

Correspondence

Renovo

Case No. 12744

May 2002

MILLER, STRATVERT & TORGERSON, P.A.
LAW OFFICES

RANNE B. MILLER
ALAN C. TORGERSON
ALICE T. LORENZ
GREGORY W. CHASE
STEPHEN M. WILLIAMS
STEPHAN M. VIDMAR
SETH V. BINGHAM
TIMOTHY R. BRIGGS
RUDOLPH LUCERO
DEBORAH A. SOLOVE
GARY L. GORDON
LAWRENCE R. WHITE
SHARON P. GROSS
VIRGINIA ANDERMAN
MARTE D. LIGHTSTONE
J. SCOTT HALL*
THOMAS R. MACK
TERRI S. BEACH
THOMAS M. DOMME
RUTH O. PREGENZER
JEFFREY E. JONES

ROBIN A. GOBLE
JAMES R. WOOD
DANA M. KYLE
KIRK R. ALLEN
RUTH FUESS
KYLE M. FINCH
H. BROOK LASKEY
KATHERINE W. HALL
PAULA G. MAYNES
MICHAEL C. ROSS
CARLA PRANDO
KATHERINE N. BLACKETT
JENNIFER L. STONE
ANDREW M. SANCHEZ
M. DYLAN O'REILLY
JENNIFER D. HALL
JENNIFER L. OLSON
TODD A. SCHWARZ
JULIE A. COLEMAN
TIMOTHY L. BUTLER

COUNSEL
ROSS B. PERKAL
JAMES J. WIDLAND
BRADLEY D. TEPPER**
GARY RISLEY
NELL GRAHAM SALE

OF COUNSEL
WILLIAM K. STRATVERT
JAMES B. COLLINS

ALBUQUERQUE, NM
500 MARQUETTE NW, SUITE 1100
P.O. BOX 25687 (87125-0687)
ALBUQUERQUE, NM 87102
TELEPHONE: (505) 842-1950
(800) 424-7585
FACSIMILE: (505) 243-4408

FARMINGTON, NM
300 WEST ARRINGTON, SUITE 300
P.O. BOX 869 (87499-0869)
FARMINGTON, NM 87401
TELEPHONE: (505) 326-4521
FACSIMILE: (505) 325-5474

SANTA FE, NM
150 WASHINGTON AVE., SUITE 300
P.O. BOX 1986 (87504-1986)
SANTA FE, NM 87501
TELEPHONE: (505) 989-9614
FACSIMILE: (505) 989-9857

LAS CRUCES, NM
1125 SOUTH MAIN ST., SUITE B
P.O. BOX 1209 (88004-1209)
LAS CRUCES, NM 88005
TELEPHONE: (505) 523-2481
FACSIMILE: (505) 526-2215

* NEW MEXICO BOARD OF SPECIALIZATION RECOGNIZED SPECIALIST IN NATURAL RESOURCES - OIL & GAS LAW
** NEW MEXICO BOARD OF SPECIALIZATION RECOGNIZED SPECIALIST IN REAL ESTATE LAW

PLEASE REPLY TO SANTA FE

May 22, 2002

HAND-DELIVERED

Ms. Florene Davidson
New Mexico Oil Conservation Division
1220 South St. Francis
Santa Fe, New Mexico 87505

Re: NMOCD Case No. _____; Application of David H. Arrington Oil and Gas, Inc.
to Reinstate Drilling Permit, Lea County, New Mexico

Dear Florene:

Enclosed is a copy of a proposed advertisement for the Division's use in the above-referenced matter. I neglected to provide a proposed advertisement when the application was filed last week.

Please note that I had previously requested this matter be heard directly by the Commission. However, until a response to the request is received, I will presume the matter will be scheduled for the June 13 Examiner hearing docket.

Thank you.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.


J. Scott Hall

JSH/glb
Enclosures

02 MAY 22 PM 2:16
C. O. ...

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

RECEIVED
OIL CONSERVATION DIV
FEB MAY 15 PM 4: 27

IN THE MATTER OF THE APPLICATION OF
DAVID H. ARRINGTON OIL AND GAS, INC.
TO REINSTATE DRILLING PERMIT,
LEA COUNTY, NEW MEXICO

CASE No. _____

APPLICATION

DAVID H. ARRINGTON OIL AND GAS, INC., by its undersigned attorneys, Miller, Stratvert & Torgerson, P.A. (J. Scott Hall), hereby makes application pursuant to Section 70-2-11 N.M.S.A. (1978) for an order reinstating its previously approved C-101 and C-102 drilling permit for Applicant's proposed Glass-Eyed Midge 25 Well No. 1 (API No. 30-025-35787) to be drilled at a standard 320-acre spacing and proration unit gas well location 803 feet from the North line and 902 feet from the East line in E/2 of Section 25. Township 16-South, Range 35-East, NMPM, Lea County, New Mexico. Applicant, in support thereof would show the Division:

1. Applicant owns a substantial portion of the working interest in and under the E/2 of Section 25, and Applicant has the right to drill thereon.
2. Applicant first acquired its lease interests in the E/2 of Section 25 in approximately January, 2001.
3. On November 29, 2001, Applicant filed with the Division's District I office in Hobbs its C-101 Application for Permit to Drill, ("APD"), for the Glass Eye Midge 25 Well No. 1 which it proposed to drill to the Townsend-Mississippian Gas pool. Applicant simultaneously filed a C-102 acreage dedication plat form proposing to dedicate the E/2 of said Section 25 to the subject well.

4. On December 17, 2001, the Division's District I office approved Applicant's permit to drill the subject well.
5. On March 15, 2002, without notice to the Applicant, TMBR/Sharp Drilling, Inc. filed another C-101 APD with the Division's District I office for its Blue Fin 25 Well No. 1 (API No. 30-025-35865) which was also proposed to be drilled to the Mississippian formation in the NW/4 of Section 25, T-16-S, R-35-E, NMPM in Lea County. The C-102 acreage dedication plat which accompanied the filing of the TMBR/Sharp Drilling, Inc. APD proposed to dedicate the N/2 of said Section 25 to the Blue Fin 25 Well No. 1.
6. On March 20, 2002, without notice to the Applicant, the Division's District I office approved the APD for the Blue Fin 25 Well No. 1.
7. As a consequence of the actions of the Division's District I office, there existed two simultaneously approved APD's with attached C-102's that both proposed to dedicate the NE/4 of Section 25 in violation of, *inter alia*, 19 NMAC 15.C.104(C)(2)(c).
8. At the time of the filing of the APD's, there were owners of other interests in the N/2 and E/2 of Section 25, respectively, who had not voluntarily agreed to participate in the drilling of the proposed wells. Neither Applicant nor TMBR/Sharp Drilling, Inc. had consolidated the interests of all the non-participating owners either by way of a voluntary agreement, communitization agreement, or compulsory pooling order. Both Applicant and TMBR/Sharp Drilling, Inc. subsequently initiated separate compulsory pooling proceedings before the Division seeking to consolidate those interests.

9. On April 26, 2002, the New Mexico Oil Conservation Commission issued Order No. R-11700-B in Case Nos. 12731 and 12744. In Order No. R-11700-B, the Commission, citing to separately pending litigation in the district court involving conflicting leases, found that APD's previously issued to Arrington for wells in the S/2 of Section 23 and the W/2 of Section 25, T-16-S, R-35-E should not have been granted because Arrington was not an owner in those lands.
10. At the time it filed the APD for its Glass Eye Midge 25 No. 1 Well, Applicant owned separate oil and gas lease interests independent from the conflicting leases that are the subject of the district court litigation cited by the Commission in Order No. R-11700-B. As such, Applicant was eligible to become the operator of the subject well and should have received the permit to drill that was issued to it on December 17, 2001.
11. On May 1, 2002, the Division's District I office notified Applicant that its approved APD was canceled. Applicant received the notification on May 7, 2002.
12. Applicant continues to own lease interests underlying the E/2 of said Section 25 and continues to be eligible to be operator.
13. The cancellation of Applicant's permit by the Division's District I office was arbitrary, capricious and otherwise unreasonable.
14. Geological, engineering and equitable considerations mandate that development occur by way of a 320 acre spacing and proration unit located in the E/2 of said Section 25 dedicated to Applicant's proposed well in order to avoid the drilling of unnecessary wells, prevent waste and protect correlative rights.

WHEREFORE, Applicant prays that this application be set for hearing before a duly appointed examiner of the Oil Conservation Division no later than June 13, 2002, and that after notice and hearing as required by law, the Division enter its order reinstating the drilling permit for Applicant's proposed well and making such other and further provisions as may be proper in the premises.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By J. Scott Hall

J. Scott Hall

Post Office Box 1986

Santa Fe, New Mexico 87504

(505) 989-9614

ATTORNEYS FOR DAVID H. ARRINGTON OIL
AND GAS, INC.

12 0000 0000 0000

02 MAY 22 PM 2:16

Application of David H. Arrington Oil and Gas, Inc. To Reinstate Drilling Permit, Lea County, New Mexico. Applicant seeks an order reinstating its previously approved C-101 and C-102 drilling permit for the Glass-Eyed Midge 25 Well No. 1 (API No. 30-025-3587) to be drilled at a standard 320-acre spacing and proration unit gas well location 803 feet from the North line and 962 feet from the East line in the NE/4 of Section 25, Township 16 South, Range 35 East, and to which Applicant proposes to dedicate the E/2 of said Section 25. Applicant's drilling permit was originally approved by the Division's District I office on December 17, 2001 and was subsequently cancelled on May 1, 2002. The proposed well location is approximately 6 miles southwest of Lovington, New Mexico.

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

OIL CONSERVATION DIV.

02 MAY 22 PM 2:22

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

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

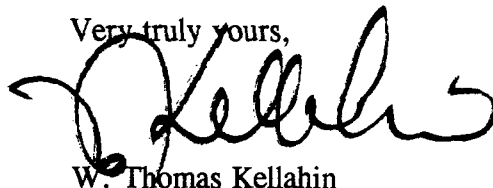
Re: NMOCD Case 12731 (De Novo)
Application of TMBR/Sharp Drilling, Inc.
for an order staying David H. Arrington
Oil & Gas, Inc. from commencing
operations, Lea County, New Mexico.

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,



W. THOMAS KELLAHIN
KELLAHIN & KELLAHIN
P.O. Box 2265
Santa Fe, New Mexico 87501
(505) 982-4285

and

SUSAN R. RICHARDSON
RICHARD R. MONTGOMERY
ROBERT T. SULLIVAN
COTTON, BLEDSOE, TIGHE, & DAWSON, P.C.
500 West Illinois, Suite 300
PO Box 2776
Midland, Texas 79702-2776
(915) 684-5782
(915) 682-3672

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:

J. Scott Hall, Esq.
Miller, Stratvert & Torgerson, P.A.
P.O. Box 1986
Santa Fe, NM 87504-2986

James Bruce, Esq.
P.O. Box 1056
Santa Fe, NM 87504

William F. Carr, Esq.
P.O. Box 2208
Santa Fe, NM 87504

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



W. Thomas Kellahin

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW
EL PATIO BUILDING
117 NORTH GUADALUPE
POST OFFICE BOX 2268

TELEPHONE (505) 842-4265
TELEFAX (505) 842-2047

W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

SANTA FE, NEW MEXICO 87504-2268

JASON KELLAHIN (RETIRED 1991)

May 16, 2002

**HAND DELIVERED
AND FACSIMILE**

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

**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**

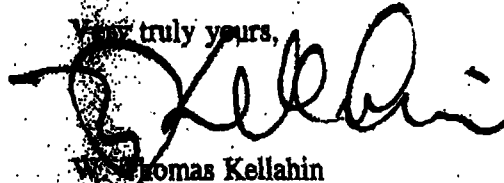
Dear Mr. Ross:

On behalf of TMBR/Sharp Drilling, Inc., I wish to inform you that we are opposed for Arrington's Petition for Rehearing and Motion to Stay the Commission Order R-11700-B which was filed yesterday by Mr. Hall.

In accordance with the Commission Order, Tmbr/Sharp on May 7, at 8:30 AM spudded its Blue Fin 25 Well in the NE1/4 of Section 25 and as of May 13, 2002 the well was drilling at 3,900 feet on an estimated 45 day drilling schedule which does not include completion time.

We will file a formal response to Mr. Hall's pleadings on Wednesday May 22, 2002

Very truly yours,



W. Thomas Kellahin

cc: 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
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

OIL CONSERVATION DIV.
02 MAY 15 PM 4:52

IN 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 & GAS, INC. FROM
COMMENCING OPERATIONS, LEA COUNTY,
NEW MEXICO.

Case No. 12,731 (*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.

Case No. 12,744 (*de novo*)

Order No. R-11700-B

OCEAN ENERGY, INC.'S APPLICATION FOR REHEARING
AND MOTION TO STAY ORDER

Pursuant to NMSA 1978 §70-2-25 and Division Rules 1220 and 1222, Ocean Energy, Inc. ("Ocean") requests that the Commission (a) rehear the above matter, and (b) stay the effectiveness of TMBR/Sharp Drilling, Inc.'s ("TMBR/Sharp") application for permit to drill ("APD") for a well in §25-16S-35E pending resolution of the pooling cases being heard by the Division on May 16, 2002, and in support thereof, states:

1. Ocean is a party of record adversely affected by the above order. The order is erroneous as noted below.

2. Ocean is protecting its rights:

Finding paragraph 37 of the order states that "Ocean isn't planning on preserving its rights by drilling a well itself, and hasn't applied for a permit to drill a well." That is incorrect.

When the rights of David H. Arrington Oil & Gas, Inc. ("Arrington") became an issue in January 2002, Ocean proposed a well in the NW¼ of Section 25. **Affidavit of Derold Maney, attached as Exhibit A, at paragraph 6.** It then followed up on its well proposal by filing a compulsory pooling application on February 26, 2002. **Id., at paragraph 10; Division Case No. 12841.**¹ Ocean's pooling case has been continued for 8 weeks, against Ocean's wishes, at the request of TMBR/Sharp.

Ocean also filed an APD for its well in the NW¼ of Section 25, which was not approved by the Hobbs District Office due the pending APD's issued to Arrington and TMBR/Sharp. **See Affidavit of Derold Maney at paragraphs 7, 9.** Under the requirements set forth by the Commission in its order, Ocean's APD should have been approved because Ocean owns an interest in the well unit, spacing is proper, etc. **Order No. R-11700-B, at Paragraphs 29, 33.**

Due to the foregoing, basing the Commission's decision on the erroneous claim that Ocean is not protecting its rights is improper.

3. Under the Commission's findings, Arrington had the right to drill, and its APD is valid:

The Commission stated that "any suggestion that the acreage dedication plat "pools" acreage is expressly disavowed." **Order No. R-11700-B at paragraph 34.** The summary judgment granted by the Lea County District Court is based upon the premise that an acreage

¹Ocean has also filed a pooling application, in Case No. 12860, for a well located in the SW¼ of Section 25, solely due to concerns raised by the Commission about Ocean's right to drill on another party's lease.

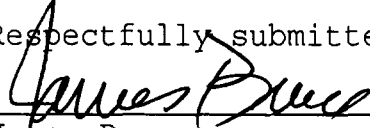
dedication plat pools acreage. The Form C-102 is a form promulgated by the Division and Commission under Rule 1102. A court should defer to an agency's expertise. **See Santa Fe Exploration Co. v. Oil Conservation Comm'n, 114 N.M. 103, 835 P.2d 819 (1992)**. Therefore, TMBR/Sharp's claim to the NW¼ of Section 25 must fail, and Arrington's permit to drill must be approved.

4. Finally, the effectiveness of TMBR/Sharp's Section 25 APD should be stayed pending resolution of matters now before the Division. On May 16, 2002, the Division will hear pooling cases affecting all of Section 25. **See Case Nos. 12816 (N¼ unit), 12840 (W¼ unit), 12859 (E¼ unit), and 12860 (W¼ unit)**. Until the pooling process has run its course, the effectiveness of TMBR/Sharp's permit to drill must be stayed. At the May 16th hearing, substantial geologic, geophysical, and other evidence will be presented to determine the proper unit orientation and how to develop Section 25. Such a decision will supersede any APD.

Moreover, as the Commission noted, an appeal of the Lea County District Court's decision could alter the Commission's own conclusion. **Order No. R-11700-B at paragraph 30**. If Arrington is successful on appeal, 100% of the working interest owners in the W¼ of Section 25 desire a standup unit. To allow TMBR/Sharp's APD to remain effective during the appeal process could impair the rights of Ocean and Arrington.

WHEREFORE, Ocean requests that a rehearing be granted, and that the effectiveness of the TMBR/Sharp's APD be stayed until all matters are resolved by the Division and the Commission.

Respectfully submitted,


James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for Ocean Energy, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record in the manner noted below this (5th) day of May, 2002:

Hand Delivered

Stephen C. Ross
Oil Conservation Commission
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Fax and U.S. Mail

W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504
Fax No. (505) 982-2047

Fax and U.S. Mail

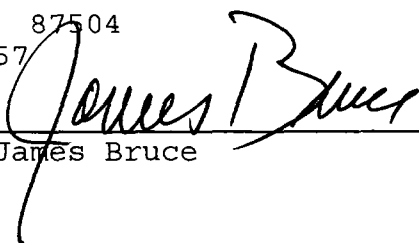
Susan Richardson
Cotton, Bledsoe, Tighe & Dawson
P.O. Box 2776
Midland, Texas 79702
Fax No. (915) 682-3672

Fax and U.S. Mail

William F. Carr
Holland & Hart LLP
Post Office Box 2208
Santa Fe, New Mexico 87504
Fax No. (505) 983-6043

Fax and U.S. Mail

J. Scott Hall
Miller, Torgerson & Stratvert, P.A.
P.O. Box 1986
Santa Fe, New Mexico 87504
Fax No. (505) 989-9857


James Bruce

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

IN 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 & GAS, INC. FROM
COMMENCING OPERATIONS, LEA COUNTY,
NEW MEXICO.

Case No. 12,731 (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.

Case No. 12,744 (de novo)

Order No. R-11700-B

AFFIDAVIT OF DEROLD MANEY

STATE OF TEXAS)
) ss.
COUNTY OF HARRIS)

Derold Maney, being duly sworn upon his oath, deposes and states:

1. I am over the age of 18, and have personal knowledge of the matters stated herein.
2. I am a landman for Ocean Energy, Inc. ("Ocean").
3. Ocean obtained a farmout agreement in July 2001 covering 100% of the working interest in the SW¼ of Section 25, Township 16 South, Range 35 East, N.M.P.M., Lea County, New Mexico.
4. The farmout agreement requires a well to be commenced on the SW¼ of Section 25, or on lands pooled therewith, by July 1, 2002.
5. Since July 2001 Ocean has planned to drill a well, or cause a well to be drilled, in the W¼ of Section 25, Township 16 South, Range 35 East, N.M.P.M. Ocean had an agreement with David H. Arrington Oil & Gas, Inc. ("Arrington") for Arrington to drill the well.



6. When Arrington's right to operate was placed in dispute in January 2002, Ocean sent proposal letters to all interest owners in the W¼ of Section 25, for a well in the NW¼ of Section 25. Copies of the proposal letters are attached hereto as Exhibit 1.

7. Ocean also filed an Application for Permit to Drill for a well unit comprised of the W¼ of Section 25, a copy of which is attached hereto as Exhibit 2. The permit was verbally denied by the Hobbs District Office in April 2002.

8. Due to questions raised by the Division and the Commission over Ocean's right to drill a well located in the NW¼ of Section 25 (in which it owns no interest), Ocean sent proposal letters to all interest owners in the W¼ of Section 25, for a well in the SW¼ of Section 25. Copies of the proposal letters are attached hereto as Exhibit 3.

9. Ocean has also filed an Application for Permit to Drill for a well unit comprised of the W¼ of Section 25, with a well in the SW¼ thereof, a copy of which is attached hereto as Exhibit 4.

10. Ocean has filed compulsory pooling applications on both of its well proposals. Those cases are docketed as Case Nos. 12841 and 12860 before the Oil Conservation Division.

Derold Maney

Derold Maney

SUBSCRIBED AND SWORN TO before me this 30th day of April, 2002, by Derold Maney.

Anne Corbet

Notary Public

My Commission Expires:

10-4-05





January 25, 2002

Ameristate Oil & Gas, Inc.
P. O. Box 341449
Austin, Texas 78734

Attention: Mr. Mark Nearburg

Re: Triple Hackle Dragon "25" #1
1815' FNL and 750' FWL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Gentlemen:

Ocean Energy Inc. hereby proposes to drill a 13,200' Mississippian Test at a location 1815' FNL and 750' FWL of Section 25, T16S, R35E, Lea County, New Mexico. Based upon our most current title information, Ameristate Oil & Gas, Inc. appears to own leasehold interest in the NW/4 of said Section 25. Please advise if this is incorrect.

Ocean respectfully requests that Ameristate Oil & Gas, Inc. participate for its proportionate interest in the proposed well. Enclosed for your review and execution are two (2) copies of the AFE for the above captioned well. Should Ameristate Oil & Gas, Inc. elect to participate in the proposed well, please execute and return one (1) copy of this letter and one (1) AFE well cost estimate. An Operating Agreement will be forwarded for your review and approval if you elect to participate in the proposed well. Also, please provide your well information requirements and the names of personnel to receive reports.

If Ameristate Oil & Gas, Inc. is not interested in participating in drilling the proposed well, please call me at 713-265-6897 to discuss other alternatives.

Thank you for your consideration of this proposal.

Yours very truly,

OCEAN ENERGY, INC.

Derold Maney
Senior Land Advisor

_____ AMERISTATE OIL & GAS, INC. ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

_____ AMERISTATE OIL & GAS, INC. ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

By: _____
Title: _____
Date: _____





January 25, 2002

TMBR/Sharp Drilling, Inc.
P. O. Drawer 10970
Midland, Texas 79702

Attention: Mr. Jeff Phillips

Re: Triple Hackle Dragon "25" #1
1815' FNL and 750' FWL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Gentlemen:

Ocean Energy Inc. hereby proposes to drill a 13,200' Mississippian Test at a location 1815' FNL and 750' FWL of Section 25, T16S, R35E, Lea County, New Mexico. Based upon our most current title information, TMBR/Sharp Drilling, Inc. appears to own leasehold interest in the NW/4 of said Section 25. Please advise if this is incorrect.

Ocean respectfully requests that TMBR/Sharp Drilling, Inc. participate for its proportionate interest in the proposed well. Enclosed for your review and execution are two (2) copies of the AFE for the above captioned well. Should TMBR/Sharp Drilling, Inc. elect to participate in the proposed well, please execute and return one (1) copy of this letter and one (1) AFE well cost estimate. An Operating Agreement will be forwarded for your review and approval if you elect to participate in the proposed well. Also, please provide your well information requirements and the names of personnel to receive reports.

If TMBR/Sharp Drilling, Inc. is not interested in participating in drilling the proposed well, please call me at 713-265-6897 to discuss other alternatives.

Thank you for your consideration of this proposal.

Yours very truly,

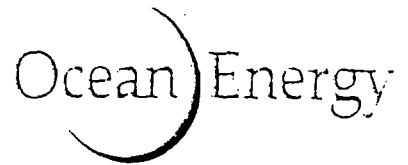
OCEAN ENERGY, INC.

Derold Maney
Senior Land Advisor

_____ TMBR/SHARP DRILLING, INC. ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

_____ TMBR/SHARP DRILLING, INC. ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

By: _____
Title: _____
Date: _____



January 25, 2002

Fuel Products, Inc.
P. O. Box 3098
Midland, Texas 79702

Attention: Mr. Tom Beall

Re: Triple Hackle Dragon "25" #1
1815' FNL and 750' FWL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Gentlemen:

Ocean Energy Inc. hereby proposes to drill a 13,200' Mississippian Test at a location 1815' FNL and 750' FWL of Section 25, T16S, R35E, Lea County, New Mexico. Based upon our most current title information, Fuel Products, Inc. appears to own leasehold interest in the NW/4 of said Section 25. Please advise if this is incorrect.


Ocean respectfully requests that Fuel Products, Inc. participate for its proportionate interest in the proposed well. Enclosed for your review and execution are two (2) copies of the AFE for the above captioned well. Should Fuel Products, Inc. elect to participate in the proposed well, please execute and return one (1) copy of this letter and one (1) AFE well cost estimate. An Operating Agreement will be forwarded for your review and approval if you elect to participate in the proposed well. Also, please provide your well information requirements and the names of personnel to receive reports.

If Fuel Products, Inc. is not interested in participating in drilling the proposed well, please call me at 713-265-6897 to discuss other alternatives.

Thank you for your consideration of this proposal.

Yours very truly,

OCEAN ENERGY, INC.


Derold Maney
Senior Land Advisor

_____ FUEL PRODUCTS, INC. ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

_____ FUEL PRODUCTS, INC. ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

By: _____
Title: _____
Date: _____



January 25, 2002

Mr. Louis Mazzullo
P. O. Box 66657
Albuquerque, New Mexico 87193

Re: Triple Hackle Dragon "25" #1
1815' FNL and 750' FWL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Dear Mr. Mazzullo,

Ocean Energy Inc. hereby proposes to drill a 13,200' Mississippian Test at a location 1815' FNL and 750' FWL of Section 25, T16S, R35E, Lea County, New Mexico. Based upon our most current title information, you appear to own leasehold interest in the NW/4 of said Section 25. Please advise if this is incorrect.

Ocean respectfully requests that you participate for your proportionate interest in the proposed well. Enclosed for your review and execution are two (2) copies of the AFE for the above captioned well. Should you elect to participate in the proposed well, please execute and return one (1) copy of this letter and one (1) AFE well cost estimate. An Operating Agreement will be forwarded for your review and approval if you elect to participate in the proposed well. Also, please provide your well information requirements and the names of personnel to receive reports.

If you are not interested in participating in drilling the proposed well, please call me at 713-265-6897 to discuss other alternatives.

Thank you for your consideration of this proposal.

Yours very truly,

OCEAN ENERGY, INC.

Derold Maney
Senior Land Advisor

_____ LOUIS MAZZULLO ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

_____ LOUIS MAZZULLO ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

By: _____
Title: _____
Date: _____



January 25, 2002

David H. Arrington Oil & Gas, Inc.
P. O. Box 2071
Midland, Texas 79702

Attention: Mr. David H. Arrington

Re: Triple Hackle Dragon "25" #1
1815' FNL and 750' FWL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Gentlemen:

Ocean Energy Inc. hereby proposes to drill a 13,200' Mississippian Test at a location 1815' FNL and 750' FWL of Section 25, T16S, R35E, Lea County, New Mexico. Based upon our most current title information, David H. Arrington Oil & Gas, Inc. appears to own leasehold interest in the NW/4 of said Section 25. Please advise if this is incorrect.

Ocean respectfully requests that David H. Arrington Oil & Gas, Inc. participate for its proportionate interest in the proposed well. Enclosed for your review and execution are two (2) copies of the AFE for the above captioned well. Should David H. Arrington Oil & Gas, Inc. elect to participate in the proposed well, please execute and return one (1) copy of this letter and one (1) AFE well cost estimate. An Operating Agreement will be forwarded for your review and approval if you elect to participate in the proposed well. Also, please provide your well information requirements and the names of personnel to receive reports.

If David H. Arrington Oil & Gas, Inc. is not interested in participating in drilling the proposed well, please call me at 713-265-6897 to discuss other alternatives.

Thank you for your consideration of this proposal.

Yours very truly,

OCEAN ENERGY, INC.

Derold Maney
Senior Land Advisor

_____ DAVID H. ARRINGTON OIL & GAS, INC. ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

_____ DAVID H. ARRINGTON OIL & GAS, INC. ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #1 Well.

By: _____
Title: _____
Date: _____

District I
1625 N. French Dr., Hobbs, NM 88240
District II
811 South First, Artesia, NM 88210
District III
1000 Rio Brazos Road, Aztec, NM 87410
District IV
2040 South Pacheco, Santa Fe, NM 87505

State of New Mexico
Energy Minerals and Natural Resources
Oil Conservation Division
2040 South Pacheco
Santa Fe, NM 87505

Form C-101
Revised March 17, 1999

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 Ocean Energy, Inc. 1001 Fannin, Suite 1600, Houston, TX 77002		² OGRID Number 169255
		³ API Number
⁴ Property Code 28458	⁵ Property Name Triple-Rackle Dragon 25	⁶ Well No. 1

⁷ Surface Location

UL or lot no.	Section	Township	Range	Lot 1/4	Feet from the	North/South line	Feet from the	East/West line	County
2	25	16S	35E		1815	North	750	West	Lea

⁸ Proposed Bottom Hole Location If Different From Surface

UL or lot no.	Section	Township	Range	Lot 1/4	Feet from the	North/South line	Feet from the	East/West line	County
⁹ Proposed Pool 1 North Townsend Mississippian					¹⁰ Proposed Pool 2 86390				

¹¹ Work Type Code N	¹² Well Type Code G	¹³ Cable/Retary R	¹⁴ Lease Type Code P	¹⁵ Ground Level Elevation 3958'
¹⁶ Multiple N	¹⁷ Proposed Depth 13,500'	¹⁸ Formation Mississippian	¹⁹ Contractor Grey Wolf	²⁰ Spud Date WHEN APPROVED

²¹ Proposed Casing and Cement Program

Hole Size	Casing Size	Casing weight/foot	Setting Depth	Sacks of Cement	Estimated TOC
25"	20"	Conductor	40'	Redi-mix	Surface
17 1/2"	13 3/8"	54.5	450'	500 Sx	Surface
11"	8 5/8"	32	4900'	1300 Sx.	Surface
7 7/8"	5 1/2"	17	13,400'	1200 Sx	500' above uppermost pay.

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.

Ocean Energy, Inc. proposes to drill this well to 13,500'. Log and run production casing as indicated above if log looks productive.

BOP Program: 11" 5000 psi type "U" ram. 11" 5000 psi annular preventor, 4" 5000 psi manifold. BOP's will be tested every two weeks. (See attached sketch of BOP's.

EXHIBIT
2

²³ I hereby certify that the information given above is true and complete to the best of my knowledge and belief.

Signature: *Jessie McMillan*
Printed name: Jessie McMillan
Title: Regulatory Specialist

Date: 3/28/02 Phone: (713) 265-6834

OIL CONSERVATION DIVISION

Approved by: _____
Title: _____
Approval Date: _____ Expiration Date: _____

Conditions of Approval:

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.
Artec, NM 87410

DISTRICT IV
P. O. Box 2088
Santa Fe, NM 87507-2088

State of New Mexico
Energy, Minerals, and Natural Resources Department

OIL CONSERVATION DIVISION
P. O. Box 2088
Santa Fe, New Mexico 87504-2088

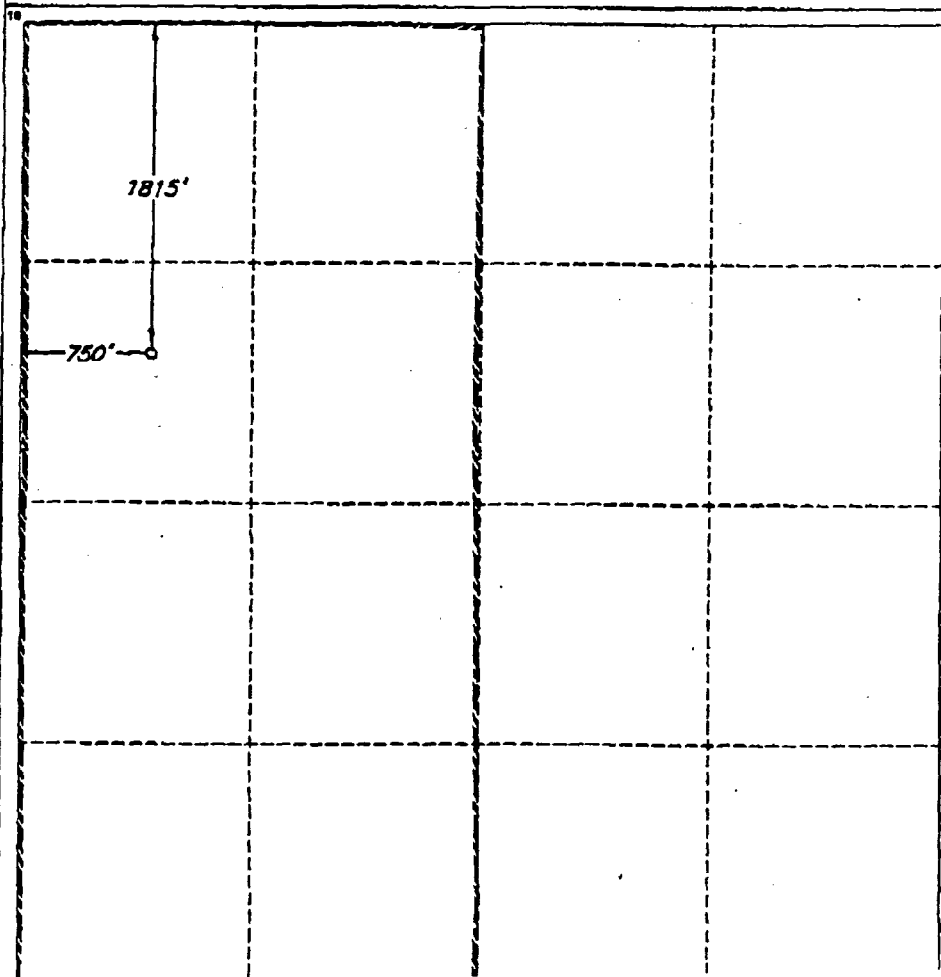
Form C-102
Revised 02-10-94
Instructions on back
Submit to the Appropriate
District Office
State Lease - 4 copies
Fee Lease - 3 copies

AMENDED REPORT

WELL LOCATION AND ACREAGE DEDICATION PLAT

1 API Number		2 Pool Code 86390		3 Pool Name NORTH TOWNSEND MISSISSIPPIAN					
4 Property Code		5 Property Name TRIPLE-HACKLE DRAGON 25						6 Well Number 1	
7 O&G No. 169355		8 Operator Name OCEAN ENERGY, INC.						9 Elevation 3958'	
10 SURFACE LOCATION									
11 or Lot no. E	Section 25	Township 16 SOUTH	Range 35 EAST. N.M.P.M.	Lot Id.	Feet from the 1815'	North/South Line NORTH	Feet from the 750'	East/West Line WEST	County LEA
12 BOTTOM HOLE LOCATION IF DIFFERENT FROM SURFACE									
11 or Lot no.	Section	Township	Range	Lot Id.	Feet from the	North/South Line	Feet from the	East/West Line	County
13 Dedicated Acres 320		14 Joint or Infill		15 Consolidation Code		16 Order No.			

NO ALLOWABLE WELL 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
Joe T. Janica

Printed Name
Joe T. Janica

Title
Agent

Date
04/05/02

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.

Date of Survey
JULY 18, 2001

Signature
V. Lynn Reznor
Printed Name
V. LYNN REZNER
NO. 7920
STATE OF NEW MEXICO
LAND SURVEYOR
V. L. REZNER LAND SURV. S. #7920



April 4, 2002

TMBR/Sharp Drilling, Inc.
P. O. Drawer 10970
Midland, Texas 79702

Attention: Mr. Jeff Phillips

Re: Triple Hackle Dragon "25" #2
1980' FWL and 1980' FSL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Gentlemen:

Ocean Energy Inc. hereby proposes to drill a 13,200' Mississippian Test at a location 1980' FWL and 1980' FSL of Section 25, T16S, R35E, Lea County, New Mexico. Based upon our most current title information, TMBR/Sharp Drilling, Inc. appears to own leasehold interest in the NW/4 of said Section 25. Please advise if this is incorrect.

Ocean respectfully requests that TMBR/Sharp Drilling, Inc. participate for its proportionate interest in the proposed well. Enclosed for your review and execution are two (2) copies of the AFE for the above captioned well. Should TMBR/Sharp Drilling, Inc. elect to participate in the proposed well, please execute and return one (1) copy of this letter and one (1) AFE well cost estimate. An Operating Agreement will be forwarded for your review and approval if you elect to participate in the proposed well. Also, please provide your well information requirements and the names of personnel to receive reports.

If TMBR/Sharp Drilling, Inc. is not interested in participating in drilling the proposed well, please call me at 713-265-6897 to discuss other alternatives.

Thank you for your consideration of this proposal.

Yours very truly,

OCEAN ENERGY, INC.

Derold Maney
Senior Land Advisor

_____ TMBR/SHARP DRILLING, INC. ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #2 Well.

_____ TMBR/SHARP DRILLING, INC. ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #2 Well.

By: _____
Title: _____
Date: _____



April 4, 2002

Fuel Products, Inc.
P. O. Box 3098
Midland, Texas 79702

Attention: Mr. Tom Beall

Re: Triple Hackle Dragon "25" #2
1980' FWL and 1980' FSL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Gentlemen:

Ocean Energy Inc. hereby proposes to drill a 13,200' Mississippian Test at a location 1980' FWL and 1980' FSL of Section 25, T16S, R35E, Lea County, New Mexico. Based upon our most current title information, Fuel Products, Inc. appears to own leasehold interest in the NW/4 of said Section 25. Please advise if this is incorrect.

Ocean respectfully requests that Fuel Products, Inc. participate for its proportionate interest in the proposed well. Enclosed for your review and execution are two (2) copies of the AFE for the above captioned well. Should Fuel Products, Inc. elect to participate in the proposed well, please execute and return one (1) copy of this letter and one (1) AFE well cost estimate. An Operating Agreement will be forwarded for your review and approval if you elect to participate in the proposed well. Also, please provide your well information requirements and the names of personnel to receive reports.

If Fuel Products, Inc. is not interested in participating in drilling the proposed well, please call me at 713-265-6897 to discuss other alternatives.

Thank you for your consideration of this proposal.

Yours very truly,

OCEAN ENERGY, INC.

Derold Maney
Senior Land Advisor

_____ FUEL PRODUCTS, INC. ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #2 Well.

_____ FUEL PRODUCTS, INC. ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #2 Well.

By: _____
Title: _____
Date: _____



April 4, 2002

Mr. Louis Mazzullo
P. O. Box 66657
Albuquerque, New Mexico 87193

Re: Triple Hackle Dragon "25" #2
1980' FWL and 1980' FSL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Gentlemen:

Ocean Energy Inc. hereby proposes to drill a 13,200' Mississippian Test at a location 1980' FWL and 1980' FSL of Section 25, T16S, R35E, Lea County, New Mexico. Based upon our most current title information, you appear to own leasehold interest in the NW/4 of said Section 25. Please advise if this is incorrect.

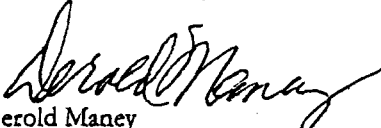
Ocean respectfully requests that you participate for your proportionate interest in the proposed well. Enclosed for your review and execution are two (2) copies of the AFE for the above captioned well. Should you elect to participate in the proposed well, please execute and return one (1) copy of this letter and one (1) AFE well cost estimate. An Operating Agreement will be forwarded for your review and approval if you elect to participate in the proposed well. Also, please provide your well information requirements and the names of personnel to receive reports.

If you are not interested in participating in drilling the proposed well, please call me at 713-265-6897 to discuss other alternatives.

Thank you for your consideration of this proposal.

Yours very truly,

OCEAN ENERGY, INC.


Derold Maney
Senior Land Advisor

_____ LOUIS MAZZULLO ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #2 Well.

_____ LOUIS MAZZULLO ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #2 Well.

By: _____
Title: _____
Date: _____



April 4, 2002

David H. Arrington Oil & Gas, Inc.
P. O. Box 2071
Midland, Texas 79702

Attention: Mr. David H. Arrington

Re: Triple Hackle Dragon "25" #2
1980' FWL and 1980' FSL
W/2 Section 25, T16S, R35E
Lea County, New Mexico

Gentlemen:

Ocean Energy Inc. hereby proposes to drill a 13,200' Mississippian Test at a location 1980' FWL and 1980' FSL of Section 25, T16S, R35E, Lea County, New Mexico. Based upon our most current title information, David H. Arrington Oil & Gas, Inc. appears to own leasehold interest in the NW/4 of said Section 25. Please advise if this is incorrect.

Ocean respectfully requests that David H. Arrington Oil & Gas, Inc. participate for its proportionate interest in the proposed well. Enclosed for your review and execution are two (2) copies of the AFE for the above captioned well. Should David H. Arrington Oil & Gas, Inc. elect to participate in the proposed well, please execute and return one (1) copy of this letter and one (1) AFE well cost estimate. An Operating Agreement will be forwarded for your review and approval if you elect to participate in the proposed well. Also, please provide your well information requirements and the names of personnel to receive reports.

If David H. Arrington Oil & Gas, Inc. is not interested in participating in drilling the proposed well, please call me at 713-265-6897 to discuss other alternatives.

Thank you for your consideration of this proposal.

Yours very truly,

OCEAN ENERGY, INC.

Derold Maney
Senior Land Advisor

_____ DAVID H. ARRINGTON OIL & GAS, INC. ELECTS TO PARTICIPATE in the Triple Hackle Dragon "25" #2 Well.

_____ DAVID H. ARRINGTON OIL & GAS, INC. ELECTS NOT TO PARTICIPATE in the Triple Hackle Dragon "25" #2 Well.

By: _____
Title: _____
Date: _____

District I
1625 N. French Dr., Hobbs, NM 88240
District II
811 South First, Artesia, NM 88210
District III
1000 Rio Brazos Road, Aztec, NM 87410
District IV
2040 South Pacheco, Santa Fe, NM 87505

State of New Mexico
Energy Minerals and Natural Resources

Form C-101
Revised March 17, 1999

Oil Conservation Division
2040 South Pacheco
Santa Fe, NM 87505

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 Ocean Energy, Inc. 1001 Fannin, Suite 1600, Houston, TX 77002		² OGRID Number 160255
		³ API Number
³ Property Code 28458	⁵ Property Name Triple-Hackle Dragon 25	⁶ Well No. 2

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
K	25	16S	35E		1980	South	1980	West	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 Townsend Mississippian					¹⁰ Proposed Pool 2				

¹¹ Work Type Code N	¹² Well Type Code G	¹³ Cable/Rotary R	¹⁴ Lease Type Code P	¹⁵ Ground Level Elevation 3959'
¹⁶ Multiple N	¹⁷ Proposed Depth 13500'	¹⁸ Formation Mississippian	¹⁹ Contractor Grey Wolf	²⁰ Spud Date When Approved

²¹ Proposed Casing and Cement Program

Hole Size	Casing Size	Casing weight/foot	Setting Depth	Sacks of Cement	Estimated TOC
25"	20"	Conductor	40'	Redi-mix	Surface
17-1/2"	13-3/8"	54.5	450'	500 sx	Surface
11"	8-5/8"	32	4900'	1300 sx	Surface
7-7/8"	5-1/2"	17	13400'	1200 sx	500' above pay ^{Use most}

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.

Ocean Energy, Inc. proposes to drill this well to 13,500'. Log and run production casing as indicated above if log looks productive.

BOP Program: 11" 5000 psi type "U" ram. 11" 5000 psi annular preventor, 4" 5000 psi manifold. BOP's will be tested every two weeks. (See attached sketch of BOP's).



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: <i>Jeanie McMillan</i>			
Printed name: Jeanie McMillan		Approved by:	
Title: Regulatory Specialist		Title:	
Date: 4/29/02		Approval Date:	
Phone: (713) 265-6834		Expiration Date:	
Conditions of Approval:			
Attached <input type="checkbox"/>			

DISTRICT I
1825 N. French Dr., Hobbs, NM 88240

DISTRICT II
911 South First, Artesia, NM 88210

DISTRICT III
1000 Rio Brazos Rd., Aztec, NM 87410

DISTRICT IV
6040 South Pecos, Santa Fe, NM 87505

State of New Mexico
Energy, Minerals and Natural Resources Department

Form C-102
Revised March 17, 1998

Submit to Appropriate District Office
State Lease - 4 Copies
Fee Lease - 3 Copies

OIL CONSERVATION DIVISION

2040 South Pecos
Santa Fe, New Mexico 87504-2088

AMENDED REPORT

WELL LOCATION AND ACREAGE DEDICATION PLAT

API Number	Pool Code 86390	Pool Name NORTH TOWNSEND MISSISSIPPIAN
Property Code	Property Name TRIPLE HACKLE DRAGON "25"	Well Number 2
OGRID No. 169355	Operator Name OCEAN ENERGY, INC.	Elevation 3959'

Surface Location

UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
K	25	16 S	35 E		1980	SOUTH	1980	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 320	Joint or Infill	Consolidation Code	Order No.
------------------------	-----------------	--------------------	-----------

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

	<p>OPERATOR CERTIFICATION</p> <p>I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief.</p> <p><i>Jeanie McMillan</i> Signature</p> <p>JEANIE McMillan Printed Name</p> <p>SR. REGULATORY SPECIALIST Title</p> <p>4/29/02 Date</p>
	<p>SURVEYOR CERTIFICATION</p> <p>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.</p> <p>APRIL 8, 2002 Date</p> <p><i>Garrett Jones</i> Signature</p> <p>Garrett Jones Professional Engineer No. 7977</p>
	<p>W.C. No. 2094</p>
	<p>Certificate No. GARRETT Jones 7977</p>

5-15-2002

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

APPLICATION FOR REHEARING
AND
REQUEST FOR PARTIAL STAY OF ORDER NO. R-11700-B

David H. Arrington Oil and Gas, Inc., ("Arrington"), through its attorneys, Miller Stratvert & Torgerson, P.A., (J. Scott Hall), moves pursuant to NMSA 1978 Section 70-2-25 of the New Mexico Oil and Gas Act and 19 NMAC 15.N.1222 for rehearing on the issuance of Order No. R-11700-B issued by the Commission on April 26, 2002. Arrington also moves pursuant to 19 NMAC 15.N.1220.B for entry of an order staying Order No. R-11700-B

BACKGROUND FACTS

Case Nos. 12731 and 12744 involve consolidated applications filed by TMBR/Sharp Drilling, Inc., ("TMBR/Sharp"), challenging and APD issued on July 17, 2001 to Arrington for its Triple-Hackle Dragon 25 Well No. 1 covering lands in the W/2 of Section 25¹ as well as the

¹ All referenced lands are located in Township 16-South, Range 35-East, NMPM in Lea County.

permit approved on July 30, 2001 for Arrington's Blue Drake 23 Well No. 1 covering lands in the E/2 of Section 23. Applications filed in August, 2001 by TMBR/Sharp for permits to drill its Leavelle 23 No. 1 well and the Blue Fin 25 No. 1 well in Sections 23 and 25, respectively, had been denied by the Division's District I office due to the previous approval of the Arrington drilling permits for the same lands.

The consolidated administrative cases ultimately resulted in the issuance by the New Mexico Oil Conservation Commission of Order No. R-11700-B on April 26, 2002, which found, among other things, that the Division's District I Supervisor should issue an APD to TMBR/Sharp for its proposed Blue Fin 25 Well No. 1 in the NW/4 of Section 25 to which TMBR/Sharp proposes to dedicate a N/2 spacing and proration unit. The Order also directed that a drilling permit should be approved for TMBR/Sharp's Blue Drake 23 Well No. 1 to which it proposed to dedicate the E/2 of Section 23. In addition, the Commission expressly retained jurisdiction over the matter, noting that separate court proceedings to resolve title issues could affect the outcome these pending administrative cases. At issue in that collateral litigation presently pending before the 5th Judicial District Court in Lovington is whether the filing of a C-102 form with the Division's District I office in Hobbs for TMBR/Sharp's Blue Fin 24 No. 1 well in Section 24, T-16-S, R-35-E, was sufficient to perpetuate TMBR/Sharp's leases from Madeline Stokes and Erma Stokes Hamilton to Ameristate Oil and Gas (and, by assignment, to TMBR/Sharp) that covered portions of lands in Sections 23 and 25 identified in the APD's filed both by TMBR/Sharp and Arrington. In that litigation, the lessors and Arrington, the owner of top-leases executed by the Stokes family (by way of farmouts through Ocean Energy, Inc.), contend that the leases held by TMBR/Sharp had lapsed.

In the interim, on January 28, 2002, TMBR/Sharp had filed an application for compulsory pooling in Case No. 12816 seeking to consolidate the working interests in the N/2 of Section 25

for its Blue Fin 25 Well No. 1. Ocean Energy, Inc. also filed separate compulsory pooling applications (Case No. 12841 and Case No. 12860) seeking to pool the W/2 of Section 25 for two alternative proposed Mississippian formation well locations in the NW/4 and SW/4, respectively. More recently, Arrington has filed its application for compulsory pooling in Case No. 12859 to create an E/2 unit in Section 25 for its Glass-Eyed Midge 25 No. 1 Atoka/Morrow/Mississippian well to be drilled in the NE/4. Arrington's C-101 APD for the Glass-Eyed Midge 25 No. 1 well was issued by the Division on December 17, 2001 and its C-102 reflecting an E/2 unit was filed on November 29, 2001. The N/2 TMBR/Sharp unit is in obvious conflict with the E/2 and W/2 units proposed by Arrington and Ocean Energy. Case Nos. 12816, 12859, 12860 and 12841 are all scheduled to be heard by the Division's examiner on May 16, 2002.

Significantly, Arrington's Application does not present a title issue like TMBR/Sharp's Applications in Case Nos. 12731 and 12741 did, and the lands under its proposed E/2 unit were not involved in those two cases. Arrington's lease interests are wholly independent from the lease title currently in dispute in the 5th Judicial District Court litigation.

On March 15, 2002, without notice to the Applicant and *before* the issuance of Order R-11700-B, TMBR/Sharp Drilling, Inc. filed another C-101 APD with the Division's District I office for its Blue Fin 25 Well No. 1 (API No. 30-025-35865) which was also proposed to be drilled to the Mississippian formation in the NW/4 of Section 25. The C-102 acreage dedication plat which accompanied the filing of the TMBR/Sharp Drilling, Inc. APD proposed to dedicate the N/2 of said Section 25 to the Blue Fin 25 Well No. 1.

On March 20, 2002, again without notice to Arrington and *before* the issuance of Order No. R-11700-B, the Division's District I office approved the APD for the Blue Fin 25 Well No. 1. As a consequence of the actions of the Division's District I office, there existed two

simultaneously approved APD's with attached C-102's that both operators proposed to dedicate the NE/4 of Section 25 to their respective wells.

At the time of the filing of the APD's, there were owners of other interests in the N/2 and E/2 of Section 25, respectively, who had not voluntarily agreed to participate in the drilling of the proposed wells. Neither the Arrington nor TMBR/Sharp compulsory pooling cases had been heard and neither operator had consolidated the interests of all the non-participating owners either by way of a voluntary agreement, communitization agreement, or otherwise. Although TMBR/Sharp, Ocean Energy and Arrington now all have compulsory pooling applications pending before the Division to consolidate the unjoined interests, TMBR/Sharp moved to continue its own pooling case (Case No. 12816) and to dismiss Cases 12859, 12860 and 12841. The Division's examiner denied the TMBR/Sharp motion at a hearing on May 14, 2002.

To date, however, no geologic, engineering or equitable evidence having a bearing on the development of Section 23 and 25 has been presented to the Division or the Commission.

Significantly, it was learned on May 14th that TMBR/Sharp began drilling its Blue Fin 25 Well No. 1 on May 7, 2002, without having consolidated the unjoined interests and without allowing the Division to determine the final configuration of the spacing and proration units in Section 25.

On May 15, 2002, Arrington filed with the Division its *Application To Reinstate Drilling Permit* whereby it seeks an order directing the Division's District I office to reinstate the drilling permit for its Glass-Eye Midge 25 Well No. 1 previously approved on December 17, 2001. (A copy of the Application is attached as Exhibit "A".)

THE REQUEST FOR REHEARING

Arrington respectfully submits that Case Nos. 12731 and 12744 should be reheard for the reasons that (1) Order R-11700-B is based, in part, on error, (2) was improvidently issued, and (3) its operation allows a ministerial act to supersede the agency's statutory functions.

Order R-11700-B Is Based On Error.

In Order No. R-11700-B, the Commission, citing to the separately pending litigation in the district court involving conflicting leases, found that APD's previously issued to Arrington for wells in the S/2 of Section 23 and the W/2 of Section 25, T-16-S, R-35-E should not have been granted because Arrington was not an owner in those lands and had "no authority over the property". (Order R-11700-B, Par. 29.) This finding was the primary basis for the Commission's determination. This finding is clearly based on error. Arrington established that it had the right to drill and operate as the owner of lease interests in the W/2 of Section 25 separate and apart from the oil and gas leases involved in the district court litigation.

In addition, at the time it filed the APD for its Glass Eye Midge 25 No. 1 Well, Applicant owned separate oil and gas lease interests in the E/2 of Section 25 that were independent from the conflicting leases that are the subject of the district court litigation cited by the Commission in Order No. R-11700-B. As such, Applicant was eligible to become the operator of that well and the permit to drill that was issued to it on December 17, 2001 should have been undisturbed. In this regard, the findings in Paragraph 14 of Order No. R-11700-B are telling:

"14. The central issue in this case is whether Arrington was eligible to become the operator of the wells in question...If Arrington was eligible to become the operator, then the permits were properly issued to Arrington."

In its findings at Paragraph 29 of Order R-11700-B, the Commission erroneously assumed that the rulings issued by the 5th Judicial District Court served to adjudicate all of the title owned by Arrington. Instead, the scope of the district court rulings affected only the lands encumbered

by the Stokes/Hamilton base lease claimed by Ameristate and TMBR/Sharp and the top-lease claimed by Arrington. The interests separately owned by Arrington remained unaffected, and as such, Arrington continued to be eligible to become operator throughout.

The agency's determination of the geologic and economic waste issues before it should determine the outcome of these disputed cases, not resolution of collateral title issues. Accordingly, the Division should discharge its statutory function and resolve these matters at the earliest opportunity.

Order R-11700-B Was Improvidently Issued.

Order No. R-11700-B was improvidently issued, failing to completely resolve the dispute before the agency or accord full relief to the affected parties. The initial determination of Cases 12731 and 12744 has allowed the permitting issue to unduly influence events and has pre-empted proper consideration by the agency's of its statutory mandates to prevent waste, protect correlative rights and avoid the drilling of unnecessary wells. As a further consequence of its issuance, Order No. R-11700-B has precipitated more problems for the parties, including the Division, that have become manifest in the frustrated efforts of Arrington to develop the E/2 of Section 25, acreage that should not have been affected by the proceedings.

Through no fault of the Commission, the scope of the TMBR/Sharp applications in Case Nos. 12731 and 12744 was limited to the issuance of drilling permits for its two proposed wells. That circumstance was the product of one single act of neglect on the part of TMBR/Sharp: That is, TMBR/Sharp's failure to abide by the terms of one of its oil and gas leases and properly file a pooled unit designation in the county records for their Blue Fin 24-1 well. That single failure or omission has consequently determined all of TMBR's actions, legal positions and arguments ever since, both in court and before the Division and Commission. That same omission has, by necessity, caused TMBR/Sharp to argue that it is not necessary to file a unit designation in the

county to perpetuate its lease interests. Rather, TMBR/Sharp has been compelled by events to assert that the mere filing of a C-102 with the Division is sufficient to perpetuate their lease on Section 25.

As a further consequence, TMBR/Sharp has placed itself in the position of having to argue to the Division that compulsory pooling is unnecessary altogether. (*See* April 29, 2002 Motion of TMBR/Sharp Drilling, Inc. To Continue Case No. 12816 And To Dismiss Cases 12859, 12860, and 12841.) As TMBR/Sharp asserts, the C-102 is sufficient to “consolidate” interests and that is enough to determine the unit configuration which will, in turn, determine the ultimate development of the entirety of Section 25.

It is apparent that issues of waste, correlative rights, and unnecessary drilling are inextricably bound with the issue of which operator may be entitled to drilling permits. These interrelated disputes cannot be resolved separately until the agency discharges its statutory obligations to consider the pooling applications and make its determinations, based on geologic, and engineering evidence that the resulting development will prevent waste and protect correlative rights.

The Operation Of Order R-11700-B Allows A Ministerial Act To Supersede The Agency's Statutory Functions.

The determination, first, that TMBR/Sharp may have been entitled to have its drilling permits approved before issues of correlative rights and waste are considered exalts a mere ministerial act over the substantive and discretionary quasi-judicial function that the Division is *mandated* to perform under N.M. Stat. Ann. 1978 Sections 70-2-17 and 70-2-18.²

² Compulsory Pooling proceedings are identified as adjudicatory matters at 19 NMAC 15N.1207.A(1).

In a situation such as this, where multiple owners have not agreed to pool their interests, under the Division's compulsory pooling statutes, on application, the agency is obliged to convene a hearing and consider evidence probative of whether pooling is necessary "...to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste". N. M. Stat. Ann. 1978 Section 70-2-17(C). See Simms v. Mechem 72 N.M. 186, 188, 382 P.2d 183, 184 (1963). ("Unquestionably the commission is authorized to require pooling of property when such pooling has not been agreed upon by the parties[.]") Where the evidence presented substantially supports affirmative findings and conclusions on any one of these issues, then the statute directs that the Division "***shall pool*** all or any part of such lands or interests or both in the spacing or proration unit." *Id.*, (emphasis added). Even under this statutory hearing process, depending on the evidence, the issuance of a compulsory pooling order is discretionary and is by no means an entitlement. This quasi-judicial function is expressly reserved to the Commission and the Director or her duly appointed examiners (N. M. Stat. Ann. 1978 sec. 70-2-13) and ***no part*** of it may be delegated by fiat under the guise of a ministerial approval of a drilling permit. See Kerr-McGee Nuclear Corp. v. New Mexico Environmental Improvement Board, 97 N.M. 88, 97, 637 P.2d 38, 47 (Ct. App. 1981). In Kerr-McGee, the Court of Appeals held that duties which are quasi-judicial in nature, and which require the exercise of judgment cannot be delegated. *Id.* As Kerr-McGee was a case of first impression in New Mexico, the Court of Appeals relied on Oklahoma case law. The Supreme Court of Oklahoma in Van Horn Oil Co. v. Okla. Corp. Com'n., 753 P.2d 1359, 1363 (1988) cited to the same authority relied on the New Mexico Court of Appeals when it quoted:

Administrative bodies and officers cannot alienate, surrender, or abridge their powers and duties, or delegate authority and functions which under the law may be exercised only by them; and, although they may delegate merely ministerial functions, in the absence of statute or organic act permitting it, they

cannot delegate powers and functions discretionary or quasi-judicial in character, or which require the exercise of judgment.

Citing, Anderson v. Grand River Dam Authority, 446 JP.2d 814 (1968). The Anderson Court also quoted with approval from American Jurisprudence and Corpus Juris Secundum:

In 2 Am. Jur. 2nd Administrative Law, Section 222, it is said: It is a general principal of law, expressed in the maxim “delegates no protest delegare”, that a delegated power may not be further delegated by the person to whom such power is delegated and than in all cases of delegated authority, or personal trust or confidence is reposed in the agent and especially where the exercise and application of the power is made subject to his judgment and discretion, the authority is purely personal and cannot be delegated to another***. A commission charged by law with power to promulgate rules, cannot in turn, delegate that power to another.”

Because New Mexico has expressly adopted Oklahoma law, it is the law in this state that an administrative body may not delegate a statutory function, particularly in the manner that TMBR/Sharp advocates.

In making any determination under the compulsory pooling statute, under long-standing practice,³ the Division will consider evidence relating to, among other matters: (1) the presence or absence of a voluntary pooling agreement; (2) whether a reasonable and good-faith effort was made to obtain the voluntary participation of others; (3) reasonableness of well costs; (4) geologic and engineering evidence bearing on the avoidance of waste and the protection of correlative rights, including the drilling of unnecessary wells; (5) the assessment of a risk penalty; and (6) whether a proposal is otherwise in the interests of conservation. The mere approval of a drilling permit and the filing of an acreage dedication plat serve to do none of these things and neither have any of the functions enumerated above been delegated outside the Division’s regular hearing process.⁴

³ See Morris, Richard, *Compulsory Pooling of Oil and Gas Interests in New Mexico*, 3 Nat. Resources J. 316 (1963).

⁴ N. M. Stat. Ann. 1978 Section 70-2-17(C): “All orders effecting such pooling shall be made after notice and hearing[.]”

It is inappropriate to allow any portion of the pooling process to be subsumed by the mere processing of an APD. Order No. R-11700-B, Par. 33. (“An application for a permit to drill serves different objectives than an application of compulsory pooling and the two proceedings should not be confused.”) Moreover, the issuance of a drilling permit does not constitute any determination of a property right. *See Gray v. Helmerich & Payne, Inc., et al.* 843 S.W. 2d 579 (Tex. 2000).

Whether intentional or not, the practical effect of Order R-11700-B was to allow a ministerial event to dictate events to the exclusion of the statutory adjudicatory functions that ought first be performed by the Division and the Commission.

THE REQUEST FOR PARTIAL STAY

Arrington requests that Order No. R-11700-B be stayed to the extent it operates to prevent the reinstatement of its drilling permit and otherwise prevents it from commencing the drilling of it Glass-Eye Midge 25 Well No. 1 in the NE/4 of Section 25.

Further stay of Order R-11700-B is requested to the extent it approves, by implication or otherwise, the creation of a N/2 spacing and proration unit for TMBR/Sharp’s Blue Fin 25 Well No. 1 pending the agency’s consideration of geologic and engineering evidence and the issuance of an order determining the proper orientation of the 320 acre units in Section 15.

A proposed Order of Partial Stay is attached hereto as Exhibit “B”.

CONCLUSION

For the reasons outlined above, Arrington respectfully requests the Commission immediately enter its Order of Partial Stay and then set all these matters for rehearing at the next regularly scheduled Commission hearing docket set for June 21, 2002.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By J. Scott Hall

J. Scott Hall
Attorneys for David H. Arrington Oil & Gas,
Inc.
Post Office Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 15th day of May, 2002, as follows:

James Bruce, Esq.
Post Office Box 1056
Santa Fe, New Mexico 87504

Thomas Kellahin, Esq.
Post Office Box 2265
Santa Fe, New Mexico 87504

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

Susan Richardson, Esq.
Cotton Bledsoe Tighe & Dawson
500 W Illinois Ave # 300
Midland, Texas 79701

William F. Carr, Esq.
Post Office Box 2208
Santa Fe, New Mexico 87504



J. Scott Hall

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

IN THE MATTER OF THE APPLICATION OF
DAVID H. ARRINGTON OIL AND GAS, INC.
TO REINSTATE DRILLING PERMIT,
LEA COUNTY, NEW MEXICO

CASE No. _____

APPLICATION

DAVID H. ARRINGTON OIL AND GAS, INC., by its undersigned attorneys, Miller, Stratvert & Torgerson, P.A. (J. Scott Hall), hereby makes application pursuant to Section 70-2-11 N.M.S.A. (1978) for an order reinstating its previously approved C-101 and C-102 drilling permit for Applicant's proposed Glass-Eyed Midge 25 Well No. 1 (API No. 30-025-35787) to be drilled at a standard 320-acre spacing and proration unit gas well location 803 feet from the North line and 902 feet from the East line in E/2 of Section 25. Township 16-South, Range 35-East, NMPM, Lea County, New Mexico. Applicant, in support thereof would show the Division:

1. Applicant owns a substantial portion of the working interest in and under the E/2 of Section 25, and Applicant has the right to drill thereon.
2. Applicant first acquired its lease interests in the E/2 of Section 25 in approximately January, 2001.
3. On November 29, 2001, Applicant filed with the Division's District I office in Hobbs its C-101 Application for Permit to Drill, ("APD"), for the Glass Eye Midge 25 Well No. 1 which it proposed to drill to the Townsend-Mississippian Gas pool. Applicant simultaneously filed a C-102 acreage dedication plat form proposing to dedicate the E/2 of said Section 25 to the subject well.

EXHIBIT A

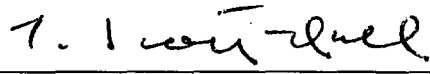
4. On December 17, 2001, the Division's District I office approved Applicant's permit to drill the subject well.
5. On March 15, 2002, without notice to the Applicant, TMBR/Sharp Drilling, Inc. filed another C-101 APD with the Division's District I office for its Blue Fin 25 Well No. 1 (API No. 30-025-35865) which was also proposed to be drilled to the Mississippian formation in the NW/4 of Section 25, T-16-S, R-35-E, NMPM in Lea County. The C-102 acreage dedication plat which accompanied the filing of the TMBR/Sharp Drilling, Inc. APD proposed to dedicate the N/2 of said Section 25 to the Blue Fin 25 Well No. 1.
6. On March 20, 2002, without notice to the Applicant, the Division's District I office approved the APD for the Blue Fin 25 Well No. 1.
7. As a consequence of the actions of the Division's District I office, there existed two simultaneously approved APD's with attached C-102's that both proposed to dedicate the NE/4 of Section 25 in violation of, *inter alia*, 19 NMAC 15.C.104(C)(2)(c).
8. At the time of the filing of the APD's, there were owners of other interests in the N/2 and E/2 of Section 25, respectively, who had not voluntarily agreed to participate in the drilling of the proposed wells. Neither Applicant nor TMBR/Sharp Drilling, Inc. had consolidated the interests of all the non-participating owners either by way of a voluntary agreement, communitization agreement, or compulsory pooling order. Both Applicant and TMBR/Sharp Drilling, Inc. subsequently initiated separate compulsory pooling proceedings before the Division seeking to consolidate those interests.

9. On April 26, 2002, the New Mexico Oil Conservation Commission issued Order No. R-11700-B in Case Nos. 12731 and 12744. In Order No. R-11700-B, the Commission, citing to separately pending litigation in the district court involving conflicting leases, found that APD's previously issued to Arrington for wells in the S/2 of Section 23 and the W/2 of Section 25, T-16-S, R-35-E should not have been granted because Arrington was not an owner in those lands.
10. At the time it filed the APD for its Glass Eye Midge 25 No. 1 Well, Applicant owned separate oil and gas lease interests independent from the conflicting leases that are the subject of the district court litigation cited by the Commission in Order No. R-11700-B. As such, Applicant was eligible to become the operator of the subject well and should have received the permit to drill that was issued to it on December 17, 2001.
11. On May 1, 2002, the Division's District I office notified Applicant that its approved APD was canceled. Applicant received the notification on May 7, 2002.
12. Applicant continues to own lease interests underlying the E/2 of said Section 25 and continues to be eligible to be operator.
13. The cancellation of Applicant's permit by the Division's District I office was arbitrary, capricious and otherwise unreasonable.
14. Geological, engineering and equitable considerations mandate that development occur by way of a 320 acre spacing and proration unit located in the E/2 of said Section 25 dedicated to Applicant's proposed well in order to avoid the drilling of unnecessary wells, prevent waste and protect correlative rights.

WHEREFORE, Applicant prays that this application be set for hearing before a duly appointed examiner of the Oil Conservation Division no later than June 13, 2002, and that after notice and hearing as required by law, the Division enter its order reinstating the drilling permit for Applicant's proposed well and making such other and further provisions as may be proper in the premises.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By 
J. Scott Hall
Post Office Box 1986
Santa Fe, New Mexico 87504
(505) 989-9614

ATTORNEYS FOR DAVID H. ARRINGTON OIL
AND GAS, INC.

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 OF PARTIAL STAY
OF ORDER NO. R-11700-B

THIS MATTER, having come before the Commission on the Application For Rehearing And Request For Partial Stay Of Order No. R-11700-B filed by David H. Arrington Oil and Gas, Inc., and the Commission, being duly advised, ORDERS as follows:

1. Order No. R-11700-B is stayed to the extent it may operate to prevent the reinstatement of the drilling permit previously issued to David H. Arrington Oil and Gas, Inc. on December 17, 2001 for the drilling of the Glass-Eye Midge 25 Well No. 1 (API No.30-025-35787) 803' from the north line and 962' from the east line in the NE/4 of Section 25, Township 16-South, Range 35-East, NMPM, Lea County, New Mexico. Order No. R-11700-B is

EXHIBIT B

further stayed to the extent it prevents Arrington from commencing drilling operations for the referenced well.

2. Order No. R-11700-B is further stayed to the extent it may be regarded as approving, by implication or otherwise, the establishment of a spacing and proration unit consisting of the N/2 of Section 25, Township 16-South, Range 35-East, NMPM, Lea County, New Mexico, for the TMBR/Sharp Drilling, Inc. Blue Fin 25 Well No. 1 located in the NW/4 of said Section 25.
3. Jurisdiction over these cases is retained for the entry of such further orders as may be necessary.

DONE at Santa Fe, New Mexico, on this ____ day of May, 2002.

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**

By: _____
Lori Wrotenbery, Chair.

TMBR/Sharp

MILLER, STRATVERT & TORGERSON, P.A.
LAW OFFICES

RANNE B. MILLER
ALAN C. TORGERSON
ALICE T. LORENZ
GREGORY W. CHASE
STEPHAN M. WILLIAMS
STEPHAN A. VIDMAR
BETH V. BINGHAM
TIMOTHY R. BRIGGS
RUDOLPH LUCERO
DEBORAH A. SOLOVE
GARY L. GORDON
LAWRENCE R. WHITE
SHARON P. GROSS
VIRGINIA ANDERMAN
MARTE D. LIGHTSTONE
J. SCOTT HALL*
THOMAS R. MACK
TERRI S. BEACH
THOMAS M. DOMME
RUTH O. PREGENZER
JEFFREY E. JONES

ROBIN A. GOBLE
JAMES R. WOOD
DANA M. KYLE
KIRK R. ALLEN
RUTH FUESS
KYLE M. FINCH
H. BROOK LASKEY
KATHERINE W. HALL
PAULA G. MAYNES
MICHAEL C. ROSS
CARLA PRANDO
KATHERINE N. BLACKETT
JENNIFER L. STONE
ANDREW M. SANCHEZ
M. DYLAN O'REILLY
JENNIFER D. HALL
JENNIFER L. OLSON
TODD A. SCHWARZ
JULIE A. COLEMAN
TIMOTHY L. BUTLER

COUNSEL
ROSS B. PERKAL
JAMES J. WIDLAND
BRADLEY D. TEPPER**
GARY RISLEY
NELL GRAHAM SALE

OF COUNSEL
WILLIAM K. STRATVERT
JAMES B. COLLINS

ALBUQUERQUE, NM
500 MARQUETTE NW, SUITE 1100
P.O. BOX 25687 (87125-0687)
ALBUQUERQUE, NM 87102
TELEPHONE: (505) 842-1950
(800) 424-7585
FACSIMILE: (505) 243-4408

SANTA FE, NM
150 WASHINGTON AVE., SUITE 300
P.O. BOX 1986 (87504-1986)
SANTA FE, NM 87501
TELEPHONE: (505) 989-9614
FACSIMILE: (505) 989-9857

FARMINGTON, NM
300 WEST ARRINGTON, SUITE 300
P.O. BOX 869 (87499-0869)
FARMINGTON, NM 87401
TELEPHONE: (505) 326-4521
FACSIMILE: (505) 325-5474

LAS CRUCES, NM
1125 SOUTH MAIN ST., SUITE B
P.O. BOX 1209 (88004-1209)
LAS CRUCES, NM 88005
TELEPHONE: (505) 523-2481
FACSIMILE: (505) 526-2215

PLEASE REPLY TO SANTA FE

* NEW MEXICO BOARD OF SPECIALIZATION RECOGNIZED SPECIALIST IN NATURAL RESOURCES - OIL & GAS LAW
** NEW MEXICO BOARD OF SPECIALIZATION RECOGNIZED SPECIALIST IN REAL ESTATE LAW

May 9, 2002

VIA FACSIMILE (505) 393-0720

Mr. Chris Williams
District I Supervisor
New Mexico Oil Conservation Division
1625 French Drive
Hobbs, New Mexico 88240

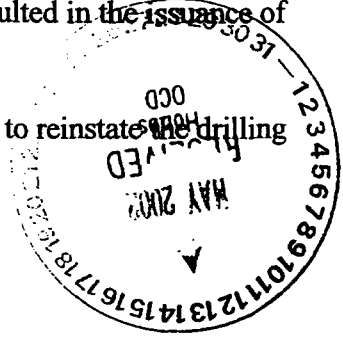
Re: ~~David H. Arrington Oil and Gas, Inc.~~ *THIS FILE*
Sec. 25, T-16-S, R-35-E, NMPM, Lea County, New Mexico

Dear Mr. Williams:

This firm represents ~~David H. Arrington Oil and Gas, Inc.~~ in connection with the above-referenced matter. Your May 1, 2002 letter was received by Arrington on May 7, 2002 and forwarded to me.

Please be advised that Arrington has had and continues to have the right to drill in Section 25 independent of the oil and gas lease that is the subject of the ongoing litigation in the Fifth Judicial District Court referenced in your letter. Therefore, the premise underlying your conclusion that Arrington's C-101 and C-102 should be canceled is erroneous. Moreover, the APD approved by the Division for Arrington's Glass-Eyed Midge 25 Well No. 1 well on December 17, 2001, was not the subject of NMOCC Case Nos. 12731 and 12744 (*de novo*) which resulted in the issuance of Order No. R-11700-B.

On behalf of David H. Arrington Oil and Gas, Inc., you are requested to reinstate ~~the~~ drilling permit for the Glass-Eyed Midge Well No. 1 at the earliest opportunity.



1 The correct name of the well is the Glass-Eyed Midge 25 Well No. 1.

Mr. Chris Williams
May 9, 2002
Page 2

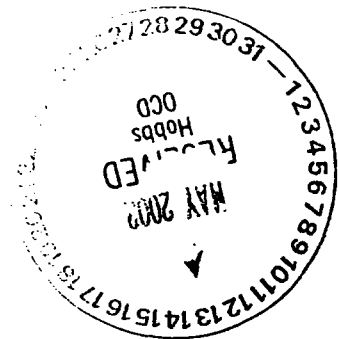
With respect to the Triple Hackle Well No. 1, Ocean Energy is planning on drilling that well and you should communicate with them directly.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.



J. Scott Hall





NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

GARY E. JOHNSON

Governor
Betty Rivera
Cabinet Secretary

Lori Wrotenbery
Director
Oil Conservation Division

May 1, 2002

David H Arrington Oil & Gas Inc
ATT: Danny Ledford
P O Box 2071
Midland, TX 79702

RE: Cancel of Intents to Drill

Gentlemen:

Per the order #CV2001-315C from the 5th Judicial District Court of Lea County and the order R-11700-B from the Oil Conservation Division TMBR/Sharp Inc has the rights to drill in Sec.25, T-16s, R-35e.

The Oil Conservation Division is canceling your intents to drill the two wells listed below:

Triple-Hackle Dragon 25 #1-E, 25-16s-35e, API #30-025-35636
Glass-Eye Midge 25 #2-A, 25-16s-35e, API # 30-025-35787

If you have any questions on this matter, please call the Hobbs District office (505) 393-6161.

Yours truly,

OIL CONSERVATION DIVISION


Chris Williams
District I, Supervisor

CW:dm

CC: OCD Hobbs
OCD Santa Fe
Bureau of Land Management
State Land Office

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

IN 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 & 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

ORDER OF THE OIL CONSERVATION COMMISSION

BY THE COMMISSION:

THIS MATTER came before the Oil Conservation Commission (hereinafter referred to as "the Commission") on March 26, 2002, at Santa Fe, New Mexico, on application of TMBR/Sharp Drilling Inc. (hereinafter referred to as "TMBR/Sharp"), *de novo*, and opposed by David H. Arrington Oil and Gas Inc. (hereinafter referred to as "Arrington") and Ocean Energy Inc. (hereinafter referred to as "Ocean Energy") and the Commission, having carefully considered the evidence, the pleadings and other materials submitted by the parties hereto, now, on this 26th day of April, 2002,

FINDS,

1. Notice has been given of the application and the hearing on this matter, and the Commission has jurisdiction of the parties and the subject matter herein.
2. In Case No. 12731, TMBR/Sharp seeks an order voiding permits to drill obtained by Arrington and awarding or confirming permits to drill to TMBR/Sharp concerning the same property.
3. In Case No. 12744, TMBR/Sharp appeals the action of the Supervisor of District I of the Oil Conservation Division denying two applications for permit to drill.

4. Arrington and Ocean Energy oppose¹ both applications.
5. The cases were consolidated by the Division for purposes of hearing and remain so before the Commission.
6. Still pending before the Division are two applications for compulsory pooling. They are: Case No. 12816, Application of TMBR/Sharp for compulsory pooling, Lea County, and Case No. 12841, Application of Ocean Energy Inc. for compulsory pooling, Lea County.
7. The Commission conducted an evidentiary hearing on March 26, 2002, heard testimony from witnesses called by TMBR/Sharp, and accepted exhibits. The Commission also accepted pre-hearing statements from TMBR/Sharp and Arrington and heard opening statements from TMBR/Sharp, Arrington and Ocean Energy and accepted brief closing statements from TMBR/Sharp and Arrington.
8. Following the hearing, TMBR/Sharp filed a Motion to Supplement the Record to include the April 10, 2002 letter of Arrington to the Oil Conservation Division's Hobbs District Office and a portion of Arrington's Supplemental Response to Plaintiff's Motion for Reconsideration in Lea County Cause No. CV-2001-315C. Ocean filed a response to that motion that argued the items add nothing to the record, and Arrington filed a response arguing that the supplemental material is not new or inconsistent. The Motion to Supplement the Record should be granted as no party seems to object to review of the documents; the objections seem to relate only to the significance of the documents to this matter.
9. Applications for permit to drill were filed with the Division in Sections 23 and 25 by Arrington and TMBR/Sharp. The applications filed by TMBR/Sharp and Arrington both proposed a well in the NW/4 of in Section 25. In Section 23, the application for permit to drill filed by TMBR/Sharp proposed a well in the NE/4, and the application of Arrington proposed a well in the SE/4.
10. Arrington's application in Section 25 was filed on July 17, 2001 and sought a permit to drill its proposed "Triple-Hackle Dragon "25" Well No. 1." This application was approved on July 17. On or about August 7, 2001, TMBR/Sharp filed its application for a permit to drill its proposed "Blue Fin "25" Well No. 1" in the same section. That application was denied on August 8, 2001.
11. Arrington's application in Section 23 was filed on July 25, 2001 and sought a permit to drill its proposed "Blue Drake "23" Well No. 1." This application was

¹ On April 10, 2002 Arrington agreed to release its permit to drill to TMBR/Sharp. A dispute may no longer therefore exist concerning Section 23 although the parties apparently do not agree with this assessment.

approved on July 30, 2001. On or about August 6, 2001, TMBR/Sharp filed its application for a permit to drill its proposed "Leavelle "23" Well No. 1" in the same section. That application was denied on August 8, 2001.²

12. TMBR/Sharp's applications in Sections 23 and 25 were denied on the grounds of the permits previously issued to Arrington for the "Triple-Hackle Dragon "25" Well No. 1" and the "Blue Drake "23" Well No. 1." The Townsend Mississippian North Gas Pool, the pool from which the wells are to produce, is governed by the spacing and well density requirements of Rule 104.C(2) [19 NMAC 15.C.104.C(2)]. That rule imposes 320-acre spacing on wells producing from that pool. TMBR/Sharp's applications were denied because, if granted, more than one well would be present within a 320-acre spacing unit, in violation of Rule 104.C(2).

13. Before an oil or natural gas well may be drilled within the State of New Mexico, a permit to drill must be obtained. See NMAC 19.15.3.102.A, 19 NMAC 15.M.1101.A. Only an "operator" may obtain a permit to drill, 19 NMAC 15.M.1101.A, and an "operator" is a person who is "duly authorized" and "is in charge of the development of a lease or the operation of a producing property." NMAC 19.15.1.7.O(8).

14. The central issue in this case is whether Arrington was eligible to become the operator of the wells in question. If not, Arrington should not have received the permits to drill. If Arrington was eligible to become the operator, then the permits were properly issued to Arrington.

15. A dispute exists concerning the validity of Arrington and TMBR/Sharp's mineral leases in Sections 23 and 25. As will be seen below, resolution of this dispute in favor of Arrington or TMBR/Sharp determines which party is eligible to be the operator and thus, who should receive the permits to drill.

16. TMBR/Sharp is the owner of oil and gas leases comprising the NW/4 of Section 25 and the SE/4 of Section 23 (along with other lands) pursuant to leases dated August 25, 1997 granted by Madeline Stokes and Erma Stokes Hamilton. TMBR/Sharp Exhibit 6. The leases were granted to Ameristate Oil & Gas, Inc. (hereinafter referred to as "Ameristate") and were recorded respectively in Book 827 at Page 127 and in Book 827 at Page 124 in Lea County, New Mexico.

17. TMBR/Sharp and Ameristate entered into a Joint Operating Agreement along with other parties on July 1, 1998 and TMBR/Sharp was designated as the operator in Section 25. See TMBR/Sharp Exhibit 7.

² Apparently TMBR/Sharp reapplied for the permits to drill that were previously denied, and the Division approved those permits on March 20, 2002.

18. Although the primary terms of the TMBR/Sharp leases have apparently expired, TMBR/Sharp alleges that the leases were preserved by the drilling of the "Blue Fin 24 Well No. 1" and subsequent production from that well. The Blue Fin 24 Well No. 1 is located in the offsetting section 24.

19. Subsequent to Stokes and Hamilton's execution of leases in favor of Ameristate Oil & Gas Inc., they granted leases in the same property to James D. Huff on March 27, 2001. See TMBR/Sharp Exhibit 9. The leases to Mr. Huff were recorded in Book 1084 at Page 282 and in Book 1084 at Page 285 in Lea County, New Mexico. The parties referred to these leases as "top leases," meaning that according to their terms, they would not take effect until the prior or "bottom" leases became ineffective. See TMBR/Sharp Exhibit 9, ¶ 15.

20. Arrington alleges Mr. Huff is an agent of Arrington but presented nothing to support that contention.

21. In July and August 2001, Ocean acquired a number of farm-out agreements in Section 25. See TMBR/Sharp Exhibit 10, Schedule 1. By an assignment dated September 10, 2001, Ocean assigned a percentage of the farm out agreements to Arrington under terms that require Arrington to drill a test well in Section 25 known as the Triple Hackle Dragon "25" Well No. 1 in the NW/4 of that section.

22. On August 21, 2001, after receiving the denials of the applied-for permits to drill from the District office, TMBR/Sharp filed suit against Arrington and the lessors of its mineral interests in the Fifth Judicial District Court of Lea County, New Mexico. In that case, styled "TMBR/Sharp Drilling, Inc. v. David H. Arrington Oil & Gas, Inc., *et al.*", TMBR/Sharp alleged that its leases were still effective and the Arrington top leases were ineffective. The District Court, in its Order Granting Partial Summary Judgment, dated December 24, 2001, agreed with TMBR/Sharp's contention. See TMBR/Sharp's Exhibit No. 12,

23. During the hearing of this matter, TMBR/Sharp argued that because the Fifth Judicial District Court found that Arrington's "top leases" had failed, TMBR/Sharp was entitled to permits to drill in Sections 23 and 25 and Arrington was not entitled to permits to drill and its permits should be rescinded. TMBR/Sharp also argued that Arrington had filed applications to prevent TMBR/Sharp from being able to drill and to place its obligations under the continuous drilling clauses of the oil and gas leases in jeopardy. TMBR/Sharp argued that Ocean Energy's letter agreement with Arrington could not revive Arrington's claim of title and that Ocean Energy's pending pooling application with the Division is essentially irrelevant to the question of whether TMBR/Sharp should have been granted a permit to drill.

24. Arrington argued in response that the title issue ruled upon by the District Court with respect to section 25 is irrelevant because Arrington acquired an independent

interest in that section by virtue of a farm out agreement in September of 2001. Arrington also argued it was willing to assign the disputed acreage in Section 23 to TMBR/Sharp in order to resolve the present controversy. Arrington also argued that it doesn't intend to actually drill at the present time under either approved permit to drill and argued, citing Order No. R-10731-B, that the Commission's practice has not been to rely on "first in time, first in right" principles in deciding competing applications on compulsory pooling, but instead on geological evidence. Arrington seemed to argue that a compulsory pooling proceeding is the place to present such geologic evidence. Arrington argues that these proceedings are unnecessary and that the Commission should rely upon the Division's pending pooling cases to decide who of the various parties should properly possess the permit to drill.

25. Ocean Energy argued that since its farm out agreement terminates on July 1, 2002 time is of the essence and that the matters at issue here should be resolved in the pending compulsory pooling proceeding instead of this proceeding. Ocean Energy argued that the permit to drill is meaningless in this context, that TMBR/Sharp is essentially asking the Commission to determine pooling in the context of the permit to drill, and that the dedication of acreage on the acreage dedication plat should not determine what acreage would be pooled to the well. If the Commission were to adopt this approach, Ocean Energy argues, the compulsory pooling statutes would be written out of existence.

26. The parties seem to agree that in a situation where the bottom lease has not failed, a person owning a top lease is not a person duly authorized to be in charge of the development of a lease or the operation of a producing property, and is therefore not entitled to a permit to drill. NMAC 19.15.1.7(O)(8). See also 1 Kramer & Martin, The Law of Pooling and Unitization, 3rd ed., § 11.04 at 11-10 (2001). Moreover, because only an "owner" may seek compulsory pooling, it seems that a person owning a top lease where the bottom lease has not failed might not be entitled to compulsory pooling either. See NMSA 1978, § 70-2-17(C).

27. When an application for permit to drill is filed, the Division does not determine whether an applicant can validly claim a real property interest in the property subject to the application, and therefore whether the applicant is "duly authorized" and "is in charge of the development of a lease or the operation of a producing property." The Division has no jurisdiction to determine the validity of any title, or the validity or continuation in force and effect of any oil and gas lease. Exclusive jurisdiction of such matters resides in the courts of the State of New Mexico. The Division so concluded in its Order in this matter. See Order No. R-11700 (December 13, 2001).

28. It is the responsibility of the operator filing an application for a permit to drill to do so under a good faith claim to title and a good faith belief that it is authorized to drill the well applied for. It appears to this body that Arrington had such a good faith belief when it filed its application, but subsequently the District Court found otherwise.

It is not within the purview of this body to question that decision and it should not do so in this case.

29. As of the date of this order, TMBR/Sharp, by Court declaration, is the owner of an oil and gas lease in both Section 23 and Section 25, 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.

30. Both Arrington and Ocean Energy imply that an appeal will be filed of the District Court's decision. Until the issue of title in Sections 23 and 25 is finally resolved by the courts or by agreement of the parties, the outcome of this proceeding is therefore uncertain. As of the present time, TMBR/Sharp has prevailed on the title question and this Order reflects that (present) reality. However, as an appeal could change that conclusion, jurisdiction of this matter should therefore be retained until matters are finally resolved.

31. The permits to drill issued by the Division in July 2001 to Arrington were issued erroneously and should be rescinded *ab initio*. The applications to drill submitted by TMBR/Sharp in August 2001 should have been processed within a few days of receipt. Arrington's later acquisition of an interest in section 23 and 25 through a farm out agreement doesn't change this analysis; Arrington had no interest by virtue of farm out as of the date of TMBR/Sharp's applications.

32. On another issue, Arrington and Ocean Energy have both urged this body to stay these proceedings pending the resolution of the applications for compulsory pooling, arguing that a decision on those matters will effectively resolve the issues surrounding the permits to drill.

33. Arrington and Ocean Energy's conclusion does not necessarily follow. An application for a permit to drill serves different objectives than an application for compulsory pooling and the two proceedings should not be confused. The application for a permit to drill is required to verify that requirements for a permit are satisfied. For example, on receipt of an application, the Division will verify whether an operator has financial assurance on file, identify which pool is the objective of the well so as to identify the proper well spacing and other applicable requirements, ensure that the casing and cementing program meets Division requirements and check the information provided to identify any other relevant issues. The acreage dedication plat that accompanies the application (form C-102) permits verification of the spacing requirements under the applicable pool rules or statewide rules. Compulsory pooling is related to these objectives in that compulsory pooling would not be needed in the absence of spacing requirements. 1 Kramer & Martin, *The Law of Pooling and Unitization*, § 10.01 (2001) at 10-2. But its primary objectives are to avoid the drilling of unnecessary wells and to protect correlative rights. NMSA 1978, § 70-2-17(C).

34. It has long been the practice in New Mexico that the operator is free to choose whether to drill first, whether to pool first, or whether to pursue both contemporaneously. The Oil and Gas Act explicitly permits an operator to apply for compulsory pooling after the well is already drilled. See NMSA 1978, § 70-2-17(C) (the compulsory pooling powers of the Division may be invoked by an owner or owners "... who has the right to drill *has drilled* or proposes to drill a well [sic] ..."). Issuance of the permit to drill does not prejudice 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, § 70-2-18(A) and, if unsuccessful, to seek compulsory pooling pursuant to NMSA 1978, § 70-2-17(C).

35. Thus, where compulsory pooling is not required because of voluntary agreement or because of common ownership of the dedicated acreage, the practice of designating the acreage to be dedicated to the well on the application for a permit to drill furthers administrative expedience. Once the application is approved, no further proceedings are necessary. 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.

36. Thus, the process fosters efficiency by permitting a simple approach in cases where ownership is common and pooling, voluntary or compulsory, is not necessary.

37. Ocean's expiring farm-outs present a difficult problem because the delay occasioned by this proceeding and any delay that might occur in the pending compulsory pooling cases may place Ocean's interests in jeopardy. It is worth noting that Ocean's interests seem to be free of the title issues plaguing the other parties, but since Ocean Energy intended that Arrington drill and become operator, Ocean isn't planning on preserving its rights by drilling a well itself and hasn't applied for a permit to drill. Unfortunately, this body is without authority to stay expiration of the farm-outs; Ocean should petition the District Court for relief if the expiring farm-outs are a concern.

CONCLUSION OF LAW:

The Oil Conservation Commission has no jurisdiction to determine the validity of any title, or the validity or continuation in force and effect of any oil and gas lease. Exclusive jurisdiction of such matters resides in the courts of the State of New Mexico.

IT IS THEREFORE ORDERED:

1. The portion of TMBR/Sharp's application in Case No. 12731 seeking to void permits to drill obtained by Arrington is granted. The permits to drill awarded to

Arrington shall be and hereby are rescinded *ab initio* and the applications originally filed by TMBR/Sharp in August, 2001 shall be and hereby are remanded to the District Office for approval consistent with this Order provided the applications otherwise meet applicable Division requirements.

2. TMBR/Sharp's application in Case No. 12744, appealing the decision of the Supervisor of District I of the Oil Conservation Division, is granted and the decision shall be and hereby is overruled.

3. The motions of Arrington and Ocean to continue this proceeding until after the decision in Cases No. 12816 and No. 12841 shall be and hereby are denied.

4. The motion of TMBR/Sharp to Supplement the Record is hereby granted.

5. Jurisdiction of this case is retained for the entry of such further orders as may be necessary given subsequent proceedings in TMBR/Sharp Drilling, Inc. v. David H. Arrington Oil & Gas, Inc., *et al.*

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

LORI WROTENBERY, CHAIR

JAMI BAILEY, MEMBER

ROBERT LEE, MEMBER

SEAL

District I
1625 N. French Dr., Hobbs, NM 88240
District II
811 South First, Artesia, NM 88210
District III
1000 Rio Brazos Road, Aztec, NM 87410
District IV
2040 South Pacheco, Santa Fe, NM 87505

State of New Mexico
Energy Minerals and Natural Resources

Form C-101
Revised March 17, 1999

Oil Conservation Division
2040 South Pacheco
Santa Fe, NM 87505

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 David H. Arrington Oil & Gas, Inc P.O. Box 2071 Midland, Texas 79702		² OGRID Number 005898
³ Property Code 29099	³ Property Name Glass-Eye Midge "25"	³ API Number 30-025-35787
		⁶ Well No. 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
A	25	16S	35E		803'	North	962'	East	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 N. Townsend; Mississippian Wildcat					¹⁰ Proposed Pool 2				

¹¹ Work Type Code N	¹² Well Type Code G	¹³ Cable/Rotary Rotary	¹⁴ Lease Type Code Fee	¹⁵ Ground Level Elevation 3959'
¹⁶ Multiple No	¹⁷ Proposed Depth 13,000'	¹⁸ Formation Mississippian	¹⁹ Contractor Patterson	²⁰ Spud Date ASAP

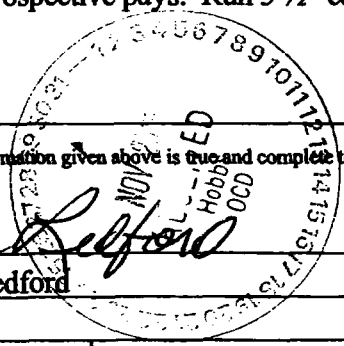
²¹ Proposed Casing and Cement Program					
Hole Size	Casing Size	Casing weight/foot	Setting Depth	Sacks of Cement	Estimated TOC
17 1/2"	13 3/8"	54.5#	470'	500 sxs	Circ
11"	8 5/8"	32#	4950'	1750 sxs	Circ
7 7/8"	5 1/2"	17#	13,000'	500 sxs	500 Above
					uppermost pay

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.

Drill 17 1/2" hole to 470'. Set 13 3/8" csg. Circ cement to surface. Drill 11" hole to 4950'. Set 8 5/8" to 4950'. Circ cement to surface. Install BOP's. Test BOP's to 5000 psi. Test casing to 1500 psi. Drill 7 7/8" hole to 13,000'. DST any prospective pays. Run 5 1/2" casing as justified.

Permit Expires 1 Year From Approval Date Unless Drilling Underway



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: <i>Danne Ledford</i>	Approved by: <i>Chris Williams</i>	ORIGINAL SIGNED BY CHRIS WILLIAMS ENGINEERING MANAGER	
Printed name: Danne Ledford	Title:	Approval Date: DEC 17 2001	Expiration Date:
Title: Geologist	Date: 11/29/2001	Phone: (915) 682-6685	Conditions of Approval: <i>Can not produce without community agreement.</i>
Attached <input checked="" type="checkbox"/>			

2

DISTRICT II
 P. O. Drawer DD
 Artesia, NM 88211-0719

OIL CONSERVATION DIVISION
 P. O. Box 2088
 Santa Fe, New Mexico 87504-2088

Submit to the Appropriate
 District Office
 State Lease - 4 copies
 Fee Lease - 3 copies

DISTRICT III
 1000 Rio Brozos Rd.
 Aztec, NM 87410

AMENDED REPORT

DISTRICT IV
 P. O. Box 2088
 Santa Fe, NM 87507-2088

WELL LOCATION AND ACREAGE DEDICATION PLAT

1 API Number 30-025-35787		2 Pool Code 86390		3 Pool Name N. Dwyersch; Mississippiian Wildcat			
4 Property Code 29099		5 Property Name GLASS-EYE MIDGE '25'				6 Well Number 1	
7 GRID No. 5898		8 Operator Name DAVID H. ARRINGTON OIL & GAS, INC.				9 Elevation 3959'	

*** SURFACE LOCATION**

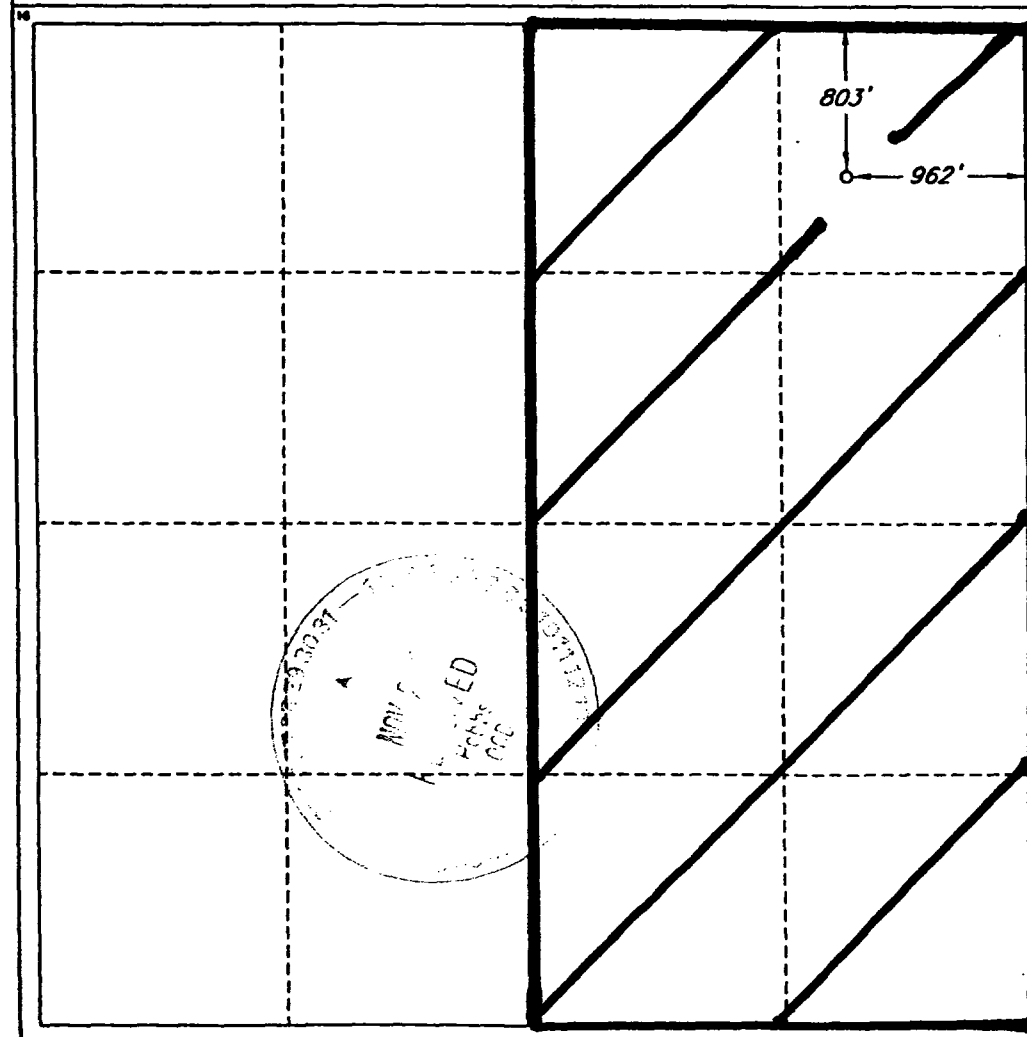
UL or lot no.	Section	Township	Range	Lot Ida	Feet from the	North/South line	Feet from the	East/West line	County
A	25	16 SOUTH	35 EAST, N.M.P.M.		803'	NORTH	962'	EAST	LEA

" BOTTOM HOLE LOCATION IF DIFFERENT FROM SURFACE

UL or lot no.	Section	Township	Range	Lot Ida	Feet from the	North/South line	Feet from the	East/West line	County

12 Dedicated Acres 320	13 Joint or Infill	14 Consolidation Code	15 Order No.
---------------------------	--------------------	-----------------------	--------------

NO ALLOWABLE WELL 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

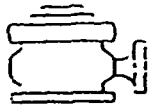
 Printed Name
 Danny Ledford
 Title
 Geologist
 Date
 11/29/01

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.

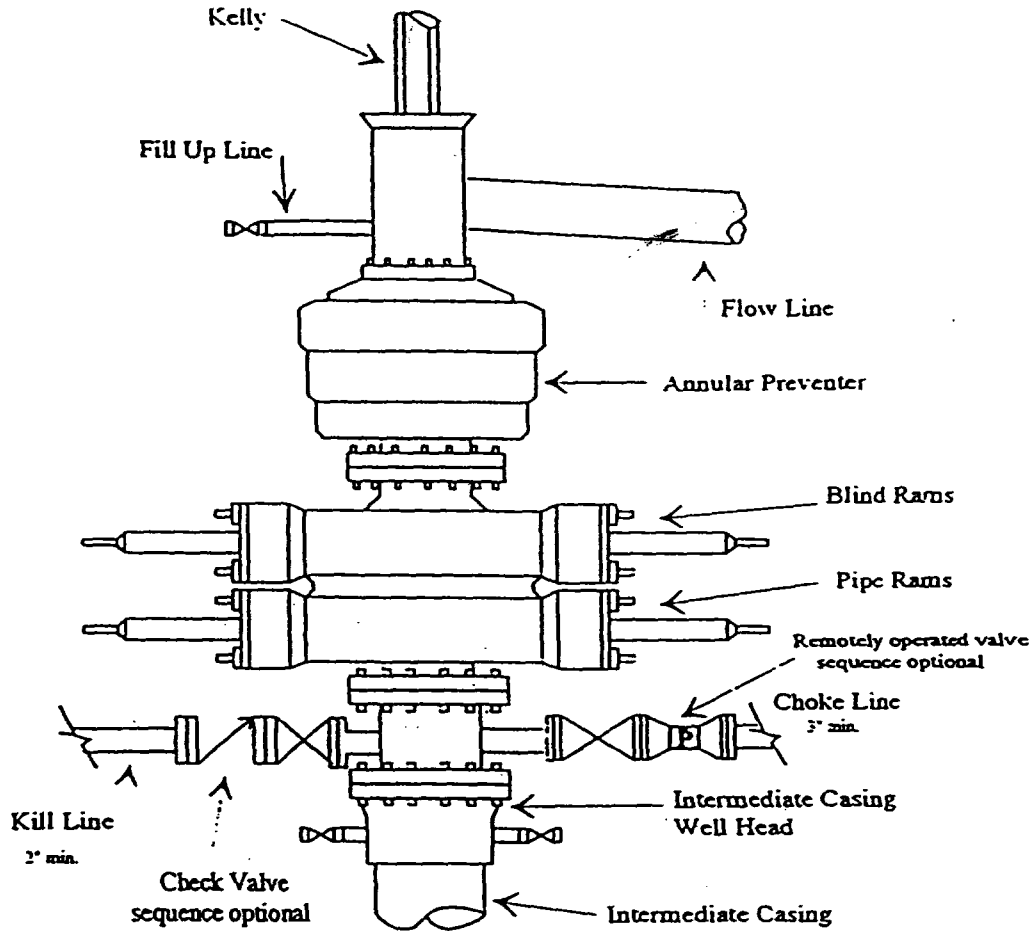
Date of Survey
 NOVEMBER 13, 2001
 Signature and Profession

 State of New Mexico
 V. LYNN BEZNER
 NO. 7920
 11-19-01
 JOB #7920 / V.H.B.

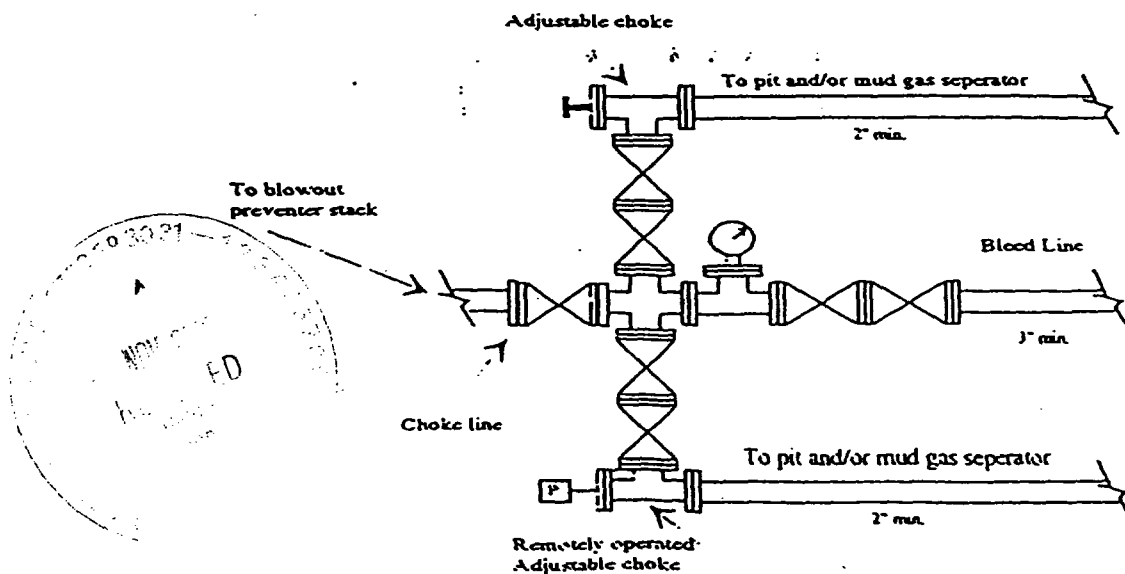


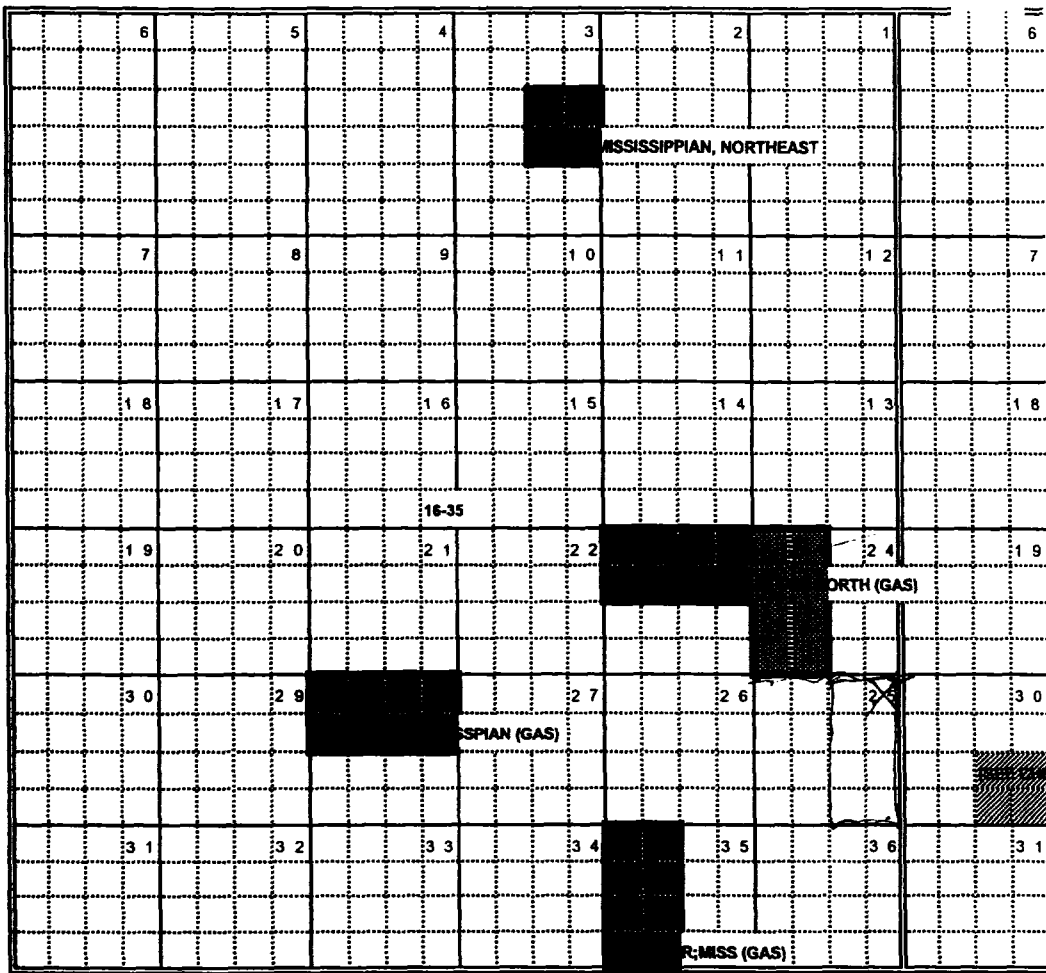
David H. Arrington Oil & Gas, Inc.

Typical 5,000 psi Pressure System Schematic Annular with Double Ram Preventer Stack



Typical 5,000 psi choke manifold assembly with at least these minimum features





8639C

320000

CMD : ONGARD 12/03/01 09:25:09
OG5SECT INQUIRE LAND BY SECTION OGODM -TPEF

PAGE NO: 1

Sec : 25 Twp : 16S Rng : 35E Section Type : NORMAL

D	C	B	A
40.00	40.00	40.00	40.00
Fee owned	Fee owned	Fee owned	Fee owned

E	F	G	H
40.00	40.00	40.00	40.00
Fee owned	Fee owned	Fee owned	Fee owned

A

PF01 HELP PF02 PF03 EXIT PF04 GoTo PF05 PF06
PF07 BKWD PF08 FWD PF09 PRINT PF10 SDIV PF11 PF12

CMD : ONGARD 12/03/01 09:33:13
OG5SECT INQUIRE LAND BY SECTION OGODM -TPEF
 PAGE NO: 2
Sec : 25 Twp : 16S Rng : 35E Section Type : NORMAL

L	K	J	I
40.00	40.00	40.00	40.00
		CPR	CPR
		V05494 0000	V05494 0000
Fee owned	Fee owned	YATES PETROLEUM C	YATES PETROLEUM C
		03/01/04	03/01/04

M	N	O	P
40.00	40.00	40.00	40.00
		CPR	CPR
		V05494 0000	V05494 0000
Fee owned	Fee owned	YATES PETROLEUM C	YATES PETROLEUM C
		03/01/04	03/01/04

PF01 HELP PF02 PF03 EXIT PF04 GoTo PF05 PF06
PF07 BKWD PF08 FWD PF09 PRINT PF10 SDIV PF11 PF12

	6	5	4	3	2	1
				MISSISSIPPIAN, NORTHEAST		
	7	8	9	10	11	12
	18	17	16	15	14	13
			16-35			
	19	20	21	22	24	
				MISSISSIPPIAN, NORTH (GAS)		
	30	29		27	26	25
			MISSISSIPPIAN (GAS)			
	31	32	33	34	35	36
				MISSISSIPPIAN, NORTH (GAS)		

8639D
320cc