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

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

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

ORDER NO. R-11700-C

ORDER OF THE DIVISION

BY THE DIVISION:

These cases came on for hearing at 8:15 a.m. on May 16, 2002, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 27th day of November, 2002, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given, and the Division has jurisdiction of these cases and their subject matter.

(2) **Division Cases No. 12816, 12841, 12859, and 12860** were consolidated for the purpose of presenting testimony. Inasmuch as the issues involved encompass the same acreage, any approval issued in one or more cases would necessarily require the denial of the

remaining case or cases. One order should therefore be entered for all four cases.

(3) In **Case No. 12816** the applicant, TMBR/Sharp Drilling, Inc. ("TMBR/Sharp"), seeks an order pooling all uncommitted mineral interests from the surface to the base of the Mississippian formation underlying the N/2 of Section 25, Township 16 South, Range 35 East, NMPM, Lea County, New Mexico, forming a standard 320-acre lay-down gas spacing unit for any and all formations and/or pools developed on 320-acre spacing within that vertical extent, which presently include but are not necessarily limited to the Undesignated Shoe Bar-Atoka Gas Pool, Undesignated Townsend-Morrow Gas Pool, Undesignated Shoe Bar-Mississippian Gas Pool, and Undesignated North Townsend-Mississippian Gas Pool.

(4) This unit is to be dedicated to TMBR/Sharp's Blue Fin "25" Well No. 1 (**API No. 30-025-35865**), which at the time of the hearing was being drilled (**spud date May 7, 2002**) at a standard gas well location 1913 feet from the North line and 924 feet from the West line (Unit E) of Section 25. Division records indicate that a total depth of 13,200 feet in this well was reached on June 26, 2002.

(5) In **Case No. 12841** the applicant, Ocean Energy, Inc. ("Ocean"), seeks an order pooling all mineral interests from the surface to the base of the Mississippian formation underlying the W/2 of Section 25, forming a standard 320-acre stand-up gas spacing unit for any and all formations and/or pools developed on 320-acre spacing within that vertical extent, which presently include but are not necessarily limited to the Undesignated Shoe Bar-Atoka Gas Pool, Undesignated Townsend-Morrow Gas Pool, Undesignated South Shoe Bar-Morrow Gas Pool, Undesignated Shoe Bar-Mississippian Gas Pool, and Undesignated North Townsend-Mississippian Gas Pool.

(6) This unit is to be dedicated to Ocean's proposed Triple Hackle Dragon "25" Well No. 1 to be drilled a standard gas well location in the SW/4 NW/4 (Unit E) of Section 25.

(7) In **Case No. 12859** the applicant, David H. Arrington Oil & Gas, Inc. ("Arrington"), seeks an order pooling all mineral interests underlying the following-described acreage in Section 25:

> (a) the E/2, forming a standard 320-acre stand-up gas spacing unit for any and all formations and/or pools developed on 320-acre spacing, which presently include but are not necessarily limited to the Undesignated Shoe Bar-Atoka Gas Pool, Undesignated Townsend-Morrow Gas Pool, Undesignated Shoe Bar-Mississippian Gas Pool, and Undesignated North Townsend-Mississippian Gas Pool;

(b) the NE/4, forming a standard 160-acre spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing, which presently include but are not necessarily limited to the Undesignated North Shoe Bar-Strawn Pool and Undesignated North Shoe Bar-Wolfcamp Pool; and

(c) the E/2 NE/4, forming a standard 80-acre stand-up oil spacing and proration unit for any pool developed on 80-acre spacing, which presently includes only the Undesignated Shoe Bar-Devonian Pool.

(8) The above-described units are to be dedicated to Arrington's proposed Glass-Eyed Midge "25" Well No. 1 (API No. 30-025-35787) to be drilled 803 feet from the North line and 962 feet from the East line (Unit A) of Section 25. In accordance with Division Rules 104.C (2) and (3) this location is standard for gas wells spaced on 320-acre and 160-acre units. However, this location is unorthodox for the: (i) 160-acre oil spacing and proration units within both the Undesignated North Shoe Bar-Strawn and Undesignated North Shoe Bar-Wolfcamp Pools; and (ii) 80-acre oil spacing and proration unit within the Undesignated Shoe Bar-Devonian Pool.

(9) In Case No. 12860, Ocean seeks an order pooling all mineral interests from the surface to the base of the Mississippian formation underlying the W/2 of Section 25, forming a standard 320-acre stand-up gas spacing unit for any and all formations and/or pools developed on 320-acre spacing within that vertical extent, which presently include but are not necessarily limited to the Undesignated Shoe Bar-Atoka Gas Pool, Undesignated Townsend-Morrow Gas Pool, Undesignated South Shoe Bar-Morrow Gas Pool, Undesignated Shoe Bar-Mississippian Gas Pool, and Undesignated North Townsend-Mississippian Gas Pool.

(10) This unit is to be dedicated to Ocean's proposed Triple Hackle Dragon "25" Well No. 2 to be drilled a standard gas well location in the NE/4 SW/4 (Unit K) of Section 25.

(11) Yates, a mineral interest owner in Section 25, appeared at the hearing through legal counsel but offered no testimony or evidence supporting a position.

(12) The primary zone of interest for TMBR/Sharp is the lower Chester series of the Mississippian formation with the shallower Atoka and Morrow as secondary targets. The primary zone of interest for both Arrington and Ocean is the shallower Atoka interval with the deeper Morrow and Mississippian intervals as secondary targets. All four of the proposed wells that are the subject of these cases are to be drilled down to the Mississippian formation.

(13) These deep gas zones within Section 25 are "unprorated" and are therefore not subject to Part H of the Division's statewide rules entitled *"Gas Proration and Allocation"* (Rules 601 through 605). However, these intervals are currently governed by Division Rule 104.C (2), which requires 320-acre spacing, requires wells to be located no closer to a quarter section line than 660 feet nor closer to any internal quarter-quarter section line than 10 feet, and allows for an optional infill well within an existing unit provided the infill well is located in the quarter section not containing the unit's initial producing gas well.

(14) On July 17, 2001, Arrington filed an *Application for Permit to Drill* (Division Form C-101) for its proposed Triple Hackle Dragon "25" Well No. 1 (**API No. 30-025-35636**) to be located in the W/2 of Section 25 at a standard gas well location 1815 feet from the North line and 750 feet from the West line (Unit E) of Section 25. The Division's District I office in Hobbs approved Arrington's APD on July 19, 2001.

(15) On or about August 7, 2001, TMBR/Sharp filed an *Application for Permit to Drill* (Division Form C-101) for its proposed Blue Fin 25 Well No. 1 (**API No. 30-025-35653**) to be located in the N/2 of Section 25 at a standard gas well location 1913 feet from the North line and 924 feet from the West line (Unit E) of Section 25. On August 8, 2001, the Division's District I office in Hobbs denied the TMBR/Sharp APD due to the previous approval of the APD for Arrington's above-described Triple Hackle Dragon "25" Well No. 1.

(16) At the time of the filing of the above-described APD's by both Arrington and TMBR/Sharp, there were owners of other interests in the affected portions of each applicant's proposed spacing unit that had not voluntarily agreed to participate in the drilling of the proposed wells. Neither Arrington nor TMBR/Sharp had consolidated the interests of all of the non-participating owners in the conflicting spacing units either by way of a voluntary agreement or compulsory pooling order.

(17) Further, these two APD's were the subject of a hearing before the Division on September 20, 2001 on two applications filed by TMBR/Sharp, Cases No. 12731 and 12744, that were consolidated and resulted in the issuance on December 13, 2001 of Division Order No. R-11700, which order in part denied TMBR/Sharp's application to stay Arrington from commencing drilling of its proposed Triple Hackle Dragon "25" Well No. 1 in the W/2 of Section 25 and to set aside the District supervisor's decision denying approval of TMBR/Sharp's APD for its proposed Blue Fin "25" Well No. 1 in the N/2 of Section 25. Cases No. 12731 and 12744 were subsequently heard, *de novo*, by the New Mexico Oil Conservation Commission ("Commission") on March 26, 2002, resulting in the issuance on April 26, 2002 of Order No. R-11700-B. That order reversed the Division's decision in Order No. R-11700 and granted TMBR/Sharp's application in Case No. 12731 to: (1) void

the APD obtained by Arrington for its Triple Hackle Dragon "25" Well No. 1; and (ii) order the Division's District I office to approve the APD originally filed by TMBR/Sharp in August, 2001 for its Blue Fin "25" Well No. 1. It is noted that Finding Paragraph No. 29 on page 6 of Order No. R-11700-B states:

> *"As of the date of this order [April 26, 2002], TMBR/Sharp, by Court declaration, is the owner of an oil and gas lease in both Section 23 and Section 25 [Township 16 South, Range 35 East, NMPM, Lea County, New Mexico], and Arrington, also by Court declaration, is not an owner in those sections. Therefore, Arrington, who the Court has now decreed has no authority over the property, should not have been granted permits to drill in those sections and TMBR/Sharp should have been granted a permit."*

(18) This argument over the two drilling permits that were the subject of Cases No. 12731 and 12744, addressed by Order No. R-11700-B, is not at issue in these consolidated cases currently before the Division. Moreover, Order No. R-11700-B states (see Finding Paragraph No. 33 on page 6):

> *"An application for a permit to drill serves different objectives than an application for compulsory pooling and the two proceedings should not be confused."*

Further, Order No. 11700-B goes on to say (see Finding Paragraph No. 34 on page 7):

> *"Issuance of the permit to drill does not prejudge the results of a compulsory pooling proceeding, and any suggestion that the acreage dedication plat attached to an application to drill somehow "pools" acreage is expressly disavowed. If acreage included on an acreage dedication plat is not owned in common, it is the obligation of the operator to seek voluntary pooling of the acreage pursuant to NMSA 1978, Section 70-2-18 (A) and, if unsuccessful, to seek compulsory pooling pursuant to NMSA 1978, Section 70-2-17 (C)."*

(19) On April 29, 2002, TMBR/Sharp filed a Motion to Continue Case No. 12816 and to dismiss Cases No. 12859, 12860 and 12841. The Division denied TMBR/Sharp's motion at a pre-hearing conference held on May 14, 2002. It was learned at that time that TMBR/Sharp had spudded its Blue Fin "25" Well No. 1 on May 7, 2002 without having consolidated the unjoined interests.

(20) Order No. R-11700-B further states (see Finding Paragraph No. 35 on page 7):

> *"An operator may first apply for a permit to drill a well and may thereafter pool (on a voluntary or compulsory basis) separately owned tracts to the well. Alternatively, the operator may first pool and later seek a permit to drill. The two are not mutually exclusive, and there is no preferred methodology."*

(21) On November 29, 2001, Arrington filed an *Application for Permit to Drill* (Division Form C-101) for its proposed Glass Eyed Midge "25" Well No. 1 (API No. 30-025-35787) to be located in the NE/4 of Section 25 [as further described in Finding Paragraph No. (8) above]. Arrington simultaneously filed an Acreage Dedication Plat (Division Form C-102) proposing to dedicate the E/2 of Section 25 to its proposed well to the Mississippian formation. On December 17, 2001, the Division's District I office in Hobbs approved Arrington's APD for the Glass Eyed Midge "25" Well No. 1.

(22) At the time of the filing of this APD by Arrington, there were owners of other interests in the NE/4 of Section 25 that had not voluntarily agreed to participate in the drilling of the proposed well. Arrington had not consolidated the interests of all of the non-participating owners in the proposed spacing unit either by way of a voluntary agreement or compulsory pooling order. On May 1, 2002, the Division's District I office in Hobbs revoked this APD due to the issuance of Order No. R-11700-B by the Commission to approve TMBR/Sharp's APD for its Blue Fin "25" Well No. 1 in the N/2 of Section 25.

(23) The testimony presented shows the following approximate mineral interest ownership in Section 25:

(a) the NW/4 is fee acreage referred to as the Stokes/Hamilton leases;

(i) TMBR/Sharp's interest, if any, in this tract is derived from leases from Madeline Stokes and Erma Stokes Hamilton to Ameristate Oil & Gas, Inc., dated effective December 7, 1997 recorded in Book 827 at pages 127 and 124, respectively, Public Records of Lea County, New Mexico ("the bottom leases");

(ii) Arrington's interest, if any, in this tract is derived from leases from Madeline Stokes and Erma Hamilton to James D. Huff dated effective March 27, 2001 recorded in Book 1084 at pages 282 and 285, respectively, Public Records of Lea County, New Mexico ("the top leases"); the assignment of the top leases to Arrington was recorded in the Lea County Clerk's Office in September, 2001; and

(iii) the effectiveness of the top leases and bottom leases are being litigated in Lea County District Court in Case No. CV-2001-315C;

(b) the SW/4 is fee acreage referred to as the Ocean farm-in acreage obtained beginning on and after July 23, 2001; Ocean assigned a partial interest in such acreage to Arrington on November 11, 2001;

(c) the SE/4 is a State of New Mexico lease held by Yates Petroleum Corporation; and

(d) the NE/4 is divided between the E/2 and W/2; TMBR/Sharp controls approximately 63% and Arrington controls approximately 31% of the leases covering this quarter section.

(24) At the time of the hearing, TMBR/Sharp controlled 82% of the working interest ownership, Arrington controlled 16%, and two parties who could not be located controlled 2% of the N/2 of Section 25.

(25) The technical testimony presented by TMBR/Sharp indicates that:

(a) commencing in 1995, Mr. Louis Mazzullo, a contract petroleum geologist, began developing a geological model of an area known as the "Big Tuna Prospect" which included Sections 23, 24, 25 and 26 of Township 16 South, Range 35 East, NMPM, Lea County, New Mexico; this study included the Wolfcamp, Atoka, and portions of the upper Mississippian ("Chester") formations;

(b) by 1997, Mr. Mazzullo had included 2-Dimensional and 3-Dimensional seismic data along with conventional geological (log) data, and concluded that the best opportunity for deep gas production from the "Chester" series of the Mississippian formation was to locate and drill wells in bowl-shaped structure features, which could be identified and located using the 3-Dimensional seismic data; as a result, Mr. Mazzullo initially identified "Chester Bowls" in the SW/4 of Section 24, the NW/4 of Section 25, and the NE/4 of Section 23;

(c) Mr. Mazzullo shared his geological conclusions with a group of investors (collectively "TMBR/Sharp") who signed a Joint Operating Agreement in July, 1998;

(d) on May 29, 2001, TMBR/Sharp, using Mr. Mazzullo's geological interpretation, successfully drilled and completed its Blue Fin "24" Well No. 1 (API No. 30-025-35257) in the SW/4 of Section 24 for production from the Chester Bowl with first production on June 29, 2001;

(e) the success of the Blue Fin "24" Well No. 1 confirmed the accuracy of Mr. Mazzullo's geological model;

(f) from further evaluation, Mr. Mazzullo predicted that a second Chester Bowl is located in the NW/4 of Section 25 and that a third bowl is located straddling the north/south dividing line between the SW/4 and the SE/4 of Section 25; and

(g) Mr. Mazzullo further concludes:

(i) that each of these three Chester Bowls is a separate and distinct reservoir separated by fault blocks; and

(ii) that it would be necessary to drill a well in each bowl.

(26) The technical testimony presented by Ocean indicates that:

(a) on or about January 31, 2001, Mr. Robert Silver, a geophysicist with Ocean, was given a detailed review of TMBR/Sharp's geology including its 3-Dimensional seismic data, and concluded that Ocean should not participate based on his belief that the Chester series of the Mississippian formation would be structurally too low and therefore too wet (water saturation too high to allow for commercial production of hydrocarbons);

(b) Mr. Silver prepared an isopach map based on well control of the Brunson Sand, being the lower portion of the Atoka formation, which included the Atoka (Brunson Sand) wells and the Chester (which Ocean called the Austin) wells;

(c) this isopach map indicates that there are no Brunson Sand producing gas wells in the S/2 of Section 23, Section 24 or 25, the E/2 of Section 26, or Section 36, all in Township 16 South, Range 35 East, NMPM, Lea County, New Mexico; however Mr. Silver extended the Brunson Sand isopach into the E/2 of Section 24, the W/2 of Section 25, and the NW/4 of Section 36;

(d) Mr. Silver presented time structure maps of the Austin (Lower Mississippian Lime) and the Brunson Sand intervals, both of which show three distinct "pods" which substantially agree with the "Chester Bowls" on Mr. Mazzullo's time structure map;

(e) both TMBR/Sharp's and Ocean's maps demonstrate that the Chester Bowl in the S/2 of Section 25 is split between the SW/4 and the SE/4; and

(f) Mr. Silver also presented an Austin (Mississippian) isopach on which he drew the productive limits to connect the Chester Bowls in the SW/4 of Section 24 to the two Chester bowls in the NW/4 and the S/2 of Section 25.

(27) The technical testimony presented by Arrington indicates that:

(a) two northwest to southeast trending structures known as the North Shoe Bar and East Shoe Bar fields exist within the Morrow limestone;

(b) the primary target for its proposed Glass Eyed Midge "25" Well No. 1 is the Lower Atoka Brunson Sand;

(c) the NE/4 of Section 25 presents the only potential stand-alone development prospect for the Atoka Brunson Sand formation in this section; and

(d) any potential Morrow development is located exclusively within the western portion of Section 25.

(28) The cumulative technical evidence presented by Arrington, Ocean, and TMBR/Sharp indicates that:

(a) at least two wells will be needed in Section 25 to adequately drain any potential reserves from the two Chester Bowls; one well in the NW/4 of Section 25 and another for the bowl that more or less straddles the quarter section line between the SW/4 and SE/4 of Section 25;

(b) if these Chester Bowls were developed with two wells in the W/2 of Section 25, that portion of the Bowl that extends into the SE/4 could be drained, and those mineral interests within the E/2 of Section 25 would not share in production. It is doubtful whether a sufficiently large part of this bowl is located under the SE/4 of Section 25 to justify another well to this horizon in that quarter section. These aspects of the development of the Mississippian formation in Section 25 favor lay-down spacing units; and

(c) since Division Rules 104.C (2) (b) and (c) allow for an optional infill well per 320-acre spacing unit for deep gas wells in southeast New Mexico, Arrington's and Ocean's Morrow and/or Atoka maps support either lay-down or stand-up spacing units.

(29) Considering that TMBR/Sharp was the first to propose development within

Section 25 with Mr. Mazzullo's "Big Tuna Prospect" and that the Blue Fin "25" Well No. 1 has been drilled, the deep gas bearing intervals in Section 25 should be developed with lay-down (N/2 and S/2) spacing units.

(30) To avoid the drilling of unnecessary wells, to protect correlative rights, to prevent waste and to afford to the owner of each interest in the N/2 of Section 25 the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbon production in any pool resulting from this order, TMBR/Sharp's proposal set forth in **Case No. 12816** should be **approved**, and the applications of: (i) Qcean in **Cases No. 12841** and **12860**; and (ii) Arrington's **Case No. 12859** should be **denied**.

(31) TMBR/Sharp should be designated the operator of the: (i) Blue Fin "25" Well No. 1 as described in Finding Paragraph No. (4) above; and (ii) N/2 of Section 25 being a standard 320-acre lay-down gas spacing unit from the surface to the base of the Mississippian formation for any and all formations and/or pools developed on 320-acre spacing within that vertical extent, which presently include but are not necessarily limited to the Undesignated Shoe Bar-Atoka Gas Pool, Undesignated Townsend-Morrow Gas Pool, Undesignated Shoe Bar-Mississippian Gas Pool, and Undesignated North Townsend-Mississippian Gas Pool.

(32) After pooling, uncommitted working interest owners are referred to as "non-consenting working interest owners." Any non-consenting working interest owner should be afforded the opportunity to pay its share of actual well costs to the operator in lieu of paying its share of reasonable well costs out of production.

(33) TMBR/Sharp requested that a risk penalty of 200 percent be assessed against all uncommitted mineral interest owners.

(34) Since the subject well has already been drilled, the risk penalty should be reduced to 100 percent based on precedent established in previous compulsory pooling cases involving existing wellbores.

(35) Reasonable charges for supervision (combined fixed rates) should be fixed at $6,000.00 per month while drilling and $ 600.00 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations.*"

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of TMBR/Sharp Drilling, Inc. ("TMBR/Sharp") in **Case No. 12816**, all uncommitted mineral interests, whatever they may be, from the surface to the base of the Mississippian formation underlying the N/2 of Section 25, Township 16

South, Range 35 East, NMPM, Lea County, New Mexico, are hereby pooled to form a standard 320-acre lay-down gas spacing unit for any and all formations and/or pools developed on 320-acre spacing within that vertical extent, which presently include but are not necessarily limited to the Undesignated Shoe Bar-Atoka Gas Pool, Undesignated Townsend-Morrow Gas Pool, Undesignated Shoe Bar-Mississippian Gas Pool, and Undesignated North Townsend-Mississippian Gas Pool.

(2) This unit will be dedicated to the recently drilled Blue Fin "25" Well No. 1 (API No. 30-025-35865) located at a standard gas well location 1913 feet from the North line and 924 feet from the West line (Unit E) of Section 25.

(3) The applications of Ocean Energy, Inc. ("Ocean") in Cases No. 12841 and 12860 seeking to pool all mineral interests from the surface to the base of the Mississippian formation underlying the W/2 of Section 25 to form a standard 320-acre stand-up gas spacing unit for any and all formations and/or pools developed on 320-acre spacing within that vertical extent, which presently include but are not necessarily limited to the Undesignated Shoe Bar-Atoka Gas Pool, Undesignated Townsend-Morrow Gas Pool, Undesignated South Shoe Bar-Morrow Gas Pool, Undesignated Shoe Bar-Mississippian Gas Pool, and Undesignated North Townsend-Mississippian Gas Pool, for its proposed: (*i*) Triple Hackle Dragon "25" Well No. 1 to be drilled at a standard gas well location in the SW/4 NW/4 (Unit E) of Section 25 (as requested in Case 12841); and (*ii*) Triple Hackle Dragon "25" Well No. 2 to be drilled at a standard gas well location in the NE/4 SW/4 (Unit K) of Section 25 (as requested in Case No. 12860), are hereby **denied**.

(4) The application of David H. Arrington Oil & Gas, Inc. ("Arrington") for an order pooling all mineral interests underlying the following-described acreage in Section 25 for its proposed Glass-Eyed Midge "25" Well No. 1 (API No. 30-025-35787) to be drilled 803 feet from the North line and 962 feet from the East line (Unit A) of Section 25, is hereby **denied**. This application proposed to pool the mineral interests in the following acreage:

(a) the E/2, forming a standard 320-acre stand-up gas spacing unit for any and all formations and/or pools developed on 320-acre spacing, which presently include but are not necessarily limited to the Undesignated Shoe Bar-Atoka Gas Pool, Undesignated Townsend-Morrow Gas Pool, Undesignated Shoe Bar-Mississippian Gas Pool, and Undesignated North Townsend-Mississippian Gas Pool;

(b) the NE/4, forming a standard 160-acre spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing, which presently include but are not necessarily limited to the Undesignated North Shoe Bar-Strawn Pool and Undesignated North

Shoe Bar-Wolfcamp Pool; and

(c) the E/2 NE/4, forming a standard 80-acre stand-up oil spacing and proration unit for any pool developed on 80-acre spacing, which presently includes only the Undesignated Shoe Bar-Devonian Pool.

(5) TMBR/Sharp is hereby designated the operator of the: (i) above-described Blue Fin "25" Well No. 1 (API No. 30-025-35865); and (ii) standard 320-acre lay-down gas spacing unit comprising the N/2 of Section 25.

(6) After pooling, uncommitted working interest owners are referred to as "non-consenting working interest owners." Within 30 days after the effective date of this order, the operator shall furnish the Division and each known non-consenting working interest owner in the unit an itemized schedule of actual well costs.

(7) Within 30 days from the date the schedule of actual well costs is furnished, any non-consenting working interest owner shall have the right to pay its share of actual well costs to the operator in lieu of paying its share of reasonable well costs out of production, and any such owner who pays its share of actual well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(8) If no objection to the actual well costs is received by the Division and the Division has not objected within 45 days following receipt of the schedule described in the forgoing paragraph, the actual well costs shall be the reasonable well costs; provided, however, that if there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(9) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of actual costs in advance as provided above shall receive from the operator its share of the amount, if any, that actual well costs exceed reasonable well costs.

(10) The operator is hereby authorized to withhold the following costs and charges from production:

(a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner who has not paid its share of actual well costs within 30 days from the date the schedule of actual well costs is furnished; and

(b) as a charge for the risk involved in the drilling of the well and

the risk involved in obtaining payout, 100 percent of the above costs.

(11) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs.

(12) Reasonable charges for supervision (combined fixed rates) are hereby fixed at $6,000.00 per month while drilling and $ 600.00 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled *"Accounting Procedure-Joint Operations."* The operator is hereby authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(13) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order.

(14) Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(15) All proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in Lea County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

(16) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(17) The operator of the well and unit shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(18) In the event of entry of a final judgment, no longer subject to appeal, determining that the bottom leases are still effective, and the top leases are not effective, Ordering Paragraph No. (5) appointing TMBR/Sharp as operator shall be of no further force and effect. In the absence of agreement by all parties, the Division, upon application of any party owning an interest in the unit pursuant to such judgment, shall appoint a substitute operator.

(19) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

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

SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

Lori Wrotenbery

LORI WROTENBERY
Director