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JASON KELLAHIN (RETIRED 1991)

May 22, 2002

HAND DELIVERED

Steve Ross, Esq.
Oil Conservation Commission
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

OIL CONSERVATION DIV.
02 MAY 22 PM 2:26

Re: ***NMOCD Case 12731 (De Novo)***
Application of TMBR/Sharp Drilling, Inc. for an order staying David H. Arrington Oil & Gas, Inc. from commencing operations, Lea County, New Mexico.

NMOCD Case 12744 (De Novo)
Application of TMBR/Sharp Drilling, Inc. appealing the Hobbs District Supervisor's decision denying approval of two applications for permit to drill filed by TMBR/Sharp Drilling, Inc., Lea County, New Mexico

Dear Mr. Ross:

On behalf of TMBR/Sharp Drilling, Inc., please find enclosed our consolidated response to applications for rehearing filed by David H. Arrington Oil & Gas, Inc. and Ocean Energy, Inc.

Very truly yours,

W. Thomas Kellahin

cc: **Lori Wrotenberg, Director**
Michael E. Stogner, Examiner
David K. Brooks, Esq.
Attorney for the Division
J. Scott Hall, Esq.
Attorney for Arrington
James Bruce, Esq,.
Attorney for Ocean
William F. Carr
Attorney for Yates
cc: TMBR/Sharp
Rick Montgomery, Esq.

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

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

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

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

ORDER NO. R-11700-B

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

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

Ocean's Application Should be Denied

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

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

Arrington's Application Should be Denied

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

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

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

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

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

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

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

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

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

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

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

Conclusion

As the Commission is all too well aware, the drilling activity presently being undertaken by TMBR/Sharp is the culmination of an arduous administrative process that has gone through almost every level of decision making authority, spanning a period of several months, and other collateral issues still require resolution by the Division. It seems clear that Arrington and Ocean will not rest until the Commission

resolves these cases in a manner completely inconsistent with the action that it has previously taken. If this perception is correct, these parties should pursue their judicial appellate options and not take up any more of the Commission's time on a matter that has been the subject of exhaustive deliberation. The applications for rehearing filed by Ocean and Arrington should be denied.

Respectfully submitted,

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Certificate of Mailing

I certify that a copy of the foregoing pleading was faxed to counsel of record on the 22 day of May, 2002, as follows:

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