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OIL CONSERVATION DIV.

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April 20, 2002

Via Fax and U.S. Mail

David K. Brooks  
Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

Re: Case Nos. 12816 and 12841 (TMBR/Sharp Drilling,  
Inc./Ocean Energy, Inc.)

Dear Mr. Brooks:

Regarding your letter of April 1, 2002, Ocean Energy, Inc. ("Ocean") agrees with the letter of April 9, 2002 submitted by Losee, Carson, Haas & Carroll, P.A. on behalf of David H. Arrington Oil & Gas, Inc. ("Arrington"). As Ocean has previously argued before the Division and the Commission, an APD is, and must be, subsidiary to a compulsory pooling order issued by the Division. See Ocean's Response to Motion to Dismiss (copy enclosed). An APD issued by a District Office cannot supersede a pooling order entered by the Division Director.

Moreover, it is the duty of the Division to prevent waste and protect correlative rights. **NMSA 1978 §70-2-11.** Allowing the matters at issue in the competing pooling cases to be trumped merely by the issuance of an APD, without a review of the land, geological, and engineering evidence, does not satisfy the Division's duty. Finally, I include for your review a Division Memorandum dated April 5, 1995, regarding matters to consider in competing pooling applications. The issuance of an APD to one or the other party is not mentioned therein.

Therefore, even if TMBR/Sharp Drilling, Inc. ("TMBR/Sharp") should prevail at the Commission, the pooling cases must proceed.

On the second issue which you raise, a special hearing date may be necessary, depending on the status of the docket on May 2nd. There are now three pooling cases involved (Ocean's on the W½ §25, TMBR/Sharp's on the N½ §25, and Arrington's on the E½ §25), and

thus there will be three sets of witnesses. Obviously, the case will occupy at least an entire day.

Very truly yours,



James Bruce

Attorney for Ocean Energy, Inc.

cc: Ernest L. Carroll (via fax)  
J. Scott Hall (via fax)  
W. Thomas Kellahin (via fax)



ENERGY MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

2040 S. PACHECO  
SANTA FE, NEW MEXICO 87505  
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MEMORANDUM

TO: William J. LeMay, Director *WJL*  
FROM: David Catanach, Examiner *DC*  
DATE: April 5, 1995  
RE: Competing Forced Pooling Applications

It has come to our attention that during the next few months the Division will receive numerous competing forced-pooling applications. In an effort to reduce the presentation of unnecessary evidence and testimony, and to clarify the types of criteria that the decisions in these cases should be based upon, I am presenting to you some suggested guidelines to be utilized by Division Examiners in deciding these issues. In addition, I am presenting some criteria that should not be utilized in deciding these issues. It should be noted that these criteria are in no particular order of importance and may be used singly or in any combination thereof.

RELEVANT AND PERTINENT EVIDENCE

- a) Any information related to pre-hearing negotiations conducted between the parties;
- b) Willingness of operator(s) to negotiate a voluntary agreement;
- c) Interest ownership within the particular spacing unit being sought;
- d) Geologic evidence and testimony as it relates to proposed well location(s), especially if proposed well locations are different;
- e) Information regarding dates prospect was developed, proposed, etc.;
- f) Overhead rates for supervision;
- g) Proposed risk penalties;
- h) Significant differences in AFE's (Well costs);
- i) Other information deemed pertinent by Division Examiner.

IRRELEVANT AND UNNECESSARY EVIDENCE

- a) Insignificant differences in AFE's (Well costs); overhead rates and risk penalties;
  - b) Subjective judgement calls on an operator's ability to drill a well;
  - c) Subjective judgement calls on an operator's ability to produce and/or operate a well;
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- d) Subjective judgement calls on an operator's ability to market oil and gas from the subject well, or dispose of waste products;
  - e) Incidence and description of previous disagreements between the parties;

In those cases where the differences in relevant evidence are not sufficient to make a clear and fair determination of operatorship, the Division should institute a policy and/or procedure whereby operatorship is awarded on an alternate basis.