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BEFORE THE  
OIL CONSERVATION DIVISION  
Case No. 12817 Exhibit No. 5  
Submitted By:  
TMBR/Sharp Drilling  
Hearing Date: February 21, 2002

July 14, 2000

No. 15,069

TMBR/Sharp Drilling Inc.  
Drawer 10970  
Midland, Texas 79702-7970

Attention: Mr. Jeffrey D. Phillips, Vice-President

Re: **ORIGINAL DRILLING TITLE OPINION** covering State of  
New Mexico Oil and Gas Lease VO-5336 covering all  
of Section 10, Township 14 South, Range 34 East,  
Lea County, New Mexico.

Gentlemen:

At your request, and for the purpose of rendering this  
Original Drilling Title Opinion, we have examined the following:

## MATERIALS EXAMINED

1. Personal examination of the instruments listed on an uncertified runsheet prepared by Dennis Hopkins, Independent Landman, from the indices and records of Caprock Title Company, Inc. covering the records in the office of the County Clerk, Lea County, New Mexico as to the captioned land from July 1, 1998 at 7:00 a.m., the date of the captioned lease, to June 9, 2000 at 7:00 a.m.
2. Supplemental Abstract of Title No. 7472 certified by Schutz Abstract Company, Inc. as covering the records of the Office of the Commissioner of Public Lands of the State of New Mexico as to Lease VO-5336 as to all of Section 10 from July 1, 1998 at 8:00 a.m. to June 26, 2000 at 8:00 a.m., containing 31 pages.
3. Photocopy of Assignment 34, described in the Assignment History set forth below.
4. Photocopy of partially executed Exploration Agreement dated June 1, 1998, between TMBR/Sharp Drilling, Inc., et al., and Santa Fe Natural Resources, Inc.
5. Photocopy of unexecuted and undated Operating Agreement designating TMBR/Sharp Drilling, Inc. as operator.

## PATENT INFORMATION

The materials examined indicate that the captioned land has not been patented.

## FEE OWNERSHIP

Based on our examination of the foregoing materials, and subject to the comments and requirements hereinafter made, our

opinion is that the oil and gas estate in the captioned land is owned as follows:

State of New Mexico . . . . . All\*

\* Subject to State of New Mexico Oil and Gas Lease VO-5336.

OIL AND GAS LEASE

Serial No.: VO-5336.

Dated: July 1, 1998.

Recorded: 899 LCR 443.

Lessor: State of New Mexico.

Original Lessee: Joe D. Gilmer.

Record Owner: Santa Fe Natural Resources, Inc.

Land Covered: All of Section 10.

Interest Covered: Full interest lease.

Primary Term: Five (5) years.

Royalty: 1/6 on oil and gas; shut-in gas royalty in an amount equal to twice the annual rental, but not less than \$320.00 per well per year, provided, however, that any such annual royalty for any year beginning on or after 10 years from the date of the lease shall equal 4 times the annual rental due by the lessee under the terms of the lease but not less than \$2,000.00 per well per year. However, the lease may not be continued after 5 years from the date thereof for any period more than 10 years by the payment of said annual royalty unless, for good cause shown, the Commissioner of Public Lands, at his discretion, grants such a continuance.

Rentals: 50¢ per acre due and payable, regardless of production, in advance to the lessor on successive anniversary dates of this lease.

Pooling: None.

Cessation of Production/  
Continuous Operations: 60 days with written notice as provided in paragraph 15 of the lease.

Special Provisions: Pursuant to paragraph 14, operations beyond the primary term must be approved by Lessor upon written application filed with Lessor on or before expiration of the primary term. Lessor has the right to take in kind its royalty share of oil and gas and further reserves a continuing option to purchase at any time at market price prevailing in the area on the date of purchase all the oil and gas produced from this land. Lessee is liable for all

damages to range, livestock, growing crops or improvements. Lessee agrees to notify Lessor of the location of each well before commencing drilling thereon. Other provisions are contained in the lease which you should carefully study.

#### ASSIGNMENT HISTORY

1. By instrument dated July 3, 1998, effective July 1, 1998, recorded 898 LCR 480, Joe D. Gilmer and wife, Betty Gilmer, conveyed a 5.3333% overriding royalty interest in the captioned land and lease to Dennis V. Stowers (1%), Keith D. Stowers (1%), CCW Resources, Inc. (0.5833%) and Hesperus Minerals, Inc. (2.75%).
2. By instrument dated July 3, 1998, effective July 1, 1998, recorded 898 LCR 483, Joe D. Gilmer and wife, Betty Gilmer, conveyed a 3% overriding royalty interest in the captioned land and lease to Bill Burkett (1.0%), Garland Lamb (1.0%) and Patrick J. Whelan (1.0%).
3. By instrument dated July 6, 1998, effective July 1, 1998, recorded 898 LCR 486, Joe D. Gilmer and wife, Betty Gilmer, conveyed a 100% interest in the captioned land and lease to Santa Fe Natural Resources, Inc.
4. By instrument dated August 31, 1998, effective August 1, 1998, recorded 904 LCR 703, Santa Fe Natural Resources, Inc. conveyed a 25% interest in the captioned land and lease to TMBR/Sharp Drilling, Inc.
5. By instrument dated August 31, 1998, effective August 1, 1998, recorded 904 LCR 706, Santa Fe Natural Resources, Inc. conveyed a 14.25% interest in the captioned land and lease to States, Inc.
6. By instrument dated August 31, 1998, effective August 1, 1998, recorded 904 LCR 709, Santa Fe Natural Resources, Inc. conveyed a 6% interest in the captioned land and lease to Jim Zabcik and V. Ann Hoyt, as joint tenants with rights of survivorship.
7. By instrument dated August 31, 1998, effective August 1, 1998, recorded 904 LCR 712, Santa Fe Natural Resources, Inc. conveyed a 6% interest in the captioned land and lease to JMR Development, Inc.
8. By instrument dated August 31, 1998, effective August 1, 1998, recorded 904 LCR 715, Santa Fe Natural Resources, Inc. conveyed a 2% interest in the captioned land and lease to C. John Zabcik and Elaine Odom Zabcik.
9. By instrument dated August 31, 1998, effective August 1, 1998, recorded 904 LCR 718, Santa Fe Natural Resources, Inc. conveyed an 8.25% interest in the captioned land and lease to Ralph G. Odom, Trustee of the Ralph G. and Helene A. Odom Family Trust dated January 8, 1993. (See Requirement 3).
10. By instrument dated August 31, 1998, effective August 1, 1998, recorded 904 LCR 721, Santa Fe Natural Resources, Inc. conveyed a 1.75% interest in the captioned land and lease to Dale K. Price and Janice W. Price.
11. By instrument dated August 31, 1998, effective August 1, 1998, recorded 904 LCR 724, Santa Fe Natural Resources, Inc. conveyed a 2% interest in the captioned land and lease to Michael Odom.

12. By instrument dated August 31, 1998, effective August 1, 1998, recorded 904 LCR 727, Santa Fe Natural Resources, Inc. conveyed a 4.50% interest in the captioned land and lease to David H. Essex.
13. By instrument dated August 31, 1998, effective August 1, 1998, recorded 904 LCR 730, Santa Fe Natural Resources, Inc. conveyed a 5% interest in the captioned land and lease to Rachel Lyman.
14. By instrument dated August 31, 1998, effective August 1, 1998, recorded 904 LCR 733, Santa Fe Natural Resources, Inc. conveyed a 5.25% interest in the captioned land and lease to Pevehouse, Inc.
15. By instrument dated August 31, 1998, effective August 1, 1998, recorded 904 LCR 736, Santa Fe Natural Resources, Inc. conveyed a 0.5% interest in the captioned land and lease to Garland C. Lamb.
16. By instrument dated August 31, 1998, effective August 1, 1998, recorded 904 LCR 739, Santa Fe Natural Resources, Inc. conveyed a 1% interest in the captioned land and lease to Janice Kay King.
17. By instrument dated August 31, 1998, effective August 1, 1998, recorded 904 LCR 742, Santa Fe Natural Resources, Inc. conveyed a 3% interest in the captioned land and lease to Jack B. Wilkinson, Jr.
18. By instrument dated August 31, 1998, effective August 1, 1998, recorded 904 LCR 745, Santa Fe Natural Resources, Inc. conveyed a 2% interest in the captioned land and lease to Great Eastern Energy and Development Corporation.
19. By instrument dated August 31, 1998, effective August 1, 1998, recorded 904 LCR 748, Santa Fe Natural Resources, Inc. conveyed a 2% interest in the captioned land and lease to Fagadau Energy Corporation.
20. By instrument dated August 31, 1998, effective August 1, 1998, recorded 904 LCR 751, Santa Fe Natural Resources, Inc. conveyed a 1.5% interest in the captioned land and lease to Jasper Resources, Inc.
21. By instrument dated September 18, 1998, effective September 15, 1998, recorded 907 LCR 278, Hesperus Minerals, Inc. conveyed a 0.50% overriding royalty interest in the captioned land and lease to Santa Fe Natural Resources, Inc.
22. By instrument dated September 18, 1998, effective September 15, 1998, recorded 908 LCR 100, Santa Fe Natural Resources, Inc. conveyed a 0.50% overriding royalty interest in the captioned land and lease to Azucarbaya Mineral Corp.
23. By instrument dated September 24, 1998, effective September 1, 1998, recorded 910 LCR 306, Santa Fe Natural Resources, Inc. conveyed a 2% interest in the captioned land and lease to Jackal Oil Company.
24. By instrument dated September 24, 1998, effective September 1, 1998, recorded 910 LCR 319, Santa Fe Natural Resources, Inc. conveyed a 1.25% interest in the captioned land and lease to Dusty Sanderson.
25. By instrument dated September 24, 1998, effective September 1, 1998, recorded 910 LCR 339, Santa Fe Natural Resources, Inc. conveyed a 0.25% interest in the captioned land and lease to Cliff W. Keiser.

- 26. By instrument dated September 24, 1998, effective September 1, 1998, recorded 910 LCR 345, Santa Fe Natural Resources, Inc. conveyed a 0.25% interest in the captioned land and lease to Mario E. Maldonado.
- 27. By instrument dated October 15, 1998, effective September 1, 1998, recorded 912 LCR 197, Dusty Sanderson conveyed his 1.25% interest in the captioned land and lease to SSS-ODS Oil and Gas, Ltd. (1/3), C. D. LaSusa (1/3) and Dusty Sanderson (1/3).
- 28. By instrument dated September 25, 1998, effective September 1, 1998, recorded 914 LCR 753, Jim Zabcik and V. Anne Hoyt, as joint tenants with rights of survivorship, conveyed 2% of their 6% interest in the captioned land and lease to Santa Fe Natural Resources, Inc. (See Requirement 1).
- 29. By instrument dated October 13, 1998, effective October 1, 1998, recorded 914 LCR 759, Great Eastern Energy and Development Corporation conveyed 2% of its 2% interest in the captioned land and lease to Santa Fe Natural Resources, Inc. (See Requirement 5).
- 30. By instrument dated November 13, 1998, effective October 1, 1998, recorded 921 LCR 521, Santa Fe Natural Resources, Inc. conveyed a 2% interest in the captioned land and lease to Fagadau Energy Corporation.
- 31. By instrument dated January 4, 1999, effective January 1, 1999, recorded 930 LCR 597, Santa Fe Natural Resources, Inc. conveyed a 3.125% interest in the captioned land and lease to Michael T. Sullivan.
- 32. By instrument dated December 4, 1998, effective September 1, 1998, recorded 938 LCR 72, Dale K. Price and Janice W. Price conveyed 1.75% of their 1.75% interest in the captioned land and lease to Santa Fe Natural Resources, Inc. (See Requirement 2).
- 33. By instrument dated June 21, 1999, effective May 1, 1999, recorded 963 LCR 4, Jasper Resources, Inc. conveyed 50% of its interest in the captioned land and lease to Chariot Royalty Inc.
- 34. By instrument dated June 1, 2000, effective May 1, 2000, recorded 1022 LCR 535, Bank of America, N.A., as Independent Executor of the Estate of Rachel Lyman, Deceased, and as Trustee of the Rachel Lyman Family Trust, all her 5% interest in the captioned land and lease to TMBR/Sharp Drilling, Inc.

OIL AND GAS LEASEHOLD ESTATE

I. Overriding Royalty Interest:

Hesperus Minerals, Inc.	2.25% ORI (.0225000 NRI)
Bill Burkett	1% ORI (.0100000 NRI)
Patrick J. Whelan	1% ORI (.0100000 NRI)
Garland C. Lamb	1% ORI (.0100000 NRI)
Dennis V. Stowers	1% ORI (.0100000 NRI)

Keith D. Stowers . . . . .	1% ORI (.0100000 NRI)
CCW Resources, Inc. . . . .	0.5833% ORI (.0058330 NRI)
Azucarabaya Mineral Corp. . . . .	0.50% ORI (.0050000 NRI)
Total . . . . .	8.333300% ORI (.083333 NRI)

**II. Working Interest:**

TMBR/Sharp Drilling, Inc. . . . .	30% x 75% WI (.2250000 NRI)
States, Inc. . . . .	14.25% x 75% WI (.1068751 NRI)
Jim Zabcik and V. Ann Hoyt, jtwros . . . . .	4% x 75% WI (.0300000 NRI)
JMR Development, Inc. . . . .	6% x 75% WI (.0450000 NRI)
C. John Zabcik and Elaine Odom Zabcik . . . . .	2% x 75% WI (.0150000 NRI)
Ralph G. Odom, Trustee of the Ralph G. and Helene A. Odom Family Trust . . . . .	8.25% x 75% WI (.0618750 NRI)
Michael Odom . . . . .	2% x 75% WI (.015000 NRI)
David H. Essex . . . . .	4.50% x 75% WI (.0337500 NRI)
Pevehouse, Inc. . . . .	5.25% x 75% WI (.0393750 NRI)
Garland C. Lamb . . . . .	0.50% x 75% WI (.00375000 NRI)
Janice Kay King . . . . .	1% x 75% WI (.0075000 NRI)
Jack B. Wilkinson, Jr. . . . .	3% x 75% WI (.0225000 NRI)
Fagadau Energy Corporation . . . . .	4% x 75% WI (.0300000 NRI)
Jasper Resources, Inc. . . . .	0.75% x 75% WI (.0056250 NRI)
Chariot Royalty Inc. . . . .	0.75% x 75% WI (.0056250 NRI)
Jackal Oil Company . . . . .	2% x 75% WI (.0150000 NRI)
Dusty Sanderson . . . . .	33.3334% x 1.25% x 75% WI (.0031250 NRI)
SSS-ODS Oil and Gas, Ltd. . . . .	33.3333% x 1.25% x 75% WI (.0031250 NRI)

C. D. LaSusa . . . . .	33.3333% x 1.25% x 75% WI (.0031250 NRI)
Cliff W. Keiser . . . . .	0.25% x 75% WI (.0018750 NRI)
Mario E. Maldonado . . . . .	0.25% x 75% WI (.0018750 NRI)
Michael T. Sullivan . . . . .	3.125% x 75% WI (.0234375 NRI)
Santa Fe Natural Resources, Inc. . . . .	6.875% x 75% WI (.0515625 NRI)

**EXPLORATION AGREEMENT**

The captioned land and lease are subject to an Exploration Agreement dated June 1, 1998, between TMBR/Sharp Drilling, Inc., et al., and Santa Fe Natural Resources, Inc. We have assumed that you are familiar with the terms and provisions of this agreement and its effect on your proposed operations on the captioned land and lease. As noted above, the copy of this agreement furnished for our examination was only partially executed. You should satisfy yourself as to execution of this agreement by all parties thereto.

**OPERATING AGREEMENT**

We have been advised that the captioned land and leases will be subject to an Operating Agreement in the form attached as Exhibit "C" to the above described Exploration Agreement. The agreement is on a 1982 A.A.P.L. Form 610-1982 Model Form Operating Agreement. The agreement provides for non-consent penalties of 200% for surface equipment beyond the wellhead and for operating costs, and 400% for drilling, reworking, testing, deepening, plugging back and completion. The agreement contains a maintenance of uniform interest provision, but the preferential right to purchase provision has been deleted. There are numerous additional deletions and modifications to the printed form. We assume that you have thoroughly reviewed this agreement and understand its application to and effect on your operations on the captioned land. As noted above, the copy of the agreement furnished for our examination was not executed. You should satisfy yourself as to the execution of this agreement by all parties thereto.

**EASEMENTS AND RIGHTS-OF-WAY**

None reflected in the materials examined.

**AGRICULTURAL LEASE**

The abstract examined reflects that the surface of Section 10 is subject to Agricultural Lease GT-1697, issued to Darr and Pamela Angell. Said lease expires September 30, 2003.

**LIENS AND ENCUMBRANCES**

The interest of Chariot Royalty Inc. is subject to a Deed of Trust, Mortgage, Security Agreement, Assignment of Production and Financing Statement dated June 18, 1999, recorded 963 LCR 524, securing a note in the initial amount of \$65,000.00 (not to exceed \$130,000.00) payable to Chase Bank of Texas, National Association on or before October 18, 2003. This note is further secured by Financing Statement in favor of Chase Bank of Texas, National Association, recorded 963 LCR 518.

**TITLE REQUIREMENTS**

1.

Jim Zabcik and V. Anne Hoyt owned a 6% interest in the captioned land and lease as joint tenants with right of survivorship, pursuant to Assignment 6. In Assignment 28, Jim Zabcik and V. Anne Hoyt conveyed 2% of their 6% interest in the captioned land and lease to Santa Fe Natural Resources, Inc. We were advised that the intent of this instrument was to convey a 2% interest in the captioned land and lease, and have credited this assignment accordingly. Further we have been advised that Jim Zabcik and V. Anne Hoyt are husband and wife.

**REQUIREMENT:** Submit for our examination and then place of record in Lea County, New Mexico (1) a correction assignment made in lieu of Assignment 28, executed by the assignor and assignee, which conveys a 2% interest in the captioned land and lease to Santa Fe Natural Resources, Inc., and (2) an affidavit stating that Jim Zabcik and V. Anne Hoyt are husband and wife.

2.

Dale K. Price and Janice W. Price owned a 1.75% interest in the captioned land and lease pursuant to Assignment 10. In Assignment 32, Dale K. Price and Janice W. Price conveyed 1.75% of their 1.75% interest in the captioned land and lease to Santa Fe Natural Resources, Inc. We were advised that the intent of this instrument was to convey a 1.75% interest in the captioned land and lease to Santa Fe Natural Resources, Inc. We have also been advised that Dale K. Price and Janice W. Price are husband and wife.

**REQUIREMENT:** Obtain a correction assignment, made in lieu of Assignment 10, and executed by the assignors and assignee, which conveys a 1.75% interest in the captioned land and lease to Santa Fe Natural Resources, Inc. and record same in Lea County, New Mexico. This assignment should recite that the assignors are husband and wife.

3.

In Assignment 9, Santa Fe Natural Resources, Inc. conveyed an 8.25% interest in the captioned land and lease to "Ralph G. Odom, Ralph G. and Helene A. Odom Family Trust dated January 8, 1993." We have assumed that the instrument was intended to convey an 8.25% interest in the captioned land and lease to Ralph G. Odom, as Trustee of the Ralph G. and Helene A. Odom Family Trust dated January 8, 1993, and have credited this interest accordingly.

**REQUIREMENT:** Verify that our assumption as stated above is correct. Submit for our examination and record in Lea County, New Mexico a correction assignment made in lieu of Assignment 9, executed by both the assignor and the assignee, which conveys an 8.25% interest in the captioned land and lease to Ralph G. Odom, as Trustee of the Ralph G. and Helene A. Odom Family Trust dated January 8, 1993.

4.

Assignment 27 was executed by Dusty Sanderson, and we have no information regarding his marital status at the time he acquired his interest in the captioned land. In New Mexico, property acquired during marriage is presumed to be community property and



any conveyance of community real property not executed by both spouses is void.

**REQUIREMENT:** Determine the marital status of Dusty Sanderson at the time he acquired his interest in the captioned land. If he was married at that time, obtain and record in Lea County, New Mexico a ratification of the above assignment from husband and wife with words of grant.

5.

Great Eastern Energy and Development Corporation owned a 2% interest in the captioned land and lease pursuant to Assignment 18. In Assignment 29, Great Eastern Energy and Development Corporation conveyed 2% of its 2% interest in the captioned land and lease to Santa Fe Natural Resources, Inc. We were advised that the intent of this instrument was to convey a 2% interest in the captioned land and lease to Santa Fe Natural Resources, Inc., and have credited this assignment accordingly.

**REQUIREMENT:** Submit for our examination and then record in Lea County, New Mexico a correction assignment in lieu of Assignment 18, executed by the assignor and assignee, which conveys a 2% interest in the captioned land and lease to Santa Fe Natural Resources, Inc.

6.

Assignment 34 was executed by Bank of America, N.A., as Independent Executor of the Estate of Rachel Lyman, Deceased, and as Trustee of the Rachel Lyman Family Trust u/w/o Rachel Lyman and as a result of Rachel Lyman's exercise of a special power of appointment over the trust estate of the residuary trust created under the will of C. V. Lyman, dated July 3, 1975. We have not examined probate proceedings held in connection with the Estate of Rachel Lyman, Deceased, or the Estate of C. V. Lyman, Deceased.

**REQUIREMENT:** (a) Submit for examination photocopies of the complete probate proceedings for the above estates.

(b) If either party did not reside in New Mexico at the time of his or her death, ancillary probate proceedings should be conducted in New Mexico. If New Mexico probate proceedings have already been conducted, a notice in probate should be recorded in the Real Property Records of Lea County, New Mexico.

7.

We direct your attention to the Deed of Trust and Financing Statement which encumber Chariot Royalty Inc.'s working interest in the captioned land and lease.

**REQUIREMENT:** In the event of production, obtain a joint division order from Chariot Royalty Inc. and Chase Bank of Texas specifying the manner in which to distribute proceeds of production attributable to Chariot's interest.

8.

The captioned lease is still within its primary term, however, annual rentals were due on or before July 1, 2000. We have examined evidence that rentals for past years have been paid, but

July 14, 2000

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the materials examined do not reflect whether current year rentals have been paid because the abstract examined closed on June 26, 2000.

**REQUIREMENT:** Verify that annual rentals for the captioned lease were paid in the proper amount for the year 2000.

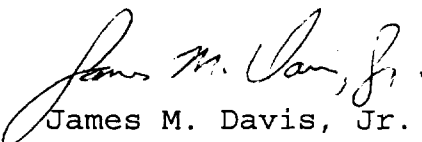
**COMMENTS**

1. Title examination based upon an uncertified runsheet is less reliable than other forms of title examination. We have used this form of title examination, as to the county records, at your request and with your assurance that you understand the risk associated with this form of examination. This opinion is necessarily limited to the instruments actually examined.
2. This opinion does not cover any matters not revealed by the materials examined, such as undisclosed lands, unpaid bills that may ripen into mechanics and materialman's liens, genuineness of instruments, prior dedication of gas to interstate commerce, the price of either oil or gas produced and marketed from the premises, the number and depths of wells, surface or subsurface location of wells, boundary lines, survey lines, conflicts of boundary lines, vacancies, excesses, access, rights of parties in possession or other matters which could be determined only by an investigation upon the ground or by survey of the land.
3. This opinion does not cover the question of potential liability for environmental contamination, caused by past spills, leaks, releases, discharges or disposal of hazardous waste on the captioned land. State and federal statutes may impose liability for such occurrences on past, present and subsequent owners' real property without evidence of the negligence, culpability, or actual contribution to the contaminating event.
4. Our opinion is limited to the materials actually examined and is intended for the use of only the addressee. Any party relying on this opinion, other than the addressee, does so at its own risk.

The abstract submitted for our examination is returned herewith.

Very truly yours,

COTTON, BLEDSOE, TIGHE & DAWSON, P.C.

By:   
James M. Davis, Jr.

JMD/kk

Enclosure

c: Mr. Dennis Hopkins (by FedEx)