Exhibit 18

FIFTH JUDICIAL DISTRICT COURT STATE OF NEW MEXICO COUNTY OF LEA

TMBR/SHARP DRILLING, INC.,

Plaintiff,

v.

No. CV- 1844 3/11 5

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, and TOM STOKES,

Defendants.

PLAINTIFF'S COMPLAINT FOR DECLARATORY JUDGMENT, TORTIOUS INTERFERENCE, REPUDIATION, DAMAGES, AND INJUNCTIVE RELIEF

TMBR/SHARP DRILLING, INC. ("TMBR/Sharp"), Plaintiff, for cause of action against DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, AND ERMA STOKES HAMILTON would show the Court as follows:

THE PARTIES

- Plaintiff is TMBR/Sharp Drilling, Inc. ("TMBR/Sharp") which is a Texas corporation doing business in the State of New Mexico and with offices in Midland, Texas.
- Defendant David H. Arrington Oil & Gas, Inc. ("Arrington O&G") is a Texas corporation
 doing business in New Mexico and is a resident of Midland, Texas. It may be served

 <u>Certified Mail, Return Receipt Requested</u>, through its registered agent, Lewis Cox, III, at 311

 North First Street, Lovington, New Mexico, 88260.

Plaintiff's Complaint for Declaratory Judgment, Tortious Interference, Repudiation, Damages, and Injunctive Relief

Mid: SRICHARDSON\004370\000021\297609.1

Page 1

BEFORE THE OIL CONSERVATION COMMISSION

Case No. 12731 Exhibit No.__

Submitted By:

TMBR/Sharp Drilling
Hearing Date: March 26, 2002

- 3. James D. Huff ("Huff") is an individual doing business in New Mexico and is a resident of Mineola, Texas. He may be served by Certified Mail, Return Receipt Requested, at P. O. Box 705, Mineola, Texas 75773.
- 4. Defendant Madeline Stokes is an individual owning real property in New Mexico and residing in Ozona, Texas and may be served by <u>Certified Mail, Return Receipt Requested</u>, at Box 1115, Ozona, Texas 76943.
- 5. Defendant Erma Stokes Hamilton is an individual owning real property in New Mexico and residing in Big Spring, Texas and may be served by Certified Mail, Return Receipt Requested, at 408 W. Washington, Big Spring, Texas 79720.
- 6. Defendant John David Stokes is an individual owning real property in New Mexico and residing in Ozona, Texas and may be served by <u>Certified Mail, Return Receipt Requested</u>, at P. O. Box 1739, Ozona, Texas 76943.
- 7. Defendant Tom Stokes is an individual owning real property in New Mexico and residing in Ozona, Texas and may be served by <u>Certified Mail, Return Receipt Requested</u>, at Box 932, Ozona, Texas 76943.

VENUE AND JURISDICTION

- 8. Pursuant to New Mexico Statute 38-3-1(D), venue is mandatory in Lea County, New Mexico because the real property, ownership of which is at issue, is located there.
- 9. This Court has jurisdiction over the parties and the subject matter of this action.

FACTUAL BACKGROUND

ORIGINAL LEASES

- 10. Effective July 1, 1998, TMBR/Sharp entered into an operating agreement ("Operating Agreement") covering oil and gas properties in Lea County, New Mexico.
- 11. Exhibit "A" to the Operating Agreement described lands covered by the agreement including Section 24, T-16-S, R-35-E, in Lea County, New Mexico, and more specifically described two oil and gas leases, each of which cover, among other lands, the NW/4 SW/4 and NW/4 NE/4 of said Section 24.

THE LEASES

- 12. The first lease ("First Lease") is an oil and gas lease made effective December 7, 1997 between Madeline Stokes and Ameristate Oil & Gas, Inc. ("Ameristate").
- 13. The First Lease is recorded in Book 827, page 128 of the Deed Records of Lea County, New Mexico, as amended by instrument dated August 10, 2000.
- 14. The second lease ("Second Lease") is a lease made effective December 7, 1997 between Erma Stokes Hamilton and Ameristate. It is filed in Book 827, page 124 of the Deed Records of Lea County, New Mexico as amended by instrument dated August 14, 2000.
- 15. By Quitclaim Deed with Reservation of Life Estate and executory rights, Emma Stokes

 Hamilton granted John David Stokes and Tom Stokes her remaining interest in the Second

 Lease.

- 16. These two leases, as amended, are herein referred to as the "Original Stokes Leases" or the "First Lease" and "Second Lease," and copies thereof are attached hereto as Exhibits "A" and "B"
- 17. TMBR/Sharp is a successor in interest to Ameristate by assignment of the First Lease and Second Lease.

THE POOLED UNIT

- 18. On November 17, 2000, TMBR/Sharp Drilling as operator under the Operating Agreement, filed an application for permit to drill (Form C-101) with the Oil Conservation Division ("OCD") of the State of New Mexico, a copy of which is attached as Exhibit "C."
- 19. On the same date TMBR/Sharp filed a well location and acreage dedication plat describing the pooled unit dedicated to the proposed well, the Blue Fin "24" No. 1 Well (Form C-102) with the OCD and outlined thereon the 320 pooled acres in Township 16 South, Range 35 East, NMPM, Section 24: W/2, Lea County, New Mexico. A copy of this instrument is attached as Exhibit "D."
- 20. The permit to drill was approved by the OCD on November 22, 2000.
- 21. The Blue Fin "24" No. 1 Well was spudded in March 29, 2001 and a drill stem test was run on May 15, 2001.
- 22. On June 3, 2001 casing was placed in the hole.
- 23. On June 28, 2001 the well was perforated and on June 29, 2001 hydrocarbons were produced from the well.

ن ۾ پؤي

- 24. The well, which is capable of producing hydrocarbons in paying quantities, is presently waiting for a pipeline connection.
- 25. The Original Stokes Leases each provides in Paragraph 5 in pertinent part: "Lessee is hereby granted the right and power, from time to time, to pool or combine this lease, the land covered by it or any part or horizon thereof with any other land, leases, mineral estates or parts thereof for the production of oil or gas.... Lessee shall file a written unit designation in the county in which the premises are located and such units may be designated from time to time and either before or after the completion of wells. Drilling operations on or production from any part of any such unit shall be considered for all purposes, except the payment of royalty, as operations conducted upon or production from the land described in this lease." (emphasis added).
- A portion of the lands covered by each of the Original Stokes Leases, namely the NW/4 SW/4 of Section 24, was included in the unit designation filed in Lea County, New Mexico with the OCD of the State of New Mexico during the primary term of such leases. Therefore, during the primary term, there was a well being drilled on a pooled unit which included Original Stokes Lease Acreage. Those activities were sufficient to preserve the leases beyond the primary terms. The First and Second Leases and all acreage described therein are now held by the Blue Fin "24" No. 1 Well, subject to continuous development by TMBR/Sharp as described below.

TOP LEASES

- 27. On or about March 27, 2001, Huff acquired an oil and gas lease from Defendant Madeline Stokes covering the same lands and minerals covered by the Original Stokes Leases. This lease is herein referred to as the "Stokes Top Lease."
- 28. The Stokes Top Lease purports to be for a primary term of three (3) years from June 7, 2001, and as long thereafter as oil or gas is produced from said land or from land with which said land is pooled.
- 29. On the same date, Huff acquired an oil and gas lease from Defendant Erma Stokes Hamilton also covering the same lands described in the Original Stokes Leases. This lease is herein referred to as the "Hamilton Top Lease."
- 30. The Hamilton Top Lease is for the same primary term as the Stokes Top Lease. The Stokes Top Lease and Hamilton Top Lease are herein collectively referred to as the "Huff Top Leases," and copies thereof are attached hereto as Exhibits "E" and "F."
- 31. The Huff Top Leases each provide in pertinent part: "This oil and gas lease is subordinate to that certain 'Prior Lease' [Original Stokes Leases] recorded in... Lea County Records, as amended by instrument dated ... recorded ... Lea County Records, but only to the extent that said prior lease is currently a valid and subsisting oil and gas lease."
- On or about July 12, 2001 Michael J. Canon, an attorney in Midland, Texas contacted RandyV. Watts an independent landman working for TMBR/Sharp and Ameristate and other parties to the Operating Agreement.

- 33. Mr. Canon advised Mr. Watts that his clients the Stokes Family questioned the continued validity of the Original Stokes Leases, in that no pooling designation had been filed in the County Clerk's office of Lea County prior to the expiration of the primary term of the Original Stokes Leases.
- 34. Mr. Phil Brewer, an attorney for TMBR/Sharp and other parties to the Operating Agreement, responded to Mr. Canon's inquiry by letter advising of TMBR/Sharp's position that the Original Stokes Leases were in full force and effect.
- 35. Mr. Canon replied to Mr. Brewer's letter in writing indicating that the "Stokes Family had questions with respect to whether or not the lease [Original Stokes Leases] is in effect and whether Ameristate has taken the necessary and appropriate action to perpetuate its lease beyond the expiration of its primary term, June 17[sic], 2001."
- 36. On information and belief, Huff has taken the position that the Original Stokes Leases have expired and that the Huff Top Leases are in effect.
- 37. On July 19, 2001 Arrington O&G filed an application for and obtained a permit to drill the Triple Hackle Dragon 25 No. 1. Well on the W/2 of Section 25, T-16-S, R-35-E, Lea County, New Mexico. The OCD approved the application on July 19, 2001.
- 38. The unit designated by Arrington O&G for this permit covered lands described in the Original Stokes Leases and the Huff Top Leases.
- 39. On information and belief, Arrington O&G obtained this permit to drill on the basis of ownership rights claimed to be held pursuant to the Huff Top Leases.

- 40. On July 30, 2001, Arrington O&G filed an application for and obtained a permit to drill the Blue Drake 23 No. 1. Well on the E/2 Section 23, T-16-S, R-35-E, Lea County, New Mexico. The OCD approved the application
- The unit designated by Arrington O&G for this permit covered lands described in the Original Stokes Leases and the Huff Top Leases.
- 42. On information and belief, Arrington O&G obtained this permit to drill on the basis of ownership rights claimed to be held pursuant to the Huff Top Leases.
- 43. David H. Arrington ("Arrington"), President of Arrington O&G, made statements to a TMBR/Sharp representative that the leases held by TMBR/Sharp had terminated and his company intended to move forward with development.
- on the E/2 of Section 25, by letter from Chris Williams, District I Supervisor for the Oil Conservation Division of the State of New Mexico, stating that the permit granted to Arrington O&G precluded the permit applied for by TMBR/Sharp.
- 45. On August 8, 2001, TMBR/Sharp was denied a permit to drill the Leavelle "23" No. 1 Well on the E/2 of Section 23, also on the basis of a letter from Chris Williams with like statement that the permit granted Arrington O&G precluded the granting of the permit sought by TMBR/Sharp.
- 46. The Original Stokes Leases are in full force and effect. However, each of these leases contains a "continuous development clause." Specifically, in Paragraph 12 of Exhibit A of each such lease provides in pertinent part: "Should Lessee fail to timely commence a well

٥

in accordance with aforesaid 180 days continuous drilling or development prior to the point in time the leased premises have fully developed then this lease shall terminate as to all lands not included in or otherwise allocated to a well unit."

- 47. TMBR/Sharp attempted to drill two additional wells in accordance with the provisions of Paragraph 12 of the Original Stokes Lease, but was denied drilling permits by the OCD on its leasehold property because those lands are claimed to be subject to the Huff Top Leases.
- 48. The drilling applications filed by Arrington O&G have prevented TMBR/Sharp from exercising its rights and fulfilling its obligations under the Original Stokes Leases.

COUNT I DECLARATORY JUDGMENT: ORIGINAL STOKES LEASES ARE PROPERLY POOLED

- 49. TMBR/Sharp incorporates by reference the factual information contained in paragraphs 1 through 44 of this Complaint.
- 50. TMBR/Sharp is an interested party under a written contract whose rights, status or other legal relations should be determined by the Court pursuant to the New Mexico Declaratory Judgment Act 44-6-1 through 44-6-15.
- 51. TMBR/Sharp seeks a declaratory judgment from the Court that the Original Stokes Leases are in full force and effect because TMBR/Sharp was drilling upon lands properly pooled with the lands covered by the Original Stokes Leases across the expiration of the primary term as provided for in Paragraph 5 of the lease.
- 52. Specifically, TMBR/Sharp seeks a declaratory judgment that its written unit designation filed in Lea County with the Oil Conservation Division of the State of New Mexico on

November 17, 2000 satisfied the obligations of Paragraph 5 of the Original Stokes Leases to properly pool the NW/4 SW/4 of Section 25, T-16-S, R-35-E, into a unit comprised of the W/2 of said Section 25.

COUNT II DECLARATORY JUDGMENT: HUFF TOP LEASES NOT EFFECTIVE

- Plaintiff incorporates by reference the factual information contained in paragraphs 1 through44 of this Complaint.
- 54. TMBR/Sharp seeks a declaratory judgment from the Court that the Huff Top Leases are not effective because the Original Stokes Leases are currently valid and subsisting oil and gas leases covering the lands described therein and superior in all respects to the Huff Top Leases.

COUNT III TORTIOUS INTERFERENCE

- Plaintiff incorporates by reference the factual information contained in paragraphs 1 through44 of this Complaint.
- 56. Arrington, Arrington O&G's and Huff's solicitation and acceptance of the Huff Top Leases, constitute deliberate and malicious tortious interference with the contractual relationships between TMBR/Sharp on the one hand and each of Madeline Stokes and Erma Stokes Hamilton on the other.

Plaintiff's Complaint for Declaratory Judgment, Tortious Interference, Repudiation, Damages, and Injunctive Relief

- 57. Huff's knowledge of the Original Stokes Lease is undisputed and clearly evidenced by the fact that Huff took a top lease that would not be viable until the expiration of the Original Stokes Leases.
- 58. TMBR/Sharp has been denied its right to perform continued drilling operations on the Original Stokes Leases.
- 59. Huff, Arrington and/or Arrington O&G have asserted that the Original Stokes Leases expired, that the Huff Top Leases were valid and subsisting oil and gas leases, and requested and received permits from the OCD to drill wells on lands and minerals covered by the Original Stokes Leases.
- 60. Arrington O&G obtained drilling permits, told TMBR/Sharp employees that the Original Stokes Leases were expired, and performed operations on the lands covered by the Huff Top Leases.
- 61. Huff, Arrington and Arrington O&G further knew and understood that TMBR/Sharp could not utilize its contractual rights if it could not obtain permits from the Oil Conservation Division of the State of New Mexico to drill on acreage covered by the Original Stokes Leases.
- 62. Huff's, Arrington's and Arrington O&G's willfully and intentionally committed acts calculated to cause damage to TMBR/Sharp and its lawful business and ownership of the property pursuant to the Original Stokes Leases.
- 63. Huff's, Arrington's and Arrington O&G's acts were the proximate cause of damage to TMBR/Sharp in that TMBR/Sharp lost the opportunity or lost time in which to drill wells

on the pre-selected sites, and deprived TMBR/Sharp of the benefit of the Original Stokes Leases.

64. TMBR/Sharp has suffered actual damage and loss by virtue of Huff's, Arrington's and Arrington O&G's conduct by losing drilling opportunities in that drilling rigs are now reasonably available and gas prices remain high. If drilling is delayed, either rigs may become unavailable or gas prices may drop. Further, TMBR/Sharp has been damages by its loss of future production from the two wells it intended to drill but was denied permits for.

COUNT IV TMBR/SHARP'S DUTY TO DRILL SHALL BE SUSPENDED

- Plaintiff incorporates by reference the factual information contained in paragraphs 1 through44 of this Complaint.
- 66. Paragraph 9 of each of the Original Stokes Leases provides in pertinent part: "Should lessee be prevented from complying with any express or implied covenant of this lease, or from conducting drilling or reworking operations hereunder, or from producing oil or gas hereunder by reason of scarcity or inability to obtain or use equipment or material or by operation of force majeure, or by any federal or state law or any order, rule or regulation of governmental authority, then while so prevented, lessee's duty shall be suspended, and Lessee shall not be liable for failure to comply therewith, and this lease shall be extended while and so long as Lessee is prevented by any such cause from conducting drilling or reworking operations or from producing oil or gas hereunder, and that time while Lessee is

so prevented shall not be counted against Lessee, anything in this lease to the contrary

notwithstanding."

67. The conduct of Arrington O&G, acting on behalf of or in concert with Huff, in applying for

and receiving permits to drill from the Oil Conservation Division on lands and minerals

covered by the Original Stokes Leases, has caused the Oil Conservation Division to withhold

the applied for drilling permits for the Blue Fin "25" No. 1 Well and the Leavelle "23" No.

1 Well, thereby resulting in circumstances which have triggered Paragraph 9 of the Original

Stokes Leases.

68. Pursuant to the terms of Paragraph 9 of the Original Stokes Leases TMBR/Sharp seeks a

declaratory judgment that its duty "shall be suspended" and it "shall not be liable for failure

to comply therewith [the lease] and the leases "shall be extended while and so long as lessee

is prevented from conducting drilling or reworking operations or from producing oil or

gas hereunder," as a result of it being unable to obtain OCD permits for the drilling of the

referenced wells.

COUNT V EQUITABLE CLAIM: LEASE REPUDIATION

- 69. Plaintiff TMBR/Sharp incorporates by reference the factual information contained in paragraphs 1 through 44 of this Complaint.
- 70. Madeline Stokes and Erma Stokes Hamilton have, acting through their attorney, Michael J.

 Canon, wrongfully repudiated the Original Stokes Leases by asserting that the actions of the

 Lessee/Plaintiff are not sufficient, pursuant to the Original Stokes Leases, to perpetuate such

 leases beyond the specified primary term.
- 71. Further, their assertions that the Huff Top Leases are valid and subsisting oil and gas leases and permitting Huff and Arrington to obtain the interfering permits, precluding the exercise by TMBR/Sharp of its rights pursuant to the Original Stokes Leases, constitute a clear and unequivocal challenge to TMBR/Sharp's title to the Original Stokes Leases.
- 72. For such time as TMBR/Sharp is precluded from obtaining permits and pursuing its rights pursuant to the Original Stokes Leases, TMBR/Sharp requests this court exercise its equitable powers and suspend the running of any time period for performance by TMBR/Sharp pursuant to the Original Stokes Leases.

PRAYER FOR RELIEF

69. WHEREFORE, PREMISES CONSIDERED, Plaintiff TMBR/Sharp, Inc. respectfully requests the Court enter judgment awarding TMBR/Sharp the following relief:

- a. All direct and consequential damages of Defendants? breaches of their duties as described herein;
- b. An award of damages for Arrington's and Huff's tortious interference;
- c. A declaration that TMBR/Sharp's written unit designation filed in Lea County with the Oil Conservation Division of the State of New Mexico on November 17, 2000, satisfied the obligations of Paragraph 5 of the Original Stokes Leases to properly pool the N/4 SW/4 of Section 25, T-16-S, R-35-E, into a unit comprised of the W/2 of said Section 25;
- d. A declaration that the Huff Top Leases are not effective because the Original Stokes

 Leases are currently valid and subsisting oil and gas leases covering the lands

 described in this Complaint;
- e. A finding that Madeline Stokes and Erma Stokes have repudiated the Original Stokes Leases;
- f. Equitable relief relieving TMBR/Sharp from any obligation to conduct further drilling operations required under the Original Stokes Leases pending a judicial resolution as to the validity of the Original Stokes Leases;
- g. A temporary restraining order and injunctive relief ordering Arrington O&G and/or
 Huff refrain from drilling any wells on and acreage covered by the Original Stokes
 Leases;
- h. Awarding TMBR/Sharp costs, reasonable attorney's fees and pre-judgment and postjudgment interest at the highest lawful statutory or contractual rate; and

 Awarding TMBR/Sharp such other and further relief at law or in equity to which it may be justly entitled.

Respectfully submitted,

COTTON, BLEDSOE, TIGHE & DAWSON, P.C. 500 West Illinois, Suite 300

P.O. Box 2776

Midland, Texas 79702-2776

(915) 684-5782

(915) 682-3672 - Fax

By:

SUSAN R. RICHARDSON RICHARD R. MONTGOMERY ROBERT T. SULLIVAN

and

PHIL BREWER

P. O. Box 298 Roswell, NM 88202-0298 (505) 625-0298

ATTORNEYS FOR PLAINTIFF

4.3

EXHIBIT A

Producer's \$8-Paid-up

 $\mathcal{A}_{\mathcal{A}}(\mathcal{A})$

14263

OIL & GAS LEASE

THIS ACREMENT made this August 25, 1997, but effective December 7, 1997, between Madeline Stukes, dealing in her sole and separate property, whose address is P.O. Box 1115, Ozona, Texas 76943, hereit utilist lessor (whether this or more) and bases: AMERITYATE OR. & GAS, INC., 1211 WEST TEXAS STREET, MINIAND, TEXAS 79701.

I Lower is the new of TEN AND OCTOMER DOLLARS and it hand paid, respire and sufficiency of which is horeby administrated, and of the reveales and of the reveales and of the several and several and several and several and several and several and the several and several

Township 16 South, Runes 35 East, NMPM

Section 13: SE%

Section 23: SE%

Section 24: NWXSWX, NWXNEX

Section 25: NW% Section 26: NE%

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Head load in administration compares 720-1911 sures, whether is surelly comprises more or load.

- 2 Subject to the raiser processes barden secretained, this least theil remain in force for a term of there (1) years from Documber 7, 1997, (called "primery term"), and as long thereafter as one gas a produced from each land or from land with which sald land is provided.
- 1. The regions where past try because etc. (a) on mill, and other liquid hydroundours asset at the stell. 2/16 of that produced and seved from total level, terror to the delivered at the stell of two of in the paythese to which the stells not be consisted, (ii) on gas, mending consultated gas or taken gassome naturation produced how said lead and must of the payment on which the sign and to the said and the sign gas and the sign gas and the sign gas and the provisions have gas provided that one gas the sign gas the stell of the gas mend, provided that one gas the sign ga
- 6. This is a particle forward local shift for the obligated during the referency terms because in order to relate the reference of the obligation to pay my action to refer to reference of the obligation to pay my ables as adual production particle for the paying a best of adual production particle for the paying a best of the obligation to pay my ables as adual production particle for the paying a best of the paying a best
- 2 Losses in backy gradual the right and power, from time to time to pool or outshire this laste, the land covered by it or tity part or horizon stimeof with any other land, bases, manual at the or part theoret for the production of oil or pr. I had pooled inactuated their lands and not a small provide and the standard provides and for the pool or area in which said land in stead of, then a colorance of the fiving, and Manurals Department of the State of New Victics or by any other lands and such tents may be designated from time to their fudice or the provides. Drilling operations on or production from the land document from the provides are footed and and tents may be designated from time to three and either before or the correlation of scale. Drilling operations on or production from the land document from the land document of the land or overally the considered for all purposes, except the payment of rejectly, as operations of the land or production from the land document of the land and provided provides the standard of the land or overall by the lands and the land of the land of the land of the land or the land of the land or the land of the land
- it is a bit expiration of the primary term there is no well upon said land expelle of profitting off or gas, but losses that continguous for drilling or remarking thereon, the least shall remain in ferce as long as operations are presented with no consistent of more than 180 correctative days, whether each operations be on the name wall or on a distance or distance and or well, and if they must be the profitting of the primary term, all wells upon taid land thrown in impaths of producing for any count, this bases that not terminate of the more commences operations for additional drilling or remarking when 140 days the commences of the land shall have a deliberate or the land through the deliberation of the land through the deliberation of the land through the produced becomes.
- 7.1 amountail have for use of all, yet and water from said land, emerging from leater's wells and tanks, for all operations prevention, and the royalty shall be compand after deducts a way to mad. Leaver whill have the right of any land during or after the empted in of this leads to remove all property and flatters placed by hoose on said land, including the right to draw and master all coding. When required by fower, known will have all pipe liest on analyzed land, below reddenry place depth, and no well shall be drilled without hands of feet (200 &) of say variedance or but may on and the without hearth content. Leaver shall have the privilege, at the right and expense, of using gas from any gas well as and ten for insulation that the privilege is the right and expense, of using gas from any gas well as and ten to some and maide higher in the provides dwelling therears, out of any surplus gas not maded for operations because of
- It has not to the party for each of the party in the contesting of, while or in part and the provisions have finished to their federa, encourage, and make an advance, and the provision of the state of their federa, encourage and assigns, but no along it is no committed of the large of the contesting of, or rights is coming, repetition of that it provises an advance and their party and their mail to binding upon bases for any purpose and if the state have funded by cartiful mail a least principally and it is not to the state with account funded by cartiful mail a least through the dust of the comme, business with account or conflict any inchange and their finished that the conflict least it is a qualant, pay or tender any royalises of the fine name of the discussed or to his state or to his hous, account or administrator with such times as four finished with oridone settleformy to least a to the party and the state or to his state or to his hous, account or four state in the state of the deast of the deas
- 9. The full later is provided it as complying with any arrows or unplied sevenant of this jours, or fives conducting drilling or reworking operations for makers or from producing oil or you have not provided by rewart of the resist or a while to these or we equipment or metatal, or by uppersions of force explaints, or by any fuleral or states or we say order, that are equipment of programmental authority, that while as proved as like one of the second of the second large of the comply there with and this later that the description of the large of the comply there with and this later that the contraction of the large of the contraction of the large of the second of the large of the larg

10. Learn bersky warrards and agrees to defined the thir to said land and agrees that learns at its option may discharge my tax, mortgage or other lies upon said land, and is the essent feman dest to it shell be substanted to such lies with the right to enforce some and to apply republic and shed is republic payable bereauder toward exhibiting some. Without experience of beauty sight to enfor the warrarty. If this lease server a less interest in the old or gos is old or one; per of said land then the entire and embrished the simple same (which releases interest in beauty as part as to which the two recent lease entered is having appelled or not) then the republic, shed in or yeaky, and other payments. If my, covining flow may part as to which this lease cover less shed interest that it is paid only is the proportion which the interest therein, if my, covered by this lease, here in the whole and undivided the interest state therein. Should say one or move of the parties assent shows a leaster this to execute this lease, it shall nevertheless be highly upon the party or parties assenting the same.

11. Lames, its or his macronars, heire and neeliges, shall have the right of any time to narrander this lesse, in whole or in part, to lesser or his heire, statements, and earligs by delivering or medium a release thereof or the lesser, or by placing a release thereof or county in which sold had in obserted, thereopen lesses shall be reflered from all obligations, supermed or implied, of this agreement as to access to narrandered, and thereof the dust-in royalty psychio hereafter thall be reduced in the properties that the common covered hereby to reduced by sold release or refuses.

Madeline Stokes

STATE OF TEXAS

4.5

COUNTY OF Crockett

This instrument was acknowledged before me on the 4d day of September 1997, by Madeline Stokes, dealing in her sole and separate property.

Sacal Stewart Sarah Stewart

My commission expires: 05.28-01

BOOK 827 PAGE 128

EXHIBIT "A"

Attached to and made a part of that certain oil and gas lease dated August 25, 1997, but effective December 7, 1997, by and between Madeline Stokes, lessor, and Ameristate Oil & Gus, Inc., lossee:

12 Notwithstanding anything contained hereinabove to the contrary, it is understood and agreed that at the expiration of the primary term, this lease shall terminate as to all lands covered hereby not included in or otherwise allocated to a "well unit" as hereinafter defined, unless lessee is producing oil, gas or other hydrocarbons from any well on the leased premises, or lands pooled therewith, or is drilling upon said lands across the expiration of the primary term as provided for in the body of this lease, and does not allow more than 180 days to clapse between the completion or abandonment of one well on such land and the commencement of another well thereon until the leased premises have been "fully developed," as hereinafter defined. Operations for drilling of the first such development well must be commenced (a) within 180 days after the expiration of the primary term if production is established under this lease prior to the expiration of the primary term, or (b) within 180 days of completion of the well which is being drilled, tested or completed across the expiration of the primary term. Should lessee fail to timely commence a well in accordance with aforesaid 180 days continuous drilling or development prior to the point in time the leased premises have fully developed then this lease shall terminate as to all lands not included in or otherwise allocated to a well unit.) For the purpose hereof, the term "well unit" shall mean the proration or spacing unit ereated for a well capable of producing oil and/or gas or other hydrocarbons in paying quantities as in accordance with the applicable rules and regulations of the New Mouco Oil Conservation Division or other governmental authority having jurisdiction, and the term "fully developed" shall mean the point in time when the entirety of the leased premises has been included in a well unit or units as defined. The date of completion of a well shall be the date of a potential test if a producing well and the date of plugging if a dry hole or abandoned well. At the end of the continuous drilling program, if any, this lease will automatically terminate as to all lands covered hereby which have not been so fully developed and as to lands so fully developed shall terminate as to all depths lying more than 100' below the total depth drilled.

13 Payment of shut-in gas well royalties will not be permitted to maintain this lease in force for any period longer than two consecutive years, without the written consent of Lessor.

Signed for identification purposes:

-- [!

Madeline Stokes

4263

TINO THE REAL PROPERTY.

STATE OF NEW MEXICO COUNTY OF LEA FILFD

nd treated in Bose Many Chapter of Chapters, Lee Coping Chat By

EXHIBIT B

Service.

. . .

44.3

**** ...

OIL & GAS LEASE

THIS ACREEMENT made this August 25, 1997, but effective Docember 7, 1997, between Erma Stokes Hamilton, dealing in her sole and separate property, whose address is P.O. Box 1470, Big Spring, Texas 79721, herein called lower (whether one or more) and lowest AMERISTATE OIL & GAS, INC., 1211 WEST TEXAS STREET, MIDLAND, TEXAS 79701.

1. Lanz, is anythereion of TEN AND 60/100ths DOLLARS cash in head pold, receipt and sufficiency of which is hereby administrated, and of the repairies herein provided and of the agreements of the hance herein contained, bureby greats, bases and lets and out-only sens beens for the purpose of investigating, capacitag, proposelag, drilling, and operating for and producing will and gar, injuring gas, weters, other fields, and air into subsurface stress, laying pipe lices, storing off, insiding analy, reachesps, telephone lines, and other structures and their princes to produce, sere, take our of, took, presses, case and transport said minorale, the following described land in Lan County, New Mexico. to wit

> Township 16 South, Range 35 East, NMPM Section 13: SE% Section 23: SE% Section 24: NW/SW/L NW/LNE/L Section 25: NW%

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Section 26: NEW

Said land a neuroscial to comprise 720,00 scree, whether it exceedly comprises more or loss

- 2. Subject to the other provisions have contained, this bear shall remain in force for a term of there (3) years from Occomber 7, 1977, (called 'printary term'), and as long thereafter no of or gas to produced from said and or from lead with which said in popular.
- 1. The republish to be paid by leases are, (a) on all, and other liquid hydrocarbous arved at the well, 2716 of that produced and saved from and land, same to be delivered at the well or to be code of lance in the pipeline to which the well any be connected; (b) on gas, including mainghost gue or other gaseous mintanes produced from soid land and and off the provides that on gas hold are all the products, the mediant white a the well of 3716 of the gas used, provided that on gas hold are all the products, the repulses shall be 3716 of the gas used, provided that on gas hold are all the provision, the repulses shall be 3716 of the gas used, provided that on gas hold are all the provision that remains an analysis of the gas used, provided that on gas hold are all the gas used, provided that on gas hold are all the gas and are used on the same and well in that in, which people and therefore, the new whether 120 days after said well is shall in, and thereafter at around leases gas accept the looks that leave by the party embring made a servant leaser all, leases made provided from an elevance duct-in repulse made at discuss the leave by the party embring made hyperment or tender, and so large at held with the leave by the party embring made and an elevance duct-in repulse the party are produced from the lease of produced in an all the party of pertical to the party of pertical the remaindant of the vident was in find producing. The payment or tender of expelies and that a crystales may be made by these or desired. Any limit payment or tender of such in remaind and the repulsion of this leave in find producing. The payment or tender of expelies and that any person when the producing and the producing. The payment or tender of such in repulsion and the remaind was in find producing. The payment or tender of such in repulsion of the well were in find producing. The payment or tender of such in repulsion of the lease was in find producing. The p
- 4. This is a problem land and hand the deligated during the princeptors, hereaf to increment on the stripme may operations of vigilatours: character or to make may payments becomes or order to make the fine of the children of the children of the children of the children or make the provision of the children or pay reputation to sense production personal to the provision of Paragraph 2 hereof.
- S I make it handly granted the right and power, from time to time, in pool or combine this lease, the lend devered by it or my part or horizes thereof with my other lead, heart, nament unture to part thereof for the production of oil or gas. Untue pooled becaused that not exceed the sender's provision and fines by her or by the Oil Communication of the Energy and Minerale Department of the State of New Microso or by any other leavild sudarity for the pool or are in which said lead is absunded, plus a tolerance of ten request. Leave shall file written sell there is the countries to the countries of the selling a questions in the country in which the promises are toorised and such sealt may be designated from three to time and either before or the countries of wells. Drilling a questions on or production from any part of any such, said that is exceeded from three before or the countries of the seal described in this least. There shall be allocated to the lead covered by this leave included in any such unit that perclaim of the state production of pooled visions from which is the described in any such unit that perclaim of the state of the total covered from the countries of the total remainer of such and such that the countries of the payment or delivery of reputly, as the before to the total remainer of such and sure in the unit. The production or allowed the total state to the state contract to the total remainer of the posterior of an ill land covered betwy and itself of our land to the posterior of an ill land covered betwy and itself out in the sum contract to the season provided by teases. As provided herein, many be dissolved by teases by recording on appropriate instrument in the anesty where the land is studied as any time after the complaint of a dry hole or the constitution of posterior and the sum of a dry bell or the constitution of posterior and the sum of a dry bell or the constitution of posterior and the sum of the sum of the sum of a dry bell or the constitution of posterior and the sum of the s
- & If a transpiration of the primary term there is no well upon sold load applies of producing oil or gas, but losses has commenced operations for drilling or reventing therein, this load that revents in furous o long as operations are proceeded with no consultant of more than 130 connective days, whether much operations be on the same well or on a children's additional well or well, and if they result in the production of all or gas, no long thereafter as all or gas is produced from sold land. If after the applyishm of the primary term, all walls upon said land should honorous incomplete of producing for any count in these shall not terminate if tensor commences operations for additional drilling, or converting operations because from it is production, then this lones shall remain in full force to long therefore as all or gas is produced because for additional drilling. thereter as ail or gan is produced here
- 7. Lunes that have free use of all, got and water from sold land, attaget water from hunter's wells and tanks, for all operations between the reporty shall be compared after deducing any so used. I amout that have the right at envytion during or ofter the expiration of this lesse to remove all property and finteres placed by lesse on sold land, including the right to draw and remove all many of these required by lesses on sold land, including that free the water common and many placed depth, and so well shall be drifted within two huntered land (2007). Of any residence we have now on take land without lesser that have the privileges, at this risk and expresse, of using gas from any gas well on said land for seven and isside lagtes in the principal detailing thereon, est of only surplus gas art sended for specifical details.
- 8. The right of other party hurstander may be uselged in whole or in part and the provisions hurstaff shall entered to their helm, excentance, administrators, nucessees and sudges; into schenge in the constrainty of the land or in the constraint of, or rights to receive, republic or drived to rights of received the rights of looses have been favorable and at leaster or drived the rights of looses with except character or cartificial capital theory purposes will 90 days the longest hearing the sustained by sustained any sustained and a leaster principal place of business with except shall interest or cartificial capital theory of business with except shall be successful and a least shrough the death of the owner, issues may, at its equitee, pay or tunder any reyables or that-in regulation the suggest of the decreased or to his state or to his before, number or administrator with such time as immediate been furnished with evidence middless as the part of the decreased or to his before the relative to the state of the decreased or to the state or to his before the sold or to the state of the decreased or to the state or to his before, number or administrator with such times as longer many and the capital to the part of the decreased or to the state of the decreased or to the state of the decreased or to the state of the fall or make default to the payment of the proportions of the fall or the decreased of my child leave under the decreased of the late that the leave interest of the payments. 8. The right of defer party harmanise may be meighed in whele or in part and the provisions harms deall estend to their helm, estendards, administrators, a
- 9 Shald leave he prevented from complying with any segment or implied coverant of this leave, or Syste conducting drilling or remarking eq F Think lease the prevence from complying with any septem or implies coverage at this peace, or Then completing deviling or revorting operations beganning of their producting oil or gas becaused by peace of participy or inability to obtain or one equipment or medical, or by operations of force majeries, of by any fideral or state love or may order, rule or regulation of greatmentall state of the filter to comply therewish, and this love day while to majorated, and allowes shall not be liable for failure to comply therewish, and this love dails out of the filter to comply therewish, and this love dails of the other land while one of the state of th

Page 3 The second secon

A CONTRACTOR OF THE PARTY OF TH

16. Lower hereby were used agrees to desired the thirte end lend and agrees that leaves at its spices may distinct may tax, mortgage or other lies upon end land, and is the event leaves does to it shell be entropped to much lies with the right to enduce name and to apply republic and shar-in reportal populs becomes forced enterlying some. Webers impriment of locates rights under the warranty. If this leave covers a less interest in the oil or gas in all or may part of end leave the state and underliked the simple cases (whether leaves, in herent in herein agreement, if may, normally the may normaling these may part as to which this leave covers less that states, but to the whole and undivided the simple cases therein. If may, novemed by this leave, hower to the whole and undivided the simple cases the cover in the covers of the parties assessed above as leaver this cases at leaver their third in the cases.

[1]. Lesses, its or his passesors, bein and assigns, shall have the right at any time to narroader this lesse. In whole or in part, as lesser or his heir, excessors, and earliest by adverting or mailing a release therefore the lesser, or by placing a release thereof of record in the county in which said less is minuted; thereupes lesses shall be reduced from all chiliptican, supressed or implied, of this opposesses as to securp so currentered, and thereofor the dust in soyalty popular homester shall be reduced in the proposition that the excessor current horsely is reduced by said reduces or release.

Coma Stakes Hamilton	د :
STATE OF TEXAS } COUNTY OF _HOWARD }	
MAY PROBLEM? MY COMMISSION COPIES January C, 1000	Notary Public
Ay commission expires:	•

EXHIBIT "A"

Attached to and made a part of that certain oil and gas lease dated August 25, 1997, but effective December 7, 1997, by and between Erms Stokes Hamilton, lessor, and Ameristate Oil & Gas, Inc., lessee:

- Notwithstanding anything contained hereinabove to the contrary, it is understood and agreed that at the expiration of the primary term, this lease shall terminate as to all lands covered hereby not included in or otherwise allocated to a "well unit" as hereinafter defined, unless lessee is producing oil, gas or other hydrocarbons from any well on the leased premises, or lands pooled therewith, or is drilling upon said lands across the expiration of the primary term as provided for in the body of this lease, and does not allow more than 180 days to elapse between the completion or abandonment of one well on such land and the commencement of another well thereon until the leased premises have been "fully developed," as hereinafter defined. Operations for drilling of the first such development well must be commenced (a) within 180 days after the expiration of the primary term if production is established under this lease prior to the expiration of the primary term, or (b) within 180 days of completion of the well which is being drilled, tested or completed across the expiration of the primary term. Should lessee fail to timely commence a well in accordance with aforesaid 180 days continuous drilling or development prior to the point in time the leased premises have fully developed then this lease shall terminate as to all lands not included in or otherwise allocated to a well unit. For the purpose hereof, the term "well unit" shall mean the proration or spacing unit created for a well capable of producing oil and/or gas or other hydrocarbons in paying quantities as in accordance with the applicable rules and regulations of the New Mexico Oil Conservation Division or other governmental authority having jurisdiction, and the term "fully developed" shall mean the point in time when the entirety of the leased premises has been included in a well unit or units as defined. The date of completion of a well shall be the date of a potential test if a producing well and the date of plugging if a dry hole or abandoned well. At the end of the continuous drilling program, if any, this lease will automatically terminate as to all lands covered hereby which have not been so fully developed and as to lands so fully developed shall terminate as to all depths lying more than 100' below the total depth drilled.
- 13. Payment of shut-in gas well royalties will not be permitted to maintain this lease in force for any period longer than two consecutive years, without the written consent of Lessor.

Signed for identification purposes:

Erma Stoke Hamilt

Erma Stokes Hamilton

]!

4262

STATE OF NEW MEXICO COUNTY OF LEA FILED

and recorded in Bental Total
Ten Chappella, Ly Off or Total
Ten Chappella, Ly Off or Total
Ten Chappella, Ly Off or Total

SEAL

EXHIBIT C

JUL-10-01 TUE 09:39 AX PO Box 1960, Hobbs, NM 85241-1980 Descrice II 811 South First, Artesla, NM 88210 District III

State of New Mexico

OIL CONSERVATION DIVISION 2040 South Pacheco

Form C-101 Revised October 18, 1994 Instructions on back Submit to Appropriate District Office State Lease - 6 Copies

000 Rio Britios I	ld . Amec, l	NM \$7410		Santa Fe, NM 87505					Fee Lease - 5 Copies		
istrict IV 140 South Pactoce. Sunta Fe. NM 97505									AMEN	DED REPORT	
APPLICA	MOIT	FOR PE				TER, DEE	PEN	, PLUGBA	\СК,		DD A ZONE
				•	Me and Address					,0	RID Number
TMBR/Sharp Drilling, Inc. P. O. Drawer 10970								}	036554		
					TX 79702					l	
		-								30.0	15-35157
'Property Code 'Property Name 24469 Blue Fla "24"							Well No.				
	-6 /-				' Surface						
Ul. er let me.	Scettes	Tousdip	nadip Range		Feet from the	North/South line		Feet from the Las		Vest News	Count
M	24	165	35E		660	West		768		South	Lon
		⁴ Pr	roposed	Bottom	Hole Locat	ion If Diffe	rent	From Surf	ace		
UL or lot no.	Section	Township	Range	Let Ma	Feet from the	North/South I	lan I	Feet from the	East/V	Vest Had	Cous
Townsend	Morrow		rd Fool 1					¹⁴ Proper	red Pool	1	
" Work Type Code " Well Type Code			Code	¹³ Cable/Resery ¹⁴ Lease Type Code			40	W Ground Level Elevation			
N G			D	R M Fermeting			P Contractor			-3956-3944 " Spud Data	
" Mukiple " Propose No 12.8		12.800	•	Marrow		TMBR/Sharp		11/19/00			
					ed Casing a				-	·	
liais S	20	Cust	y Size		if welfpriloot	Setting Do			f Comen	•	Estimated TOC
17%			3%	1	48	450		440		Surface	
		16	32		5,000		1,800		Surface		
77/4		5	51/4		17 12,800		0	1,200		4,800	
						-					
13 0			10.0	J	and a second		UC 5	1 CFC advanta			
productive : sheets if ne	tone and cessry.	proposed	new proc	ductive zo	ation is to DE ne. Describe	the blowout p	breven	ation progra	m, if a	ny. Use	additional
Intermediat comented be A 7%" hole	e bolc wi ack to su will be c	ll then be risce. A irilled to a	drilled to 3000 psi in approx	±5,000' engular p imate TI	w/brine-cut t preventer and of 12,800' w	orine system s 3000 psi dus /FW mud. T	ind an I ram The 51/1	8%" casing BOP will be " casing wil	string used o	will be : on the in: t at TD :	
					4 11,000' and					~- ~ w	

Approved by:

Approval Dates

Attached C

Titles

Permit Expires 1 Year From Approval Date Unless Drilling Underway

OIL CONSERVATION DIVISION

OHIGINAL SIGNED BY

GABY WINK

SELD REP. II NOV 2 2 200 Expiration Doces

Vice President

Nevember 16, 2000

Phone: (915) 677-5050

in licroby curtify that the ini

bed of my law

Printed

Title

Deta:

EXHIBIT D

JUL-10-01 TUE 09:48 AM DISTRICT I DESTRUCT II DESTRUCT IV FA. But MAA, Sunda Pa, JRE 81644-00

State of New Mexico

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

AMENDED REPORT

		1	VEIT 10	CATION	AND ACREA	GE DEDICATI	ON PLAT			
30-02	**************************************	257	86	100) To	wasend (Morrow)		
2441	9			·	BLUEFIN "2	IA	Fell Muncher			
36.5	54		Operator Name TMBR/SHARP DRILLING, INC.						Elevation 3964	
Surface Location										
DE or lot Mr.	Bootlen 24	Township 16 S	Range 35 E	lot lån	760	Marth/North Man SQUTH	7001 2000 the 660	Rest/Fort Man WEST	LEA	
Bottom Hole Location If Different From Surface										
TL ar iot No.	Bootles	Torontip	Hange	Lot Ma	Post from the	North/South line	Feet from the	Zast/Fost Has	County	
Butterfed Arre	Salat e	e tafili Co	acelidatien (Or Or	der He.	I		[]	<u> </u>	
NO ALLOWABLE WILL BE ASSIGNED TO THUS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED										

STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION OPERATOR CERTIFICATION SURVEYOR CERTIFICATION on this pict was pinted from field acts of mind surveys made by our or under my outpressen, and that the man in true and correct to the best of any belief NOVEMBER 16, 2000

EXHIBIT E

107161 |LLEGIBLE

OTEL & CAR LINES

to American made this fifth day of March. 1981 between indeline States, dealine with her sale and expersion marks, these address in S. S. See 1118, Green, Types 1994) begain called lesses (charites one or mass) and from Made. J. A. Lee 188, Marche, Trues 1977, Leases

. Tenery, in eventdension of MM 100 CMM DELING in hard paid, receipt of thick in have astantalped, and the asymitate barein provided and of the agreements of the lastes barein contained, brody grants, leaves and a contained with lastes for the purpose of investigating, exploring, prospecting, deliling, and operating for producing oil and one, injecting gas, subary, other Eleida, and air into extensions exceed, injusting physical class oil, building broken, resident, interest and other extensions are things thereon as produce, again, a part of, truck, process, stars and transpart acid plantain, the failuring described land in 192 County, for

Terricking (4 Search, Souge 20 Seat, N.H.P.M. Southing 13: ED/4 Seatting 20: ED/4 Seatting 20: ED/4

Sentim Ale Fo/4

told land in estimated to comprise 120,00 exces, whether or it accually comprises more or been.

- 1. Subject to the other perclaies barels contained, this losse shall genein in force for a test of three (2) years Creating 7°, 2011 (called "primery test") and as long thereafter so all or gue is protected from said land or from Lond which said land is pealed.
- from Lord orth which said Lord is posted.

 3. The reprintate to the paid by losses are: [a] on all, and other liquid hydrocubons saved at the wall, through sidely and their produced and arred from said Lord, come to be delivered at the walls or to the credit of Losses in the pipeline to which the walls may be memorical the on que, institute contactured gue or other greeness actuations produced from said land and word off the provinces or word in the manufacture of qualities or other produces, the acctual value of the produces or word. In the manufacture of qualities or other produces, the acctual value of the produces in Military and the content realized from sord value (a) and ot any time requires which to Hyper-quinteging (Military) of the que word, pure date of any said on or other than the produces, the regulation while it has a hyper-quinteging (Military) of the que word, pure date of the or of the produces, the regulation while the produces, the regulation will be real them to a green while the hyper-quinteging in the produces of the produces of the manufacture of content or other produces of the produces of the produces of the produce of the produces of the produces of the produces of the produce of the produces of the prod
- 4. This is a pold-up lease and leases shall not be shiftened during the primary term becook to commons or continue any operations of these-ever character or to sake any payments becoming the scalars to maintain this leave in the decide the primary terms between, this provision is not intended to relieve leaves of the chlightim to pay sepalties on actual production pursuent to the provisions of Faunquish 3 hereof.
- i. Leaves in heavily grammine with sight and power, from time to time, to peak ar combine this leave, the land covered by it or any part or heckem through with any order lead, leaves, aleaves extents or parts through for the production of oil of the. But or heckem of the heavy and blasses about of the state of flow threist or by less or by the till three-vertime fivilities of the heavy and blasses of spectrums of the state of flow threist or by less or by the till the matter of the state of the
- 4. If at the equinties of the princey test there is so well upon each lead aspekts of probabing oil or gas, har leaves has commoned specialism for deliting or revealing therems, this leave chall remain in force to long as specialism one personned with no execution of more than 40 executions days, therefore such specialism he so the sage wall or on a different or additional wall or wells, and if they event in the probabilism is not the sage themselves on all or gos is postered from each land. If, after the explanation of the princey test, all valle upon each lend should become inemphile of probabile for any enters, this leave shall not beaminate if lances terminate and calling of the associated within 40 days thereafter. If any delition, additional deliting, or remaiding quantities horouses sould be probabile, then this leave shall consist in fall force or long delilies, or resulting operations thereafter as all or got to pro-
- T. Become shall have from use of oil, one and union from said load, among unter from leasur's unlik and tasks, for all operations have made, and the negative shall be computed after deflecting any so used. Leasur shall have the night at any time dealers and for the exploration of this leasur to receive all property and findamen places by leasur and last, leaderthay the night to there are sensor all easing. When requiring the leasur, leaves util hery all place in anti-last before the below uniformly place depth, and so well shall be delited within two horized float light of the graniforms of hear was on sold last withink leasur's consent. Leaves shall have the privilege, at his risk and expenses, of using one form any on will on said lead for two costs lights in the principal depilling theorem, out of any maples gas not nessed for operations becomes.
- 4. The rights of either party hasteniar may be excluded in their at in part and the provisions because shall stand to their being in the exceeding of the last

BOOK 1084 PAGE 282

37-1-1

ILLEGIBLE

or in the concepts of, or rights to secure, somicion or dest-in replicion, however communicated deals queres to calcage the childrenion or distaint the nights of leaves; and to such change or division shall be binding upon leaves for any propers with 30 days after leaves had been familially by cartified and at leaves optical plans of binlesses with acceptable instruments or certified explor through the constituting the chain of binle from the coiginal leaves. If any such change is canacide contact through the death of the count, leaves any, at the option, pay or tenden any replains at shall be completed in the name of the decreased or to bid cetake or to bid below, assessing or dislikely in the special or dislikely in the payone of dislikely in the same had been such or in part chall, to the catage of such acceptance, religious of discharge leaves of my chliquidous branches only if leaves or sanigume of part or parts acceptable shall fell or mit default in the payons of the propertiesses and appears or sanigume of sould need had leave or acceptance or fall to comply with my of the provisions of this leave, such default shall not affect that leave in the leave or acceptance or fall to comply with my of the provisions of this leave, such default shall not affect that such payons on acceptance in the count of payons or make payons.

- 9. Should leave be prevented from complying with any expense or implied coverant of this leave, or from conducting drilling or recording operations becomed, or from producing all or que becomed by record of searchy or inchility to obtain or use equipmen or metactal, or by speculion of force unjourn, or by any friend or record law or only the producing of the conduction of grounded, and leaves shall be necessarily the conduction of producing and this leaves shall be unfounded while and so leaves in provented by any such assess from anothering drilling or freezing squareful or from producing all the use hereinsters and the time this leaves is so provented shall not be consisted epident leaves, anything in this leaves to the constrary potalisation.
- 16. Leaver bapely various and agrees to defend the title to said last and agrees that leaves at is option may discharge my test, environs an other lies upon said last, and in the event leaves done so it shall be enforced to such lies with the sight to enforce some out to apply togalities and shall-in applitted payable becomes toward scalinging some. Without impairment of interest's nighter under the warperty, if this leave everor a less interest in the said and upon in all or may part of said last them the entire and understand for simple extent thember leaver's interest is invited appealful or said than the applitude, shall no applit, and other required. If any covered has been such full interest, shall be gaid this in the population which the interest therein, if any, covered by this leave, because to the chale and unicided for simple extent therein. Small any or over of the parties among the acre.
- il. Leaver, lie or his separatery, being and acalque, shall have the right of any time to surround this leaver, in whole or in part, we leavest or his heles, successors, and acalque by delivering or melling a subsect thereof of the leaver, or by plantage a calcase thereof of reason in the starty in thick sold less is elemented thereupen leaver that it entirely the subsect is the properties of this operator of active surrounders, and therefore the deliver the desired the desired the subsect in the properties that the actual covered leaver such actual to subsect by said subsect or subsect.

ACRITICAL PROPERTIES

- 15. Hithelfolming exploing empholisms to the entary, at the end of the polymytem, this hous will tendent as to all staff and tendent in a change in a quality or provides with placed the provides with placed of the following and polymer.
- aj Lour Ive dillel, degand, sembel er menghad a vell en edd hek dere besekel er es jude pedel bereik vel vilde sembuded dyby (1805 day plarte die dybnius el degdescytem, magtetel odd vall es speckear el ell aubr gas, er physiologie all aub a dybde; at
 - b) Attir aytınlır. «Etopitaryim», Lemob meyyet iş öğlün, depekş vermisin, ve meyletim qerilike ve rill limb ve ik bok perketimente,
- and decorder Leave conserves a conductor hilling request valuely operations that the difficult of each conductor is the second of the conductor of the conducto
- 13. Whis Laws come and explained diffeographs, the two dell temples onto all compact the industry is a questing of present and allowed as a probably well field deal backs due to well question for the following processor processors extensive the first of the conference on, or, is the decay of the first open and the first due to the first due to
- 14. Structhetending such berminstein, Lescon shall have a continuing sight of way and encount on, over and encour all the less covered heavily for the construction, was, unlatenesse, replocuesses, or sepret of pipelines, peaks, telephote lines, electric lines, task and other familities for its operations have under an less semining covered by the lesso faileding such terminals.

Amended the day and year first above unitten.

Dadelie Studie 203, 30-4021

BOOK 1064 PAGE 283

DECEMBER ACTIONS MANUAL COLUMN STATE PARTY PARTY

count or	Paris 4	3001, by <u>Mabling</u>
PHONEDA K. SHAW HOTOMY PUBLIC STATE OF TEXAS	Stary south, make as	TV/AS

ILLEGIBLE

PLED



BOOK 1064 PAGE 284

EXHIBIT F

13.



THE AMERICAN AND WHAT HE OF THE STATE AND A STATE AND A STATE AND A STATE AND AND AND AND AND AND ASSESSED ASSESSED ASSESSED AND ASSESSED AND ASSESSED ASSESSED AND ASSESSED ASSESSED AND ASSESSED ASSESS

1. Leaser, in consideration of DM ANS COURT SELICAL in heat paid, receipt of which is here estmentativel, and of the repulties harein provided out of the aproximate of the leases herein contained, hereby genera, leases and late exclusively uses leases for the purpose of investigation, explaining, properting, defilling, and opporting for and protecting the state of the late of the late of the finite and all into releasedness states, laying pipelines, exercing all, heliding tanks, mechanys, telephone lines, and other extratures and things thereon to posture, core, take some of, breat, persons, storm and transport said minerals, the fallowing described land in [22] County, Dur Hedler, to-str.

Prenatur 15 Sects, Reser 16 Sects H.M.F.H. Souther 15: 60/4 Souther 20: 80/4 Souther 20: 80/480/4, 387/480/4 Souther 20: 80/4

sted to compelse <u>719.99</u> scree, whether it sevesly compelses scre or less,

- 1. Subject; in the other provisions burnin contained, this losse shall remain in force for a term of three (3) years from the 7°, 1001 (called "primary term") and as long thereafter as all or one is produced from sold long or from land which sold lond is posice.
- 2. The population to be paid by leases are: (a) on all, and other liquid hydrocurbons coved at the unli, theresignificable [Midigs] of their produced and served from said lead, some to be delivered at the unlik or to the steells
 al leases in the pipellies to which the unlik may be demonsted. (b) on one, including consequent guestion are other particular, the content where a the unlik are used off the providence or used in the conditionary produced from each lead used off the providence or used in the conditionary of quanties or other
 particular, the content where the trail of them-sintpartic [Middes] of the gas used, provided that on gas cold on
 or off the providence, the repulsion shall be Expressible [Middes] of the quantum or excitant from such solar, or
 and inch, or land leads to the unlikered by other providence and there are received from such as and a providence in the content of the particular theory or earlier production therefore, then on or before 16 days after said unlike about in, on the said of the description of the party of
- i. This is a paid-up lease and leases shall not be shilpsted during the primary thus berned to enumers specimes say spectales of whetevers therearder or to make any paperate becaming in ander to makein this less above during the primary terms between, this provision is not intended to relieve leases of the chilpstics pay symbiles as estead production parameter to the provisions of Paragraph 3 because.
- 8. Leaves is harsby ground the right and pure, from time to time, to prod or ambine this leave, the least answerd by it or any part or harizon thereof oith any other lead, leaves, attended extentes or parts thereof for the production of the ground of the state occord the extended percentage unit float by law or by the fill Conservation Revision of the Burry and Misscale Separation of the State of See therine or by any other least the authority for the peak or note in thick and lead in clearant, plus a belanants of the papers. Leaves shall fills united unit of estimation in the ownery in thick the present are leaved and such units tray by designated from the state and either melana or other the drug the ampleties of units. Building appreciations on as production from any part of my such unit shall be considered for all paperso, camps the paperson of sepalty, as operations conducted upon any part while their described in this leave. There while be aliented to the land overaced by this leave of production for the lead overaced by this leave desketing any word in leave or tall appropriate, which the not oil or que exceeps in the lead overaced by this leave considered for all paperson, including the paperson or delivery of sopulty, to be the entire production of partial form the tenter of a said lead overaced because and in the thirt. The production of said lead overaced because in the unit. The production of a side lead overaced because in the unit. The production of a side lead overaced because in the unit in the same union as though populated from said lead and union the tense of this leave. May peaked unit designated by leaves, as provided partial, my be dissolved by leaves by recoming an appropriate institute on each with.
- 6. If at the espiration of the primary term there is so well upon said land emphis of probining oil or gas, but leaves has commond operations for drilling or providing thereon, this leave shall remain in ferms so long or operations are presented with so conseiles of such the 44 consensive days, whether such operations in on the sense well or on a different or children's well or wells, and if they result in the protection of oil or gas, so leave themselves on oil or gas is produced from said land. If, after the exploration of the prinary term, all while upon self-land should become integrable of producing for my cases, this leaves shall not teaminate if income commons operations for children's drilling or the considery within the doys thereafter. If any drilling, children's drilling, or remobing quantities becomes result in production, then this laces chall remain in fail force or long thereafter as oil or gas is preduced becauser.
- 7. Leaves shall have five use of oil, gas out wive from sold load, except water from leaver's value and under, for all operations becomes, and the requiry shall be amputed after definiting any as used. Leaves shall have the night on any last the appearing of this leaves to supervise and finites plants by leaves noted load, leakeding the night to done out successful and a leaver, leaves will have the property and finites within two leaves will have allowed load. Leaves the night of the supervise and multivered leave below unlinery plant depth, and so well shall be deliked within two leaves due 1900 ft.) of any postdesses on hand now on acid lead within leavest's consent. Leaves shall have the privilege, at his risk and eigenes, of using use from any que well on said lead for privile and inside lights in the principal dealing therein, such of any couples que not uncoded for speculious hereunist.
- 9. The nights of either party becomes may be assigned in while or in part and the provisions become shall expend be their being, amendmen, administratory, successes and assignes but no change in the ownership of the lead

900K 1084 PAGE 285

ILLEGIBLE

or in the concepting of, or rights to measure, populates or stati-in topolation, however committated shall spends to minage the chileptions or division in distant the rights of leasent and so such charge or division shall be binding upon leases for any propose until 30 days after leases has been familiable by explicit mail at leases's principal places of business with acceptable instruments or contributed explore theorem constituting the chain of bills from the exiginal leases. If any such charge is connected excess themely the death of the cases, leases may et its epitor, pay or beather may appointed out the last seam of the decreased or to bile instants or the bide believe, occurred outsidering the chain time as leases has been familiated with ordinary actifications or to bide believe, consistent or actification that was. In assignment of this lease is while or in part chail, to the current and acceptant, military and discharge leases or or while propositions or the lease of while the payment of the propositions of the proposity or sink-in acquire of part or parts benefit deall or such default in the payment of the propositions of this lease, much default deall are allowed this leases or may acquire as for the state of the lease of the leases or may acquire the seal default deall are allowed this leases or may acquire the seal deall proposity or sinks such payments.

- 2. Should leave be prevented from emplying with toy expense or implied coverant of this leave, or from exacting deliling or remains specialists, or from probable oil or que because by reason of country or institute to obtain or use equipment or expectal, or by specialists of injury, or by my from or state law or country, onle or countries of prevented exhibits, then while no government duty shall be employed, and leaves shall not be highly for follows to emply thesenible and this leave shall be extented while on large as leaves for prevented by my such cases from combining deliling or growting operation of from probable of the government operation of from probable of the prevented shall not be countrie epilant leaves, engine in this leave to the contrary mobility-leaving.
- it. Became bomby uncreate and agrees to deduct the title to cold land and agrees that leaves at in option may the description or other like upon said land, and in the orant leaves done or it shall be subrepared to such like with the right to endoce some out to apply regulation and shat-in regulates payable becoming toward periodic particles are such that the indicate of the lands covered a loss interest in the indicate of all and you in all or vary part of said land then the entire and unlivided for simple or train bibether leaves, increase its bestim specified or not) then the separation, dust-in requiry, and other payament if any, convoing from any part on to which this leave covere less than such that interest, while is paid only in the payarties which therein, if any, covering the leaves to the plant only middle for adopte other basis. Such any one or more of the parties usual above as leaves fail to ensents this leave, it shall according upon the parties menting the same.
- il. Issues, like or bit consecute, beins and earlies, shall here the night at any time to oursewise this lesse, in while or in part, to leave or his beine, successors, and content by delivering or maling a release thereof to the lesses, or by placing a minter thereof of remai in the quarty in which said less in almetels thereope lesses shall be relieved from all chilestens, expressed or implied, of this agreement so to accomp so successed, and therefore the direct or mixed popular heavest, and therefore the direct or releases.

RODERSONS, PROVISIONS

- 13. Hatellisterling out high conduction is the enterty or the end of the patenty term, the loop will remission or to all sold leads and then included by a allowed to a quadrag or presentes such as a quadrag o
- of Learning Affect, desperal, according to proceed a vall or self-lands, down despited or an impossible theoretic and vallen are breaked eighty (1885) days point to the explanation of the pulsaray vans, energiand each well on a positions of all making gas, or playaged each wall on a day bein, or
 - if the contract of the photogram, have to expect in this is, where the product of contract of the contract is the contract in the contract in the contract is the contract in the contract in
- aufbandt Laus comens contenu dilinguepus vipoly quatrodicto diling of conved, orbs inputs, anniby o complitin of as eithy vid, as commet vide contented sight (till) has due to bete to come of fit the episoles of the planetess, or fit to entitie or playing of any vid delict, deposit, content or many better or companion of the planetess; or to preparation, or fit to the star of the global test apart vide or graphed or content of the other distribution; and to preparation of the fit of the date of the global test apart vide to appropriate generated askedy independents. I specially a vide playing apart vide to apart vide to graphete generated askedy independents.
- 13. Whe form extended systems differenced the best distributes are all energies due tripled to a gradeg expension wit all estables a producing and fields due to mild ends qualified to a producing and fields due to the first and statement of the producing and the first distributes and the first distribut
- 14. Brieflipstending such teardachies, Ectors shall have a continuing right of any and consume as, over and correct larger for the construction, was unfatorated, replacement, or reserval of physicism, reads, beinghout lices, aladicia lices, both and other Socializa for its operations becomes on land constaing covered by this losse failuring such teamination.
- 13. This all and one losse is unbestimate to that cartain "Triar Esser" dated Import 25, 1977, affective December 7, 1977, prompted in Book 267, page 124, Lee County Remedia, as absolut by instances dated property of the Price is the County Investing to the outent that said follow Index is the case. The other interesting any other parentaless of this all and que lesses, the client of the princes that all and que lesses, the client (2") conferences date of this all and que lesses that of the princes of the call and que lesses that the third (2") conferences date of this all and que lesses that the third question of the call and que lesses that the third question of the call and que lesses that the 19 conferences date of this all and que lesses that the 19 conferences date of this call and que lesses that the 19 conferences date of this call and que lesses that the 19 conferences date of this call and que lesses that the 19 conferences date of this call and question to provide of the Triar Lesses specification of the conference of the two prices of the triar Lesses, as analy question to conference provides of the Triar Lesses, as analy question to constant of the Triar Lesses, as analyte of the constant provides of the Triar Lesses, as

Description of the State of the Control of the cont

1-4-01

BOOK 1084 PAGE 286

ILLEGIBLE

or in the constraint of, or nights to receive, populates or shall topolation, however assemplished shall spends to enlarge the chileptime or division the rights of learnes and so such charge or division shall be history upon become for any purpose until 10 days officer leaves has been familiable by certified mail at leaves's principal plans of business with accordance in the statements or employee thereof constituting the shall of bitle form the original leaves. If my such charge in community seames through the death of the same, leaves only, of the option, pay or bestell any population or shall not been of the decreased or to bid extents or to bid before one that extents or the bid on the process and distance with one leaves are statement of the same and distance of any distance of this leaves in their or in part shall, be the subset of such applyment, policies and distance leaves of any shipping the theorement and leaves or neither and distance of part or pasts have delicit for such default in the populat of the proportionts part of anything or shall are applied to the state of such leaves or neither or fall to comply with any of the provisions of this leave, much default shall not allow this leave insector or in any shall not allow this leave on the sector of the leave, much default shall not allow this leave on an analyse thereof shall not allow this leave only only payersis.

- 9. Should leave be prevented from complying with any expense or implied coverant of this leave, of from exclusing deliling or presenting operations becomes, or first probability to obtain a more expension of several, or by operation of force imposes, or by any Personal or retained to any order, or by any Personal or retained to any order, rate or reputables of preventant extension, then while so greenant, read to several the subjected, and leaves shall not be liable for failness to comply theoretish, and this leave shall be extended this and so large in leaves in prevented by any such cause from combining deliling or greening operations of from probability oil or yet becomester, and the time this leaves is no prevented shall not be constant equinal leaves, oughing in this leave to the constant probability-conting.
- 10. Leaver hardly uncreate and agrees to deduce the title to said land and agrees that leaves at is option my the territory or other lies upon said land, and in the orant leaver done or it shall be subscripted to each like with the gight to eachers case out to egoly repulsion and shat-in repulsion pepuls harmonies toward satisfying same. When injudence of leaves's rights under the varrenty, if this leave events a leas interest in the sid and yes in all or any part of said land than the entire and milvited for simple estate that because its herein specialled or not) than the unfaire and milvited for simple estate that he may part as to which this leave serves land than the noth that interest, shall be gold only in the proportion which the indexest therein, if my, overein by this leave, been to the thale and univided for simple estate therein. Small may one of the parties mand above as leavers fail to essente this leave, it shall severtheless be hinding upon the party or parties uneating the same.
- II. Leaves, like or his convenents, helps and easigns, shall have the right at any time to exerceder this leave, in their or is part, to leaves or his below, microscopes, and continue by delivering or melity a release thereof to the leaves, or by placing a milese themed of round in the menty in this sold lead is attached thereupen leaves that he relieved from all chilarates thereupen leaves that he relieved from all chilarates, expressed or implied, of this agreement so to detrops on microsfored, and themedies the deliving psychia hormoder shall be subsed in the proportion that the assesse correctly is returned by said related or releaves.

MODERAGES, SHOWEREDES

- 12. Hardhandig crythig merbeitunk is die enterp, orto get ofterplany som, die beer oft symbols erts pli mid bedrock fine beledelde or dieserit to a gradig grynnales wit effected or gendedig with felicle deal bedrock with soles.
- aj Launko ĝilioj, ŝupani, conded e immetala en eli liub, duro âmiliol er uz liub podel itandik uni vilhi contended djây (188) dyn julie in iko aplania el ikopinaj una, ampleol aid vall en oprobent el eli antio pro, er played aid vall en o ây balo, er
 - MACCO anticles of the principants, Come is engaged in diffice, deposing providing or enceptains operation as cold technical te
- authorder Laste comments a contame diffequences whoshy operates defined a contact, or to deposing a sending or manufales of an existing will, as a contact of the contact of the first term of the contact of the properties, or (i) the completes of physical of any well defined accommendate commentations or conservatively explored as the physical contact of the properties of the physical operates of the contact of the first operates of the contact of the first of the first of the first of the contact of the first of the contact of the first of the f
- 11. When Euron germand operforms dell'appropries, this hour deal's constants or to all consequence date belieful to a questing corporation that all contents of the deal deal belieful date in well-of contents questioned by the appropriate processment and notice the contents of the contents of the deal deal to the contents of the cont
- 14. Estelibetending such termination, Zoossa chall have a continuing sight of any and assemble on, ever and entered his for the termination, two, anistensors, exploratest, or retarble of pipolises, reach, telephone litera, electric litera, lite
- 15. This cill and you leave is subscribed to that quetain "Tries leave" dated Report 15, 1907, offertive Scenarios 7, 1907, proceeds in Sork SIT, page 121, les County Recessis, as annated by lacknowns dated processes of the leaves of the county for the county f

Described the day and prot Mark above unitrees.

1-4-01

BOOK 1084 FARE 286

BRIVERS ASSESSMENT (For Holes Suct Post

April 4

ILLEGIBLE

FIATE OF NEW MUNICO COUNTY OF LEA WILED

JUN 112001



900K 1084 PAGE 287

RATIFICATION

STATE OF NEW MEXICO }
COUNTY OF LEA }

KNOW ALL MEN BY THESE PRESENTS:

For and in consideration of the premises and for other good and valuable consideration the sufficiency of which is hereby acknowledged, Tom Stokes and John David Stokes (hereinsfier referred to as "Lessor") whose smalling address is PO Box 632, Ozona, Texas 78943 does hereby adopt, satify and confirm that certain oil and ges tease dated March 27, 2001, executed by Erms Hamilton covering the following described property in Les County, New Mexico, to-wit:

Township 16 South, Range 35 East, N.M.P.M.

Section 13: SEA Section 23: SEA

Section 24: NW/45W/4, NW/4NE/4

Section 25: NV//4 Section 20: NE//4

a copy of which is recorded at <u>sk (086 pe 785</u>, Les County, New Maxico (the "Lesse"), in all its terms and conditions and acknowledge and agree that as of the essecution of this instrument that the Lesse is a valid and subsisting oil and gas lesse binding upon Lessor to the same sident as if Lessor had executed the Lesse in the capacity hereit stated.

For the same consideration, Lessor does hereby grant, lesse and let exclusively unto James D. Huff, whose mailing address is PO Box 706, Mineola, Texas 75773, the lesse on the same terms and conditions as contained in the lesse.

This instrument shall have to the benefit of the parties hereto, there respective heirs, aucrescore, and assigns.

EXECUTED as of the date set forth in the acknowledgment below, but EFFECTIVE for all purposes March 27, 2001.

LESSOR:

ACKNOWLEDGEMENT '

COUNTY OF LYOCK T

This instrument was acknowledged before me this 312 day of MARCK 2001 by Tom Stokes and John David Stokes.

Notary Public in and for the State of IX Printed Name: 1016 CHANDER

WE CHANG

₹1-2004

BOOK 1084 PAGE 288

ILLEGIBLE



STATE OF NEW MEXICO COURTY OF LEA YELED

JUN 11 2001

a 10:50 and Am

hands bean, in Copy Cons

BOOK 1084 PARE 285

FIFTH JUDICIAL DISTRICT COURT COUNTY OF LEA STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC.

Plaintiff,

٧.

CV-2001- 315 C

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, AND TOM STOKES

Defendants.

SUMMONS

TO: Defendant John David Stokes, P.O. Box 1739, Ozona, Texas 76943, or his physical residence.

Greetings:

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys for Plaintiff:

SUSAN R. RICHARDSON

Address of Attorney for Plaintiff:

P.O. Box 2776

Midland, Texas 79702

WITNESS the Honorable Cary Clinomy District Judge of Fifth Judicial District Court of the State of New Mexico and Seal of the District Court of Said County, this 20 day of August, 2001.

(SEAL)

JANIE G. HERNANDEZ

CLERK OF THE DISTRICT COURT

Deputy

	E OF TEXAS)	•
COUN	ITY OF)	
a part	I, being duly sworn, on oath, say t y to this lawsuit, and that I served , 2001, by delivering a	hat I am over the age of eighteen (18) years and not the within Summons in said County on the day copy thereof, with a copy of Complaint attached, by 12 Member Jury, in the following manner:
{ }	To Defendant Summons or refuses to receive Summons	(used when Defendant receives copy of ummons).
[]		erson over the age of fifteen (15) years of age and e of Defendant, who at the time of such service was
[]	- · · · · · · · · · · · · · · ·	ons and Complaint in the most public part of the person found at dwelling house or usual place of
[]	To, an Defendant.	n agent authorized to receive service of process for
[]	To, (pare is a minor or an incompetent person	ent) (guardian) of Defendant (used when Defendant on).
[]	authorized to receive service) (use	me of person), (title of person ed when Defendant is a corporation or association name, a land grant board of trustees, the State of vision).
Fees:		
		Signature of Person Making Service
		Title (if any)
*Subs	cribed and sworn to before me this	day of, 2001.
		Judge, Notary or Other Officer Authorized to Administer Oaths
My Co	mmission Expires:	Official Title

FIFTH JUDICIAL DISTRICT COURT COUNTY OF LEA STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC.

Plaintiff,

CV-2001- 3 10 10

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, AND TOM STOKES

Defendants.

SUMMONS

TO: Defendant Tom Stokes, P.O. Box 932, Ozona, Texas 76943, or his physical residence.

Greetings:

*

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys for Plaintiff:

SUSAN R. RICHARDSON

Address of Attorney for Plaintiff:

P.O. Box 2776

Midland, Texas 79702

WITNESS the Honorable Geny Clingman District Judge of Fifth Judicial District Court of the State of New Mexico and Seal of the District Court of Said County, this 21 day of August, 2001.

(SEAL)

JANIE G. HERNANDEZ

CLERK OF THE DISTRICT, COURT

Deputy

Mid: SRICHARDSON\004370\000021\298280.1

	ty to this lawsuit, and tha	oath, say that I am over the age of eighteen (18) years and not at I served the within Summons in said County on the day
		elivering a copy thereof, with a copy of Complaint attached and for Trial by 12 Member Jury, in the following manner:
[]	To Defendant	(used when Defendant receives copy of receive Summons).
[]	То	, a person over the age of fifteen (15) years of age and ce of abode of Defendant, who at the time of such service was
[]		the Summons and Complaint in the most public part of the (used if no person found at dwelling house or usual place of
[]	To Defendant.	, an agent authorized to receive service of process for
[]	Tois a minor or an incompe	, (parent) (guardian) of Defendant (used when Defendant etent person).
]	authorized to receive se	, (name of person), (title of person ervice) (used when Defendant is a corporation or association a common name, a land grant board of trustees, the State of tical subdivision).
Fees:		
		Signature of Person Making Service
		Title (if any)
*Sub	scribed and sworn to befo	ore me this day of, 2001.
		Judge, Notary or Other Officer Authorized to Administer Oaths

FIFTH JUDICIAL DISTRICT COURT COUNTY OF LEA-STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC.

Plaintiff,

٧.

CV-2001- 3/5C

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, AND TOM STOKES

Defendants.

SUMMONS

TO: Defendant David H. Arrington Oil & Gas, Inc., through its registered agent, Lewis Cox, III, at 311 North First Street, Lovington, New Mexico, 88260.

Greetings:

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys for Plaintiff:

SUSAN R. RICHARDSON

Address of Attorney for Plaintiff:

P.O. Box 2276

Midland, Texas 79702

WITNESS the Honorable Gary Clingman, District Judge of Fifth Judicial District Court of the State of New Mexico and Seal of the District Court of Said County, this 2/ day of August, 2001.

(SEAL)

JANIE G. HERNANDEZ

CLERK OF THE DISTRICT COURT

Doput

Mid: SRICHARDSON\004370\000021\298201.1

STA	TE OF NEW MEXICO)	•	
COU	NTY OF		
of _	ty to this lawsuit, and that I served , 2001, by delivering a	hat I am over the age of eighteen (18) years and not the within Summons in said County on the day copy thereof, with a copy of Complaint attached, by 12 Member Jury, in the following manner:	
[]	To Defendant Summons or refuses to receive So	(used when Defendant receives copy of ummons).	
[]		erson over the age of fifteen (15) years of age and e of Defendant, who at the time of such service was	
[]		ons and Complaint in the most public part of the person found at dwelling house or usual place of	
	To, and Defendant.	, an agent authorized to receive service of process for efendant.	
[] To, (parent) (guardian) of Defendant (used when D is a minor or an incompetent person).			
[]	authorized to receive service) (use	me of person), (title of person ed when Defendant is a corporation or association name, a land grant board of trustees, the State of vision).	
Fees:			
		Signature of Person Making Service	
		Title (if any)	
*Subs	scribed and sworn to before me this	day of, 2001.	
		Judge, Notary or Other Officer Authorized to Administer Oaths	
Мγ С	ommission Expires:	Official Title	
Mid: SRI	CHARDSON\004370\000021\298201.1	-2-	

FIFTH JUDICIAL DISTRICT COURT COUNTY OF LEA STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC.

Plaintiff,

CV-2001- 3/5C

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, AND TOM STOKES

Defendants.

SUMMONS

TO: Defendant James D. Huff, P. O. Box 705, Mineola, Texas 75773, or his physical residence.

Greetings:

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys for Plaintiff:

SUSAN R. RICHARDSON

Address of Attorney for Plaintiff:

P.O. Box 2776

Midland, Texas 79702

WITNESS the Honorable ary Clingman, District Judge of Fifth Judgal District Court of the State of New Mexico and Seal of the District Court of Said County, this day of August, 2001.

/SEAL

JANIE G. HERNANDEZ

CLERK OF THE DISTRICT COURT

Deput

Mid: SRICHARDSON\004370\000021\298202.1

STAT	TÈ OF TEXAS		
cou	NTY OF)		
of	ty to this lawsuit, and that I served , 2001, by delivering a	that I am over the age of eighteen (18) years and not if the within Summons in said County on the day a copy thereof, with a copy of Complaint attached, all by 12 Member Jury, in the following manner:	
[]	To DefendantSummons or refuses to receive S	(used when Defendant receives copy of summons).	
[]		person over the age of fifteen (15) years of age and de of Defendant, who at the time of such service was	
[]	· · · · ·	nons and Complaint in the most public part of the to person found at dwelling house or usual place of	
[]	To, an agent authorized to receive service of process for Defendant.		
[]	To, (parent) (guardian) of Defendant (used when Defendant is a minor or an incompetent person).		
[]	To, (name of person), (title of person authorized to receive service) (used when Defendant is a corporation or association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).		
Fees:			
		Signature of Person Making Service	
		Title (if any)	
*Subscribed and sworn to before me this day of, 2001.			
		Judge, Notary or Other Officer Authorized to Administer Oaths	
My Co	ommission Expíres:	Official Title	

ني د مي FIFTH JUDICIAL DISTRICT COURT COUNTY OF LEA STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC.

Plaintiff,

٧.

CV-2001-315 C

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, AND TOM STOKES

Defendants.

SUMMONS

TO: Defendant Madeline Stokes, Box 1115, Ozona, Texas 76943, or her physical residence.

Greetings:

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys for Plaintiff:

SUSAN R. RICHARDSON

Address of Attorney for Plaintiff:

Midland, Texas 79702

P.O. Box 2776

WITNESS the Honorable <u>Gary Chagaian</u>, District Judge of Fifth Judicial District Court of the State of New Mexico and Seal of the District Court of Said County, this <u>3/5</u>day of August, 2001.

(SEAL)

JANIE G. HERNANDEZ

CLERK-OF THE DISTRICT COURT

Deputy

STATE OF TEXAS)			
COUN	ITY OF	-	
of	y to this lawsuit, and that I served , 2001, by delivering a	hat I am over the age of eighteen (18) years and not the within Summons in said County on the day copy thereof, with a copy of Complaint attached, by 12 Member Jury, in the following manner:	
[]	To Defendant Summons or refuses to receive Su	(used when Defendant receives copy of ummons).	
[]		erson over the age of fifteen (15) years of age and e of Defendant, who at the time of such service was	
[]	By posting a copy of the Summons and Complaint in the most public part of the premises of Defendant (used if no person found at dwelling house or usual place of abode).		
[]	To, an agent authorized to receive service of process for Defendant.		
[]	To, (pare is a minor or an incompetent person	ent) (guardian) of Defendant (used when Defendant on).	
[]	To, (name of person), (title of person authorized to receive service) (used when Defendant is a corporation or association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).		
Fees:			
		Signature of Person Making Service	
		Title (if any)	
*Subscribed and sworn to before me this day of, 2001.			
		Judge, Notary or Other Officer Authorized to Administer Oaths	
My Co	mmission Expires:	Official Title	

FIFTH JUDICIAL DISTRICT COURT COUNTY OF LEA STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC.

Plaintiff,

٧.

CV-2001- 315 C

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, AND TOM STOKES

Defendants.

SUMMONS

TO: Defendant Erma Stokes Hamilton, 408 W. Washington, Big Spring, Texas 79720, or her physical residence.

Greetings:

3.7

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys for Plaintiff:

SUSAN R. RICHARDSON

Address of Attorney for Plaintiff:

P.O. Box 2776

Midland, Texas 79702

WITNESS the Honorable Gary Clingman, District Judge of Fifth Judicial District Court of the State of New Mexico and Seal of the District Court of Said County, this 15 day of August, 2001.

(SEAL)

JANIE G. HERNANDEZ

CLERK OF THE DISTRICT COURT

Deputy

Mid: SRICHARDSON\004370\000021\298204.1

STATE	E OF TEXAS)			
COUN	TY OF			
of	y to this lawsuit, and that I served , 2001, by delivering a	nat I am over the age of eighteen (18) years and not the within Summons in said County on the day copy thereof, with a copy of Complaint attached, by 12 Member Jury, in the following manner:		
[]	To Defendant (used when Defendant receives copy or Summons or refuses to receive Summons).			
[]		erson over the age of fifteen (15) years of age and e of Defendant, who at the time of such service was		
[]	· · · · · · · · · · · · · · · · · · ·	ons and Complaint in the most public part of the person found at dwelling house or usual place of		
[]	To, an Defendant.	agent authorized to receive service of process for		
[]	To, (pare is a minor or an incompetent person	ent) (guardian) of Defendant (used when Defendant on).		
[]	authorized to receive service) (use	me of person), (title of person ed when Defendant is a corporation or association name, a land grant board of trustees, the State of vision).		
Fees:				
		Signature of Person Making Service		
		Title (if any)		
*Subso	cribed and sworn to before me this	day of, 2001.		
		Judge, Notary or Other Officer Authorized to Administer Oaths		
My Co	mmission Expires:	Official Title		

FIFTH JUDICIAL DISTRICT COURT STATE OF NEW MEXICO COUNTY OF LEA

TMBR/SHARP DRILLING, INC.,

Plaintiff,

v.

No. CV-2001-315C

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, and TOM STOKES,

Defendants.

CLAIMANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING FILING OF UNIT DESIGNATION

TMBR/SHARP DRILLING, INC. ("TMBR/Sharp"), Claimant for cause of action against DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES and TOM STOKES and pursuant to New Mexico Rule of Civil Procedure 1-056, moves for Summary Judgment.

I. SUMMARY OF MOTION

TMBR/Sharp seeks a declaration that drilling across the primary term of the Original Stokes Leases, as described herein, perpetuated the Leases beyond the primary term because TMBR/Sharp had pooled acreage from the Leases with other acreage to obtain a drilling permit

Claimant's Motion for Partial Summary Judgment Regarding Filing of Unit Designation Mid: BSULLIVAN\004370\000021\306985.2 Page 1

from the OCD. Therefore, drilling on the pooled acreage, which began before the expiration of the primary term and extended across expiration of the primary term, to obtain a productive well was drilling on the Leases which was an act saving the Leases according to their terms. TMBR/Sharp satisfied the remaining requirement of the Leases, i.e., filing a unit designation, twice. First, it filed Form C-102 with the OCD to obtain its permit. Second, it filed a unit designation in the County Clerk's Records of Lea County, New Mexico after completion of the Well.

II. STATEMENT OF FACTS

A. THE LEASES

- 1. The first lease ("First Lease") is an oil and gas lease made effective December 7, 1997 between Madeline Stokes and Ameristate Oil & Gas, Inc. ("Ameristate"), and is recorded in Book 827, page 127 of the County Clerk's Records of Lea County, New Mexico, as amended by instrument dated August 10, 2000. A certified copy of the First Lease is attached hereto as Exhibit "A".
- 2. The second lease ("Second Lease") is a lease made effective December 7, 1997 between Erma Stokes Hamilton and Ameristate, and is filed in Book 827, page 124 of the County Clerk's Records of Lea County, New Mexico as amended by instrument dated August 14, 2000. A certified copy of the Second Lease is attached hereto as Exhibit "B".
- 3. The First and Second Leases (collectively referred to herein as the "Original Stokes Leases" or the "First Lease" and "Second Lease" or the "Leases") were amended on

August 10, 2000 and August 14, 2000, respectively, by Lessors and Ameristate¹ to create a primary term expiration date of June 6, 2001. Certified copies of the amendments are attached hereto as Exhibit "C".

B. THE POOLED UNIT

- 4. On November 17, 2000, TMBR/Sharp as operator under the Operating Agreement, filed an application for permit to drill (Form C-101) with the Oil Conservation Division of the State of New Mexico ("OCD") in its District I Office in Hobbs, Lea County, New Mexico. A certified copy of Form C-101 is attached as Exhibit "E." The certification of Forms C-101 and C-102 is filed in this pleading under Exhibit "E".
- 5. On the same date TMBR/Sharp filed a Well location and acreage dedication plat (Form C-102) describing the pooled unit dedicated to the proposed well, the Blue Fin "24" No. 1 Well (the "Well") with the OCD in its District I Office in Hobbs, Lea County, New Mexico and outlined thereon the 320 pooled acres in Township 16 South, Range 35 East, NMPM, Section 24: W/2, Lea County, New Mexico. A certified copy of Form C-102 is attached as Exhibit "F." The certification of Forms C-101 and C-102 is filed in this pleading under Exhibit "E".
- 6. The pooled 320 acres dedicated to the unit included 40 acres out of the Leases, including the NW/4 SW/4 of Section 24.
- 7. The OCD approved TMBR/Sharp's permit to drill on November 22, 2000. See Affidavit of Jeffrey D. Phillips attached as Exhibit "D".

TMBR/Sharp is a successor in interest to Ameristate by assignment of the First Lease and Second Lease effective in September of 1999. See Affidavit of Jeffrey D. Phillips attached hereto as Exhibit "D".

- 8. TMBR/Sharp spudded the Well on March 29, 2001, ran a drill stem test on May 15, 2001, and placed casing in the hole on June 3, 2001. See Exhibit "D".
- 9. On June 29, 2001, production in paying quantities was obtained from the Well and on August 6, 2001, first production was sold. See Exhibit "D".
- 10. The Well currently produces approximately 15 barrels of oil and 500 mcf of gas per day. See Exhibit "D".
 - 11. The Well cost over \$1,000,000.00 to drill and complete. See Exhibit "D".
- 12. There has been no cessation of operations on the lease for 180 consecutive days since drilling began on March 29, 2001. See Exhibit "D".
- 13. On July 20, 2001, a unit designation describing the same acreage covered by the unit plat dedication on Form C-102 previously filed with the OCD was filed in the County Clerk's Records of Lea County, New Mexico. It included 40 acres under the Original Stokes Leases. A certified copy of the Unit Designation is attached as Exhibit "G".
 - 14. The Original Stokes Leases each provides in Paragraph 5 in pertinent part:

"Lessee is hereby granted the right and power, from time to time, to pool or combine this lease, the land covered by it or any part or horizon thereof with any other land, leases, mineral estates or parts thereof for the production of oil or gas.... Lessee shall file a written unit designation in the county in which the premises are located and such units may be designated from time to time and either before or after the completion of wells. Drilling operations on or production from any part of any such unit shall be considered for all purposes, except the payment of royalty, as operations conducted upon or production from the land described in this lease."

See Exhibits "A" & "B" at Paragraph 5.

15. The Original Stokes Leases also provide:

If at the expiration of the primary term...lessee has commenced operations for drilling...thereon, this lease shall remain in force so long as operations are prosecuted with no cessation of more than 180 consecutive days....and, if they result in production of oil or gas so long thereafter as oil or gas is produced from said land.

16. Further, the Original Stokes Leases state:

Notwithstanding anything contained hereinabove to the contrary, it is understood and agreed that at the expiration of the primary term, this lease shall terminate as to all lands covered hereby...unless lessee is producing oil, gas, or other hydrocarbons from any well on the leased premises, or lands pooled therewith, or is drilling upon said lands across the expiration of the primary term as provided for in the body of the lease, and does not allow more than 180 days to elapse between the completion...of one well on such land and the commencement of another well thereon

See Exhibits "A" and "B" at paragraph 12.

17. A portion of the lands covered by each of the Original Stokes Leases, namely the NW/4 SW/4 of Section 24, was included in the C-102 unit designation filed in Lea County, New Mexico with the OCD during the primary term of such leases. See Exhibit "E".

18. During the primary term, there was a well being drilled on a pooled unit which included Original Stokes Lease acreage. Those activities were sufficient to preserve the Original Stokes Leases beyond their primary terms. The Original Stokes Leases and all acreage described therein are now held by production from the Well.

STANDARD OF REVIEW

A summary judgment provides a method whereby it is possible to determine whether a genuine claim for relief for defense exists and whether there is a genuine issue of fact to warrant the submission of the case to the jury. *Meeker v. Walker*, 80 N.M. 280, 454 P.2d 762 (1969). Trial courts are to bring litigation to an end at an early stage when it clearly appears that one of the parties is entitled to a judgment as a matter of law in the case as made out by the pleadings and the admissions of the parties. *Buffington v. Continental Casualty Co.*, 69 N.M. 365, 367 P.2d 539 (1961). Further, summary judgment is proper even though other disputed issues remain before the court. *Tapia v. Springer Transf. Co.*, 106 N.M. 461, 744 P.2d 1264 (Court App. 1987). In the present matter, the undisputed facts and the language of Paragraph 5 of the Original Stokes Leases show that TMBR/Sharp is entitled to summary judgment as a matter of law that said Leases were perpetuated beyond their respective primary terms and are still valid today.

IV.

ARGUMENTS AND AUTHORITIES

The issue for partial summary judgment is whether TMBR/Sharp and the other working interest owners did "that thing" which perpetuated the Original Stokes Leases? The New

Oil and gas authors and case law indicate that pooling is a matter of contract law and the exercise of the pooling powers is governed by the terms of the lease. For instance, Kuntz states: "Many pooling clauses contain no provision whatever as to the formality required in the exercise of the pooling power, whereas others contain specific provisions that vary from lease to lease..., if the pooling clause provides

Mexico Supreme Court has stated that the issue of lease termination revolves around the question "...[D]id the [Lessee] do that thing permitted by the lease to save it." Owens v. Superior Oil Co., 105 N.M. 155; 730 P.2d 458 (1986) (citing Humble Oil & Refining Co. v. Kunkle, 366 S.W.2d 236 (Tex. Civ. App. 1963)). What did TMBR/Sharp have to do to perpetuate the Original Stokes Leases beyond their primary terms. Simply stated, given the undisputed facts of this case, TMBR/Sharp had to drill a productive well on lands covered by the Original Stokes Leases, or on land properly pooled with such lands.

The terms of the Original Stokes Leases are unambiguous. "[C]ourts will give effect to the intent of the parties, and when the terms of the Agreement are clear and unambiguous, Courts try to ascertain the intent of the parties from the *ordinary meaning* of the language in the Agreement." Continental Potash v. Freeport-McMoran, Inc., 115 NM 690, 704; 858 P.2d 66 (1993) (emphasis added). "The purposes, meaning and intent of the parties to a contract is to be deduced from the language employed by them; and where such language is not ambiguous, it is conclusive. The Courts duty is confined to interpretation of the contract which the parties made for themselves and may not alter or make a new agreement for the parties." Id. (quoting Davies v. Boyd, 73 N.M. 85, 87-88, 385 P.2d 950, 951 (1963).

that 'lessee shall execute in writing an instrument identifying and describing the pooled acreage,' an effective power of the exercise does not require that the instrument be filed for record." 4 Eugene Kuntz, Treatise on the Law of Oil and Gas § 48.3, at 200 (1972) (citing Tiller v. Fields, 301 S.W.2d 185 (Tex. Civ. App. - Texarkana 1957, no writ). Therefore, "that thing" TMBR/Sharp had to do to preserve the Original Stokes Leases is governed by the terms of those leases.

The Leases provide in pertinent part:

If at the expiration of the primary term...lessee has commenced operations for drilling...thereon, this lease shall remain in force so long as operations are prosecuted with no cessation of more than 180 consecutive days....and, if they result in production of oil or gas so long thereafter as oil or gas is produced from said land.

Exhibits "A" and "B" at Paragraph 6.

TMBR/Sharp commenced drilling operations during the primary term, completed a producing well thereafter, and is currently producing oil and gas. See supra Section II. There has been no cessation of operations for more than 180 consecutive days. See supra Section II.

The Original Stokes Leases provide in Paragraph 5:

"Lessee is granted the right and power, from time to time, to pool or combine this lease, and the land covered by it or any part of the horizon thereof, with any other land, leases, mineral estates or parts thereof for the production of oil or gas. Units pooled hereunder shall not exceed the standard proration unit fixed by law or by the Oil Conservation Division of the Energy and Minerals Department of the State of New Mexico...Lessee shall file written unit designations in the county in which the premises are located and such units may be designated from time to time and either before or after the completion of wells.....Any pooled unit designated by Lessee, as provided herein, may be dissolved by Lessee by recording an appropriate instrument in the county where the land is situated at any time after the completion of a dry hole or the cessation of production on said unit."

See Exhibits "A" and "B" at paragraph 5 (emphasis added).

The Original Stokes Leases further provide:

"Notwithstanding anything contained hereinabove to the contrary, it is understood and agreed that at the expiration of the primary term, this lease shall terminate as to all lands covered hereby...unless lessee is producing oil, gas, or other hydrocarbons

from any well on the leased premises, or lands pooled therewith, or is drilling upon said lands across the expiration of the primary term as provided for in the body of the lease, and does not allow more than 180 days to elapse between the completion...of one well on such land and the commencement of another well thereon"

See Exhibits "A" and "B" at paragraph 12.

A. The Original Stokes Leases Are Properly Pooled

The Original Stokes Leases are perpetuated because TMBR/Sharp was drilling upon lands properly pooled with the lands covered by the Original Stokes Leases across the expiration of the primary term as provided for in Paragraph 5 of the Original Stokes Leases. "Pooling is defined as 'the bringing together of small tracts sufficient for the granting of a well permit under the applicable spacing rules'." *Uhden v. New Mexico Oil Conservation Commission*, 112 N.M. 528; 817 P.2d 721, 723 (1991) (quoting 8 H. Williams and C. Meyers, *Oil and Gas Law 727* (1987)). The written unit designation filed in Lea County with the District I Office of the OCD on November 17, 2000, brought together small tracts sufficient for the granting of a well permit, therefore, satisfying both the definition of "pooling" and the contractual pooling requirements of Paragraph 5 of the Original Stokes Leases to properly pool the NW/4 SW/4 of Section 25, T-16-S, R-35-E, into a unit comprised of the W/2 of said Section 25.

Although the Original Stokes Leases are not the drill site location for the Well, forty (40) acres of the Original Stokes Leases are within the unit designation filed with the District I Office of the OCD in Lea County prior to drilling during the primary term and in the County Clerk's Records of Lea County, New Mexico after completion of the Well beyond the primary term. See Exhibits "E, "F," and "G". Therefore, in order to obtain its drilling permit, TMBR/Sharp

Claimant's Motion for Partial Summary Judgment Regarding Filing of Unit Designation
Mid: BSULLIVAN\004370\0000021\306985.2

pooled the required 320 acres (including 40 acres out of the Original Stokes Leases) to form a unit. See Exhibits "E", "F," and "G". Because TMBR/Sharp conducted drilling operations on lands pooled with the Original Stokes Leases, production was obtained, and there has been no cessation of operations on the pooled Leases for more than 180 consecutive days. Therefore, the Original Stokes Leases are still valid. See supra Section II.B. In short, "that thing" permitted by the Original Stokes Leases to save them was the pooling, which as prescribed by the Leases must be evidenced by a written unit designation filed in the county where the land is situated, and TMBR/Sharp clearly did "that thing."

TMBR/Sharp exercised its power "to pool or combine" forty (40) acres of the Original Stokes Leases with other acreage to form a 320-acre pooled unit, which is the size unit required for a gas well by the OCD, in the Townsend; Mississippian, North (Gas) Pool. See Exhibits "F" and "G". TMBR/Sharp exercised its pooling power by filing a plat designation outlining the pooled acreage with the OCD District I Office in Lea County, New Mexico, the county of the premises covered by the Leases. See Exhibit "F". The OCD approved the requested drilling permit and drilling commenced before the expiration of the primary term and continued thereafter. See supra Section II.B. After the completion of the Well, a reconfirming unit designation was filed in the County Clerk's Records of Lea County, New Mexico. See Exhibit

See 19 NMAC 15.C.104.B(1)(a) which provides, in pertinent part, "...any such wildcat gas well which is projected to the Wolfcamp or older formations shall be located on a drilling tract consisting of 320 surface contiguous acres, more or less, ...". The Well is a wildcat well as defined in New Mexico Oil Conservation Division Rule 104.A. See Exhibit "D". The Well was drilled to the Mississippian Formation, which is older than the Wolfcamp Formation as provided in New Mexico Oil Conservation Division Rule 104.B(1)(a). See Exhibit "D".

"G". Thus, TMBR/Sharp "filed" a "written unit designation" in "Lea County, New Mexico" evidencing its pooling of the Original Stokes Leases both before and after the drilling of the Well. Under New Mexico law, and as expressly permitted by the Original Stokes Leases, drilling on the pooled unit was equivalent to drilling on the lands covered by the Original Stokes

Leases and, therefore, such leases are perpetuated by the drilling and completion of the Well.

This case is very similar to *Owens v. Superior Oil Co. supra*. In that case, the question was whether drilling on a pooled unit within the grace period provided in the lease effectuated a valid extension of an oil and gas lease so long as production was maintained. *Owens*, 730 P.2d at 458. In *Owens*, the primary term of the lease expired on April 8, 1984. However, the lease provided a grace period of 60 days after the cessation of operations to begin "additional drilling". *Id.* On April 25, 1984, the operator ceased drilling a well it had begun during the primary term because it was a dry hole. *Id.* On April 28, 1984, the operator began drilling a second well and on May 9, 1984 filed its Unit Designation purporting to pool forty (40) acres of the lease (non drill-site land) with forty (40) acres on which the second well was located. Production was obtained on June 26, 1984. *Id.*

The controversy arose because Owens, Fedric and Peters obtained mineral or leasehold interests in the dispute acreage and demanded that the Operator, Superior, release the acreage. *Id.* Superior refused and suit resulted. The New Mexico Supreme Court held that Superior "saved" its lease because a continuous operations clause in an oil and gas lease keeps the entire lease in full force and effect if, within the grace period, drilling occurs on the leased land or any land with which it is pooled when pooling is permitted by the lease. *Id.* Specifically, the Court

found that "...[B]y exercising that right [to pool] within sixty days of drilling the dry hole on the

leased premises, Superior saved the lease for as long as production is maintained." Id.

By exercising its right to pool and by drilling prior to the expiration of the primary term,

TMBR/Sharp, like Superior in Owens, perpetuated the Original Stokes Leases. There is no

question that TMBR/Sharp exercised its right to pool by filing the plat designation with the OCD

District I Office in Lea County, New Mexico during the primary term. Exhibit "F". Without

OCD's approval of the pooled acreage designation which included 40 acres of the Original

Stokes Leases, TMBR/Sharp could not have drilled. Drilling operations were commenced on the

pooled acreage prior to the expiration of the primary term of the Leases, and the Well once

completed has produced oil and gas without a cessation of production or operations for more

than 180 days (the grace period provided for in the Original Stokes Leases), and the pooled unit

was reconfirmed by filing a Unit Designation in the County Clerk's Records of Lea County, New

Mexico after the completion of the Well. See Exhibit "G". TMBR/Sharp, like Superior, has

done the things it needed to do, e.g. pool, drill, and file, to extend the Original Stokes Leases

beyond the primary term and to keep them in full force and effect as of this date.

Filing with the OCD to obtain a drilling permit is an unequivocal act of pooling. The

OCD rules set out the procedure for permitting for the drilling of wells. The Division Rules

promulgated by the OCD are authorized by NMSA, 1979, Section 70-2-11-A which states:

The division is hereby empowered and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in

this act provided. To that end, the division is empowered to make

and enforce rules, regulations and orders, and to do whatever may

Claimant's Motion for Partial Summary Judgment

Mid: BSULLIVAN\004370\0000021\306985.2

Page 12

be reasonably necessary to carry out the purposes of this act, whether or not indicated or specified in any section hereof.

19 NMAC 15.

9. 2

Rule 10 NMAC 15.N.1101.A requires that "before commencing drilling...the operator must file a permit to do so." (emphasis added) (This is a Form C-101 and it must be accompanied by a Form C-102 - Well Location and Acreage Dedication Plat). Form C-102 filed by TMBR/Sharp designated the West half of Section 24, Township 16S, Range 35E, being 320 acres, as the acreage dedicated to the Well. See Exhibit "F". The acreage included 40 acres under the Original Stokes Leases. Division Rule 19 NMAC 15.N.1102.A states: "Form C-102 is a dual purpose form used to show the exact location of the well and the acreage dedicated thereto...". Rule 19 NMAC 15.N.1102.B says all information required on Form C-102 shall be filled out and certified by the operator of the well except for the well location on this plat which is certified by a professional surveyor or engineer. Thus, Form C-102 is a public filing describing the acreage dedicated to the Well. See Exhibit "F".

Under the definition of pooling adopted by the New Mexico Supreme Court in *Uhden*, a written dedication of acreage filed with the OCD was an unequivocal act of pooling or combining leases with other lands to form a unit which satisfied the OCD rules and regulations and the Original Stokes Leases' requirement to pool into a unit that was within the standard unit size authorized by the OCD. So long as drilling commenced on that dedicated pooled acreage prior to the expiration of the primary term and continued thereafter, TMBR/Sharp has satisfied the terms of the Original Stokes Leases' terms, thus perpetuating the Leases. The only other requirement which is also satisfied by Form C-102 is a "filing" of the unit designation.

B. TMBR/Sharp Filed a Written Unit Designation Both Before and After Drilling a Well; Either of Which Satisfy the Terms of the Original Stokes Leases.

In the matter before this Court, the Original Stokes Leases, i.e., the contract, required TMBR/Sharp as part of the pooling process to "...file written unit designations in the county in which the premises are located..." See Exhibits "A" and "B" at paragraph 5. In the present matter, it is undisputed that the TMBR/Sharp filed a written unit designation in Lea County with the District I Office of the OCD on November 17, 2000. See Exhibit "F". Therefore, TMBR/Sharp has satisfied Paragraph 5 of the Original Stokes Leases as a matter of law by filing Form C-102 in Lea County. However, TMBR/Sharp's subsequent filing in the County Clerk's Records of Lea County, New Mexico after the well was completed also, independently, satisfies the "filing" requirements of the Original Stokes Leases.

The language of the Original Stokes Leases, Paragraph 5, is clear:

...Lessee shall file a written unit designation in the county in which the premises are located and such units may be designated from time to time and either before or after the completion of wells...

See Exhibits "A" and "B" at Paragraph 5. (emphasis added).

It is undisputed that TMBR/Sharp properly filed a Notice of Unit Designation with the District I Office of the OCD prior to the drilling of the Well. This alone would have satisfied the filing requirements of the Original Stokes Leases. However, this provision is also satisfied in that TMBR/Sharp filed a Unit Designation in the County Clerk's Records of Lea County, New Mexico after it drilled the Well. See Exhibit "G". As such, TMBR/Sharp has satisfied both possible means, i.e. before or after the well was drilled, of filing its Unit Designation.

Claimant's Motion for Partial Summary Judgment Regarding Filing of Unit Designation Mid: BSULLIVAN\004370\0000021\306985.2 The Original Stokes Leases allow for filing any time before or after the completion of

wells. Id. TMBR/Sharp does not contend it could file whenever it wanted. Rather, if the filing

was within a "reasonable time" TMBR/Sharp has satisfied the Original Stokes Leases' terms.

See Imes v. Globe Oil & Ref. Co., 184 Okla. 79, 84 P.2d 1106 (1938) (holding that the phrase "at

any time" in the pooling clause means within a "reasonable time" which is determined with

reference to the existing circumstances bearing on the foreseeability of pooling).

In the matter before the Court, TMBR/Sharp began drilling on March 29, 2001. See

Exhibit "D". First production in paying quantities was obtained on June 29, 2001. Id. The Unit

Designation was filed in the County Clerk's Records of Lea County, New Mexico on July 20,

2001. See Exhibit "G". First production was sold from the Well on August 6, 2001. See

Exhibit "D". Given the language of the Original Stokes Leases and the fact that drilling on the

pooled unit extends the Original Stokes Leases beyond the primary term, filing the Unit

Designation within one month of production and before any sale of production, TMBR/Sharp has

filed in the Lea County Records within a reasonable time, thereby satisfying the terms of the

Original Stokes Leases.

Because New Mexico law requires the Court to give the terms of contracts the ordinary

Page 15

meaning at the time of formation and the Original Stokes Leases require filing of the unit

designation either before or after the drilling of a well, TMBR/Sharp has satisfied the "filing"

terms of the Original Stokes Leases as a matter of law.

Claimant's Motion for Partial Summary Judgment

C. <u>Paragraph 5 is a Covenant Regarding Formation of a Pooled Unit, Not a Conveyance of Property.</u>

In the matter before the Court, TMBR/Sharp and the Lessors of the Original Stokes Leases have a contract with a covenant that requires TMBR/Sharp to file unit designations in the county where the property is located. See Exhibits "A" and "B" at Paragraph 5. This covenant is not an act of changing ownership in the property, but rather, a means to satisfy the OCD well permitting requirements and by which all parties to the Original Stokes Leases may ascertain with certainty what lands will be included in the unit designation. See Uhden v. New Mexico Oil Conservation Commission, 112 N.M. 528; 817 P.2d 721 (1981) (holding OCD's order authorizing 320 acre spacing was a condition precedent to pooling tracts). Such filing memorializes TMBR/Sharp's pooling of the Stokes acreage with other lands and informs the Lessors of the property covered by the unit designation. The filing does not affect ownership of the property subject to the unit designation, but instead, effectuates TMBR/Sharp's pooling

Defendant may argue that the pooling is a conveyance of real property and, therefore, subject to various requirements of New Mexico law, including certain filing requirements in the Lea County Records. Such a position is contrary to the holding of numerous courts. For instance, the Tenth Circuit held that the rule of perpetuities does not apply to the power to pool because such power does not accomplish a cross-transfer of property. See Phillips Petroleum Co. v. Peterson, 218 F.2d 926, 931 (10th Cir. 1954). In Kansas, the court held that the power to pool does not violate the rule against perpetuities because all the estates in interests are vested upon execution of the lease and that the rights thereunder are capable of definite ascertainment. Kenoyer v. Magnolia Petroleum Co., 245 P.2d 176 (Kan. 1952). As noted by Kuntz, "a lessor does not acquire property interest in other land included in the unit created by an exercise of the pooling power. Instead of modifying the respective property rights of lessors in the unit, an exercise of the pooling power serves to modify only the rights that exist between each lessor and his lessee." 4 Eugene Kuntz, Treatise on the Law of Oil and Gas § 48.3(3), at 216 (1972). Kuntz goes on to state that "instead of modifying property rights of lessors in the unit, the exercise of the pooling power modifies only the rights between each lessor and his lessee by modifying the covenants and special limitations contained in the lease." Id.

rights under the express lease terms. See supra Footnote 4. Further, any interested party could also determine what lands were included in the pooled unit by checking the records of the OCD.

V.

CONCLUSION

In the matter before this Court, it is undisputed that TMBR/Sharp and the other working interest owners did "that thing" which perpetuated the Original Stokes Leases. More specifically, the Original Stokes Leases are in full force and effect because TMBR/Sharp drilled upon lands properly pooled with the acreage covered by the Original Stokes Leases before expiration of the primary term as provided for in Paragraph 5 of the Original Stokes Leases. Further, TMBR/Sharp satisfied the requirements of the Original Stokes Leases by filing a written unit designation in the county in which the acreage subject to the Original Stokes Leases is located prior to drilling the Well. The filing requirement of Paragraph 5 is also independently satisfied in that TMBR/Sharp filed a written unit designation in the County Clerk's Records of Lea County, New Mexico after the Well was completed. For these reasons, as a matter of law, the Original Stokes Leases have been properly pooled and production thereon perpetuates the Leases into the secondary term.

VI.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Claimant TMBR/Sharp, Inc. respectfully requests the Court enter partial summary judgment awarding TMBR/Sharp the following relief:

- a. A declaration that TMBR/Sharp's written unit designation filed in Lea County with the Oil Conservation Division of the State of New Mexico on November 17, 2000, satisfied the obligations of Paragraph 5 of the Original Stokes Leases to file written unit designation in the county in which the premises are located;
- b. A declaration that TMBR/Sharp's written unit designation filed in County Clerk's Records of Lea County satisfied the obligations of Paragraph 5 of the Original Stokes Leases to file unit designation in the county in which the premises are located;
- c. A declaration that the Original Stokes Leases were properly pooled prior to the expiration of the primary term with acreage on which the Well is located;
- d. A declaration that commencing drilling on acreage pooled with the Original Stokes Leases satisfied the requirements in the Original Stokes Leases to extend the Leases into the secondary term;
- e. An award of reasonable attorney's fees, pre-judgment interest, post-judgment interest, and court costs; and
- f. An award of such other and further relief at law or in equity to which it may be justly entitled.

Respectfully submitted,

COTTON, BLEDSOE, TIGHE & DAWSON, P.C. 500 West Illinois, Suite 300 P.O. Box 2776 Midland, Texas 79702-2776 (915) 684-5782 (915) 682-3672 - Fax

Bv:

SUSAN R. RICHARDSON RICHARD R. MONTGOMERY ROBERT T. SULLIVAN

and

PHIL BREWER

P. O. Box 298 Roswell, NM 88202-0298 (505) 625-0298

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on this the ____ day of November, 2001, a copy of the above and foregoing instrument has been forwarded by certified U.S. mail, return receipt requested to attorney for Defendants Mr. Ernest L. Carroll, P.O. Drawer 1720, Artesia, New Mexico 88211-1720.

Susan R Richardson

Claimant's Motion for Partial Summary Judgment Regarding Filing of Unit Designation Mid: BSULLIVAN\004370\0000021\306985.2

3

COUNTY OF LEA		
STATE OF NEW MEXICO		
TMBR/SHARP DRILLING, INC., et al,)	
The store)	
Plaintiff,)	
·.)	
vs.)	No. CV-2001-315C
)	
DAVID H. ARRINGTON OIL & GAS,)	
INC., JAMES D. HUFF, MADELINE)	
STOKES, ERMA STOKES HAMILTON,)	
JOHN DAVID STOKES, and TOM)	
STOKES)	
)	
Defendant.	Ć	

FIFTH JUDICIAL DISTRICT COURT

ر د می

RESPONSE OF DAVID H. ARRINGTON OIL & GAS, INC. AND JAMES D. HUFF TO CLAIMANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING FILING OF UNIT DESIGNATION

COME NOW the Defendants, DAVID H. ARRINGTON OIL & GAS, INC., ("Arrington") and JAMES D. HUFF ("Huff") by and through their attorneys of record, Losee, Carson, Haas & Carroll (Ernest L. Carroll), and submit this Response to Claimant's Motion for Partial Summary Judgment Regarding the Filing of Unit Designation and would state as follows:

I. Introduction

Claimants, TMBR/Sharp Drilling, Inc., et al. ("TMBR/Sharp" or "Claimants") have sought a declaration that drilling across the primary term of the original Stokes Leases as described in TMBR/Sharp's motion perpetuated the Stokes Leases¹ beyond their primary term.

¹ For purposes of this response, the term "Stokes Leases" shall refer to the oil and gas lease between Madeline Stokes and Ameristate Oil & Gas, Inc., dated effective December 7, 1997, recorded in Book 827, page 127 of the Lea County Records, Lea County, New Mexico, and the oil and gas lease between Erma Stokes

Claimants seek this declaration on the basis that it properly pooled the acreage covered by the Stokes Leases with the acreage upon which an oil and gas well had been spudded and drilled to completion prior to the expiration of the primary terms of the Stokes Leases. Arrington and Huff assert that the Stokes Leases were not legally or effectively pooled prior to the expiration of their primary terms by the actions of Claimants and therefore the Stokes Leases expired at the end of their primary terms. The issue of whether or not Claimants legally and effectively pooled the Stokes Leases prior to the expiration of their primary terms is the sole issue for this Court to decide. It should be noted that Arrington and Huff have filed their own motion for summary judgment on this same issue. Arrington and Huff make this response particularly directed at arguments raised in Claimants motion but point out that the Court should consider Arrington and Huff's motion for summary judgment as an additional response or rebuttal to the issues raised in Claimants' motion for summary judgment.

A key issue to be considered by the Court deals with the allegation of Claimants that the filing of Oil Conservation Division Form C-102 ("Form C-102") with the Oil Conservation Division in Lea County is sufficient under the terms of the Stokes Leases to legally effectuate the pooling of such leases. Claimants allege that their filing of the Form C-102 was intended to be a unit dedication pursuant to the terms of the Stokes Leases. However, the undisputed facts of this case actually show that such is an after thought raised by Claimants after the fact to bootstrap an argument that the Stokes Leases had not expired by their own terms.

Hamilton and Ameristate Oil & Gas, Inc., dated effective December 7, 1997, recorded in Book 827, page 124, Lea County Records, Lea County, New Mexico. For purposes of Arrington and Huff's motion for summary judgment the Stokes Leases were defined as the "Madeline Stokes/Ameristate Lease" and the "Erma Stokes Hamilton/Ameristate Lease."

II. Statement of Undisputed Facts

Arrington and Huff adopt in their entirety the statement of undisputed facts contained in Defendants David H. Arrington Oil & Gas, Inc. and James D. Huff's Statement Of Undisputed Facts, Memorandum Of Law and Argument In Support Of Its Motion For Summary Judgment filed on November 21, 2001. Arrington and Huff will respond at this point specifically to the statement of facts contained in Claimants' Statement of Facts. Arrington and Huff will use the same numbering of facts for this response that is contained in Claimants' Statement of Facts.

- 1. Arrington and Huff admit the truth of fact number 1.
- 2. Arrington and Huff admit the truth of fact number 2.
- 3. Arrington and Huff admit the truth of fact number 3.
- 4. Arrington and Huff admit the truth of fact number 4.
- 5. Arrington and Huff admit that TMBR/Sharp filed a Form C-102 Well Location and Acreage Dedication Plat on November 17, 2000, and that such dedication plat outlined a 320 acre area being the W/2, Section 24, Township 16 South, Range 35 East, N.M.P.M.. However the issue as to whether such filing constitutes a legally effective pooling is a legal conclusion which this Court is being asked to decide. Arrington and Huff disagree with TMBR/Sharp's use of the term "pooled" in paragraph number 5. Arrington and Huff dispute that the acreage dedication plat or Form C-102 described a "pooled" unit dedicated to the Blue Fin "24" No. 1 Well. See Exhibits A, B, E and F to Claimant's Memorandum.
- 6. Arrington and Huff admit that 320 acres described in the Form C-102 includes 40 acres of the Stokes Leases, being the NW/4 SW/4, Section 24. However, Arrington and Huff disagree with TMBR/Sharp's use of the term "pooled" in paragraph number 6. The issue as to

whether such filing constitutes a legally effective pooling is a legal conclusion which this Court is being asked to decide. Arrington and Huff disagree that there were ever 320 acres "pooled" as stated in paragraph number 6. See Exhibits A and B to Claimant's Memorandum.

- 7 Arrington and Huff admit the truth of fact number 7.
- 8. Arrington and Huff admit the truth of fact number 8.
- 9. Arrington and Huff admit the truth of fact number 9.
- 10. Arrington and Huff admit the truth of fact number 10.
- Affidavit of Jeffrey D. Phillipps, does not state that the well cost \$1,000,000.00 to drill and complete but in fact states a "Well cost" in excess of \$100,000.00 to drill. Arrington and Huff would further state that fact number 11 is not a material fact with respect to the issues raised by either TMBR/Sharp's motion for summary judgment or the motion for summary judgment filed by Arrington and Huff.
- operations for 180 consecutive days since drilling of the Blue Fin "24" No. 1 Well began on March 29, 2001. However Arrington and Huff disagree as to the legal conclusion which is being inferred in paragraph number 12. Arrington and Huff believe that the reference to "lease" in paragraph number 12 refers to the Stokes Leases which are Exhibits A and B to Claimants' memorandum. Arrington and Huff assert that no acreage covered by either of the Stokes Leases shown in Exhibits A or B was ever legally or effectively pooled prior to the expiration of their primary terms and therefore no operations have been conducted on either of the leases.
 - 13. It is admitted that on July 20, 2001, a "Designation of Pooled Unit" was filed in

the County Clerk's Records of Lea County, New Mexico, by TMBR/Sharp and that such "Designation of Pooled Unit" included the Stokes Leases by reference. The legal effect of such filing is the issue which is before the Court. Arrington and Huff disagree with the use of the term "unit" as they believe it is meant in the context of paragraph number 13. Arrington and Huff believe that the use of the term "unit" in paragraph number 13 is an attempt to draw a legal conclusion that a pooled unit was legally and effectively created; a legal conclusion with which Arrington and Huff disagree. Arrington and Huff contend that there was no legally effective pooled unit created which included the Stokes Leases prior to the expiration of the primary term of those leases.

- 14. Arrington and Huff admit the truth of paragraph number 14.
- 15. Arrington and Huff admit that the language shown in paragraph number 15 is a portion of the language contained in paragraph 6 of the Stokes Leases as shown in Exhibits A and B to the Memorandum filed by Claimants.
- 16. Arrington and Huff admit that the language shown in paragraph number 16 is a portion of the language contained in paragraph 12 of the Stokes Leases as shown in Exhibits A and B to the Claimants' Memorandum.
- 17. Arrington and Huff admit that a portion of the lands covered by the Stokes Leases is shown on the Form C-102 acreage dedication plat which was filed by TMBR/Sharp. The legal effect of such filing is the issue which is before the Court. Arrington and Huff disagree with the use of the term "unit" as they believe it is meant in the context of paragraph number 17. Arrington and Huff believe that the use of the term "unit" in paragraph number 17 is an attempt to draw a legal conclusion that a pooled unit was legally and effectively created; a legal conclusion

with which Arrington and Huff disagree. Arrington and Huff contend that there was no legally effective pooled unit created which includes the Stokes Leases prior to the expiration of the primary term of such leases. Form C-102 does establish a proration unit for production to be assigned to the Blue Fin "24" No. 1 Well. It is not a designation of pooled unit as Claimants would like the Court to conclude. See Exhibit F not Exhibit E as stated in Fact 17 of Claimants' Memorandum.

18. Arrington and Huff agree that the Blue Fin "24" #1 Well was being drilled during the primary term of the Stokes Leases. The issue as to whether the Blue Fin "24" #1 Well was drilled on a legally effective pooled unit which includes the Stokes Leases and whether such activity was sufficient to extend the Stokes Leases beyond their primary term and whether the Stokes Leases are now held by production from the Blue Fin "24" #1 Well are conclusions of law which the Court has been asked to decide. Arrington and Huff contend that there was no legally effective pooled unit created which includes the Stokes Leases prior to the expiration of the primary term of such leases. Therefore the Stokes Leases are not held by production from the Blue Fin "24" #1 Well.

Arrington and Huff assert that Claimants have overlooked a critically determinative fact which exists in the laws of the State of New Mexico which, once considered, destroys Claimants conclusions. Section 14-9-1 NMSA, 1978, states:

Instruments affecting real estate; recording. All deeds, mortgages, leases of an initial term plus option terms in excess of five years, or memoranda of the material terms of such leases, assignments, or amendments to such leases, leasehold mortgages, United States patents and other writings affecting the title to real estate shall be recorded in the office of the county clerk of the county or counties in which real estate affected thereby is situated. Leases of any term

or memoranda of the material terms thereof, assignments or amendments thereto may be recorded in the manner provided in this section. As used in this section, "memoranda of the material terms of a lease" means a memorandum containing the names and mailing addresses of all lessors, lessees or assignees; if known, a description of the real property subject to the lease, and the terms of the lease, including the initial term and the term or terms of all renewal options, if any (Emphasis Added.)

III. STANDARD OF REVIEW

Claimants cite no cases with respect to the proper Standard of Review. A more correct statement of the Standard of Review in a summary judgment situation in New Mexico is contained in the Argument of Authorities of Arrington and Huff's Memorandum in support of their Motion for Summary Judgment. Arrington and Huff would further cite to the Court the case of CIUP v. Chevron U.S.A., Inc. 122 N.M. 537, 928 P.2d 263 (1996). In the CIUP case it is noted that summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The Supreme Court in that case further stated that a party cannot rely on allegations contained in its complaint or upon argument or contention of counsel to support its arguments, but rather must rely upon admissible evidence. In the present case there are no undisputed facts which support Claimants position.

The undisputed facts, however, coupled with the language of Paragraph 5 of the Stokes Leases show that Claimants are not entitled to summary judgment as a matter of law as the Stokes leases expired by their own terms due to the failure of Claimants to properly pool the Stokes leases with leases upon which drilling operations were being conducted.

IV. ARGUMENTS AND AUTHORITIES

Arrington and Huff agree with Claimants that the key issue for Summary Judgment is

whether Claimants did "that thing" which perpetuated the original Stokes leases. In Claimant's brief after acknowledging this as the issue, it is argued in footnote number 2 that "that thing" that the Claimants were required to do was solely governed by the terms of those leases. That is an incorrect statement of the law in New Mexico. In New Mexico all contracts are considered to incorporate relevant law. In State ex rel. Udall v. Colonial Penn Ins. Co., 112 N.M. 123, 812 P.2d 777 (1991), the Supreme Court stated, "A contract incorporates the relevant law, whether or not it is referred to in the agreement". In Durham v. Southwest Developers Joint Venture, 128 N.M. 648, 996 P.2d 911, (Ct. App. 1999), it is stated, "The provisions of applicable statutes are part of every contractual commitment. See Wright v. Union Cent. Life Ins. Co., 304 U.S. 502, 516, 82 L.Ed. 1490, 58 S. Ct. 1025 (1938). Thus contractual agreements are deemed to have incorporated relevant state law. See State ex rel. Udall v. Colonial Penn Ins. Co., 112 N.M. 123, 130, 812 P.2d 777, 784 (1991)".

The relevant state law which Claimants conveniently overlooked is Section 14-9-1 NMSA 1978 which states "other writings affecting the title to real estate shall be recorded in the office of the county clerk of the county or counties in which the real estate affected thereby is situated". [Emphasis added].

There can be no doubt that for pooling to be accomplished according to the specific terms of each of the Stokes Leases, the written unit designation had to be filed in Lea County, New Mexico. The critical question then becomes, does the lease language mean in the county clerk's records or somewhere else as advanced by Claimants such as the Lea County office of the Oil Conservation Division. It is likewise undeniable that the sole purpose behind the filing of a unit designation is to affect the title to the minerals covered by the leases by keeping the

leases from terminating according to their own terms. Section 14-9-1 NMSA 1978 categorically speaks to that situation by requiring that writings "affecting the title to real estate shall be recorded in the office of the county clerk of the county or counties in which the real estate affected thereby is situated" [Emphasis added.] This has always been the law in New Mexico, as the History of that section dates back to the Laws of 1886-1887 Ch. 10, § 1.

A case squarely on point is that of Sauder v. Frye, 613 S.W.2d 63 (Ct. App. Ft. Worth 1981). In that case the oil and gas lease expired on May 24, 1979. A Designation of Pooled Unit was executed by the lessee on May 23, 1979. A well was commenced drilling on the pooled unit in question commencing April 15, 1979 and was completed capable of producing gas in commercial quantities on May 26, 1979. On May 31, 1979 the Designation of Pooled Unit was recorded by the county clerk in the county of the wells location. The question in Sauder then became was the Designation of Pooled Unit executed by the lessee effective as to the lease as of the date it was executed and acknowledged or was it effective only when it was filed for record in the required county. The Court held that the lease evidenced the intent of the parties that for unitization to be effective, one of its required conditions was a recordation of the designation of pooling. Only at that point would the unitization validly come into being under the terms of the lease. The Fort Worth, Texas Court of Appeals held that the lease terminated by its own terms. The holding in Sauder v. Frye was followed in Pampell Interests, Inc. v. Wolle, 797 S.W.2d 392 (Ct. App. Austin 1990).

The New Mexico Supreme Court has had to deal with these issues though under a slightly different factual situation. However, the New Mexico Supreme Court ruled using the very principles espoused hereinabove. In Owens v. The Superior Oil Company, 105 NM 155, 730 P2d

458 (1986) the Court focused on the following facts. Prior to the expiration of the primary term, a well was begun upon the actual lands covered by the lease in question, but it resulted in a dry hole which was completed after the end of the primary term. Since the primary term had expired the continuous operation clause of the lease provided for termination 60 days after the cessation of operations, unless the lessee commenced additional drilling or reworking operations within that time period. Superior Oil Company began drilling operations on another well within that 60 day period but such well was not located on the actual leased lands. Superior filed its Designation of Pooled Unit prior to the expiration of the 60 day continuous operations clause. A producing well was obtained by those efforts. The Supreme Court, in its opinion, stated the following:

Superior urges us to adopt the Federal District Courts interpretation of the similar provision in Harper. The Harper Court, noting that the primary purpose of a continuous operations clause "is to give a lessee who has incurred the expense of drilling a well an opportunity to save his lease in the event the well is a dry hole," held that the clause kept the entire lease including the pooling clause, in full force and effect for a 60 day period after the cessation of operations. Harper v. Hudson Gas and Oil Company, 189 F. Supp. 787 (quoting Stanolind Oil and Gas Co. v. Newman Brothers Drilling Co., 157 Tex 489, 497, 305 S.W.2d 169, 174 (1957)). We are persuaded by this reasoning, and hold that a continuous operations clause in an oil and gas lease keeps the entire lease in full force and effect within a period of 60 days after the cessation of drilling or production, drilling or reworking occurs on the leased land or any land with which it is pooled when pooling is permitted by the lease. [Emphasis added.]

The factual situation in <u>Owens</u> is exactly the opposite of the facts here,² that is the pooling designation was filed <u>prior</u> to the expiration of the primary term of the lease in that case and in

Claimants try to argue the similarity of the facts in <u>Owens</u> to the facts in this case. However that is not the case. In <u>Owens</u> it was <u>undisputed</u> that Superior had filed a proper pooling designation. The controversy was over whether or not the 60 day continuous drilling clause was operative to keep the lease alive. Claimant's position is not supported by <u>Owens</u>.

this case it was not. This case does establish the fact that it is the law in New Mexico that a pooling designation must be filed according to the terms of the lease <u>prior</u> to the expiration of the lease.

Claimants also cite 4 Eugene Kuntz, Treatise on the Law of Oil and Gas § 48.3 as authority for their position. However, if one looks at the proper part of § 48.3 being found at page 202, it states,

"In order to be effective, the pooling power must be exercised while the lease is in effect in accordance with all of its terms. If the lease is terminated by application of other provisions of the lease, the authority granted by the pooling clause likewise terminates, unless an intention can be found that the lease is to remain alive for the purpose of permitting an exercise of the pooling power. Further, the lease may remain alive for a limited purpose other than pooling in which case an exercise of the pooling power will be ineffective if the lease otherwise terminated. Thus, if the lessee was in the process of drilling at the end of the primary term and the drilling operation results in a dry hole, the lease is extended solely for the purpose of permitting the lessee to comply with the dry hole clause, and an exercise of the pooling power to pool the lease with productive land will be ineffective if the lease is not otherwise sustained."

With the respect to the undisputed facts of this case, the pooling designation had to be exercised prior to June 7, 2001, or the primary terms of both of the Stokes Leases would expire and no activities, whether began prior to that time or continued thereafter, could sustain or revive the leases as maintained by Claimants.

Claimants argument is also suspicious. Arrington and Huff would ask the Court to pay particular attention to the fact that Claimants start out with a conclusion that "the original Stokes Leases are properly pooled". The Claimants then begin to use various terms interchangeably.

The terms used interchangeably are "pooling designation", "unit designation", "proration unit" and "acreage dedication plat." It is undisputed that the Stokes Leases required a pooling designation to be filed in the county where the premises are located. In the opening paragraph of Claimants argument they state that the "written unit designation" filed in Lea County with the District 1 Office of the OCD on November 17, 2000, brought together small tracts sufficient for the granting of a well permit. There was no written unit designation filed with the OCD. The only document filed with the OCD was an "acreage dedication plat." See Exhibit F to Claimants' Memorandum. It is also interesting to note that the space where they could have shown how the acreage was consolidated (i.e. by pooling or unitization) was left blank.

Claimants continue their shell game when they then change their argument from using unit designation to using the term a plat designation, again neither plat designation or unit designation complies with the terminology of the leases which require a pooling designation. Claimants argue at page 10 of their brief that, "TMBR/Sharp exercised its pooling power by filing a plat designation outlining the pooled acreage with the OCD District I Office in Lea County, New Mexico..." The leases do not authorize a plat to be filed in the OCD showing the acreage, the lease requires a written pooling designation. The plain and simple meaning of those terms indicate that the parties desired that a writing setting forth the fact that this acreage was being pooled with additional acreage be filed. Section 14-9-1. NMSA, 1978, requires that filing to be made in the County Clerks records of Lea County, New Mexico. The C-102 Form fails completely in those respects.

. 👯

Claimants then argue that after the completion of the Blue Fin "24" No. 1 Well a reconfirming unit designation was filed in the County Clerk's Records of Lea County, New

Mexico. This argument alone underscores the weakness that is recognized by Claimants in their argument. A reconfirming writing was never required by the Stokes Leases. It has no legal effect whatsoever. Again Claimants are trying to shotgun sympathy for their position. The fact that Claimants felt a reconfirming designation was required illustrates the fact that they were aware of the problem with the Stokes Lease acreage and the fact that it was not pooled. As was pointed out in Arrington and Huff's Memorandum of Law accompanying its Motion for Summary Judgment, through discovery it was learned that a drilling title opinion was not secured by TMBR/Sharp prior to the spudding of the Blue Fin "24" No.1 Well and that the attorney who authored the title opinion made note of the problem concerning the necessity of filing a pooling designation with respect to not only the Stokes Leases but one additional lease.

The arguments of Claimants give rise to a second and subsidiary issue that should be considered by the Court which deals squarely with the claim by Claimants that the filing of Form C-102 with the OCD in Lea County was intended to be a unit dedication pursuant to the terms of the Stokes Leases. The undisputed facts of this case actually show that such argument is an after thought raised by Claimants to bootstrap some kind of a case albeit weak, that the Stokes Leases had not expired by their own terms.

Claimants cite the case of <u>Uhden v. New Mexico Oil Cons. Com'n.</u>, 112 N.M. 528, 817 P.2d 721 (1991) for the proposition that "a written dedication of acreage filed with the OCD was an unequivocal act of pooling or combining leases with other lands to form a unit which satisfied the OCD rules and regulations and the Original Stokes Leases' requirement to pool into a unit that was within the standard unit size authorized by the OCD." The <u>Uhden</u> case does not stand for that proposition nor does it give any guidance to the type of writing that is required to validly

pool the acreage covered by the Stokes Leases with other acreage. That case is the landmark case dealing with the proposition of whether or not an owner in fee of an oil and gas estate was entitled to actual notice of a state proceeding on a lessee's application for an increase in well spacing. That case can be reviewed in its entirety and no guidance can be found from such a review with respect to the issues as presented by this case. It should be further pointed out that the New Mexico Supreme Court did not adopt a definition of pooling and what it takes, all it did as an ancillary part of its discussion give a description of what pooling was with respect to the facts of the <u>Uhden</u> case which are no way similar to the facts of this case. Again the attempt to cite this case and to bootstrap an argument where none exist is evident from this almost seemingly careless use of citations.

The last important issue that was raised by Claimants that must be addressed is a quotation by Claimants from the language from Paragraph 5 of the Stokes Leases which states, "and such units may be designated from time to time and either before or after the completion of the wells." It is not denied that that language exists in the both of the Stokes Leases. However, as was held in the Owens case a written pooling designation must be filed prior to the expiration of the lease or any clause therein which extends for some time the primary term of the lease. Here the written unit designation filed on July 20, 2001, came after the lease had expired and therefore was of no effect. The Blue Fin "24" No. 1 Well was spudded and/or completed prior to June 7, 2001, and had a proper pooling designation been filed in the County Clerk's Records of Lea County prior to the date of June 7, 2001, there could be no contention made that the leases had expired, however that is not the state of the record. No pooling designation was filed prior to the expiration of both of the Stokes Leases on June 7, 2001, therefore even though a well had been spudded upon

37

acreage that could have been pooled with the Stokes acreage such is of no effect, and the Stokes Leases have expired and therefore Claimants arguments must fail.

V. CONCLUSION

Under the undisputed facts before this Court, Claimants did not do "that thing" which would have caused the Stokes Leases to be perpetuated beyond the expiration of their primary term of June 7, 2001. Therefore those leases have expired, the top leases taken by Huff are therefore valid and have come to life by virtue of the expiration of the precedent leases held by Claimants. For these reasons, as a matter of law, the Stokes Leases were not properly pooled and therefore no production was obtained within their primary term and Claimants' Motion for Summary Judgment should be denied in all respects.

LOSEE, CARSON, HAAS & CARROLL, P.A.

P.O. Box 1720

Artesia, NM 88211-1720

(505)746-3505

Attorneys for Defendants, David H. Arrington Oil

Gas. Inc. and James D. Huff

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing pleading to be mailed on this ____ day of December, 2001 to the following:

Phil Brewer P.O. Box 298 Roswell, NM 88202-0298

Cotton, Bledsoe, Tighe, & Dawson, P.C. Ms. Susan R. Richardson P.O. Box 2776
Midland, TX 79702-2776

Michael Canon Canon & Gaston 303 W. Wall, Suite 1100 Midland, TX 79701

Érnest L. Carroll

FIFTH JUDICIAL DISTRICT COURT COUNTY OF LEA STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC., Plaintiff, OF CEC 27 AM 9: 33

DISTRICT COURT CLERK

VS.

No. CV2001-315C

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, and TOM STOKES, Defendants.

ORDER GRANTING PARTIAL SUMMARY JUDGMENT REGARDING FILING OF UNIT DESIGNATIONS

THIS MATTER having come before the Court upon Motion of the Plaintiff's TMBR/Sharp Drilling Company's Motion for Partial Summary Judgment regarding Filing of Unit Designations and the Defendant Arrington Oil and Gas Inc.'s and Defendant Huff's Motion for Summary Judgment Regarding Filing of Unit Designations and the Court being fully advised FINDS that the Plaintiff's Motion is well taken and should be and IS GRANTED and the Defendant's Motion is not well taken and should be and IS DENIED.

Gary L. Clingman District Judge

CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice was mailed to all parties on the 27th day of Leam (1911), 2001:

Richard Montgomery, Esquire P.O. Box 2776 Midland, Texas 79702-2776 Phil Brewer, Esquire P.O. Box 298 Roswell, NM 88202-0298

Ernest L. Carroll, Esquire P.O. Box 1720 Artesia, NM 88221-1720

Michael J. Canon, Esquire 303 W. Wall, Suite 1100 Midland, Texas 79701

Bv:

Trial Court Administrative Assistant-

2011 1:08 PM 1:08

FIFTH JUDICIAL DISTRICT COURT STATE OF NEW MEXICO COUNTY OF LEA

TMBR/SHARP DRILLING, INC.,
AMERISTATE OIL & GAS, INC., THOMAS
BEALL, MARK NEARBURG, LOUIS
MAZZALLO, F. HOWARD WALSH, JR.,
JADE RESOURCES, INC., CHI ENERGY,
INC. and THOMAS C. BROWN,

Plaintiffs,

V.

No. CV- 2001-315C

DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, ERMA STOKES HAMILTON, JOHN DAVID STOKES, and TOM STOKES,

Defendants.

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DAVID H. ARRINGTON OIL & GAS REGARDING TORTIOUS INTERFERENCE AND BRIEF IN SUPPORT THEREOF

TMBR/SHARP DRILLING, INC. ("TMBR/Sharp"), AMERISTATE OIL & GAS, INC. ("Ameristate"), THOMAS BEALL, MARK NEARBURG, LOUIS MAZZALLO, F. HOWARD WALSH, JR., JADE RESOURCES, INC., CHI ENERGY, INC. and THOMAS C. BROWN (collectively "Plaintiffs" or TMBR/Sharp, et al.) Claimants for cause of action against DAVID

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DAVID H. ARRINGTON OIL & GAS REGARDING TORTIOUS INTERFERENCE

H. ARRINGTON OIL & GAS, INC. ("Arrington"), move for Summary Judgment against Arrington for tortious interference pursuant to New Mexico Rule of Civil Procedure 1-056.

I.

SUMMARY OF MOTION

TMBR/Sharp and the other named Plaintiffs are the Lessees of two oil and gas leases located in Lea County, New Mexico. While those leases were in full force and effect, Arrington filed an application for and obtained a permit to drill two wells on acreage covered by these leases. The filing of these permits prevented TMBR/Sharp, the operator, from obtaining its own permits to drill wells. TMBR/Sharp and the other owners maintain, and the evidence contained herein will show this Court, that Arrington wrongfully obtained permits thereby tortiously interfering with Plaintiffs' rights and benefits under such leases.

II.

STATEMENT OF UNDISPUTED MATERIAL FACTS

A. THE LEASES

مي روي

- 1. The first lease ("First Lease") is an oil and gas lease made effective December 7, 1997 between Madeline Stokes and Ameristate Oil & Gas, Inc. ("Ameristate"), and is recorded in Book 827, page 127 of the Records of Lea County, New Mexico, as amended by instrument dated August 10, 2000. A certified copy of the First Lease is on file with this Court, a copy of which is attached hereto as Exhibit "A."
- 2. The second lease ("Second Lease") is a lease made effective December 7, 1997 between Erma Stokes Hamilton and Ameristate, and is filed in Book 827, page 124 of the Records of Lea County, New Mexico as amended by instrument dated August 14, 2000. A

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DAVID H. ARRINGTON OIL & GAS REGARDING TORTIOUS INTERFERENCE

certified copy of the Second Lease is on file with this Court, a copy of which is attached hereto as Exhibit "B."

- 3. The First and Second Leases (collectively referred to herein as the "Original Stokes Leases" or the "First Lease" and "Second Lease" or the "Leases") were amended on August 10, 2000 and August 14, 2000, respectively, by Lessors and Ameristate¹ to create a primary term expiration date of June 6, 2001. *Copies of the amendments are on file and attached hereto as Exhibit "D."*
- 4. This Court has ruled that the Original Stokes Leases were properly pooled by TMBR/Sharp and remain in full force and effect. See Claimant's Motion for Summary Judgment and the Court's Order granting same which are on file with this Court and incorporated herein by reference.

B. THE TOP LEASES

.

- 5. On or about March 27, 2001, James D. Huff ("Huff") acquired an oil and gas lease from Defendant Madeline Stokes covering the same lands and minerals covered by the Original Stokes Leases. This lease is herein referred to as the "Stokes Top Lease." A certified copy of the Stokes Top Lease is on file with this Court, a copy of which is attached hereto as Exhibit "E."
- 6. The Stokes Top Lease purports to be for a primary term of three (3) years from June 7, 2001, and as long thereafter as oil or gas is produced from said land or from land with which said land is pooled. See Exhibit "E."

TMBR/Sharp is a successor in interest to Ameristate by assignment of the First Lease and Second Lease effective in September of 1999. See Affidavit of Jeffrey D. Phillips, attached hereto as Exhibit "C."

- 7. On the same date, Huff acquired an oil and gas lease from Defendant Erma Stokes Hamilton also covering the same lands described in the Original Stokes Leases. This lease is herein referred to as the "Hamilton Top Lease." A certified copy of the Hamilton Top Leases is on file with this Court, a copy of which is attached hereto as Exhibit "F."
- 8. The Hamilton Top Lease is for the same primary term as the Stokes Top Lease. See Exhibit "F." The Stokes Top Lease and Hamilton Top Lease are collectively referred to herein as the "Huff Top Leases," and copies thereof are on file with this Court and incorporated herein by reference.
- 9. The Huff Top Leases each provide in pertinent part: "This oil and gas lease is subordinate to that certain 'Prior Lease' [Original Stokes Leases] recorded in ... Lea County Records, as amended by instrument dated ... recorded ... Lea County Records, but only to the extent that said prior lease is currently a valid and subsisting oil and gas lease. See Exhibits "E" and "F" (Huff Top Leases).
- 10. This Court has ruled that the Original Stokes Leases are in full force and effect as the result of TMBR/Sharp's pooling and drilling a well across the expiration of the primary term. *See supra*.

C. ASSIGNMENT OF HUFF TOP LEASES

11. On September 17, 2001, Huff assigned Arrington his entire interest in the Huff Top Leases. A certified copy of the Assignment from Huff to Arrintgon is attached hereto and referenced herein as Exhibit "G."

D. THE PERMITS

- 12. On July 19, 2001 Arrington filed an application for and obtained a permit to drill the Triple Hackle Dragon "25" No. 1 Well on the W/2 of Section 25, T-16-S, R-35-E, Lea County, New Mexico. See a certified copy of the OCD's Order of the Division dated December 11, 2001 attached hereto as Exhibit "H". The OCD approved the application on July 19, 2001. Id. at p. 2.
- 13. On July 30, 2001, Arrington filed an application for and obtained a permit to drill the Blue Drake "23" No. 1 Well on the E/2 Section 23, T-16-S, R-35-E, Lea County, New Mexico. *Id at p. 2*. The OCD approved the application. *Id at p. 2*.
- 14. On August 8, 2001, the OCD denied TMBR/Sharp's application for a permit to drill the Blue Fin "25" No. 1 Well on the E/2 of Section 25 stating that the permit granted to Arrington precluded the permit applied for by TMBR/Sharp. *Id at p. 2*.
- 15. On August 8, 2001, TMBR/Sharp was denied a permit to drill the Leavelle "23" No. 1 Well on the E/2 of Section 23 because the permit granted to Arrington precluded the granting of the permit sought by TMBR/Sharp. *Id. at p. 3*.
- 16. The Original Stokes Leases are in full force and effect. However, each of these leases contains a "continuous development clause." Specifically, in Paragraph 12 of Exhibit "A" of each such lease provides in pertinent part: "Should Lessee fail to timely commence a well in accordance with aforesaid 180 days continuous drilling or development prior to the point in time the leased premises have fully developed then this lease shall terminate as to all lands not included in or otherwise allocated to a well unit." See Exhibits "A" and "B."

- 17. TMBR/Sharp attempted to drill-two additional wells in accordance with the provisions of Paragraph 12 of the Original Stokes Lease, but was denied drilling permits by the OCD on its leasehold property because Arrington wrongfully obtained drilling permits covering the same acreage based on the Huff Top Leases. *See Exhibit "H."* Since the Huff Top Leases have not become effective, the drilling permits obtained from the OCD by Arrington were based on untrue representations of leasehold ownership. *See supra*.
- 18. The drilling applications filed by Arrington have prevented Plaintiffs from exercising their rights and fulfilling their obligations under the Original Stokes Leases. Further, the drilling permits obtained wrongfully with the OCD are preventing TMBR/Sharp from drilling additional wells for which it had requested permits, but were denied.
- 19. TMBR/Sharp filed an application for an order staying drilling operations by Arrington on the acreage subject to the Original Stokes Leases challenging the permits granted to Arrington. See a true and correct copy of the Application of TMBR/Sharp Drilling, Inc. for an Order Staying David H. Arrington from Commencing Operations attached hereto as Exhibit "I".
- 20. On September 20, 2001, the OCD heard arguments regarding TMBR/Sharp's challenge. See Exhibit "H" at p. 1.
- 21. The OCD held that Arrington had a colorable right of title and, therefore, its permits remained valid and refused to issue permits to TMBR/Sharp. See Exhibit "H" at pages 4-6. The OCD did not make a determination as to the continued validity of the Original Stokes Leases.
- 22. The order issued by the OCD stating that Arrington had colorable title was issued prior to the Court in this suit granting Plaintiff's Motion for Partial Summary Judgment which,

in effect, declared that Arrington had no present possessory interest in the Hamilton/Stokes acreage. *Id.*

23. It is important to note that Arrington obtained his permits to drill the Triple Hackel Dragon "25" No. 1 Well and the Blue Drake "23" No. 1 Well in July of 2001. See supra. This is important because he did not obtain any interest in the Huff Top Leases until they were assigned to him on September 17, 2001. See supra.

E. DAMAGES

- 24. Arrington obtained two permits to drill on the property subject to the Huff Top Leases without actual or colorable title to such leases. *See supra*. Arrington has failed or refused to release those permits and has thus continued to obstruct TMBR/Sharp's entitlement to the drilling permits it previously requested.
- 25. As a result of Arrington acquiring the permits and refusing to release them, TMBR/Sharp has been denied permits thus preventing it from drilling on the acreage subject to the Original Stoke Leases. See Exhibit "H" at pages 4-6.
- 26. To challenge the actions by Arrington, TMBR/Sharp filed a Complaint for Declaratory Judgment, Tortious Interference, Repudiation, Damages and Injunctive Relief. A true and correct copy of TMBR/Sharp's Complaint is on file with this court.
- 27. In support of its Complaint, TMBR/Sharp has engaged the counsel of Cotton, Bledsoe, Tighe & Dawson and Phil Brewer to represent their interest.
- 28. TMBR/Sharp was also forced to file an application with the OCD to prevent Arrington from drilling on the acreage subject to the Original Stokes Leases which cause was denied because the OCD believed Arrington had "colorable title". However, since the ruling by

the OCD, this Court has entered an order effectively removing any color of title in Arrington on the subject properties covered by the Original Stokes Leases. See supra.

- 29. Arrington did not actually have any title at all when he obtained the permits in that he did not receive an assignment from Huff until almost two months after the permits were granted.
- 30. As a result of the litigation caused by Huff and Arrington, TMBR/Sharp, et al. has incurred in excess of \$90,000.00 in attorney's fees. See Affidavit of Jeffrey D. Phillips attached hereto and referenced herein as Exhibit "C".
- 31. TMBR/Sharp has also been unable to drill at least two wells on acreage subject to the Original Stokes Leases thereby causing damages including loss of production, the time value of money, and decreased prices on the oil and gas that would have been produced. See Exhibit "C."

III.

STANDARD OF REVIEW

A summary judgment provides a method whereby it is possible to determine whether a genuine claim for relief for defense exists and whether there is a genuine issue of fact to warrant the submission of the case to the jury. *Meeker v. Walker*, 80 N.M. 280, 454 P.2d 762 (1969). Trial courts are to bring litigation to an end at an early stage when it clearly appears that one of the parties is entitled to a judgment as a matter of law in the case as made out by the pleadings and the admissions of the parties. *Buffington v. Continental Casualty Co.*, 69 N.M. 365, 367 P.2d 539 (1961). Further, summary judgment is proper even though other disputed issues remain before the court. *Tapia v. Springer Transf. Co.*, 106 N.M. 461, 744 P.2d 1264 (Ct. App.

-1987). In the present matter, the undisputed facts and the language of paragraph 5 of the Original Stokes Leases show that TMBR/Sharp is entitled to summary judgment as a matter of law on its claim of tortious interference.

IV.

ARGUMENTS AND AUTHORITIES

The issue for partial summary judgment is whether Arrington tortiously interfered with the Original Stokes Leases. To establish tortious interference with a contract, Plaintiffs have to prove that Arrington had: (1) knowledge of a contract [e.g. the leases] between TMBR/Sharp, Madeline Stokes, and Erma Stokes Hamilton; (2) performance of some aspect of the contract was refused [e.g. a top lease was granted and Arrington obtained drilling permits that thwarted TMBR/Sharp's ability to obtain permits]; (3) Arrington played an active and substantial part in causing TMBR/Sharp to lose the benefits of its contract; and (4) damages flowed from the breach of the contract. Ettenson v. Burke, 130 N.M. 67, 17 P.3rd 440 (Ct. App. 2000) (citing Wolf v. Perry, 65 N.M. 47, 461-62, 339 P.2d 679, 681-82 (1959)).

Clearly, Arrington had knowledge of the Original Stokes Leases between TMBR/Sharp and the lessors; the Huff Top Leases specifically reference the Original Stokes Leases. In addition, it is undisputed that TMBR/Sharp cannot perform the contracts in question because Arrington wrongfully obtained permits to drill on acreage covered by the Original Stokes Leases which blocked TMBR/Sharp's ability to obtain it own drilling permits. *See supra*. Arrington's failure and refusal to release the permits has resulted in Plaintiff's continued inability to obtain its own permits. The only remaining issue, therefore, is whether or not damages flowed from TMBR/Sharp's inability to drill wells on its leases.

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DAVID H. ARRINGTON OIL & GAS REGARDING TORTIOUS INTERFERENCE

Arrington's tortious conduct damaged Plaintiffs in two ways. First, Plaintiffs have been unable to produce the oil and gas from the Original Stokes Leases as they would have been if TMBR/Sharp were able to obtain the permits. See Exhibit "C." Secondly, Plaintiffs have incurred attorney's fees as consequential damages in order to establish the validity of the Original Stokes Leases and their right to drill thereon.

TMBR/Sharp has been unable to obtain permits to drill on the acreage covered by the Original Stokes Leases because Arrington obtained its permits wrongfully. See Exhibit "A" at pages 4-6. Such inability has caused TMBR/Sharp to incur significant damages. TMBR/Sharp would have completed both of the wells that it sought a permit for in 2001. See Exhibit "C." Further, production would have been obtained from those wells. As a result of Arrington and Huff's tortious interference, Plaintiffs have suffered damages including the following: (1) loss of production; (2) time value of money; (3) decrease in prices that Plaintiffs would have received for any production if wells could have been drilled; (4) attorneys' fees; and (5) costs. See Exhibit "C." These damages are in excess of \$500,000.00 at the time this Motion for Summary Judgment was filed. See Exhibit "C."

Incurring attorneys' fees as a result of the tortuous interference satisfies the damage element of a tortious interference with a contract claim. In *Dinkle v. Dunton*, the New Mexico Supreme Court stated: "it is generally held that where the wrongful act of defendant has involved the plaintiff in litigation with others or placed him in such relation with others that makes it necessary to incur expense to protect his interest, such costs and expenses, including attorney's fees, should be treated as legal consequences of the original wrongful act and may be recovered as damages." 68 N.M. 108, 114, 359 P.2d 345, 349 (1961) (citing 15 Am. Jur.

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DAVID H. ARRINGTON OIL & GAS REGARDING TORTIOUS INTERFERENCE (Damages) § 144, p. 552. In LaMure v. Peters, 122 N.M. 367, 924 P.2d 1379, 1382 (Ct. App. 1996), the court held that "consequential or incidental damages, such as attorney's fees are costs incurred as a result of the alleged malpractice satisfies the prerequisite injury to bring a malpractice claim." The attorneys' fees incurred by Plaintiffs are consequential damages sustained as a result of Arrington's tortious conduct and, therefore, are recoverable. Such damages for attorneys' fees total in excess of \$90,000.00. See Exhibit "C."

V.

CONCLUSION

Arrington has tortiously interfered with the Original Stokes Leases and Plaintiffs' rights under them. More specifically, Arrington had knowledge of the Original Stokes Leases, TMBR/Sharp has been unable to obtain permits to drill on the acreage subject to the Original Stokes Leases, TMBR/Sharp's inability to drill was caused by Arrington wrongfully obtaining permits for the acreage covered by the Original Stokes Leases and Plaintiffs have suffered damages as a result of their inability to drill the wells. Therefore, as a matter of law, Plaintiff have satisfied all of the elements of tortious interference with a contract with respect to Arrington and are entitled to summary judgment as a matter of law.

VI.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff TMBR/Sharp, Inc. respectfully requests the Court enter a judgment awarding TMBR/Sharp the following relief:

1. A judgment that Arrington has tortiously interfered with the Original Stokes Leases; and

.

2. Such other relief, at law or equity to which Plaintiffs are justly entitled.

Respectfully submitted,

COTTON, BLEDSOE, TIGHE & DAWSON, P.C. 500 West Illinois, Suite 300 P.O. Box 2776 Midland, Texas 79702-2776 (915) 684-5782 (915) 682-3672 – Fax

By:

SUSAN R. RICHARDSON

RICHARD R. MONTGOMERY ROBERT T. SULLIVAN

and

PHIL BREWER
P. O. Box 298
Roswell, NM 88202-0298
(505) 625-00298
TOMMY D. PARKER
P. O. Box 1094
Hobbs, New Mexico 88241-1094
(505) 393-6854

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this the 28th day of January, 2002, 2001, a copy of the above and foregoing instrument has been hand delivered to attorney for Defendants Mr. Ernest L. Carroll, Lea County Courthouse, Lovington, New Mexico and Michael J. Canon, 303 West Wall, Suite 1100, Midland, Texas.

Susan R. Richardson

FIFTH JUDICIAL DISTRICT COURT	·
COUNTY OF LEA	
STATE OF NEW MEXICO	
TMBR/SHARP DRILLING, INC., et al,)
,)
Plaintiff,)
* **) N No CV 2004 245C
Vs.) No. CV-2001-315C
DAVID H. ARRINGTON OIL & GAS,	,)
INC., JAMES D. HUFF, MADELINE)
STOKES, ERMA STOKES HAMILTON,)
JOHN DAVID STOKES, and TOM	
STOKES	
Defendant.	

7

RESPONSE OF DAVID H. ARRINGTON OIL & GAS, INC. TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING TORTIOUS INTERFERENCE

COMES NOW the Defendant, DAVID H. ARRINGTON OIL & GAS, INC., ("Arrington") by and through its attorneys of record, Losee, Carson, Haas & Carroll (Ernest L. Carroll), and submits this Response to Plaintiff's Motion for Partial Summary Judgment Against David H. Arrington Oil & Gas Regarding Tortious Interference and states as follows:

I. Introduction

Based upon this Court's interlocutory order granting partial summary judgement against Arrington, Plaintiffs TMBR/Sharp Drilling, Inc., Ameristate Oil & Gas, Inc., Thomas Beall, Mark Nearburg, Louis Mazzallo, F. Howard Walsh, Jr., Jade Resources, Inc. CHI Energy, Inc. and Thomas C. Brown ("TMBR/Sharp") now seek a summary judgment against Arrington for tortious interference alleging that Arrington wrongfully

obtained permits to drill two wells and that as a result TMBR/Sharp was damaged.

Arrington disputes that it wrongfully obtained the permits and further disputes that

TMBR/Sharp was prevented from continuously drilling upon the leasehold acreage in

question. Further Arrington asserts that TMBR/Sharp has alleged improper and highly
speculative and unsubstantiated damages and that TMBR/Sharp has based its motion
on immaterial and disputed facts.

II. Statement of Material Facts

Arrington hereby responds to the statement of facts contained in TMBR/Sharp's Statement of Undisputed Material Facts as follows:

A. THE LEASES

- 1. Arrington admits the truth of TMBR/Sharp's fact number 1¹.
- 2. Arrington admits the truth of TMBR/Sharp's fact number 2.
- 3. Arrington admits the truth of TMBR/Sharp's fact number 3.
- 4. Arrington admits that the Court has ruled with respect to the Original Stokes Leases, however, Arrington asserts that the fact contained in paragraph number 4 is not a material fact with respect to TMBR/Sharp's motion for summary judgment. TMBR/Sharp's fact number 4 references the Court's December 27, 2001, ruling. The Court's December 27, 2001, Order Granting Partial Summary Judgment Regarding Filing of Unit Designations (the "Order") is an interlocutory order and as such is subject to be overturned, modified or changed at any time prior to the issuance of

¹ Arrington adopts the defined terms contained in the Motion.

a final order in this matter and is thereafter subject to appeal.² Although the Order establishes the law of the case, that law did not exist prior to the issuance of the Order, therefore the Order is not material to the actions of Arrington prior to the issuance of the order. The only actions of Arrington upon which TMBR/Sharp may base its instant motion are actions which occurred prior to the issuance of the Order and knowledge that the Court would so rule. Interlocutory orders may be revisited at any time prior to final judgment. Sims v. Sims, 1996-NMSC-078, 122 N.M. 681; Barker v. Barker, 94 N.M. 162, 165-166, 608 P.2d 138, 141-142 (1980); Universal Constructors, Inc. v. Fielder, 118 N.M. 657, 659, 884 P.2d 813, 815 (Ct. App. 1994).

B. THE TOP LEASES

- 5. Arrington admits the truth of TMBR/Sharp's fact number 5, and further states that the Stokes Top Lease was executed by Madeline Stokes on April 4, 2001. See Exhibits E to Plaintiff's Motion for Partial Summary Judgment Against David H. Arrington Oil & Gas Regarding Tortious Interference and Brief in Support Thereof (the "Motion").
- 6. Arrington denies the allegations in paragraph number 6 and asserts that such fact, even if it were true, is immaterial to the allegations of tortious

² Arrington has already placed the Court and the Plaintiff's on notice of its intention to appeal the Order.

interference in this matter. Paragraph number 15 of the Stokes Top

Lease states:

"Notwithstanding any other provisions of this oil and gas lease, the end of the primary term hereof shall be extended until the third (3rd) anniversary date of this oil and gas lease next following the expiration of the continuous development provision contained in added Paragraph No. 12 on Exhibit "A" attached to the Prior Lease, provided that in no event shall the primary term hereof expire later than the 20th anniversary date of this oil and gas lease." See Exhibit "E" attached to the Motion.

- 7. Arrington admits the truth of TMBR/Sharp's fact number 7, and further states that the Hamilton Top Lease was executed by Erma Hamilton on April 4, 2001. See Exhibits "F" to the Motion.
- 8. Arrington asserts that the Hamilton Top Lease is for the same primary term as the Stokes Top Lease as was hereinabove recited in paragraph number 6 of this response.
- 9. Arrington admits the truth of TMBR/Sharp's fact number 9

10. Arrington asserts that the fact contained in paragraph number 10 is not a material fact. Fact number 10 is based upon an interlocutory order which is subject to be overturned, modified or changed at any time prior to the issuance of a final order in this matter and is thereafter subject to appeal. Although the Order establishes the law of the case, that law did not exist prior to the issuance of the Order, therefore the Order is not material to the actions of Arrington prior to the issuance of the order. The actions of Arrington upon which TMBR/Sharp must base the instant motion are

actions which occurred prior to the issuance of the Order and knowledge that the Court would so rule.

C. ASSIGNMENT OF HUFF TOP LEASES

11. Arrington admits the truth of TMBR/Sharp's fact number 11 and further states that the Assignment from Huff to Arrington recites that the assignment is "EFFECTIVE for all purposes as of March 27, 2001."

D. THE PERMITS

- 12. Arrington denies the allegations contained in paragraph number 12.

 Arrington asserts that on *July 17, 2001*, Arrington filed its application for permit to drill the Triple Hackle Dragon "25" No. 1 Well in the W/2 of Section 25, Township 16 South, Range 35 East, Lea County, New Mexico and that the OCD approved the application on *July 19, 2001*. See paragraph (5) of Exhibit "H" to the Motion.
- Arrington denies the allegations contained in paragraph number 13.

 Arrington asserts that on *July 25, 2001*, Arrington filed it application for permit to drill the Blue Drake "23" No. 1 Well in the E/2 of Section 23, Township 16 South, Range 35 East, Lea County, New Mexico and that the OCD approved the application on *July 30, 2001*. See paragraph (6) of Exhibit "H" to the Motion.
- 14. Arrington denies the allegations contained in paragraph number 14.

 Arrington asserts that on August 8, 2001, the OCD denied TMBR/Sharp's application for a permit to drill the Blue Fin "25" No. 1 Well in the N/2 of

Section 25, Township 16 South, Range 35 East, Lea County, New Mexico, rather than the E/2 as alleged. Arrington further admits that the OCD denied the application by reason of the previous issuance of the permit for Arrington's Triple Hackle Dragon "25" Well No. 1. See paragraph (8) of Exhibit "H" to the Motion.

- 15. Arrington admits the truth of TMBR/Sharp's fact number 15.
- 16. Arrington denies that the Original Stokes Leases are in full force and effect. The statement that the Original Stokes Leases are in full force and effect is based on an interlocutory order which is subject to be overturned. modified or changed at any time prior to the issuance of a final order in this matter and is thereafter subject to appeal. Although the Order establishes the law of the case, that law did not exist prior to the issuance of the Order, therefore the Order is not material to the actions of Arrington prior to the issuance of the order. The actions of Arrington, upon which TMBR/Sharp must base the instant motion, are actions which occurred prior to the issuance of the Order and knowledge that the Court would so Further Arrington asserts that although the Original Stokes rule. Leases contain a continuous development clause such a fact is immaterial to the issue of tortious interference as alleged in this case. On December 27, 2001, the Court issued an Order Granting Partial Summary Judgment Regarding Force Majeure (the "Force Majeure" Order"). The Force Majeure Order effectively prevents the termination of

the Original Stokes Leases for any failure to timely commence a well pursuant to the continuous development clause. Further each of the Original Stokes Leases cover additional acreage upon which no conflicting APD existed and upon which TMBR/Sharp could have fulfilled its continuous drilling obligations.

17. Arrington denies the truth of TMBR/Sharp's fact number 17. With respect to the facts alleged in paragraph 17, Arrington asserts that TMBR/Sharp is attempting to mislead the Court into the wrongful belief that lease ownership automatically grants the lessee the "right" to drill a well and that Arrington "wrongfully" obtained drilling permits based on untrue representations of leasehold ownership. Contrary to TMBR/Sharp's suggestion, the rights granted under the Original Stokes Leases do not necessarily entitle TMBR/Sharp to drill and operate wells upon the leased lands. The Original Stokes Leases did not cover one hundred percent of the mineral or operating rights in the proration units in which TMBR/Sharp proposed to drill the Blue Fin "25 No. 1 Well and the Leavelle "23" No. 1 Well. Any one owning a mineral or operating right in the proration unit dedicated to the Blue Fin "25" No. 1 Well and the Leavelle "23" No. 1 Well has an equal right to drill and operate a well. One of the tasks assigned to the OCD is to determine who among those owning a mineral or operating right will be the operator and will drill and operate the well.

S. .

Pursuant to certain farmout agreements with Ocean Energy, Arrington has an undivided 15% of the operating rights in the proration unit designated for the Triple Hackle Dragon "25" No. 1 Well. The leases, with respect to the farmout agreements with Ocean Energy, are not at issue in this lawsuit.3 Arrington's acquisition of these operating rights gave Arrington an independent right to seek a permit to drill a well and to be the operator of such well. At the time that Arrington sought and was granted the permits for the Triple Hackle Dragon "25" No. 1 Well and the Blue Drake "23" No. 1 Well, Arrington had a reasonable belief that it owned operating rights in the proration units to which the wells were dedicated. Arrington continues to believe that he owns operating rights in the proration units to which the wells were dedicated and that its actions in seeking the permits were not "wrongful" or "based on untrue representations of leasehold ownership. Arrington sought and was granted the permits at a time prior to the issuance of the Court's December 27, 2001, Order. The issuance of the Order is the only basis upon which TMBR/Sharp relies to assert that Arrington wrongfully obtained the drilling permit or that the issuance of the permits to Arrington were based upon untrue representations of leasehold interest. The issuance of the permits to Arrington was in July,

3

³ Arrington also owns leases in the NE/4 of Section 25. Ownership of the leases in the NE/4 of Section 25 would allow Arrington to rightfully seek a permit to drill a well in either the E/2 or the N/2 of Section 25. The Blue Fin "25" No. 1 Well proposed by TMBR/Sharp was dedicated to the N/2 of Section 25. With respect to the Blue Fin "25" No. 1 Well, Arrington had an equal independent right to drill a well with TMBR/Sharp.

2001, five months before the Order became the law of the case. The Order is an interlocutory order which is subject to be overturned, changed or modified prior to the issuance of a final order and is subject to appeal after the issuance of the final order. See Affidavit of Jeffrey G. Bane attached hereto as Exhibit "1".

18. Arrington denies the allegations contained in paragraph number 18.

Arrington's approved drilling applications have not prevented

TMBR/Sharp from exercising its rights and fulfilling its obligations under the Original Stokes Leases and Arrington is not preventing TMBR/Sharp from drilling additional wells. The Original Stokes Leases covered the following:

Township 16 South, Range 35 East, N.M.P.M.

Section 13: SE/4 Section 23: SE/4

Section 24: NW/4 SW/4, NW/4 NE/4

Section 25: NW/4 Section 26: NE/4

TMBR/Sharp drilled the Blue Fin "24" No. 1 Well in the W/2 of Section 24, Township 16 South, Range 35 East. Arrington has approved drilling permits for the Triple Hackle Dragon "25" Well No. 1 to be located in the W/2 of Section 25, Township 16 South, Range 35 East and the Blue Drake "23" Well No. 1 to be located in the E/2 of Section 23, Township 16 South, Range 35 East. No other wells have been drilled on the leased premises and no other permits have been issued which cover the leased

premises. Therefore, TMBR/Sharp has always had the opportunity to seek and obtain drilling permits covering the remaining lands covered by the leases, specifically the Section 13 and Section 26 acreage. Furthermore, with respect to the two permits which Arrington was granted, TMBR/Sharp has always been free to commence a forced pooling action before the OCD and have themselves declared the operator under the permits which Arrington has been granted. TMBR/Sharp is attempting to create the illusion that as the lessee of the Original Stokes Leases, TMBR/Sharp had an exclusive right to drill on the leasehold acreage or on lands pooled therewith. TMBR/Sharp is wrong. TMBR/Sharp's rights under the Original Stokes Lease are subject to the rights of all other undivided mineral owners, who have an equal right to drill a well and develop the minerals. Additionally, TMBR/Sharp's rights under the Original Stokes Leases are also subject to the authority granted to the OCD. Moreover, the Original Stokes Leases do not require that the lessee must be the entity to drill and operate a well upon the leased premises. The fact of the matter is that anyone, including Arrington, who

The situation where two completing owners of operating rights want to drill and operate a well on the same lands is fairly common. In such situations one or both of the competing owners will petition the OCD for an order force pooling the other owners and the OCD is typically asked to make the determination as to which owner of operating rights should drill and operate the proposed well. NMSA 1978, Section 70-2-1 through 70-2-38, (2001) grants the OCD the jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas, the protection of correlative rights, and the disposition of wastes resulting from oil and gas operations. The OCD is the proper authority to make a determination with respect to the forced pooling of the minerals and to determine which completing entity should drill and operate the well.

requirements of the Original Stokes Leases to obtain production. See Exhibits "A" and "B" attached to the Motion. See also Exhibit "1", hereto.

- 19. Arrington admits the truth of TMBR/Sharp's fact number 19.
- 20. Arrington admits the truth of TMBR/Sharp's fact number 20.
- 21. Arrington admits that the OCD found that Arrington had "demonstrated at least a colorable claim of title" and, therefore, Arrington's permits remained valid and that the OCD refused to issue conflicting permits to TMBR/Sharp. Arrington further admits that the OCD did not make a determination as to the continued validity of the Original Stokes Leases.

 See Exhibit "H" to the Motion.
- 22. Arrington admits that the order issued by the OCD stating that Arrington "has demonstrated at least a colorable claim of title" was issued prior to the Court's issuance of its Order. Arrington further admits that the Court's Order, in effect, declared that the Original Stokes Leases were in full force and effect. However, Arrington denies that the Order makes a determination as to Arrington's present possessory interest in the Huff Top Leases. The Order does not diminish Arrington's rights under the Huff Top Leases. Further, Arrington asserts that the Order addressed only the continuing nature of the Original Stokes Leases and did not

- address a possessory interest in acreage. See Exhibit "H" to the Motion.
- 23. Arrington denies the facts asserted in paragraph 23. From the date of the Huff Top Leases, Arrington has had an equitable right in such leases.

 Huff, acting as agent for Arrington, negotiated and contracted for the Huff Top Leases and Arrington paid for the leases. See Affidavit of Jeffrey G. Bane attached hereto as Exhibit "1".

E. DAMAGES

24. Arrington denies the facts asserted in paragraph 24. Arrington asserts that at the time it obtained the two permits to drill, Arrington had a reasonable belief that the Original Stokes Leases had expired and that Arrington could demonstrate a claim of colorable title to the Huff Top Leases, and which was so held by the OCD. Arrington further asserts that it has not failed or refused to release those permits and has not obstructed TMBR/Sharp's entitlement to the drilling permits it has requested. Arrington has offered to release the permit to drill the Blue Drake Well No. 1 located in the E/2 Section 23, Township 16 South, Range 35 East. Arrington has not offered to release the permit to drill the Triple Hackle Dragon "25" Well No. 1, because Arrington's ownership of operating rights, which are not at issue herein, give Arrington an equal right to drill and operate the well. Further TMBR/Sharp could have sought

- operatorship of any well drilled through a forced pooling action, which TMBR/Sharp apparently declined to do. See Affidavit of Jeffrey G. Bane attached hereto as Exhibit "1".
- 25. Arrington denies the facts alleged in paragraph number 25. Arrington asserts that TMBR/Sharp has not been prevented from drilling on the other acreage covered by the Original Stokes Leases. If TMBR/Sharp truly believed the Original Stokes Leases were in full force and effect, it could have met its obligations by drilling wells in Section 13 and Section 26 or lands pooled therewith. Arrington has not prevented TMBR/Sharp from drilling wells in Section 13 and Section 26. Furthermore, as stated in paragraph 24 above, Arrington has agreed to release the permit for the Blue Drake "23" No. 1 Well. TMBR/Sharp has always been free to met its obligations under the Original Stokes Leases. See Affidavit of Jeffrey G. Bane attached hereto as Exhibit "1".
- 26. Arrington admits the truth of paragraph number 26, but asserts that it is irrelevant and immaterial to the claim of tortious interference.

27. Arrington admits the truth of paragraph 17, but asserts that it is irrelevant and immaterial to the claim of tortious interference. Moreover, Arrington asserts that attorneys fees incurred in a tortious interference action are not recoverable as special damages in the same tortious interference action.

- 28. Arrington denies the facts contained in paragraph 28. Arrington asserts that TMBR/Sharp was not "forced" to file an application with the OCD to prevent Arrington from drilling on the acreage subject to the Original Stokes Leases. Arrington affirmatively asserts that had TMBR/Sharp really been serious about drilling an additional well it would have filed a forced pooling application with the OCD and sought operatorship of the well. The effect on the Original Stokes Leases is the same regardless of who drills a well on the leased premises or lands pooled therewith. Additionally, TMBR/Sharp could have satisfied its obligations under the Original Stokes Leases by drilling wells in Section 13 and Section 26. Arrington further asserts that although the Order may presently reinstate the Original Stokes Leases, the Order is an interlocutory order which is subject to be overturned, changed or modified by a final order and is thereafter subject to appeal. See Affidavit of Jeffrey G. Bane attached hereto as Exhibit "1".
- 29. Arrington denies the truth of the allegations contained in paragraph 29.

 Arrington asserts that from the date of the Huff Top Leases, Arrington had an equitable right in the Huff Top Leases. At the time Huff negotiated and contracted for the Huff Top Leases, Huff was acting as agent for Arrington and the Huff Top Leases were paid for by Arrington. See Affidavit of Jeff Bane attached hereto as Exhibit "1".

- 30. Arrington does not deny that TMBR/Sharp has incurred attorney's fees in the prosecution of this litigation, however Arrington denies that such attorney's fees incurred in a tortious interference action are recoverable as special damages in the same tortious interference action. In New Mexico, absent statutory authority or rule of court, attorneys fees are not recoverable as an item of damages. <u>Aboud v. Adams.</u> 84 N. M. 683, 507 P.2d 430 (1973). Special damages must be pleaded as well as proved. <u>Garver v. Public Service Company of New Mexico</u>, 77 N. M. 262, 421 P.2d 788 (1966).
- 31. Arrington denies that TMBR/Sharp has been damaged as the result of Arrington having obtained the two permits to drill. TMBR/Sharp could have drilled other wells which would have included lands covered by the Original Stokes Leases and TMBR/Sharp could have petitioned the OCD for a forced pooling order granting TMBR/Sharp the right to drill and operate the wells under permit to Arrington. TMBR/Sharp did nothing to mitigate any potential damages it might have suffered. Moreover, Arrington denies that TMBR/Sharp incurred damages of \$500,000 as the result of lost production, the time value of money, and decreased prices on the oil and gas that could have been produced if Arrington had not obtained the two permits. TMBR/Sharp has not alleged a single fact to support a damage award of \$500,000. The damages contemplated in TMBR/Sharp's damage calculation requires economic, engineering and

,

geological facts which have not been alleged and even if alleged would not be undisputed. TMBR/Sharp's calculation of damages is highly speculative, not supportable and must be proved at trial.

III. ARGUMENTS AND AUTHORITIES

Summary Judgment will be granted only when the moving party is entitled to a judgment as a matter of law upon clear and undisputed facts. The purpose of a hearing on the motion for such a judgment is not to resolve factual issues but to determine whether there is any genuine issue of material fact in dispute and if not, to render judgment in accordance with the law applied to the established facts or, if there be a genuine factual issue, to deny the motion for summary judgment. Great W

Construction Company v. N.C. Ribble Co., 77 NM 725, 427 P2d 246 (1967). In the case of Tapia v. Springer Transfer Co., 106 NM 461, 744 P2d 1264 (Ct. App. 1987), the Court of Appeals held concerning a motion for summary judgment, "Summary Judgment is proper when there is no genuine issue as to a material fact and the moving party is entitled to judgment as a matter of law. Matkins v. Zero Refrigerated Lines, Inc., 92 NM 511, 602 P2d 195 (Ct. App. 1979)." The Motion as presented by TMBR/Sharp contains numerous disputed material facts which must be resolved and the motion should therefore be denied.

The Restatement of Torts 2d, §766A defines the act of "Intentional Interference with Another's Performance of His Own Contract," as follows:

"One who <u>intentionally and improperly</u> interferes with the performance of a contract (except a contract to marry)

between another and a third person, by preventing the other from performing the contract or causing his performance to be more expensive or burdensome, is subject to liability to the other for the pecuniary loss resulting to him." [Emphasis added.]

TMBR/Sharp has not met its burden of proof with respect to establishing that Arrington intentionally and improperly interfered with the performance of its contract.

To prevail TMBR/Sharp must prove not only that Arrington's actions were done intentionally but also that Arrington's actions were improper. Arrington's actions were neither intentional nor improper.

Intent is a question of fact and summary judgment must be denied if there are disputed issues of fact. In this case, TMBR/Sharp alleges that Arrington's actions in seeking the permits to drill wells were done with the intention to prevent TMBR/Sharp from fulfilling its contractual obligations under the Original Stokes Lease. Arrington denies that it acted with such intention and asserts that its actions with respect to seeking the permits to drill were done in performance of the terms of the Huff Top Leases and based upon Arrington's reasonable belief that the Original Stokes Leases had expired by their own terms. Given Arrington's reasonable belief that the Original Stokes Leases had expired by their own terms and that Arrington was operating under the terms of the Huff Top Leases, TMBR/Sharp has not meet its burden of proof with respect to establishing that Arrington's actions were taken with the intent to harm TMBR/Sharp.

TMBR/Sharp has crafted its Motion from the point of view that Arrington's belief that the Original Stokes Leases had expired by their own terms was not reasonable

inprope

Driginal Stokes Leases were still valid. TMBR/Sharp's reliance on the Order is misplaced. The Order became the law of the case upon its issuance on December 27, 2001. Until the issuance of the Order Arrington was entitled to its reasonable belief that the Original Stokes Leases had expired by their own terms. The Court's December 27, 2001, Order is the only ruling in New Mexico as to the question at issue and the only case on point found, with respect to the filing of a unit designation, is <u>Sauder v.</u>

Frye, 613 S.W.2d 63 (Ct. App. Ft. Worth 1981). In the <u>Sauder</u> case, given similar facts, the Fort Worth, Texas Court of Appeals held that the lease terminated by its own terms.

Therefore, Arrington was justified in its belief that the Original Stokes Leases had expired. Furthermore, it was not improper for Arrington to seek permits to drill wells on leasehold acreage which it either owned or reasonably believed it owned the requisite operating rights. TMBR/Sharp has not met its burden of proof with respect to establishing that Arrington's actions were improper. At the very least there is a question of fact as to that issue.

TMBR/Sharp cites <u>Ettenson v. Burke</u>, 2001-NMCA-003, 130 N. M. 67, 17 P.3d 440, as a statement of the elements necessary to establish tortious interference with a contract. Arrington agrees that the elements set forth in <u>Ettenson</u> are what TMBR/Sharp must prove. The <u>Ettenson</u> court said:

"Establishing tortious interference with contract is not easy. Ettenson had to prove that (1) Burke had "knowledge of the contract" between Ettenson and the corporation, (2) performance of the contract was refused, (3) Burke "played an active and substantial part in causing [Ettenson] to lose

the benefits of his contract," (4) damages flowed from the breached contract, and (5) Burke induced the breach "without justification or privilege to do so." Wolf v. Perry, 65 N.M. 457, 461-62, 339 P.2d 679, 681-82 (1959). Not every interference leading to a breach of contract amounts to an unlawful act or a civil action; tort liability attaches only when the interference is without "justification or privilege." Williams v. Ashcraft, 72 N.M. 120, 121, 381 P.2d 55, 56, (1963). In causing one to lose the benefits of a contract, the tort-feaor must act either with an improper motive or by use of improper means." [Emphasis added.]

TMBR/Sharp has failed to establish the elements of tortious interference required under Ettenson. TMBR/Sharp alleges that the first element of tortious interference is met because Arrington had knowledge of the existence of the Original Stokes Leases. Such is true, Arrington knew of Original Stokes Leases and had a reasonable belief that they had expired by there own terms.

TMBR/Sharp alleges that the second element of tortious interference is met because Hamilton and Stokes issued a top lease to Arrington and Arrington obtained drilling permits that thwarted TMBR/Sharp's ability to obtain permits. TMBR/Sharp's position is unsupportable. The fact that Stokes and Hamilton issued top leases to Arrington which were made specifically subject to the Original Stokes Leases does not improperly interfere with the Original Stokes Lease. Furthermore, the second element in Ettenson requires that performance of the contract be refused. TMBR/Sharp's allegation that Arrington "thwarted" its ability to obtain drilling permits does not rise to the level of refusing to perform under the contract. Arrington did nothing which caused Stokes and Hamilton to refuse performance of the contract. In fact it was TMBR/Sharp who refused to perform. TMBR/Sharp had the ability to seek drilling permits on

leasehold acreage other than that which Arrington had under permit and TMBR/Sharp failed to do so. Also, TMBR/Sharp had the ability to seek and be granted operatorship of the Arrington permits pursuant to a force pooling order from the OCD but TMBR/Sharp refused to even attempt to obtain such an order.

TMBR/Sharp was not even "thwarted" from fulfilling its obligations under the Original Stokes Leases because Arrington obtained the two drilling permits.

TMBR/Sharp could have fulfilled its obligations under the Original Stokes Leases by drilling wells on other of the leased premises or lands pooled therewith or TMBR/Sharp could have petitioned the OCD for a forced pooling order with respect to Arrington's permits to drill and been granted the right to operate those wells. TMBR/Sharp did neither.

A.

The Original Stokes Leases did not give TMBR/Sharp an exclusive right to drill and operate a well on acreage covered by the Original Stokes Leases. The right to drill and operate a well is owned equally by all of the mineral owners or lessees in the proration unit. Therefore, any of the mineral owners or lessees may apply to the OCD to drill and operate a well. The terms of the Original Stokes Leases would be perpetuated regardless of which mineral owner or lessee drilled and operated the well. If the Original Stokes Leases were valid and Arrington drilled the wells which were permitted, the actions of Arrington would have perpetuated the leases. Furthermore, had TMBR/Sharp drilled a well on Section 13 or 26, the Original Stokes Leases would have been perpetuated.

TMBR/Sharp can not establish the third element of tortious interference by stating that Arrington played and active and substantial part in causing TMBR/Sharp to lose the benefits of its contract. As more fully discussed in the preceding paragraph, TMBR/Sharp has failed to establish that it lost the benefits of its contract with respect to the Original Stokes Leases solely by actions of Arrington. If TMBR/Sharp lost anything it was because of its own failure to act.

With respect to the forth element of tortious interference, TMBR/Sharp argues that damages flowed from the breach of contract as a result of Arrington's actions. As support for such damages TMBR/Sharp alleges that it suffered damages including; (1) loss of production; (2) time value of money; (3) decrease in prices that it would have received for any production if wells could have been drilled; (4) attorneys' fees; and (5) costs. If TMBR/Sharp lost money as a result of loss of production, Arrington is not responsible. TMBR/Sharp had the opportunity to drill wells on other of the leased lands or lands pooled therewith. TMBR/Sharp also had the option of force pooling the wells which Arrington had permitted and seeking operatorship of such wells. Furthermore, the damages as recited in the Affidavit of Jerry Phillips (see Exhibit "C" to the Motion) are based upon engineering, geologic and economic estimates which have not and can not be proven to a reasonable degree of certainty. No one can be certain that a well, which has not yet been drilled, once drilled will be capable of production.

The <u>Restatement of Torts 2d, §774A</u> requires that damages resulting from a tort be proven with a "reasonable degree of certainty." The <u>Restatement of Torts 2d, § 912</u> states:

"One to whom another has tortiously caused harm is entitled to compensatory damages for the harm if, but only if, he establishes by proof the extent of the harm and the amount of money representing adequate compensation with as much certainty as the nature of the tort and the circumstances permit." [Emphasis added.]

JM Case

In order to prove its damages with respect to the production which it argues was lost, TMBR/Sharp must provide the engineering, geologic and economic facts sufficient to form the basis of its statement that it suffered damages in excess of \$500,000.

TMBR/Sharp has failed to allege any such facts. Because an issue of fact to be determined exists, summary judgment is improper.

TMBR/Sharp also alleges that incurring attorneys' fees as a result of the tortious interference satisfies the damage element of a tortious interference claim.

TMBR/Sharp is wrong. In New Mexico, absent statutory authority or rule of court, attorneys fees incurred in the same action are not recoverable as an item of damages.

Aboud v. Adams, supra.: Jemez Properties, Inc. v. Lucero, 94 N.M. 181, 608 P.2d 157 (Ct. App. 1979) There is no statutory authority allowing attorneys fees as an item recoverable as damages in this case and TMBR/Sharp has cited none. Additionally, special damages must be pleaded as well as proven. Garver v. Public Service

Company of New Mexico, supra.: Jemez Properties, Inc. v. Lucero, supra. TMBR/Sharp has neither plead nor proven a claim for special damages.

As support for its notion that attorneys fees are recoverable as damages and that incurring attorneys fees satisfies the damage element of a tortious interference with a contract claim, TMBR/Sharp cites <u>Dinkle v. Denton</u>, 68 N.M. 108, 359 p.2d 345

(S. Ct. 1961) and LaMure v. Peters, 122 N.M. 367, 924 P.2d 1379 (Ct. App. 1996).

Although these cases do provide that attorneys fees were recoverable, the attorneys fees which were being referred to were attorneys fees incurred in defending other independent actions and not the attorneys fees incurred in bringing the immediate suit. The attorneys fees which TMBR/Sharp has referenced appear to be the attorneys fees for bringing the instant action and as such are not the type of attorneys fees contemplated in Dinkle v. Denton, supra and LaMure v. Peters, supra.

With respect to the last element which must be satisfied to establish a claim for tortious interference, it is significant that TMBR/Sharp failed to even mention the fifth element. As discussed in Ettenson v. Burke, supra., the fifth element is critical. Not every interference leading to a breach of contract amounts to an unlawful act or one without justification or privilege; tort liability attaches only when the interference is without "justification or privilege." It is undeniable that Arrington was justified in his belief that the Original Stokes Leases had expired by their own terms and that the Huff Top Leases were in effect. The fact that it is undeniable is supported by the fact that TMBR/Sharp ultimately filed its designation of pooled unit in the Lea County records. If TMBR/Sharp were convinced that its filing of the Form C-102 in the Lea County OCD office was sufficient there would have been no need for it to also make a filing in the Lea County records. Additionally, there was no New Mexico law for either Arrington or TMBR/Sharp to rely upon and the only case on point was the Texas case which held that the prior lease had expired due to the failure of the lessee to properly record a unit

.

designation prior to the expiration of the primary term of the lease. Therefore, up until

the Court entered its December 27, 2001, Order, Arrington has as much right to believe that the Original Stokes Leases had expired as TMBR/Sharp had to believe that they had not.

IV. CONCLUSION

WHEREFORE, Arrington prays the Court for an Order denying

TMBR/Sharp's Motion for Partial Summary Judgment Against David H. Arrington Oil &

Gas Regarding Tortious Interference.

LOSEE, CARSON, HAAS & CARROLL, P.A.

Ernest L. Carroll

P.O. Box 1720

Artesia, NM 88211-1720

(505)746-3505

Attorneys for Defendants, David H. Arrington Oil & Gas, Inc.

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing pleading to be mailed on this _____ day of February, 2002 to the following:

Phil Brewer P.O. Box 298 Roswell, NM 88202-0298

Cotton, Bledsoe, Tighe, & Dawson, P.C. Ms. Susan R. Richardson P.O. Box 2776 Midland, TX 79702-2776

Michael Canon Canon & Gaston 303 W. Wall, Suite 1100 Midland, TX 79701

Ernest L. Carroll

FIFTH JUDICIAL DISTRICT COURT COUNTY OF LEA STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC., et al.	.)	
)	
Plaintiffs,)	
·)	
vs.)	No. CV-2001-315C
)	
DAVID H. ARRINGTON OIL & GAS,)	
INC., JAMES D. HUFF, MADELINE)	
STOKES, ERMA STOKES)	
HAMILTON, JOHN DAVID STOKES,)	
and TOM STOKES)	
)	
Defendants.)	

AFFIDAVIT OF JEFFREY G. BANE

STATE OF NEW MEXICO)
: ss.
COUNTY OF LEA)

I, JEFFREY G. BANE, being duly sworn, state:

EXHIBIT

- 1. I am a resident of Midland, Texas.
- 2. I employed with David H. Arrington Oil & Gas, Inc. ("Arrington") as a General Manager, in charge of land management as well as other supervisory duties.
- The facts set forth herein are personally known to be to be true, and if called as a witness, I
 could competently testify thereto under oath.
- 4. James Huff regularly negotiates and contracts for oil and gas leases in the capacity of agent for Arrington.
- 5. The Stokes and Hamilton top leases were leases which James Huff negotiated and contracted for in his capacity as agent for Arrington.
- 6. The Stokes and Hamilton top leases were paid for by Arrington.
- 7. At the time that Arrington obtained the permits to drill the Triple Hackle Dragon "25" Well
 No. 1 and the Blue Drake "23" Well No. 1, Arrington had a reasonable belief that the

- Original Stokes Leases had expired by their own term and that Arrington had the right to seek such permits pursuant to the terms of the Huff Top Leases.
- 8. Since the issuance of the Court's December 27, 2001, Order, Arrington has offered to release to TMBR/Sharp, the permit to drill the Blue Drake "23" Well No. 1.
- 9. Arrington has not agreed to release the permit to drill the Triple Hackle Dragon "25" Well No.1 because Arrington owns 15% of the operating rights in the proration unit dedicated to the Triple Hackle Dragon "25" Well No. 1 which are not in dispute in this matter.
- 10. Arrington acquired 15% operating rights in the proration unit dedicated to the Triple Hackle

 Dragon "25" Well No. 1 pursuant to a farmout agreement with Ocean Energy.
- In a situation where Arrington and a competing mineral or operating right owner each want to drill a well on the same proration unit. Arrington would seek operatorship of such well through a forced pooling action before the OCD. Such an option was available to TMBR/Sharp in the instant case.

Ş

- 12. Arrington was aware that TMBR/Sharp could have filed a force pooling petition for the proration units in both sections 25 and 23, township 16 south, range 35 east, Lea County, New Mexico, and that by virtue of such petition become the operator for such wells.
- 13. Before drilling a well in either Section 23 or 25, Arrington would have filed a force pooling action itself for its proposed proration units in order to prevent non-joining mineral owners from being carried cost and risk free through the drilling and testing of the well. By filing a forced pooling application all mineral owners have to join in drilling the well or pay a penalty for not joining in the drilling of a well to cover the consenting parties risk incurred in the drilling of the well.
- 14. It is not prudent for an operator to drill deep oil and gas wells such as involved in this case without voluntary joinder or by force pooling all mineral owners.

FURTHER, Affiant sayeth naught.

Jeffrey G. Bane

SUBSCRIBED AND SWORN TO before me this 9th day of February, 2002.

-My commission expires:

December 14.2002

Suutte Johnson
Notary Public