

Sherman never put itself in a proper position to become the operator for DHY B in the eyes of NMOCD or the other interest owners during its entire tenure of its interest ownership. Thus Sherman never had the right to operate DHY B well. There was no right to operations to transfer from Sherman to Chi or any other party.

Moreover, even if I. T. wishes to do so, it would be violating the terms of the JOA to relinquish the operations for the DHY B well without relinquishing the operations for DHY State #1. Notwithstanding all of the above, I. T. has been and remains the acknowledged operator by the NMOCD for both DHY wells at all times since 1991 and the two wells are subject to the same JOA.

## 2. UNIFORMITY OF UNIT OWNERSHIP

Under the JOA, a uniformity of unit ownership must be maintained at all times. I. T. and Sherman made cross assignments on the two wells. But since I. T. now owns an interest (acquiring 25% interest from DEVON in DHY B) in both DHY wells, this provision is now fully satisfied. Under this provision, I. T. now is in full compliance with all aspects of the JOA as the operator for both wells. In the same vein, Chi Energy, Inc., cannot become the operator of the DHY B well in accordance with the JOA since it does not own any interest in DHY STATE #1.

## 3. RESIGNATION OF OPERATOR

Under the Resignation of Operator provision, there is only one way an operator can be removed and that is by resignation. Under the Selection of New Operator provision, unless a new operator is chosen by the remaining parties, the party acquiring the operators interest becomes the operator. Dekalb, the former operator, sold its interest to I. T. and Sherman. Since I. T. is the acknowledged operator by New Mexico Oil Conservation Division (hereinafter called NMOCD) and has been responsible for posting the plugging bond on both DHY State and DHY B wells since 1991, ***there has never been a resignation, or a vote and Sherman never asserted the claim of Operator.*** Indeed, Sherman was never bonded in the State of New Mexico and could not be an Operator. The true test of being an Operator for the two wells is the fact that I. T. was acknowledged operator by all other parties to the JOA. I. T. performed all duties of an operator for JIB billings until Sherman's act and AFE for plugging and abandonment. I. T. maintained its operator status properly in the eyes of NMOCD and has filed shut in reports diligently for four years on the DHY "B" #1 well.