

JAMES BRUCE
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OIL CONSERVATION DIV.
02 APR 23 PM 1:16

April 20, 2002

Via Fax and U.S. Mail

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

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

Dear Mr. Brooks:

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

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

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

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

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

Very truly yours,

A handwritten signature in cursive script that reads "James Bruce". The signature is written in black ink and is positioned above the printed name.

James Bruce

Attorney for Ocean Energy, Inc.

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



ENERGY MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

2040 S. PACHECO
SANTA FE, NEW MEXICO 87505
(505) 827-7131

MEMORANDUM

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

ILLEGIBLE

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

RELEVANT AND PERTINENT EVIDENCE

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

IRRELEVANT AND UNNECESSARY EVIDENCE

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

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

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

02 APR 23 PM 1:19

APPLICATION OF OCEAN ENERGY,
INC. FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO.

No. 12841

RESPONSE OF OCEAN ENERGY, INC. IN OPPOSITION TO
MOTION TO DISMISS

TMBR/Sharp Drilling, Inc. ("TMBR/Sharp") has filed a motion to dismiss the above case. Ocean Energy, Inc. ("Ocean") opposes the motion. Ocean's application must be allowed to proceed, for if TMBR/Sharp's motion is granted, New Mexico's compulsory pooling statutes will become meaningless. **In addition**, Ocean has an expiring farmout on its acreage. Therefore, it must be allowed to proceed in order to protect its correlative rights.

I. FACTS.

Ocean has a farmout on the working interest in the SW $\frac{1}{4}$ of Section 25. The farmout expires on July 1, 2002, and will not be extended. **See the Affidavit of Derold Maney, attached as Exhibit A.** In order to develop its property, Ocean applied for an order pooling all mineral interests from the surface to the base of the Mississippian formation underlying the W $\frac{1}{2}$ of Section 25, Township 16 South, Range 35 East, N.M.P.M., Lea County, New Mexico. TMBR/Sharp has applied, in Case No. 12816, for an order pooling the N $\frac{1}{2}$ of Section 25. Both of these matters are set for hearing on the March 21st docket.

As the Division is aware, there is a dispute between TMBR/Sharp and David H. Arrington Oil & Gas, Inc. ("Arrington") over APD's covering all of Section 25. **See Case Nos. 12731 and 12744 (de novo).** Their dispute arises due a title dispute

affecting ownership of 100% of the working interest in the NW¼ of Section 25. Ocean submits that the battle over the TMBR/Sharp and Arrington APD's is irrelevant to the competing pooling cases of Ocean and TMBR/Sharp.

II. ARGUMENT.

TMBR/Sharp's argument is essentially that: (1) the District Court has ruled in TMBR/Sharp's favor in its title dispute with Arrington; (2) as a result, TMBR/Sharp is now entitled to have its APD's issued by the Division; and (3) therefore, the W½ of Section 25 is not available for compulsory pooling. Thus, Ocean's case must be dismissed.

If TMBR/Sharp's argument is accepted by the Division, it means that the filing of an APD is superior to the compulsory pooling statutes, because once an APD is issued, the APD mandates: (1) the orientation of a well unit; (2) a well's location; and (3) who operates the well. Thus, a pooling application such as Ocean's, which seeks a different well unit orientation than in TMBR/Sharp's APD, is forbidden. This is contrary to law and Division precedent.

The Oil and Gas Act requires that where there are separately owned tracts of land in a well unit, or undivided interests in the well unit, the operator is required to obtain voluntary agreements with the interest owners, or pool the interest owners in the well unit. **NMSA 1978 §§70-2-17, 18.** Upon application of the operator, the Division shall pool the acreage in order to prevent the drilling of unnecessary wells, prevent waste, and protect correlative rights. **NMSA 1978 §§70-2-17.** In reviewing competing

pooling applications, the Division reviews geology, working interest ownership, good faith negotiations, and well costs. **Oil Conservation Commission Order No. R-10731-B, at 9-10.**

There are no voluntary agreements covering either the W½ well unit or the N½ well unit. Thus, a pooling order is required. Ocean is ready to present evidence as to why the geology favors a W½ well unit. In addition, with respect to TMBR/Sharp's application, there are issues regarding lack of good faith negotiations as to a N½ well unit. However, instead of having the Division review the evidence in the two competing pooling applications, and issuing a decision based thereon, it is TMBR/Sharp's position that the pooling statutes are trumped solely by the approval of an APD: Once an APD is approved, according to TMBR/Sharp, a pooling application by another interest owner is not allowed. Such an argument is legally incorrect. Despite the approved or unapproved APD's of Arrington and TMBR/Sharp, the Division must still examine the evidence presented in the two pooling cases to determine the issues of unit orientation, well location, etc. The Division's pooling order must determine these matters, not the mere filing of an APD.

In Case No. 11887, Santa Fe Energy Resources, Inc. ("Santa Fe") filed an application to pool Lots 3-6 and 11-14 of irregular Section 1, Township 21 South, Range 34 East, N.M.P.M. The only party being pooled was Phillips Petroleum Company ("Phillips"). After receiving notice of the pooling application, Phillips filed an APD covering Lots 1-8 of Section 1, and then filed a motion to

dismiss Santa Fe's application, claiming that Lots 3-6 and 11-14 of Section 1 were dedicated to a well and no longer available for pooling. The hearing examiner denied Phillips' motion, and allowed the case to proceed. (The parties subsequently settled their differences.) The same rule must be applied in the present case, and Ocean must at least be allowed to present its evidence.

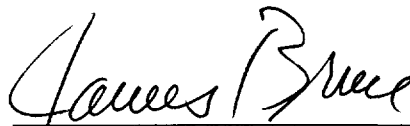
TMBR/Sharp's argument also ignores the fact that the order of the District Court is appealable, and it may not withstand appellate review. Thus, TMBR/Sharp has no more right than Arrington to an APD until the lawsuit is finally resolved. However, it is clear that Ocean has the right to drill a well in Section 25. Ocean is prepared to present geologic and land evidence on the issues before the Division, and must be allowed to do so, or the pooling statutes are of no effect. Any contrary decision will adversely affect Ocean's correlative rights.

In short, any dispute over APD's is subsidiary to a pooling order entered by the Division.

III. CONCLUSION.

For the reasons stated above, TMBR/Sharp's motion must be denied.

Respectfully submitted,

A handwritten signature in cursive script that reads "James Bruce". The signature is written in dark ink and is positioned above a horizontal line.

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

Attorney for Ocean Energy, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Entry of Appearance was served upon the following counsel of record via facsimile transmission this 18th day of March, 2002:

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


James Bruce



NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

GARY E. JOHNSON

Governor
Betty Rivera
Cabinet Secretary

April 1, 2002

Lori Wrotenbery
Director
Oil Conservation Division

Mr. Tom Kellahin
Kellahin and Kellahin
117 North Guadalupe
P.O.Box 2265
Santa Fe, NM 87504-2265

Mr. James Bruce
3304 Camino Lisa
P.O.Box 1056
Santa Fe, NM 87504

Mr. Ernest Carroll
Losee, Carson, Haas & Carroll, P.A.
P.O.Box 1720
Artesia, NM 88211-1720

Re: Case No. 12816; Application of TMBR/Sharp Drilling, Inc.
Case No. 12841; Application of Ocean Energy, Inc.

Gentlemen:

I concur with Mr. Kellahin's observation (in his letter of March 27) that these applications cannot be properly addressed by the Division until the Commission resolves the appeal it heard on March 26. Accordingly, the captioned cases will be continued to the May 2, 2002 Examiner docket.

Regarding the effect of TMBR/Sharp prevailing at the Commission level on the pending applications, and the need for a special examiner hearing, I invite response.

Should you have any questions, please call me at (505)-476-3450.

Very truly yours,

David K. Brooks
Assistant General Counsel

cc: Hon. David R. Catanach

JAMES BRUCE
ATTORNEY AT LAW

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April 1, 2002

Via Fax

Lori Wrotenbery
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

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

Dear Ms. Wrotenbery:

Ocean Energy, Inc. ("Ocean") opposes the motion for a continuance filed by TMBR/Sharp Drilling, Inc. ("TMBR/Sharp"). As you know, Ocean has an expiring farmout. Any delay in hearing the above competing pooling cases means that they cannot be resolved until after the farmout is set to expire. No harm will occur by hearing the above cases this week. If the two cases are heard, then they can proceed in a timely fashion to final resolution by the Commission without the need to resort to District Court. Any delay will impair Ocean's correlative rights.

Again, Ocean requests that the motion be denied.

Very truly yours,



James Bruce

Attorney for Ocean Energy, Inc.

cc: David K. Brooks (via fax)
W. Thomas Kellahin (via fax)
Ernest L. Correal (via fax)

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

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W. THOMAS KELLAHIN*

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

JASON KELLAHIN (RETIRED 1991)

March 27, 2002

HAND DELIVERED

Ms. Lori Wrotenbery, Director
Oil Conservation Division
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

MOTION TO CONTINUE

- Re: Case 12816 N/2 Section 25, T16S, R35E
Application of TMBR/Sharp Drilling, Inc.
for compulsory pooling, Lea County, New Mexico*
- Re: Case 12841 W/2 Section 25, T16S, R35E
Application of Ocean Energy, Inc.
for compulsory pooling, Lea County, New Mexico*

Dear Ms. Wrotenbery:

On behalf of TMBR/Sharp Drilling's ("TMBR/Sharp") we request that the reference cases set for hearing of the Examiner's docket for April 4, 2002, be continue until the New Mexico Oil Conservation Commission enters an order decide Cases 12744 and 12731 heard at the De Novo hearing on March 26, 2002.

At the conclusion of the Commission hearing yesterday afternoon, Commissioner Wrotenbery announced that the Commission would attempt to reach a decision about the permit dispute between Tmbr/Sharp and Arrington by its April 26, 2002 hearing.

02 MAR 27 PM 1:46

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March 27, 2002

-Page 2-

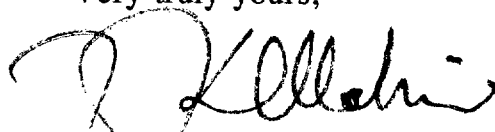
At a Pre-Hearing Conference for the compulsory pooling cases held on March 19, 2001, Mr. David Brooks, for the Division, continued the reference compulsory pooling case then set for March 21 to April 4, 2001, so that the Commission could decide the Permit (APD) dispute has a prerequisite to the Division hearing the compulsory pooling case. Mr. Brooks further advised that the pooling cases maybe continue further until the Commissions decides the permit dispute.

A Commission decision in favor of TMBR/Sharp will eliminate the need for the Division to decide the Ocean compulsory pooling case. In the event the Commissions decides against TMBR/Sharp's position, we estimate that the pooling case with require a 1-2 day hearing.

Ocean complains that any delay in hearing its pooling case will increase it risk that its July 1, 2002 Farm-in will expire. Ocean's remedy is in District Court and is not before the Division which has no obligation to help save Ocean's farm--in. Correlative rights is the "opportunity afforded, as far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share." Ocean join forces with Arrington and as a result has waste its opportunity. Ocean also had plenty of opportunity from July 23, 2001 to propose its own well and file a pooling application prior to February 2, 2002. If is now time for Ocean to seek District Court protection like TMBR/Sharp was required to do.

Based on the foregoing, TMBR/Sharp requested that the pooling cases be continued to a Special Examiner Docket set after the Commission entered an order decide the permit dispute between Arrington and TMBR/Sharp.

Very truly yours,

A handwritten signature in black ink, appearing to read 'W. Thomas Kellahin', with a stylized, cursive script.

W. Thomas Kellahin

cc: David K. Brooks,
Division Attorney
Steve Ross, Esq. Commission Attorney
James Bruce, Esq.,
Attorney for Ocean Energy, Inc.
Earnest Carroll, Esq.
Attorney for David H. Arrington Oil & Gas Inc.