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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 13, 2002

HAND DELIVERED

ms

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

**Re: Motion of TMBR/Sharp Drilling, Inc.
to Dismiss Case 12841**

**NMOCD Case 12816
Application of TMBR/Sharp Drilling, Inc.
for compulsory pooling N/2 Section 25, T16S, R35E
Lea County, New Mexico.**

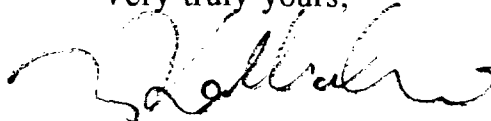
**NMOCD Case 12841
Application of Ocean Energy, Inc
for compulsory pooling W/2 Section 25, T16S, R35E
Lea County, New Mexico.**

RECEIVED
MAR 13 1992

Dear Ms. Wrotenbery:

On behalf of TMBR/Sharp Drilling, Inc., please find enclosed our Motion to Dismiss the referenced Ocean Case (NMOCD 12841). This case is currently set for hearing on March 21, 2002.

Very truly yours,



W. Thomas Kellahin

cc: David H. Brooks, Esq.
Attorney the Division
Michael E. Stogner, Examiner
James Bruce, Esq.
Attorney for Ocean Energy, Inc.
cc: TMBR/Sharp
Rick Montgomery, Esq.

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

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

CASE NO. 12841

**MOTION OF TMBR/SHARP DRILLING, INC.
TO DISMISS CASE 12841**

Comes now TMBR/Sharp Drilling, Inc. ("TMBR/Sharp") by its attorneys, Kellahin & Kellahin, and moves that the New Mexico Oil Conservation Division dismiss Ocean Energy, Inc. (Ocean") application for compulsory pooling of the W/2 of Section 25 Township 16 South, Range 35 East on the grounds that a decision by the Lea County District Court and Division Order R-11700 precludes the Division from entering an order granting the relief sought by Ocean.

And in support states:

INTRODUCTION

(1) On August 6, 2001, TMBR/Sharp filed an application for a permit to drill ("APD") with the Hobbs Office of the Division requesting a permit to drill its Blue Fin "25" Well No. 1 in Unit E and to dedicated it to the N/2 of Section 25, T16S, R35E.

(2) The Division, in Order R-11700, refused to approve TMBR/Sharp's APD because on July 19, 2001, the Division approved an APD for David H. Arrington Oil & Gas Inc. ("Arrington") for its Triple Hackle Dragon "25" Well No. 1 for a spacing unit consisting of the W/2 of Section 25 based upon his claim of colorable title on the Hamilton/Stokes top leases, and stated that:

- (a) "(22) that "Arrington has demonstrated at least a colorable claim of title that would confer upon it a right to drill its proposed wells, no basis exists to reverse or overrule the action of the District Supervisor in approving the Arrington APDs."
- (b) "(21) The Oil Conservation Division has no jurisdiction to determine the validity of any title, or the validity or continuation in force and effect of any oil and gas lease. Exclusive jurisdiction of such matters resides in the courts of the State of New Mexico"

(3) The Lea County District Court, has exercised that jurisdiction, and has ruled that TMBR/Sharp's Hamilton/Storks leases are still valid and in effect and Arrington's Hamilton/Stokes top leases are not in effect. **See Exhibit "A"**

(4) TMBR/Sharp is now entitled to have its APD issued by the Division without inference from Arrington or Ocean **See Exhibit "B"**

(5) The issuance of a compulsory pooling order to Ocean will preclude TMBR/Sharp from receive is an approved APD to which it was entitled and would have received but for the wrongful actions of Arrington.

(6) At the time TMBR/Sharp filed its APD, Arrington had no interest in the W/2 of Section 25.

(7) Arrington did not receive an interest in Ocean's various farm-ins in the SW/4 of Section 25 until November 14, 2001,

(8) Ocean's compulsory pooling application is an attempt by Ocean to substitute itself for Arrington on the APD approved by the Division on July 19, 2001:

- (a) on September 10, 2001, Ocean and Arrington entered into a Letter Agreement concerning their plans for the Triple Hackle Dragon "25" Well No. 1 for the W/2 of Section 25;
- (b) which provide that Arrington would be the Operator;
- (c) that if drilling title opinion requirement prevented Arrington from drilling, Ocean would be the operator

(b) Ocean now seeks a compulsory pooling order for the Arrington's Triple Hackle Dragon "25" Well No. 1

ARGUMENT

Ocean's application unduly interferes with TMBR/Sharp's prior right to drill the well it sought to drill in August 2001 until Arrington interfered with that right. Arrington argued to the Division at the hearing in Case 12731 that its Stokes/Hamilton Top leases gave Arrington the right to apply for and receive the permit to drill the Triple Hackle Dragon "25" Well No. 1. Specifically, Mr. Ernest Carroll arguing on behalf of Arrington said, "We own the Hamilton and Stokes interest because we have a valid lease...We have a right to apply for a permit." (Case 12731, Transcript, page 22) By order of the Court in the Fifth Judicial District of Lea County, New Mexico, on December 27, 2001, Arrington's Stokes/Hamilton top leases were declared inferior to TMBR/Sharp's original leases which are still valid. Therefore Arrington was without authority and was not legally qualified to file for and receive the Division approved permit to drill the Triple Hackle Dragon "25" Well No. 1. In addition, but for Arrington's blocking of TMBR/Sharp's permit, TMBR/Sharp would have received a permit to drill and would have already drilled its well in the N/2 of Section 25.

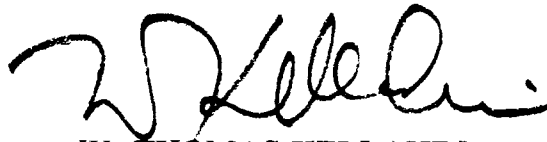
Arrington, entered into an agreement with Ocean that if Arrington was not successful in curing any title disputes then Ocean would become the operator of the Triple Hackle Dragon "25" Well No. 1 and that Ocean would initiate compulsory pooling proceedings for a spacing unit consisting of the W/2 of Section 25. **See Exhibit "C" at page 2**

Arrington's APD is invalid and cannot be transferred to Ocean so that Ocean can be substituted for Arrington. Except for Arrington's acts, TMBR/Sharp's APD would have been approved and TMBR/Sharp would have all ready drilled its well.

A failure by the Division to now approve TMBR/Sharp's APD amounts to a violation of TMBR/Sharp's constitutional protected rights to due process. The Division appears to have issued an illegal permit to Arrington, a non-owner with no right to a permit, at the expense for TMBR/Sharp, an owner with a right to a permit, who is now blocked from drilling. The Division's failure to have safeguards in place and allow a permit to be "pending" until title is resolved has destroyed and damaged TMBR/Sharp's property rights to drill a well in the N/2 of Section 25. Ocean should not be allowed to take advantage of a wrong caused by Arrington.

In Order R-11700, paragraph 25, the Division said "it has jurisdiction to revoke its approval of any APD in an appropriate case." Now is the time to exercise that jurisdiction.

RESPECTFULLY SUBMITTED:



W. THOMAS KELLAHIN
KELLAHIN & KELLAHIN
P. O. Box 2265
Santa Fe, New Mexico 87501
(505) 982-4285

CERTIFICATE OF SERVICE

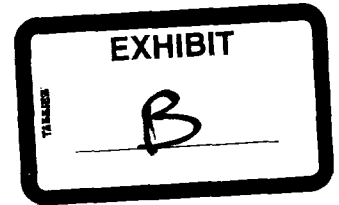
I certify that a copy of the foregoing pleading was sent by facsimile this 13th day of March, 2002 to James Bruce, Esq., attorney for Ocean Energy, Inc.



W. Thomas Kellahin

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:**



**APPLICATION OF TMBR/SHARP
DRILLING, INC. FOR AN ORDER
STAYING DAVID H. ARRINGTON
OIL & GAS, INC. FROM COMMENCING
OPERATIONS, LEA COUNTY, NEW MEXICO.**

CASE NO. 12731

**APPLICATION OF TMBR/SHARP
DRILLING, INC. APPEALING THE
ARTESIA [S/C] DISTRICT SUPERVISOR'S
DECISION DENYING APPROVAL OF
TWO APPLICATIONS FOR PERMIT TO DRILL
FILED BY TMBR/SHARP DRILLING, INC.,
LEA COUNTY, NEW MEXICO.**

CASE NO. 12744

ORDER NO. R-11700

ORDER OF THE DIVISION

BY THE DIVISION:

Case No. 12731 came on for hearing at 8:15 a.m. on September 20, 2001, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

Case No. 12744 came on for hearing at 8:15 a.m. on October 18, 2001, at Santa Fe, New Mexico, before Examiner David K. Brooks

NOW, on this 11th day of December, 2001, the Division Director, having considered the testimony, the record and the recommendations of the Examiners, -

FINDS THAT:

(1) Due public notice has been given, and the Division has jurisdiction of this case and of the subject matter.

(2) In Case No. 12731, TMBR/Sharp Drilling, Inc. ("TMBR/Sharp") seeks an order staying David H. Arrington Oil & Gas Inc. ("Arrington") from commencing

operations under two approved Applications for Permit to Drill (the "Arrington APDs") pending final determination of Cause No. CV-2001-315C, now pending in the Fifth Judicial District Court of Lea County, New Mexico, styled "**TMBR/Sharp Drilling, Inc. v. David H. Arrington Oil & Gas, Inc., et al.**," ("the TMBR/Sharp suit").

(3) In Case No. 12744, TMBR/Sharp appeals the action of the Supervisor of District I of the Oil Conservation Division ("the District Supervisor") denying two Applications for Permit to Drill ("the TMBR/Sharp APDs") wherein TMBR/Sharp applied for permits to drill on the same spacing and proration units as the previously approved Arrington APDs.

(4) At the hearing in Case No. 12744, that case was consolidated with Case No. 12731, and was taken under advisement, to be determined on the basis of the record made in Case No. 12731. Since these cases involve the same units and subject matter, one order should be entered for both cases.

(5) On July 17, 2001, Arrington filed an Application for Permit to Drill (form C-101) for its proposed Triple-Hackle Dragon "25" Well No. 1, to be located in the W/2 of Section 25, Township 16 South, Range 35 East, Lea County, New Mexico, at a standard location in SW/4 NW/4 (Unit E), 750 feet from the west line and 1815 feet from the north line of the section. This APD was approved on July 17, 2001 by Paul Kautz, acting for the District Supervisor of the Division.

(6) On July 25, 2001, Arrington filed an Application for Permit to Drill (form C-101) for its proposed Blue Drake "23" Well No. 1, to be located in the E/2 of Section 23, Township 16 South, Range 35 East, Lea County, New Mexico, at a standard location in NE/4 SE/4 (Unit I), 660 feet from the east line and 1980 feet from the south line of the section. This APD was approved on July 30, 2001 by Paul Kautz, acting for the District Supervisor of the Division.

(7) The APDs described in findings (5) and (6) are the Arrington APDs that are the subject of the applications filed in these consolidated cases.

(8) On or about August 7, 2001, TMBR/Sharp filed an Application for Permit to Drill (form C-101) for its proposed Blue Fin "25" Well No. 1, to be located in the N/2 of Section 25, Township 16 South, Range 35 East, Lea County, New Mexico, at a standard location in SW/4 NW/4 (Unit E), 924 feet from the west line and 1913 feet from the north line of the section. On August 8, 2001, Paul Kautz, acting for the District Supervisor of the Division, denied this APD by reason of the previous issuance of the APD for Arrington's Triple-Hackle Dragon "25" Well No. 1.

(9) On or about August 6, 2001, TMBR/Sharp filed an Application for Permit to Drill (form C-101) for its proposed Leavelle "23" Well No. 1, to be located in the E/2 of Section 23, Township 16 South, Range 35 East, Lea County, New Mexico, at a standard location in SW/4 NE/4 (Unit F), 1998 feet from the east line and 2038 feet from the north line of the section. On August 8, 2001, Paul Kautz, acting for the District Supervisor of the Division, denied this APD by reason of the previous issuance of the APD for Arrington's Blue Drake "23" Well No. 1.

(10) The APDs described in findings (8) and (9) are the TMBR/Sharp APDs that are the subject of the applications filed in these consolidated cases.

(11) On August 21, 2001, TMBR/Sharp filed the TMBR/Sharp suit.

(12) In the TMBR/Sharp suit, TMBR/Sharp alleges that it is the owner of the oil and gas leasehold estate in all of the NW/4 of Section 25, and all of the SE/4 of Section 23, Township 16 South, Range 35 East, Lea County, New Mexico, along with other lands, pursuant to two oil and gas leases ("the TMBR/Sharp leases") dated August 25, 1997, from Madeline Stokes and Erma Stokes Hamilton, respectively, to Ameristate Oil & Gas, Inc., recorded respectively in Book 827 at Page 127, and in Book 827 at Page 124, Deed Records of Lea County, New Mexico.

(13) Although the primary terms of the TMBR/Sharp leases have expired, TMBR/Sharp contends that the TMBR/Sharp leases have been maintained in force and effect by the drilling of and production from its Blue Fin 24 Well No. 1, located in the SW/4 SW/4 of Section 24, Township 16 South, Range 35 East, Lea County, New Mexico, on lands allegedly pooled with the lands covered by the TMBR/Sharp leases.

(14) Arrington claims that no legally effective pooling of the SW/4 SW/4 of Section 24 with any lands covered by the TMBR/Sharp leases ever occurred, and that the TMBR/Sharp leases have expired.

(15) Arrington claims that it is the owner of the oil and gas leasehold estate in all of the NW/4 of Section 25, and all of the SE/4 of Section 23, Township 16 South, Range 35 East, Lea County, New Mexico, along with other lands, pursuant to two oil and gas leases ("the Arrington leases") dated March 27, 2001, from Madeline Stokes and Erma Hamilton, respectively, to James D. Huff, recorded respectively in Book 1084 at Page 282, and in Book 1084 at Page 285, Deed Records of Lea County, New Mexico.

(16) The Arrington APDs and the TMBR/Sharp APDs both identified the Townsend Mississippian North Gas Pool as the pool to which the well would be dedicated.

(17) The Townsend Mississippian North Gas Pool is governed by the spacing and well density requirements of Rule 104.C(2) [19 NMAC 15.C.104.C(2)].

(18) The Arrington APDs conformed to the requirements of Rule 104.C(2), and were properly approved.

(19) After approval of the Arrington APDs, the TMBR/Sharp APDs could not have been approved because:

(a) TMBR/Sharp's proposed Blue Fin "25" Well No. 1 was proposed to be located in NW/4 of Section 25, the same quarter section as Arrington's proposed Triple-Hackle Dragon "25" Well No. 1, in violation of Rule 104.C(2)(b).

(b) TMBR/Sharp's APD for its proposed Blue Fin "25" Well No. 1 proposed a N/2 dedication, whereas the previously approved Arrington APD established a W/2 spacing unit.

(c) The approval of APDs naming TMBR/Sharp as operator for wells proposed to be located in either the W/2 of Section 25 or the E/2 of Section 23, following the approval of the Arrington APDs, would contravene Rule 104.C(2)(c), which requires that any subsequent well drilled in a spacing unit be operated by the operator of the initial well.

(20) TMBR/Sharp did not present any geological or engineering testimony or evidence that the locations it proposed were in any way superior to the locations proposed in the Arrington APDs.

CONCLUSIONS OF LAW:

(21) The Oil Conservation Division has no jurisdiction to determine the validity of any title, or the validity or continuation in force and effect of any oil and gas lease. Exclusive jurisdiction of such matters resides in the courts of the State of New Mexico.

(22) Since the Arrington APDs were filed at a time when no conflicting APDs had been filed affecting the subject units, the APDs conformed to applicable OCD Rules, and Arrington has demonstrated at least a colorable claim of title that would confer upon it a right to drill its proposed wells, no basis exists to reverse or overrule the action of the District Supervisor in approving the Arrington APDs.

(23) The approval of the Arrington APDs *ipso facto* precludes approval of the TMBR/Sharp APDs.

(24) If TMBR/Sharp has better title to the lands in question, it has a fully adequate remedy in the 5th Judicial District Court of Lea County, New Mexico, which is clothed with equitable power to restrain operations authorized by the Arrington APD, or to order Arrington to withdraw the Arrington APDs, if such court determines either such action to be warranted.

(25) Since the Division has jurisdiction to revoke its approval of any APD in an appropriate case, Arrington's Motions to Dismiss TMBR/Sharp's Applications for want of jurisdiction should be denied.

(26) The Application of TMBR/Sharp for an order staying operations under the Arrington APDs until the conclusion of the TMBR/Sharp suit should be denied. However, in the interest of protecting correlative rights, commencement of operations under the Arrington APDs should be stayed for a brief time after issuance of this order to allow TMBR/Sharp to petition the 5th Judicial District Court of Lea County for temporary relief, should it elect to do so.

IT IS THEREFORE ORDERED THAT:

(1) Arrington's Motions to Dismiss TMBR/Sharp's Applications for want of jurisdiction are denied.

(1) TMBR/Sharp's Application appealing the denial of the TMBR/Sharp APDs is denied.

(2) TMBR/Sharp's Application for an order staying approval of the Arrington APDs until final conclusion of the TMBR/Sharp suit is denied.

(3) Approval of the Arrington APDs is hereby suspended for a period of ten (10) days after the date of issuance of this order, to afford TMBR/Sharp an opportunity to petition the 5th Judicial District Court of Lea County, New Mexico for relief in this matter should it elect to do so.

(4) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

A handwritten signature in cursive script that reads "Lori Wrotenbery".

LORI WROTENBERY
Director

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF LEA
STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC.,
Plaintiff,

vs.

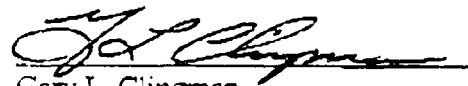
DAVID H. ARRINGTON OIL & GAS,
INC., JAMES D. HUFF, MADELINE
STOKES, ERMA STOKES HAMILTON,
JOHN DAVID STOKES, and TOM STOKES,
Defendants.

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF LEA
STATE OF NEW MEXICO
01 02 27 AM 9:33
DANIELA HERNANDEZ
DISTRICT COURT CLERK

No. CV2001-315C

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 December, 2001:

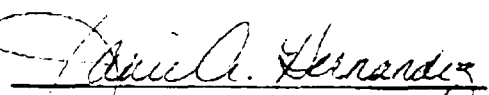
Richard Montgomery, Esquire
P.O. Box 2776
Midland, Texas 79702-2776

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

Ernest L. Carroll, Esquire
P.O. Box 1720
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Michael J. Canon, Esquire
303 W. Wall, Suite 1100
Midland, Texas 79701

By:


Daniela Hernandez
Trial Court Administrative Assistant



original agmt

214 West Texas
Suite 400, (Zip 79701)
P.O. Box 2071
Midland, Texas 79702

DAVID H. ARRINGTON OIL & GAS, INC.

Phone: (915) 682-6685
Fax: (915) 682-4139

September 10, 2001

Mr. Derold Maney
Ocean Energy, Inc.
1001 Fannin, Suite 1600
Houston, TX 77992

Re: Assignment Of Rights In And To Certain Farmout Agreements Concerning The
SW/4 Of Section 25, T16S, R35E, Lea County, New Mexico
South Payday "25" Prospect

Gentlemen:

When executed by the parties hereto, this letter agreement (this "Agreement") shall set forth the agreement between Ocean Energy, Inc. a Louisiana corporation ("Ocean") and David H. Arrington Oil & Gas, Inc. ("Arrington") concerning the assignment of thirty percent (30%) of Ocean's right in and to those certain farmout agreements covering the SW/4 of Section 25, T16S, R35E, Lea County, New Mexico, more particularly described on Schedule 1 hereto (such agreement, as may be amended, supplemented, restated or otherwise modified from time to time, a "Farmout Agreement", and collectively, the "Farmout Agreements"). For good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. On or before July 1, 2002, but not earlier than January 10, 2002, time being of the essence, Arrington shall commence actual drilling of a test well (the "Test Well") to be located in the NW/4 of Section 25, T16S, R35E, Lea County, New Mexico, referred to as the Triple Hackle Dragon 25 #1 Well, and shall thereafter prosecute drilling of the Test Well to penetrate and test the lower Mississippian Lime formation (as hereinafter defined) or to a depth of approximately thirteen thousand two hundred feet (13,200'), whichever is the lesser depth (the "Contract Depth") and shall complete the Test Well as capable of producing oil and/or gas in paying quantities or plug and abandon the same. Ocean shall participate in the drilling of this Test Well for its proportionate share. The Lower Mississippian Lime formation is defined as that certain gas and condensate bearing zone encountered at the stratigraphic equivalent depth of twelve thousand four hundred and four feet (12,404'), as shown on that certain compensated neutron three detector density log measurement in the Mayfly "14" State Com # 1 Well, located in Section 14, Township 16 South, Range 35 East, Lea County, New Mexico.



Mr. Derold Maney
Ocean Energy, Inc.
September 10, 2001
Page 2 of 6

In the event that the drilling title opinion rendered by a law firm licensed to do business in the State of New Mexico shall contain title requirements such that Arrington or Ocean as a reasonable and prudent operator is unable to commence drilling operations on the Test Well prior to July 1, 2002, Arrington or Ocean shall no later than January 5, 2002, initiate force pooling proceeding for a 320 acre unit comprised of the W/2 of Section 25, T16S, R35E, Lea County, New Mexico. Arrington or Ocean shall diligently and expeditiously pool such lands in order to cure such title requirements so that the Test Well may be drilled prior to July 1, 2002.

Should Arrington or Ocean fail to successfully cure such title defects through force pooling proceeding or otherwise and fail to timely commence drilling operations on the Test Well by July 1, 2002, then Ocean shall have the right, but not the obligation, to become the designated Operator under the Operating Agreement for the drilling of the Test Well through the point of first production; subsequently, Ocean shall relinquish operations under said Test Well to Arrington, and Arrington shall be the designated Operator under the Operating Agreement. Notwithstanding anything contained in this Agreement to the contrary Ocean shall not be obligated to participate in the drilling of the Test Well for a share of costs greater than thirty-five percent (35%) and Ocean is satisfied in its sole discretion that the remainder of the costs for the Test Well will be paid, either by Arrington or another third party with title to the leasehold interest in the lands contained within the pooling order issued by the New Mexico Oil Conservation Division.

2. In the event any well is lost for any reason prior to being drilled to Contract Depth or Arrington has encountered, during the drilling of any well, mechanical difficulty or a formation or condition which would render further drilling impracticable or impossible, Arrington may plug and abandon that well and may continue its rights under this agreement by commencing a substitute well (or wells) ("Substitute Well(s)") for any such well which has been lost or abandoned within sixty (60) days from the date the drilling rig is removed from the location of the prior well. Any Substitute Well drilled shall be drilled subject to the same terms and conditions and to the same depth as provided for the well so lost or abandoned. Any reference in this agreement to the Test Well shall be deemed to be a reference to any well or wells, which may be drilled as a Substitute Well. In the event that either party elects to drill a Substitute Well as provided herein, the other party must participate in same, or forfeit to the participating party any interest which it would have otherwise earned by virtue of its participation in such Substitute Well.
3. Contemporaneously herewith, Arrington and Ocean shall have entered into that certain Operating Agreement attached hereto as Exhibit A (the "Operating Agreement"), covering the W/2 of Section 25, T16S, R35E, Lea County, New Mexico (the "Contract Area"). Exhibit "A" to the Operating Agreement shall be completed based upon the results of the drillsite title opinion being prepared covering the W/2 of said Section 25.
4. Subject to the terms and conditions (i) of this agreement, (ii) each Farmout Agreement and (iii) the Joint Operating Agreement, Ocean hereby assigns unto Arrington, an undivided

Mr. Derold Maney
Ocean Energy, Inc.
September 10, 2001
Page 3 of 6

thirty percent (30%) of Ocean's right in and to each Farmout Agreement. In the event that any Farmout Agreement contains a requirement that the Farmor (as defined in such Farmout Agreement) thereunder consent to any such assignment, Ocean shall use its best efforts to obtain such consent; provided, however, that in the event that Ocean is unable to acquire such Farmor's consent to assign, then Ocean shall assign additional interest(s) from such other of the Farmout Agreements as Ocean may elect in its discretion such that the aggregate of Arrington's right to earn rights under all Farmout Agreements will entitle Arrington to an assignment of Ocean's interest in the Contract Area equal to an undivided thirty percent (30%), proportionately reduced to Ocean's interest in the Contract Area. The terms and conditions of this letter agreement shall apply to any extensions or renewals of each Farmout Agreement acquired by either Arrington or Ocean within 180 days of the expiration of the farmout agreement.

5. Arrington has acquired proprietary 3D seismic data across certain lands, including, without limitation, T16S, R35E, Lea County, New Mexico (i) Section 23: E/2E/2; (ii) Section 24: All that Arrington has in the SW/4; (iii) Section 25: W/2, W/2E/2; (iv) Section 26: E/2E/2; (v) Section 35: NE/4NE/4; and (vi) Section 36: N/2NW/4, NW/4NE/4 (such 3D seismic data, collectively, the "Arrington 3D Data"). Arrington agrees (and represents to Ocean that Arrington has the right to so agree) that Ocean shall (i) have access to the Arrington 3D Data in Arrington's offices during normal business hours, in order to work and interpret the Arrington 3D Data and (ii) have access to and copies of, Arrington's interpretations of the Arrington 3D Data (the Arrington 3D Data together with such interpretations thereof, the "Arrington Evaluation Material"). Arrington shall retain full ownership rights to the Arrington 3D Data, and no ownership or license to the Arrington 3D Data shall be conveyed to Ocean. Except as provided for in this Paragraph 5, Arrington makes no representations or warranties to Ocean (i) as to the Arrington 3D Data (ii) or in respect of Ocean's reliance upon the Arrington Evaluation Material. Ocean shall keep the Arrington Evaluation Material confidential; provided however, that such obligation of confidentiality shall not apply to information which (i) was or becomes available to the public other than as a result of a disclosure by Ocean, (ii) was or becomes available to Ocean on a non-confidential basis from a source other than Arrington, provided that such source is not known by Ocean to be bound by a confidentiality agreement with Arrington or otherwise prohibited from transmitting the information by a contractual, legal or fiduciary obligation, (iii) was within Ocean's possession prior to its being furnished by Arrington, (iv) is developed or derived without the aid, application or use of the Arrington Evaluation Material, (v) is disclosed following receipt of the written consent of Arrington to such disclosure being made, or (vi) is disclosed pursuant to Paragraph 6 hereof.
6. In the event that Ocean is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena civil investigative demand or other process) to disclose any of the Arrington Evaluation Material, Ocean agrees that it will provide Arrington with prompt notice of any such request or requirement (written if practical) so that Arrington may seek an appropriate protective order or waive compliance with the provisions of this Agreement. If, failing the entry of a protective order or the receipt of a waiver hereunder prior to the time such disclosure is required to be made, Ocean may disclose that

FROM OCEAN ENERGY

(FRI) 2:15:02 11/24/ST. 11:21/NO. 4861012961 P 5

Mr. Derold Maney
Ocean Energy, Inc.
September 10, 2001
Page 4 of 6

portion of the Arrington Evaluation Material which Ocean's counsel advises that it is compelled to disclose and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to that portion of the Arrington Evaluation Material which is being disclosed. Arrington agrees that Ocean shall have no liability hereunder for any disclosure of the Arrington Evaluation Material made in compliance with this Paragraph 6.

7. Ocean has acquired proprietary 3D seismic data across certain lands, including, without limitation, T15S, R35E, Lea County, New Mexico (i) Section 7: W/2, W/2NE/4, W/2SE/4, SE/4SE/4; (ii) Section 17: W/2NW/4, NW/4SW/4; and (iii) Section 18: N/2, N/2S/2 (such 3D seismic data, collectively, the "Ocean 3D Data"). Ocean agrees (and represents to Arrington that Ocean has the right to so agree) that Arrington shall (i) have access to the Ocean 3D Data in Ocean's offices during normal business hours, in order to work and interpret the Ocean 3D Data and (ii) have access to and copies of, Ocean's interpretations of the Ocean 3D Data (the Ocean 3D Data together with such interpretations thereof, the "Ocean Evaluation Material"). Ocean shall retain full ownership rights to the Ocean 3D Data, and no ownership or license to the Ocean 3D Data shall be conveyed to Arrington. Except as provided for in this Paragraph 7, Ocean makes no representations or warranties to Arrington (i) as to the Ocean 3D Data (ii) or in respect of Arrington's reliance upon the Ocean Evaluation Material. Arrington shall keep the Ocean Evaluation Material confidential; provided however, that such obligation of confidentiality shall not apply to shall not apply to information which (i) was or becomes available to the public other than as a result of a disclosure by Arrington, (ii) was or becomes available to Arrington on a non-confidential basis from a source other than Ocean, provided that such source is not known by Arrington to be bound by a confidentiality agreement with Ocean or otherwise prohibited from transmitting the information by a contractual, legal or fiduciary obligation, (iii) was within Arrington's possession prior to its being furnished by Ocean, (iv) is developed or derived without the aid, application or use of the Ocean Evaluation Material, (v) is disclosed following receipt of the written consent of Ocean to such disclosure being made, or (vi) is disclosed pursuant to Paragraph 8 hereof.
8. In the event that Arrington is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena civil investigative demand or other process) to disclose any of the Ocean Evaluation Material, Arrington agrees that it will provide Ocean with prompt notice of any such request or requirement (written if practical) so that Ocean may seek an appropriate protective order or waive compliance with the provisions of this Agreement. If, failing the entry of a protective order or the receipt of a waiver hereunder prior to the time such disclosure is required to be made, Arrington may disclose that portion of the Ocean Evaluation Material which Arrington's counsel advises that it is compelled to disclose and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to that portion of the Ocean Evaluation Material which is being disclosed. Ocean agrees that Arrington shall have no liability hereunder for any disclosure of the Ocean Evaluation Material made in compliance with this Paragraph 8.

FROM OCEAN ENERGY

(FRI) 2:15:02 11:24/ST 11:21/NO. 4861012951 P 6

Mr. Derold Maney
Ocean Energy, Inc.
September 10, 2001
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9. It is not the intention of the parties to create a partnership, nor shall this agreement be construed as creating a mining or other partnership, joint venture, agency relationship or other association, or to render the parties liable as partners, co-venturers or principals. Unless provided for to the contrary in the Operating Agreement, (i) the liability of the parties shall be several, not joint or collective and (ii) each party shall be responsible only for its obligations, and shall be liable only for its proportionate share of the costs, if any, to be incurred hereunder. No party shall have any liability hereunder to third parties to satisfy the default of any other party in the payment of any expense or obligation.
10. This Agreement and all matters pertaining hereto, including, but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties and interpretation or construction, shall be governed and determined by the law of the State of Texas. **THE PARTIES HEREBY CONSENT TO THE EXCLUSIVE VENUE OF THE PROPER STATE OR FEDERAL COURT LOCATED IN MIDLAND COUNTY, TEXAS, AND HEREBY WAIVE ALL OTHER VENUES.**
11. This Agreement, the Exhibits and Schedules hereto and the Operating Agreement set forth all understandings between the parties respecting the subject matter of this transaction, and all prior agreements, understandings and representations, whether oral or written, respecting this transaction are merged into and superseded by this written agreement.
12. This agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns and the terms hereof shall be deemed to run with the lands described herein. If any transfer is effected by a party pursuant to the terms of this agreement, or by any of its successors or assigns, the transfer will be made expressly subject to this agreement, and the transferor shall remain responsible for the obligations of the transferee until the transferee expressly assumes in writing all of the existing duties and obligations of the transferor.
13. This agreement may not be altered or amended, nor any rights hereunder waived, except by an instrument, in writing, executed by the party to be charged with such amendment or waiver. No waiver of any other term, provision or condition of this agreement, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, other provision or condition or as a waiver of any other term, provision or condition of this agreement.
14. **EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT.**
15. If any provision of this agreement is invalid, illegal or incapable of being enforced, all other provisions of this agreement shall nevertheless remain in full force and effect, so long as the economic or legal substance of the transactions contemplated hereby is not affected in a materially adverse manner with respect to either party.

FROM OCEAN ENERGY

(FRI) 2:15:02 11:25/ST: 11:21/NO: 48610:296: F 7

Mr. Derold Maney
Ocean Energy, Inc.
September 10, 2001
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If this properly sets forth your understanding of our agreement, please so indicate by signing in the space provided below, and returning to my attention.

Mr. Derold Maney
Ocean Energy, Inc.
September 10, 2001
Page 7 of 6

Yours truly,

DAVID H. ARRINGTON OIL & GAS, INC.



David H. Arrington
President

DD/trd

ACCEPTED AND AGREED THIS 14th DAY OF NOVEMBER, 2001

OCEAN ENERGY, INC.

By: 

Hank Wood
Attorney-in-Fact



FROM OCEAN ENERGY

(FRI) 2:15:02 11/25/ST: 11:21/NO. 4861012961 P 9

Schedule 1 to that certain Letter Agreement,
by and between Ocean Energy, Inc., a Louisiana corporation
and David H. Arrington Oil & Gas, Inc.,
dated as of September 10, 2001

1. Farmout Agreement, dated as July 23, 2001, by and between Ocean Energy, Inc., a Louisiana corporation, as Farnsee, and Branex Resources, Inc., as Farmor, as amended by that certain Letter Agreement, dated as of August 14, 2001, attached hereto as Exhibits B-1 and B-2;
2. Farmout Agreement, dated as July 23, 2001, by and between Ocean Energy, Inc., a Louisiana corporation, as Farnsee, and States, Inc. and B.B.L., Ltd., as Farmor, as amended by that certain Letter Agreement, dated as of August 22, 2001, attached hereto as Exhibits C-1 and C-2;
3. Farmout Agreement, dated as July 23, 2001, by and between Ocean Energy, Inc., a Louisiana corporation, as Farnsee, and Judith White, Trustee¹, as Farmor, as amended by that certain Letter Agreement, dated as of August 15, 2001, attached hereto as Exhibit D-1 and D-2;
4. Farmout Agreement, dated as July 23, 2001, by and between Ocean Energy, Inc., a Louisiana corporation, as Farnsee, and Slash Four Enterprises, Inc., as Farmor, as amended by that certain Letter Agreement, dated as of August 15, 2001, attached hereto as Exhibit D-1 and D-2;
5. Farmout Agreement, dated as July 23, 2001, by and between Ocean Energy, Inc., a Louisiana corporation, as Farnsee, and Pabo Oil & Gas, as Farmor, as amended by that certain Letter Agreement, dated as of August 15, 2001, attached hereto as Exhibit D-1 and D-2;
6. Farmout Agreement, dated as July 23, 2001, by and between Ocean Energy, Inc., a Louisiana corporation, as Farnsee, and Phelps White, III, as Farmor, attached hereto as Exhibit E;
7. Farmout Agreement, dated as July 23, 2001, by and between Ocean Energy, Inc., a Louisiana corporation, as Farnsee, and David R. Gannaway, as Farmor, attached hereto as Exhibit F; and
8. Farmout Agreement, dated as July 23, 2001, by and between Ocean Energy, Inc. a Louisiana corporation, as Farnsee, and ICA Energy, Inc., as Farmor, as amended by that certain Letter Agreement, dated as of August 15, 2001, attached hereto as Exhibit G-1 and G-2.