamilton top leases were leases which James Huff negotiated and contracted for in his capacity as agent for Arrington.

6. The Stokes and Hamilton top leases were paid for by Arrington.

7. At the time that Arrington obtained the permits to drill the Triple Hackle Dragon "25" Well No. 1 and the Blue Drake "23" Well No. 1, Arrington had a reasonable belief that the

Original Stokes Leases had expired by their own term and that Arrington had the right to seek such permits pursuant to the terms of the Huff Top Leases.

8. Since the issuance of the Court's December 27, 2001, Order, Arrington has offered to release to TMBR/Sharp, the permit to drill the Blue Drake "23" Well No. 1.

9. Arrington has not agreed to release the permit to drill the Triple Hackle Dragon "25" Well No.1 because Arrington owns 15% of the operating rights in the proration unit dedicated to the Triple Hackle Dragon "25" Well No. 1 which are not in dispute in this matter.

10. Arrington acquired 15% operating rights in the proration unit dedicated to the Triple Hackle Dragon "25" Well No. 1 pursuant to a farmout agreement with Ocean Energy.

11. In a situation where Arrington and a competing mineral or operating right owner each want to drill a well on the same proration unit. Arrington would seek operatorship of such well through a forced pooling action before the OCD. Such an option was available to TMBR/Sharp in the instant case.

12. Arrington was aware that TMBR/Sharp could have filed a force pooling petition for the proration units in both sections 25 and 23, township 16 south, range 35 east, Lea County, New Mexico, and that by virtue of such petition become the operator for such wells.

13. Before drilling a well in either Section 23 or 25, Arrington would have filed a force pooling action itself for its proposed proration units in order to prevent non-joining mineral owners from being carried cost and risk free through the drilling and testing of the well. By filing a forced pooling application all mineral owners have to join in drilling the well or pay a penalty for not joining in the drilling of a well to cover the consenting parties risk incurred in the drilling of the well.

14. It is not prudent for an operator to drill deep oil and gas wells such as involved in this case without voluntary joinder or by force pooling all mineral owners.

FURTHER, Affiant sayeth naught.

Jeffrey G. Bane

SUBSCRIBED AND SWORN TO before me this 9th day of February, 2002.

My commission expires:

December 14, 2002

Notary Public