

BEFORE THE NEW MEXICO OIL-CONSERVATION DIVISION

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

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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 SW¼ 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 W½ 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 N½ 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 (and apparently the SE¼ 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,



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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 18<sup>th</sup> day of March, 2002:

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

  
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James Bruce

## BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

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


Case No. 12,841

AFFIDAVIT OF DEROLD MANEY

STATE OF TEXAS                     )  
  ) ss.  
COUNTY OF HARRIS                )

Derold Maney, being duly sworn upon his oath, deposes and states:

1. I am over the age of 18, and have personal knowledge of the matters stated herein.
2. I am a landman for Ocean Energy, Inc.
3. Ocean Energy, Inc. has obtained a farmout agreement covering 100% of the working interest in the SW¼ of Section 25, Township 16 South, Range 35 East, N.M.P.M., Lea County, New Mexico.
4. The farmout agreement requires a well to be commenced on the SW¼ of Section 25, or on lands pooled therewith, by July 1, 2002.
5. The farmors of the farmout agreement have informed Ocean Energy, Inc. in writing that they will not extend that well commencement date.

  
Derold Maney

SUBSCRIBED AND SWORN TO before me this 18TH day of March, 2002, by Derold Maney.

  
Notary Public

My Commission Expires:  
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