

TESTIMONY OF JEFFREY D. PHILLIPS

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION COMMISSION

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

)
APPLICATION OF TMBR/SHARP DRILLING,) CASE NO. 12,744
INC., APPEALING TO THE DIRECTOR OF THE)
NEW MEXICO OIL CONSERVATION DIVISION)
THE HOBBS DISTRICT SUPERVISOR'S DECISION)
DENYING APPROVAL OF TWO APPLICATIONS)
FOR PERMIT TO DRILL FILED BY TMBR/SHARP,)
INC., LEA COUNTY, NEW MEXICO)

)
APPLICATION OF TMBR/SHARP DRILLING,) CASE NO. 12,731
INC., FOR AN ORDER STAYING DIVISION)
APPROVAL OF TWO APPLICATIONS FOR)
PERMIT TO DRILL OBTAINED BY DAVID H.)
ARRINGTON OIL AND GAS, INC., LEA COUNTY,)
NEW MEXICO)

_____) (Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN
JAMI BAILEY, COMMISSIONER
ROBERT LEE, COMMISSIONER

March 26th, 2002
Santa Fe, New Mexico

This matter came on for hearing before the Oil
Conservation Commission, LORI WROTENBERY, Chairman, on Tuesday, March 26th,
2002, at the New Mexico Energy, Minerals and Natural Resources Department, 1220

TESTIMONY OF JEFFREY D. PHILLIPS

South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner,
Certified Court Reporter No. 7 for the State of New Mexico.

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TESTIMONY OF JEFFREY D. PHILLIPS

Jeff Phillips to the stand.

JEFFREY D. PHILLIPS,

the witness herein, after having been first duly sworn upon his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. RICHARDSON:

Q. Mr. Phillips, would you please state your name?

A. My name is Jeff Phillips.

Q. And by whom are you employed?

A. I'm employed by TMBR/Sharp Drilling, Inc.

Q. Okay, and how long have you worked for them?

A. I've worked for TMBR/Sharp for seven years now.

Q. And your title?

A. My title is now president.

Q. And tell us a little bit about where you grew up and what your educational background is.

A. I grew up in west Texas, Odessa primarily. I was educated in Lubbock, received an undergraduate degree in petroleum engineering in May of 1985, went to work for an independent operator named Adobe Oil and Gas in Midland, Texas, moved to south Louisiana and became the manager of offshore and onshore Gulf Coast gas district down there, left Adobe in a merger in 1992 and came back to west Texas, consulted for a year, worked for a couple independents and went to work for TMBR/Sharp Drilling, Inc., in March of 1995.

TESTIMONY OF JEFFREY D. PHILLIPS

Q. Okay. I want to go through a little bit about the history of drilling the Blue Fin 24. When that was contemplated to be drilling, had the locations for the 25 and 23 wells already been picked out?

A. Yes, they had.

Q. Okay. And how long before the Blue Fin was spudded in March of 2001 had you all identified those precise locations? Do you remember?

A. I don't recall. It was over a year prior.

Q. Okay. If you would look with me at Exhibit Number 8, is this the C-101 filing for the Blue Fin 24 and the C-102 filing?

A. Yes, it is.

Q. This was approved by the Division, your permit to drill the Blue Fin 24, on November 22nd, 2000?

A. That's correct.

Q. Okay. And when did you all prepare your location?

A. We prepared our location in November of 2000, facing a lease expiration in November, and we had filed for a permit to drill and were preparing a surface location to drill when Mr. Nearburg acquired the lease extensions into June of the next year.

Q. Okay. What was the delay between obtaining the permit in November, 2000, and spudding the well March 29th, 2001?

A. We were -- a couple of reasons for delay. We were under pressure of -- Rig activity was very high at that time. We used our own drilling rigs to drill our prospects with, and all of those were committed at the time. It was nip and tuck as to whether we could get one of our own rigs.

TESTIMONY OF JEFFREY D. PHILLIPS

We also had problems with partner participation. We'd had one partner drop out because of the risk, and we had one partner that we were not going to carry into this prospect with us. So we had about a third of the participation interest uncommitted for, and we were trying to find another industry partner to drill with us.

Q. Okay. You finally shored up who your investor group was going to be --

A. We did.

Q. -- and drilled the well?

You conducted the drill stem test on that well on May 15th, 2001?

A. That's correct.

Q. And what information did you get about the well as of that time?

A. When we conducted the drill stem test of the primary or Chester zone, we found a prolific gas interval. It was about a 35 interval. It is a chert detritus, it was very prolific on the drill stem test, good bottomhole pressures, we definitely had found a reservoir in what was a very risky -- it was one of the reasons we had trouble getting investors is, we were drilling in a low, and most people are used to drilling on a bump.

And as Mr. Nearburg said earlier, Ocean had declined previously to participate with us because they were afraid we would be too low and wet, and our drill stem test confirmed that we did have reservoir.

Q. And you actually obtained production of hydrocarbons June 29th of 2001?

A. That's correct.

Q. And then at that point in time, did you have any idea that Huff had obtained top leases from the Stokes and Hamilton lessors?

A. At June 29th?

Q. Right.

TESTIMONY OF JEFFREY D. PHILLIPS

A. No.

Q. Okay. Shortly after that, though, did you receive some kind of communications from an attorney for the Stokes Hamilton lessors?

A. Yes, we did, we received a communication -- I believe Mike Canon, who represented the Stokes Hamilton interests, contacted first our landman, Randy Watts, and then Phil Brewer.

Q. And what did Mr. Canon discuss with your group?

A. Mr. Canon had informed us that his clients, the Stokes Hamiltons, had given a top lease to an entity that he declined to name at that time, so we didn't know who it was. They said that this entity claimed that their top lease was valid and our lease was now invalid.

Q. And what did you all tell him?

A. We told Mr. Canon that we disagreed with that assertion that our lease was no longer valid.

Q. And did you know at that time who the top lessee was?

A. No, we didn't.

Q. Did you have occasion to see David Arrington at the Petroleum Club in Midland on about July 24th, 2001?

A. I did.

Q. Okay. Can you relate to the Commission the substance of that conversation?

A. On July 24th we knew at that time that Huff had taken the top leases, because we had investigated the county records and saw Huff's name in the record. We speculated that Arrington may have been involved, because Huff leases for him sometimes. And I ran into David Arrington in the Midland Petroleum Club at noon on July the 24th and we

TESTIMONY OF JEFFREY D. PHILLIPS

spoke topically for a few minutes, as we had known each other previously, and were cordial and civil.

As we were preparing to part company, I asked Mr. Arrington if that were him that had top-leased us in the Big Tuna area.

His response was, Oh, please don't ask me that right now.

I asked him again, I said, You did, didn't you? You top-leased us in our Big Tuna area?

And Mr. Arrington again said, Oh, please don't ask me that right now.

And again I asserted, It was you, wasn't it? Didn't you top-lease us?

And he said, Well, yes, I did, but I didn't know that that was you and Tom -- meaning Tom Brown. He said, I thought it was Tom Bell, who was operating in that area.

Q. Tom Brown is the CEO of TMBR/Sharp Drilling?

A. Tom Brown is the chairman and chief executive of TMBR/Sharp. The TMBR in TMBR/Sharp stands for Tom Brown. We're not affiliated nor connected in any way any longer with Tom Brown, Inc., the production company.

Q. And Tom Bell is the owner of Fuel Products?

A. That's correct.

Q. Another investor in these wells?

A. Another investor.

Q. Okay. So after he made that comment, what else was said?

A. We discussed the merits of both of our arguments as to why each of us thought our leases were valid and the others weren't. We didn't discuss it long because we're still in court and in these proceedings, deciding the matter.

TESTIMONY OF JEFFREY D. PHILLIPS

Q. By that time a lawsuit had already been filed?

A. By July 24th, no.

Q. Well, it was filed on July the 24th -- Excuse me, that's wrong, it was filed on August 24th. Excuse me --

A. Right.

Q. -- I misspoke, no lawsuit had been filed. But there was a controversy?

A. Right, there was a controversy. When we again were preparing to part company David said, Well, I need to come talk to Tom.

And I said, you do, David, because it's an eighth of the well we just drilled. And I said, Even more importantly, it's half of the next two locations we'll drill.

And he said, Well, I'll come talk to Tom about that one, but we're going to fight you on the other two. And he said, We were real surprised that you were able to get your well drilled when you did. And he said, But we are certain that you won't be able to drill the next two.

Q. Is there a 180-day continuous drilling clause in the Stokes Hamilton lease?

A. There is.

Q. So from completion on or about sometime in June of 2001, basically TMBR/Sharp and its investors had 180 days to drill the next well or lose its leases?

A. That's correct.

Q. Did you understand at that time what Arrington was going to do to see that TMBR/Sharp couldn't drill within its continuous drilling obligation time period?

A. No, he had not specifically said what he was going to do, but I understood that he intended to block us somehow.

TESTIMONY OF JEFFREY D. PHILLIPS

Q. Okay. You were not aware at that time that on July 17th, 2001, Arrington had already applied for and received his Triple-Hackle Dragon 25 well on the west half of Section 25?

A. No, we were not aware at that time.

Q. How did you become aware that Arrington had obtained permits which were going to block your drilling?

A. We became aware of Arrington's permits filed in our locations when we read their publication in the Anderson reports, the report that publishes newly released permits.

Q. And what did you do in response to hearing that he had permits that were going -- that were on the acreage you planned to drill next?

A. We were already in the process of preparing our own permits. We had the surveyors in process of staking the locations and anticipating filing our own permits. And so we rushed the process up and filed our own competing permits in the District Office.

Q. Okay, and you filed your applications for a permit to drill the Blue Fin 25 Number 1 well on August 6th, 2001?

A. That's correct.

Q. Okay. If you would look at Exhibit 5 in your book -- Excuse me, if you'd look at Exhibit 4 in your book, and then we'll look at 5. All right, if you'll look at the C-102 filing, it says the surveyor's certification was July 26th, 2001, only two days after you had your conversation with Mr. Arrington at the Petroleum Club. Did you already have the survey process in the works before you even had the conversation with Mr. Arrington?

A. I'm not certain, but either prior to or after that conversation we were in the works.

TESTIMONY OF JEFFREY D. PHILLIPS

Q. But in any case, you did an expedited effort to go ahead and get your applications for permits to drill filed?

A. That's correct.

Q. And what happened when -- Well, who filed them for you? Who actually in your shop filed them?

A. Lonnie Arnold is my production manager, filed both of these permits and carried them to the Hobbs District Office.

Q. And what happened at the Hobbs District Office?

A. The Hobbs District informed Lonnie that they couldn't grant these permits because there were competing permit APDs that had been granted prior to our application.

Q. Okay. What action did TMBR/Sharp take next to protect its interest in the property? Did it file these cases before the OCD?

A. Yes, we filed for a hearing in front of the OCD to determine the status of the permits, which was the first hearing. We subsequently filed a lawsuit in the District Court in Lea County in regards to our contested interests and leases.

Q. And that lawsuit was filed on August 24th, 2001?

A. Right.

Q. At the time -- After having examined the land records in Section 25, at the time Mr. Arrington applied for and received his permits in Section 25, it's true, isn't it, that he personally of record title didn't own any interest in Section 25, even in the Stokes Hamilton lease, top lease?

A. That's correct, I did not personally examine the title records, but that's what we believe to be true.

TESTIMONY OF JEFFREY D. PHILLIPS

Q. Okay. If you'll look at your time line that I believe is in front of you, September 17th, 2001 --

A. Okay.

Q. -- do you see that entry?

A. I do.

Q. It says "Huff assigns his entire interest in the Huff Top Leases to Arrington Oil & Gas." So far as you know, was that the first time Arrington even purportedly had any interest in this section?

A. That is correct.

Q. Have -- Time to time in the course of the litigation, has TMBR/Sharp requested, either in person or by filing pleadings with the District Court requesting that Arrington release or withdraw his permits so that our permits to drill could be granted?

A. Yes.

Q. And as of this date, has Mr. Arrington withdrawn either his Section 25 permit to drill or his Section 23 permit to drill?

A. He has not.

Q. Did TMBR/Sharp decide to file a supplemental application for a permit to drill on Section 25 recently?

A. Yes, we did.

MS. RICHARDSON: And -- I'm sorry, Madame Chairman, I don't know the exhibit number of that most recent supplemental filing.

MR. CARROLL: It was 17.

Q. (By Ms. Richardson) 17, thank you. Okay.

TESTIMONY OF JEFFREY D. PHILLIPS

Why did TMBR/Sharp file Exhibit 17, which was the supplemental application for a permit to drill that basically mirrored the prior one?

A. We filed it strictly as a supplement to our original permit application. We used the same property code, we used the same API number in our filing, and we typed at the head of the Application, supplemental to our original API number, and we filed it with the motions from the District Court granting summary judgment on our lawsuit regarding the validity of our leases.

Q. And about last Saturday -- It seems like a long time ago now, but last Saturday did we learn that the District Office of the Oil Conservation Division had granted our supplemental filing for the Blue Fin 25?

A. That's correct.

Q. So that at this point in time there are two approved permits to drill on Section 25, both Arrington's and ours?

A. That is correct.

Q. When we filed our Section 25 Application for permit to drill originally, did we intend at that time to obtain the permit and file a pooling action, or did we intend to obtain the permit and drill the well, and then file a pooling action if necessary?

A. We intended to file the permit, receive approval for it and drill the well, and pool the well after we had drilled it.

Q. Okay. And why would we do it in that order?

A. We -- Time is of the essence all the time here, in light of my conversation with Arrington, so we had a lease clock ticking. We typically drill our wells that way, because although this would be pooled in the same pool as the Blue Fin 24, these wells are all still really wildcats. It's not a development well.

TESTIMONY OF JEFFREY D. PHILLIPS

And so that if we dryholed in the lower, deeper zone, it might not be necessary for us to have a 320-acre unit. It would be possible to make a well in the Strawn horizon or another horizon, which might be a 160- or an 80-acre unit.

And so that after we drill a well, we're more informed about what we actually want to pool. And if we made a deep-horizon 320-acre well, well, that's the one we would pool.

Q. And with the 180-day clock ticking, because we had completed the well sometime in June, 2001, we basically had till the end of the year 2001 to drill the next well before the rest of the lease expires?

A. That's correct.

Q. Was there some concern on our part that if we obtained our permit and then engaged in a protracted pooling filing that our time clock might run before we could ever drill?

A. Obviously.

Q. Okay. The same was true with the 23 well, our intention was to move forward, obtain the permit and drill, and pool if necessary?

A. That's correct.

Q. Okay. If we had drilled another well after the Blue Fin 24 on the Stokes Hamilton acreage, we would have bought ourselves another six months before any additional acreage expiring --

MR. CARROLL: Madame Commissioner, I've been very patient throughout this entire hearing, but it's just getting worse. Ms. Richardson is testifying for and is leading the witness to the point that we're no longer hearing what Mr. Phillips has to say, but he's just --

TESTIMONY OF JEFFREY D. PHILLIPS

MS. RICHARDSON: I'll rephrase.

CHAIRMAN WROTENBERY: Thank you.

Q. (By Ms. Richardson) I'll rephrase, thank you.

What advantage would we get from being able to go ahead drill the Blue Fin with respect to the Stokes Hamilton lease?

A. Had we been able to go ahead and drill the Blue Fin 25 well, we would have perpetuated the Stokes Hamilton lease for another six months.

Q. And in our permitting applications, in the spot where it says spud date, when did we indicate we would have spudded the Blue Fin 25 and the Leavelle 23?

A. In the permit applications --

Q. Right, Exhibits 4 and 5.

A. -- we had put September the 1st, 2001, as the anticipated spud date.

Q. All right. If you would look at Exhibit 2, which is the Arrington APD for Section 25, what does it indicate there would have been the spud date for Arrington?

A. In Exhibit 2 Arrington has ASAP as an anticipated spud date.

Q. Are you aware of any action on the part of Arrington to -- currently, to drill either Section 25 or 23?

A. No, I'm not. And Mr. Carroll has indicated they have no intention right now of drilling either one.

Q. Okay. You were aware -- or were you aware whether or not Ocean Energy had ever applied for and received any kind of application -- or, excuse me, permit to drill either Section 25 or 23?

A. I'm not aware of an application filed by Ocean for either location.

Q. But you received a well proposal from Ocean Energy, didn't you?

TESTIMONY OF JEFFREY D. PHILLIPS

A. We did receive a well proposal from Ocean in January of this year.

Q. And Ocean identified the well they wanted to drill was the Triple-Hackle Dragon 25?

A. That's correct.

Q. And how does that compare to the APD applied for and received by Mr. Arrington?

A. That's the same well name as Mr. Arrington's permit that he received as the Triple-Hackle Dragon 25 Well Number 1.

Q. Is the well proposal by Ocean -- how does its well location it proposes compare to what Arrington wanted in his permit to drill the 25 well?

A. Ocean's well proposal has the same footage call location as Arrington's Triple-Hackle Dragon 25 Number 1.

Q. You heard Mr. Carroll's statements earlier about Section 23, and I want to see if we can get that one cleared up. And I advised you that my understanding of what Arrington Oil and Gas was willing to do with respect to Section 23 was to agree to withdraw their permit to drill on Section 23, advise -- we would jointly advise the Commission that our permit should be granted and that if we had a permit then we would proceed at some point, rig availability and other things all being equal, to drill that well. Did I advise you about that?

A. That's correct, you did.

Q. Okay. And were you willing to do that if Arrington was willing to withdraw his permit, ask the Commission to grant ours, and then we would have a permit to drill? Was that arrangement acceptable to TMBR/Sharp and its investors?

A. It is suitable to us that he withdraws his permit and that our permit is approved.

TESTIMONY OF JEFFREY D. PHILLIPS

Q. Okay, one last area. A compulsory pooling proceeding was filed by TMBR/Sharp in January of 2002. Why did -- in light of your earlier testimony, why did TMBR/Sharp file a compulsory pooling request?

A. We filed a compulsory pooling request because it was, at the time, one of the only things we had available to us to get us to this hearing. Arrington has exhibited quite a bit of gamesmanship in all of these proceedings, and --

MR. CARROLL: I'm going to object to the characterizations of the witness. I think that's totally outside the scope of the question and it's just he's got the floor and he wants to bad-mouth David Arrington, and I think that's improper, and I think the witness should be instructed to answer the question, period.

THE WITNESS: I'll rephrase.

CHAIRMAN WROTENBERY: Thank you.

THE WITNESS: We filed the pooling application because it was one of the only things left for us to do at the time. We also were cognizant of the fact that it was important to get the application in first, or early, because we were aware that Ocean was preparing to file a west-half pooling, force-pooling motion.

Q. (By Ms. Richardson) Was it TMBR/Sharp's desire and what TMBR/Sharp is asking the Commission to do with respect to Section 25, to vacate Arrington's permit -- the Division Office has already granted a Section 25 permit to us, so vacate Mr. Arrington, leave ours in place and let us drill the well?

A. That's correct. We have a permit that's been granted. Vacate Mr. Arrington's permit, we'll drill our well and pool afterwards as we had planned to do.

Q. And if the pooling occurs after the drilling, what additional information do you think will be obtained that might facilitate the pooling -- compulsory pooling process?

TESTIMONY OF JEFFREY D. PHILLIPS

A. Well, the compulsory pooling process will be science and geological information. If we drill a well, we'll have that much more science and geological information. We'll have logging, information about the thickness of the zone, we'll be able to tie it to our 3-D seismic. We'll just be that much better off.

Q. Okay. And one last question about Ocean Energy. To your knowledge, when did Ocean Energy even obtain any interest in Section 25?

A. It was -- November was our earliest knowledge that Ocean had obtained any interest in Section 25.

Q. And that was obtained on the basis of farmouts they got in July of 2001?

A. That's correct.

Q. Isn't it true that it was represented to Judge Clingman in Lea County that although Ocean had been assigned an interest by Arrington in the Stokes Hamilton leases, they had decided to reassign that acreage to Mr. Arrington because they no longer wanted any interest in the top leases?

A. Now, restate that for me, please.

Q. Sure. Do you recall that it was represented to the Court, Judge Clingman in Lea County, that Ocean Energy, who has farm-in acreage in 25 but also has alleged Stokes Hamilton top lease, that Ocean Energy represented to the Court that their intention was to dispose of that acreage, if you will, reconvey it to Mr. Arrington so that they no longer claimed an interest in the Stokes Hamilton top leases?

A. That's correct, that was our understanding.

Q. Okay. To date we haven't seen that reassignment, but that's our understanding of what they intend to do?

A. That's correct.

TESTIMONY OF JEFFREY D. PHILLIPS

MS. RICHARDSON: Nothing further, pass the witness.

CHAIRMAN WROTENBERY: Mr. Carroll?

CROSS-EXAMINATION

BY MR. CARROLL:

Q. Mr. Phillips, one of the things that an operator accomplishes when he does a force-pooling action is, he gets -- he can get the Division or the Commission to assess a penalty to those parties who do not join in and pay their share; is that correct?

A. That is correct.

Q. If an operator does as TMBR/Sharp is doing and fails to force pool prior to drilling of the well, the operator forgoes the opportunity to have a risk penalty assessed against any parties who do not join in and pay their share of the well up front?

A. I believe that, I take your word for that.

Q. All right. It's your testimony that TMBR/Sharp has waited some six months to file the force pooling on the north half of Section 25, until just recently, and that was because you thought it was necessary to beat Ocean to the filing of a force-pooling action; is that correct?

A. That was one of the reasons, yes.

Q. Was there any other reasons?

A. The other reason is, it was one of the only actions or options we had available to us at the time. We could stand still and watch all of this go on, or we could engage and try to --

Q. Okay, as an option, you can file the force pooling, and you may be awarded operatorship and also be awarded the location of your choice; isn't that correct?

TESTIMONY OF JEFFREY D. PHILLIPS

A. We had not permit at the time. It was my understanding that permits and pooling are two different tracts and that the operator holding the permit controlled the pooling process.

Q. The operator who holds the APD controls the pooling process; is that what you're saying?

A. Right.

Q. Then why did you even bother to file a pooling application?

A. We hoped to be able to get our APD at this hearing or one of these hearings. We hadn't given up on being granted an APD.

MR. CARROLL: I have nothing else.

CHAIRMAN WROTENBERY: Commissioners?

COMMISSIONER BAILEY: Tom, I'm fully confident that you know the Oil and Gas Act forwards and backwards. Is --

MR. KELLAHIN: May I have counsel?

(Laughter)

MR. KELLAHIN: Mr. Carr is back here.

CHAIRMAN WROTENBERY: He wants to take the Fifth.

COMMISSIONER BAILEY: Is there a provision that designates where filings have to be made in the county?

MR. KELLAHIN: In the Oil and Gas Act?

COMMISSIONER BAILEY: Yes.

MR. KELLAHIN: No, ma'am. It doesn't specify that.

COMMISSIONER BAILEY: That's an Oil Conservation Division regulation?

MR. KELLAHIN: Were you asking -- I'm sorry, I didn't hear.

TESTIMONY OF JEFFREY D. PHILLIPS

COMMISSIONER BAILEY: Is there an OCD regulation, or is it in the Oil and Gas Act which declares that filings have to be made in the county?

MR. KELLAHIN: For the designation of a pool unit?

COMMISSIONER BAILEY: Right.

MR. KELLAHIN: You can find it in the forms in terms of a declaration by the applicant, the operator, to the Division as to his spacing unit. We do that with the C-102, and that permitting process is a disclosure to the Division that I propose the dedication of a certain configuration.

Whether that satisfies your lease obligations -- and those lease obligations sometimes are differently phrased language -- some lease obligations specifically tell you that it must be a recorded instrument filed with the county clerk. This lease doesn't say that.

COMMISSIONER BAILEY: But a statute or an OCD regulation would supersede any kind of lease terms, wouldn't it?

MR. KELLAHIN: You can certainly make that argument.

COMMISSIONER BAILEY: Okay.

MR. CARROLL: Commissioner Bailey, if I may add, because the question you just asked or phrased is the issue that is before the District Court in Lea County, and I think Mr. Kellahin is correct, there is no -- the Oil and Gas Act does not specifically make a requirement, it is more a contractual requirement. You find it in the lease and you have to interpret the lease.

Now, there is one additional statute, and this is one of the issues that has been argued in the District Court and which will be one of the issues that will be appealed to the Court of Appeals, is that there is a statute that says all filings that deal

TESTIMONY OF JEFFREY D. PHILLIPS

with the ownership of real property, of which minerals are one, have to be in the county. And that has been the argument of Arrington, is that this filing in the OCC is not sufficient.

We've also argued -- and again, this is the argument in the District Court, not here -- but the problem is, is if you look at the lease the contract says you shall file it in the county where the land is located.

Well, that lease provision -- what would it mean if you went to Chaves County, because there's no Oil Conservation Commission or Division office in Chaves County? There's one in Eddy County and there's one in Lea County, and there's one up in the northwest in San Juan County. There's only four offices outside -- or three offices outside of Santa Fe.

That is, in a nutshell, the problem before the court system right now. And so, that's the issue -- you've hit it right on the head -- as to what's troubling these parties as to what was the effect of filing the C-102 or not filing the designation of pooling in the county records.

COMMISSIONER BAILEY: Thank you both very much. I appreciate your help on that.

I do have another question, though.

EXAMINATION

BY COMMISSIONER BAILEY:

Q. In the lease, in the very -- paragraph 2, it says that the lease shall remain in effect for three years and so long as there is oil and gas produced in said land.

Is the Blue Fin 24 still producing?

A. It is.

TESTIMONY OF JEFFREY D. PHILLIPS

Q. So is there truly an urgency for this six months between drilling, even though the lease is still perpetuated by production from the Blue Fin 24?

A. The primary term of the Blue Fin 24 lease had expired, so we're now under the continuous development phase of the lease.

COMMISSIONER BAILEY: Okay, thank you.

MS. RICHARDSON: If you could explain, just so it will be in the record clear. The continuous development phase of the lease means precisely what?

THE WITNESS: It means that every 180 days you have to have drilled a well or be producing hydrocarbons from a new location or horizon on the lease, in order for the lease to perpetuate. It is an extension of the lease outside the primary term.

MS. RICHARDSON: The lease will perpetuate as to the acreage held by the Blue Fin 24?

THE WITNESS: Correct.

MS. RICHARDSON: But the remaining acreage --

THE WITNESS: The remaining acreage --

MS. RICHARDSON: -- under 25 --

THE WITNESS: -- outside the proration unit held by the Blue Fin 24 is perpetuated by continuous drilling.

CHAIRMAN WROTENBERY: Thank you.

THE WITNESS: The Blue Fin 24 proration unit will be held so long as the well produces and it's not interrupted. And there's interruption language in there, every 60 days or something like that.

MS. RICHARDSON: And what is the Blue Fin -- I know you've checked on it today. What is it producing today?

TESTIMONY OF JEFFREY D. PHILLIPS

THE WITNESS: We have -- In preparation to frac, fracture-stimulate the Blue Fin 24 in the primary zone, the chert detritus, we had acidized it on Monday, and we've cleaned up the acid. It's producing around a million cubic feet of gas a day right now, at a flowing tubing pressure of around 1000 pounds, and at a liquid or condensate rate of about 170 barrels of condensate a day.

We anticipate frac'ing that well in the morning.

MS. RICHARDSON: Okay, thank you. Nothing further.

CHAIRMAN WROTENBERY: Commissioner Lee, any questions?

COMMISSIONER LEE: (Shakes head)

CHAIRMAN WROTENBERY: Mr. Ross?

MR. ROSS: Maybe one.

CHAIRMAN WROTENBERY: We may still have a few more questions for you, don't go away.

Okay.

EXAMINATION

BY MR. ROSS:

Q. Mr. Phillips, I understood Mr. Nearburg to say that at some point there was something, in fact, filed with the County Clerk; is that correct?

A. There was. After we drilled the well we filed a designation of pool unit with the County Clerk.

Q. When was that document -- We don't have it in front of us. When was that document filed or recorded, do you know?

A. It was -- Do you have that? It was in July, I'm not certain of the date. Our lease allows us to file that document before or after drilling the well.

TESTIMONY OF JEFFREY D. PHILLIPS

MR. ROSS: Can we get that document? Is that possible?

MR. KELLAHIN: Be happy to submit that to you, sir.

MS. RICHARDSON: And may I say, there is no question that Judge Clingman on the title has addressed all the concerns, all the arguments that Mr. Arrington has raised, and has concluded as a matter of law -- no fact questions -- as a matter of law, that our lease is valid, that we did what we needed to do to pool it and extend it beyond the primary term. So I think insofar as what the Commission does with this matter, that title matter has been decided by Judge Clingman. It is certainly subject to appeal.

But as of now the law of the case, if you will, is what Judge Clingman has said. And that is, our lease is good, the top lease is invalid and has been from the time we spudded and completed the well.

MR. ROSS: Judge Clingman's order is kind of terse.

MS. RICHARDSON: Yes.

MR. ROSS: It might help us if we had --

MS. RICHARDSON: If you had the motion.

MR. ROSS: -- the motions, right.

MS. RICHARDSON: It is in this stack of paper. I was hoping not to have to get down on my hands and knees to retrieve it, but maybe someone more agile than me can find it.

MR. ROSS: Well, we don't need it right now, but it would be nice to have a copy.

MS. RICHARDSON: No, we knew it was and we anticipated that when we were preparing yesterday. We thought this order doesn't make sense unless you can see the prayer. So that's a good point.

MR. ROSS: I have nothing further. Thanks.

TESTIMONY OF JEFFREY D. PHILLIPS

MR. MONTGOMERY: Mr. Carroll, do you want one of these?

MR. CARROLL: I might as well have whatever you can give me.

MS. RICHARDSON: And I'll represent to the Commission, this is what was attached to our supplemental APD filing that -- you know, where we just received a permit on 25. And very frankly, we were surprised that it was granted. We thought that was what you all were going to be deciding today. But just to say it was an unusual, thick filing, and I'm not sure how it got under the radar screen. And we don't really know what the District thought, but we just wanted to bring that to your attention.

CHAIRMAN WROTENBERY: Thank you. Did you have anything further for --

MR. ROSS: Oh, no. Thanks.

CHAIRMAN WROTENBERY: -- for Mr. Phillips?

Thank you, Mr. -- Well, let me ask first, did you have any follow-up, Ms. Richardson?

MS. RICHARDSON: Nothing further, thank you.

CHAIRMAN WROTENBERY: Mr. Carroll?

MR. CARROLL: No.

CHAIRMAN WROTENBERY: Thank you very much for your testimony, Mr. Phillips.

THE WITNESS: Thank you.