

STATE OF NEW MEXICO OIL CONSERVATION DIV.
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT APR 10 AM 8:37
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 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
(505) 989-9317

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March 26th, 2002
 Commission Hearing
 CASE NOS. 12,744 and 12,731 (Consolidated)

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A P P E A R A N C E S

FOR THE COMMISSION:

STEPHEN ROSS
Deputy General Counsel
Energy, Minerals and Natural Resources Department
2040 South Pacheco
Santa Fe, New Mexico 87505

FOR THE APPLICANT:

KELLAHIN & KELLAHIN
117 N. Guadalupe
P.O. Box 2265
Santa Fe, New Mexico 87504-2265
By: W. THOMAS KELLAHIN

and

COTTON, BLEDSOE, TIGHE & DAWSON
500 West Illinois, Suite 300
Midland, TX 79701
By: SUSAN R. RICHARDSON
and
RICHARD R. MONTGOMERY

FOR DAVID H. ARRINGTON OIL AND GAS, INC.:

LOSEE, CARSON, HAAS & CARROLL, P.A.
311 West Quay Avenue
Post Office Box 1720
Artesia, New Mexico 88211-1720
By: ERNEST L. CARROLL

(Continued...)

A P P E A R A N C E S (Continued)

FOR OCEAN ENERGY, INC.:

JAMES G. BRUCE, Attorney at Law
324 McKenzie
Santa Fe, New Mexico 87501
P.O. Box 1056
Santa Fe, New Mexico 87504

* * *

ALSO PRESENT:

SUZETTE JOHNSON
Paralegal
LOSEE, CARSON, HAAS & CARROLL, P.A.
311 West Quay Avenue
Post Office Box 1720
Artesia, New Mexico 88211-1720

* * *

STEVEN T. BRENNER, CCR
(505) 989-9317

1 WHEREUPON, the following proceedings were had at
2 11:52 a.m.:

3 CHAIRMAN WROTENBERY: Okay, if everybody's ready
4 we'll go back on the record, and at this point we'll take
5 up two cases that are being consolidated for the purpose of
6 hearing. One is Case 12,744, the Application of TMBR/Sharp
7 Drilling, Inc., appealing the decision of the Hobbs
8 District Supervisor denying approval of two applications
9 for permit to drill filed by TMBR/Sharp, Inc., in Lea
10 County, New Mexico.

11 Also Case 12,731, the Application of TMBR/Sharp
12 Drilling, Inc., for an order staying Division approval of
13 two applications for permit to drill obtained by David H.
14 Arrington Oil and Gas, Inc., in Lea County, New Mexico.

15 Both of these cases are being heard *de novo* by
16 the Commission upon the Application of TMBR/Sharp Drilling,
17 Inc.

18 And at this time I'll call for appearances.

19 MR. KELLAHIN: Members of the Commission, my name
20 is Tom Kellahin. I'm an attorney with Kellahin and
21 Kellahin of Santa Fe, New Mexico. I'm appearing today in
22 association with Mrs. Susan Richardson and Mr. Richard
23 Montgomery. They are Midland attorneys and they, in
24 association with me, represent TMBR/Sharp Drilling Company.

25 MR. CARROLL: Members of the Commission, my name

1 is Ernest Carroll of the Losee, Carson, Haas and Carroll
2 law firm of Artesia, New Mexico. I am here today on behalf
3 of David H. Arrington and Company.

4 CHAIRMAN WROTENBERY: Thank you, Mr. Carroll.

5 MR. BRUCE: Madame Chair, my name James Bruce of
6 Santa Fe. I'm here today on behalf of Ocean Energy,
7 Incorporated.

8 CHAIRMAN WROTENBERY: And do you each have
9 witnesses here today?

10 MR. KELLAHIN: I have two witnesses to be sworn.

11 CHAIRMAN WROTENBERY: Mr. Carroll?

12 MR. CARROLL: Ms. Wrotenbery, I have witnesses
13 here who were going to authenticate certain of our
14 exhibits. Because Counsel Richardson and I have entered
15 into an agreement where there will be no objection to any
16 of the exhibits, I think the necessity of calling my
17 witnesses has been negated.

18 The other problem is, my witnesses both have
19 airplane commitments to make within the next hour, so...
20 We had anticipated going on first, and so for those reasons
21 we have a stipulation as to the evidence, the exhibits, and
22 therefore I will not -- do not plan to call the witnesses
23 then.

24 CHAIRMAN WROTENBERY: Thank you, Mr. Carroll.

25 Mr. Bruce?

1 MR. BRUCE: I do not have any witnesses.

2 MR. KELLAHIN: I have two witnesses to be sworn.

3 CHAIRMAN WROTENBERY: Mr. Carroll -- Okay, would
4 the two witnesses for TMBR/Sharp please stand to be sworn?

5 (Thereupon, the witnesses were sworn.)

6 CHAIRMAN WROTENBERY: Thank you. Would you like
7 to make opening statements?

8 MR. KELLAHIN: Yes, ma'am, I would like to do so.

9 CHAIRMAN WROTENBERY: Okay, Mr. Kellahin?

10 MR. KELLAHIN: Madame Chairman, we distributed to
11 members of the Commission last week an exhibit book. There
12 will be some supplements to the book by stipulation.

13 In addition, that book has a poor copy of a
14 locator map. It is not very useful, and I have some
15 substitutes for it.

16 CHAIRMAN WROTENBERY: That would be great. It's
17 hard to tell the colors.

18 MR. KELLAHIN: This one has colors.

19 CHAIRMAN WROTENBERY: Good. Thank you.

20 MR. KELLAHIN: We're here before you this morning
21 to ask you to resolve a permitting dispute between
22 Arrington and TMBR/Sharp. That permitting dispute occurred
23 in July and August of last year. It occurred at the Hobbs
24 District Office.

25 The area involved involved four APDs; there were

1 two filed by Arrington and two filed by TMBR/Sharp. If
2 you'll look at the map I just handed out to you, I can
3 orient you as to the dispute.

4 If you'll look at Section 23, both Arrington and
5 TMBR/Sharp have proposed a west-half spacing unit for a
6 deep gas well. This is to be drilled to the Mississippian.
7 It would include all deep gas formations on 320 acres.

8 The disputed acreage is a question about what we
9 call the Stokes and the Hamilton leases. I'll explain that
10 to you in a moment, but you can see that in 23 the Stokes
11 Hamilton acreage is shaded in green.

12 I'm going to focus my comments and attention on
13 Section 25. In Section 25 there were two APDs filed, one
14 by Arrington and one by TMBR/Sharp. The Arrington APD was
15 a west-half deep gas spacing unit with a well up in Unit
16 Letter D of Section 25. The disputed acreage is the
17 northwest quarter. TMBR/Sharp proposed a north-half
18 orientation to the 320 with its well approximately the same
19 location. They're a hundred feet or more apart.

20 When we talk about another well, there's a well
21 in Section 24 with a standup west-half spacing unit.
22 That's the Blue Fin 24 well that was drilled and operated
23 by TMBR/Sharp, and you can see the location of that well.

24 We're asking you to void the Arrington APDs, and
25 at this point to confirm the TMBR/Sharp APDs that were

1 filed in August of last year.

2 On August 7th, TMBR/Sharp filed its application
3 to drill with the Hobbs Office for the north half of
4 Section 25, to dedicate that spacing unit to the Blue Fin
5 25 well. TMBR/Sharp controlled about 80 percent of the
6 working interest ownership in that spacing unit at that
7 time. Since then it's increased.

8 It included the northwest quarter, the disputed
9 acreage. We refer to that at TMBR/Sharp as the Stokes
10 Hamilton base lease.

11 TMBR/Sharp had obtained these leases from
12 Ameristate in July of 1998. The primary term for those
13 leases would have expired on June 6th of last year.

14 At the same time, on July 1st of 1998, TMBR/Sharp
15 entered into an operating agreement that included the
16 disputed lands and other lands. Pursuant to the operating
17 agreement, TMBR/Sharp perpetuated the disputed acreage by
18 drilling the Blue Fin 24 well, and you see that one on the
19 locator map. That's the west half of 24. They drilled
20 that well; it was completed for production on June 29th.

21 And as a result of that activity, TMBR/Sharp
22 contends that the Stokes Hamilton base lease that it
23 controlled in the northwest quarter was extended beyond the
24 primary term and that TMBR/Sharp took all necessary action
25 pursuant to that contract to extend their base lease.

1 The next important sequence is that the day after
2 TMBR/Sharp filed its application for permit to drill with
3 Mr. Williams's office, they received a letter on August
4 8th, denying their APD. And it was denied based upon the
5 fact that on July 18th, the Division's District Office had
6 approved Arrington's APD for what he calls the Triple
7 Hackle Dragon 25 Well Number 1, and that was to be drilled
8 with a spacing unit for the west half of Section 25.

9 Arrington's claim for a right to drill and
10 operate that well was predicated upon its assumption that
11 the oil and gas leases held by TMBR/Sharp over the disputed
12 acreage had expired and that Arrington now controlled some
13 top leases. He obtained some top leases through a man
14 named James Huff for the disputed acreage.

15 Without the claim of interest in the two top
16 leases, Arrington would have no interest in the west half
17 of Section 25. In addition, he would have had no interest
18 in the east half of 23. So it's critical to Arrington that
19 his top leases prevail.

20 The top leases were dated just two days after
21 TMBR/Sharp spudded the Blue Fin 24 well and were finally
22 placed of record in September, on September 6th of last
23 year.

24 Except for Arrington's action in claiming the top
25 leases for the disputed acreage, TMBR/Sharp's APDs would

1 have been approved. The practice is to approve the APDs
2 first in time, get your APD. There are no other deep gas
3 wells in the section, so whoever files first gets to select
4 orientation, gets their APD approved and goes about
5 drilling their well.

6 TMBR/Sharp appealed the District Division
7 Supervisor's action. He sent a letter. It's in the file
8 here, the August letter. He sent a letter in the file and
9 he says, We're denying you approval of your two APDs
10 because we have issued permits to Arrington ahead of
11 hearing. There was a hearing held before the Division on
12 September 20th of last year.

13 On December 13th of this year the Division
14 entered an order. It's R-11,700. It denied TMBR/Sharp's
15 Application, which would have been to terminate the
16 Arrington APDs and to then instate the TMBR/Sharp APDs.
17 They denied that.

18 And they stated in the findings -- and we have a
19 copy of the order in the exhibit book -- in Finding 24 they
20 said because Arrington had demonstrated at least a
21 colorable claim of title -- they call it a colorable claim
22 of title -- that would confer upon it a right to drill its
23 proposed well. No basis exists to reverse or overrule the
24 action of the District Supervisor in approving Arrington's
25 APDs.

1 They also found that -- in paragraph 21, that the
2 Division has no jurisdiction to determine the validity of
3 title or the validity or continuation in force and effect
4 of oil and gas leases and said the exclusive jurisdiction
5 is with the courts.

6 They then, in paragraph 25, said the Division
7 does have jurisdiction to revoke its approval of APDs in
8 appropriate cases.

9 What has happened now is, Arrington has prevailed
10 in the permitting dispute because the District and this
11 order has decided that Arrington was first in time and sad
12 some colorable claim of title as a result of the top
13 leases. The order, when you read it, gave TMBR/Sharp 10
14 days to go to district court.

15 In fact, TMBR/Sharp was already in district
16 court. They had filed the lawsuit in August, on August
17 24th of last year, and were litigating in Lea County with
18 Arrington to obtain a judicial determination, among other
19 things, of the validity of Arrington's claim of title to
20 the disputed acreage.

21 On December 24th of last year the District Court
22 entered a decision about the title dispute. They entered
23 an order holding that Arrington's assumptions were wrong
24 and entered summary judgment in favor of TMBR/Sharp.
25 Arrington's claim of a top lease, interest in the top

1 lease, had now failed. And TMBR/Sharp's position is that
2 its leases are valid -- that's what the court said -- and
3 we are now entitled to have our permit issued.

4 That case is proceeding to trial on other issues,
5 including the effects of Arrington's action and whether
6 that action results in damages, so it's on a damage claim
7 basis at this point.

8 At this point we have obtained from the District
9 Court a decision on the title, and we're now back before
10 the Commission to have you exercise your jurisdiction and
11 to issue to TMBR/Sharp approvals of the APDs they would
12 have otherwise have obtained back in August.

13 Pursuant to the order issued by the Division at
14 the Examiner Hearing, Arrington has failed now to
15 demonstrate colorable title and, except for that
16 demonstration before the Examiner, could never have gotten
17 their APDs approved.

18 We would now like you to issue our APDs without
19 interference from Arrington and from Ocean.

20 Let's talk a minute why Mr. Bruce is here on
21 behalf of Ocean. We think now is the time to do for us
22 what we would have obtained back in August, and that was
23 the opportunity to drill our well.

24 A decision by you today is a decision on whether
25 our permit has priority now because we have the better

1 title, we have that proof, and that decision will resolve
2 some compulsory pooling cases that had been pending before
3 the Examiner.

4 Those cases -- the first one was filed by
5 TMBR/Sharp on January 25th, and it was TMBR/Sharp's
6 application to complete its consolidation of the north half
7 of 25.

8 At this point I think their consolidation
9 represents more than 90 percent. Back in August they had
10 80 percent. But their pooling case at this point is to
11 consolidate the remaining interest in the north half of the
12 section. It does not attempt to pool Ocean. Ocean is not
13 a party or an interest owner in the north half of the
14 section.

15 Six months after this APD dispute started, Ocean,
16 on February 2nd, filed a compulsory pooling application for
17 the west half of Section 25. The Division, as a result of
18 a prehearing conference last week, continued the pooling
19 cases until this Commission could decide the permitting
20 dispute that occurred back in August of last year.

21 Ocean claims this: Ocean claims an interest in
22 the southwest quarter of Section 25. They base that claim
23 on the fact that in the southwest quarter, on July 23rd
24 last year, they obtained some farmouts of interest owners
25 in the southwest quarter. Those farmouts are going to

1 expire on July 1st of this year. So they had a one-year
2 window in which to act.

3 After they obtained the farmouts, they did not
4 oppose the well, they did not institute compulsory pooling,
5 they did not file for an application for a permit to drill
6 their well. What they have simply done is entered into a
7 letter agreement with Mr. Arrington, which Ocean accepted
8 on November 14th. And pursuant to that letter agreement,
9 Arrington has a 15-percent interest in the southwest
10 quarter.

11 It appears that Ocean is trying to substitute
12 themselves now for Mr. Arrington. They're going forward
13 with a well in the west half under the same name, using the
14 same location that Arrington attempted to achieve until his
15 title failed.

16 Interesting to note that Arrington had no
17 interest in the Ocean farmout acreage until Ocean accepted
18 that arrangement in November, on the 14th of November last
19 year. The letter agreement is not even dated until
20 September 12th.

21 Ocean's compulsory pooling application is simply
22 an attempt by Ocean to substitute itself for Arrington on
23 the APD that Arrington obtained back on July 18th. They've
24 used the same location and they're attempting to stand in
25 his shoes.

1 If the Ocean farmouts expire, it really is
2 Ocean's fault. They took no action to independently
3 develop the west half of the spacing unit, except to marry
4 themselves to Mr. Arrington. They've simply joined at the
5 hip with regards to that development and relied upon him to
6 accomplish it. They have not been successful.

7 They have not exhausted the opportunity to save
8 their farmouts. Back when TMBR/Sharp was worried about its
9 leasing arrangements and the top lease and whether its base
10 leases were still in effect, we went to district court in a
11 timely fashion, obtained an injunction and relief from the
12 District Court to save our leases. Ocean could do the same
13 thing, and they've not sought the opportunity to do that.

14 Our position here today, before you this morning,
15 is that Ocean should not be allowed to take advantage of a
16 wrong caused by Mr. Arrington. And that wrong was to stand
17 in the way of TMBR/Sharp, which was entitled to and should
18 have received its permits for approval of its spacing units
19 back in August of last year.

20 Our position is, Arrington's APDs are invalid,
21 cannot be transferred to Ocean, that Arrington's title has
22 failed, so that Ocean cannot be substitute for Arrington.
23 Except for Arrington's actions, TMBR/Sharp's APDs would
24 have been approved, and TMBR/Sharp would have drilled these
25 wells.

1 If you decide in our favor, there's no point in
2 going forward with the Ocean force pooling case, and that's
3 why those cases have been postponed until you make the
4 decision on how we issue permits at the District level for
5 APDs and, now that Arrington's title has failed, whether or
6 not we are next in priority and should be approved.

7 Our presentation this morning includes the
8 exhibits to support all those statements. We have a
9 chronology to present to our witnesses about the sequence
10 of activities to get to the conclusion I've just advanced.

11 Thank you.

12 CHAIRMAN WROTENBERY: Thank you, Mr. Kellahin.

13 Mr. Carroll?

14 MR. CARROLL: Thank you, Commissioner Wrotenbery.

15 I think we ought to put this hearing in a little
16 better perspective because, quite frankly, I'm a little
17 concerned about why we're even here.

18 First of all, some time ago -- There are actually
19 two permits, one in Section 23 and one in Section 25. Some
20 time ago, Arrington has put TMBR/Sharp on notice that it
21 wasn't going to drill either one of these APDs at the
22 present time. And in fact, we offered to turn the Section
23 23 APD back to or do an assignment of operatorship and give
24 it to TMBR/Sharp. We've never had an official response
25 other than, No, we're going to go to the Commission.

1 I would put the Commission on notice that with
2 respect to Section 23, that offer still stands. We will do
3 an assignment of operatorship to TMBR/Sharp, if that's what
4 they request.

5 Now, with respect to Section 25, Mr. Kellahin has
6 forgotten to inform the Commission that with respect to an
7 Application for an APD in Section 25, on March 20th, 2002,
8 they were granted one. There is an APD for the Section 25
9 well existing in TMBR/Sharp. They made an application for
10 it, it was signed by Paul Krautz -- Kautz, I guess, I'm not
11 sure if I'm --

12 CHAIRMAN WROTENBERY: Kautz.

13 MR. CARROLL: -- pronouncing it right -- Kautz?

14 MR. BROOKS: Kautz.

15 MR. CARROLL: Kautz, okay. K-a-u-t-z. It was
16 signed by him, and it's granted. So there is an APD in
17 existence for Section 25.

18 Now, with respect to this issue that Mr. Kellahin
19 has been bringing up, he has tried to make, I think, very
20 short shrift of the Commission policy with respect to
21 competing Applications for wells. He has basically stated
22 that this Commission only enforces a "first in time, first
23 in right" rule. That is not the rule before this
24 Commission.

25 In -- and I don't want to steal any of the steam

1 of Mr. Bruce, but in Order Number R-10,731-D -- this was in
2 an Application between KCS Medallion Resources and Yates
3 Petroleum Corporation -- this Commission, not the Division
4 but the Commission, ruled that the most important
5 consideration in awarding operations to competing interest
6 owners is geologic evidence as it relates to well location
7 and recovery of oil and gas and associated risk.

8 Now, what Arrington is willing to do with respect
9 to the TMBR/Sharp -- I mean with respect to its present APD
10 in Section 25 -- and you must also understand that one of
11 the things Mr. Kellahin left -- did not tell you, is that
12 first of all with respect to this Section 25, they have --
13 TMBR/Sharp seeks to have a north-half orientation of its
14 proration unit.

15 David H. Arrington controls acreage in the
16 northeast quarter. He has leases in the northeast quarter
17 presently.

18 And yet TMBR/Sharp is telling us -- and they have
19 told us -- and is telling this Commission, they don't
20 intend to force pool this proration unit.

21 I'm not sure exactly what the role is here.
22 We're playing games, is what I'm trying to, I guess, point
23 out to the Commission, is that we have a force pooling
24 statute that is mandatory, it says it shall. If you don't
25 control all the interest in a well, you shall force pool,

1 or you shall obtain a voluntary pooling agreement.

2 Well, I can tell you, there is no voluntary
3 pooling agreement between David Arrington in the northeast
4 quarter, in the north half of Section 25.

5 Now, what we do have is that David Arrington does
6 own part of the acreage, part of the farmout -- and that's
7 part of some of the agreements that we're going to put into
8 evidence -- in the west half of Section 25.

9 Now, what David Arrington is willing to do,
10 because there are now two competing force pooling
11 Applications before the Division, and this Commission
12 hearing ruling which I just recited to you and read from,
13 will control. And not only -- I read only one of them,
14 which was termed as the most important. There were a good
15 number of things that should be considered, and that the
16 Commission said and ranked them in importance. But again,
17 geology is the most important one, not first in time to get
18 an APD.

19 But Arrington is willing, and puts the Commission
20 on notice, that it will assign -- it has no intent at this
21 time to drill that well, but it has an APD, and it is
22 willing to do whatever the Division says, whoever the
23 Division grants the pooling Application for. If it's
24 TMBR/Sharp, David Arrington will assign that APD.

25 And of course, that's just a simple procedure, as

1 I think this Commission knows. You just do a change of
2 operatorship. Once you're the operator, you can pick any
3 location. But the point is, that location, because this is
4 -- we've got two competing -- it should be the subject of a
5 hearing. There are applications before the Division to
6 test that very aspect of it, the geological, which has been
7 stated by this Commission is the most important.

8 Now, so frankly, what are we proposing? This
9 Commission -- I frankly don't know where we stand.
10 Arrington has agreed to assign to whomever this Commission
11 says it should assign those two APDs. That's the key thing
12 here. Why do we need to go on any further?

13 Because first of all, what are we here for? We
14 are appealing two cases. First of all, 12,731, which was
15 an application for an order staying David H. Arrington from
16 drilling. David H. Arrington has told this Commission it
17 doesn't intend to drill. But it intends to abide by the
18 Commission's wishes as to where those APDs should go. That
19 settles the first application for appeal *de novo*.

20 The second one, TMBR/Sharp in 12,744 asks for it
21 to be granted APDs. First of all, Arrington with respect
22 to Section 23 has said, If you want it, TMBR/Sharp, you
23 just ask it, and if the Commission approves it we'll assign
24 operatorship. Well, we'll assign operatorship and then it
25 gets approved.

1 As to Section 25, the Division has already
2 granted an APD. It is Exhibit Number 17 of the exhibits
3 that TMBR/Sharp will be presenting here at this hearing.

4 So frankly, all of the wishes have already -- of
5 TMBR/Sharp, have already occurred. So where do we go from
6 here? I'm not exactly sure, but that is our position. All
7 we want this Commission to know by David Arrington's
8 presence is, first of all, we control an interest in this
9 area.

10 We have in Section 25, in the west half, we have
11 a farmout agreement. That was dated back in September of
12 2001. We had an AMI agreement with Ocean -- that is who
13 the farmout agreement is with -- that dates back into 2000.
14 We had a contractual arrangement with Ocean out in this
15 area. Ocean was getting leases, David H. Arrington was out
16 getting leases.

17 And now we have the competing pooling
18 Applications. And frankly, the Commission has got to get
19 around that hurdle. Which comes first, the chicken or the
20 egg?

21 In my opinion, and I think this is what David
22 Arrington is asking this Commission to do, is to state --
23 the Commission needs to stand by its ruling, its orders
24 that are on record, and throw out this notion of first in
25 time but go back to where it said, We're going to look at

1 competing applications based on geology, and that this
2 hearing needs to be sent back to await for the Division
3 Hearings to decide who should, in fact, be the operator and
4 which one of these competing applications should control
5 based on geology, and then after that David Arrington will
6 just -- is here as almost a passing party at this stage.

7 We will give and do what the Commission says with
8 these APDs, because there are parties out there that need
9 to drill and that want to drill, and we're willing to abide
10 by that.

11 Thank you.

12 CHAIRMAN WROTENBERY: Thank you, Mr. Carroll.

13 MR. KELLAHIN: May I respond to that?

14 CHAIRMAN WROTENBERY: Mr. Bruce first.

15 MR. KELLAHIN: Next in turn?

16 CHAIRMAN WROTENBERY: Pardon me?

17 MR. KELLAHIN: Next in turn.

18 CHAIRMAN WROTENBERY: That's right.

19 MR. BRUCE: I was planning on giving this as my
20 closing, Madame Chair, but since people are going into
21 detail I think it would help the Commissioners to know up
22 front what's really at issue here.

23 First, let me address one thing that Mr. Kellahin
24 said about Ocean Energy, and I'll get into this in a little
25 more detail in a minute.

1 Ocean does have a farmout in the southwest
2 quarter of Section 25. It expires July 1 of this year.
3 They have been informed in writing, it will not be
4 extended. So they need to drill a well. They need to
5 protect their rights.

6 The fact of the matter is, when they got that
7 farmout it was anticipated that David Arrington would be
8 the operator of the well and it would be a west-half well
9 unit. They didn't sit on their rights. David Arrington
10 got the APD approved, and it was moving forward toward the
11 drilling of the well until the lawsuit occurred.

12 Once that became an issue -- and of course this
13 isn't before you, but I will represent to the Commission
14 that Ocean sent out a proposal letter to all of the
15 interest owners, TMBR/Sharp, Arrington, in the northwest
16 quarter, proposed a well and filed its pooling application
17 for a west-half well unit. That's on the Division's docket
18 right now, because it was TMBR/Sharp's application for
19 force pooling of a north-half well unit. They didn't sit
20 on their rights, they just thought Arrington was going to
21 operate it. Once that became a legal issue in the District
22 Court, and probably in the court of appeals, Ocean had to
23 act. It's acting.

24 I would also say that all of these companies are
25 aware of what's going on in this area of Lea County. It's

1 a hot area. There has -- Commissioner Bailey knows, there
2 has been a lot of money paid for oil and gas leases at the
3 state lease sales over the last couple of years in this
4 Townsend area, in the Lovington area.

5 Believe me, if TMBR/Sharp had attempted to move
6 forward with the drilling of a well last year, last fall,
7 Ocean would have done something about it. These parties
8 are out there protecting their rights and the rights of
9 their royalty owners.

10 As I said, Ocean has a farmout and the working
11 interest in the southwest quarter of Section 25. That
12 farmout expires July 1. In order to develop that property,
13 Ocean has applied to the Division for an order pooling
14 mineral interests in the west half of that section. That's
15 Case 12,841 on the Division's docket. TMBR/Sharp applied
16 in Case 12,816 for an order pooling the north half. These
17 matters were set for hearing on the last Division docket.
18 Currently, they've been continued to the April 4th docket.

19 TMBR/Sharp's argument is essentially that first
20 the District Court has ruled in its favor in the title
21 dispute with Arrington. As a result, TMBR/Sharp is now
22 entitled to have its APDs issued by the Division or the
23 Commission. And therefore, because they're entitled to a
24 north half APD, the west half is not available for
25 compulsory pooling.

1 Frankly, if this argument is accepted by the
2 Commission -- if you say, TMBR/Sharp, go ahead and drill --
3 it means that the force-pooling states in this state have
4 become absolutely meaningless.

5 That's the case, because what Mr. Kellahin is
6 saying in so many words is, once an APD is issued, that
7 determines who the operator is, what the well unit is,
8 standup or laydown, and it determines the well's location,
9 and nobody can challenge it, nobody, because an APD is
10 issued. That's contrary to the law and Division and
11 Commission precedent.

12 The Oil and Gas Act requires that there are
13 separately owned tracts of land in a well unit or undivided
14 interest in the well unit -- and I've handed you the
15 statute, Number 70-2-18 -- it says, It shall be the
16 obligation of the operator to obtain voluntary agreements
17 pooling those lands or an order of the Division pooling
18 those lands. It doesn't say anything about an APD. It
19 says order of the Division pooling those lands.

20 Secondly, if you go to the primary pooling
21 statute, Section 17, it says, All orders effecting pooling
22 shall be made after notice and hearing. Not the filing of
23 an APD which goes down to the District Office and is
24 approved, who knows how. It says notice and hearing.

25 And it says, Each order shall describe the lands

1 included in the unit designated thereby. Not by the APD,
2 but by the pooling order.

3 And it says it shall designate an operator of the
4 unit. Once again, it doesn't reference an APD. Nobody
5 cares about an APD. I hate to say they're meaningless, but
6 at this point they are, when there are contested issues of
7 fact about how the well unit should be oriented.

8 The final matter I've handed you are portions of
9 an order issued by the Commission a few years ago. And
10 I'll tell you this, it was a very hotly contested case
11 between KCS Medallion and Yates Petroleum.

12 If you go to page 9 of that order, the Commission
13 went down a list of things that should be considered in
14 competing pooling cases. As Mr. Carroll's brief just
15 cited, it says the most important consideration in awarding
16 operations to competing interest owners is geologic
17 evidence as it relates to well location and recovery of oil
18 and gas and associated risk.

19 I submit to you that the proper place for that
20 determination is in a contested hearing before the Hearing
21 Examiner and, if necessary, an appeal to the Commission.
22 Not by filing an APD.

23 Ocean is ready to go before the Division and put
24 forward its geology to show why it should be a west-half
25 well unit. It goes through these other factors, good-faith

1 negotiations prior to force pooling, risk factor, the
2 capability of parties to operate. And last, and least, in
3 the absence of other compelling factors, working interest
4 control.

5 But what they're talking about there is, you've
6 got to look at the geology, you've got to look at the good-
7 faith negotiations, and that's what's required for a force-
8 pooling hearing. Not with -- Once again, this order says
9 nothing about APDs. It doesn't say first in time, first in
10 right, or anything else. It never once mentions an APD,
11 but it does mention the evidence presented at a normal
12 pooling hearing.

13 There are no voluntary agreements covering either
14 the west-half well unit at this point or the north-half
15 unit. That's why a pooling is required.

16 Ocean s ready to present evidence as to why the
17 geology favors a west-half well unit. I presume TMBR/Sharp
18 has geology as to why it should be a north-half unit. You
19 can't tell that from the APD.

20 However, instead of having the Division review
21 the evidence in two competing pooling applications,
22 TMBR/Sharp just wants you to approve the APD, and we're out
23 of here. That's just not proper. The Division must still
24 examine the evidence presented.

25 I think TMBR/Sharp's argument also ignores the

1 fact that the order of the District Court regarding title
2 -- and I don't know how that's going to end up, but that's
3 appealable. I'm sure it will go up to the Court of Appeals
4 and maybe the Supreme Court. At this point, I do know that
5 Ocean has the right to drill that well up there. They've
6 got a farmout. And Ocean is prepared to pursue its rights.

7 In short, any dispute over the APD or APDs is
8 subsidiary to a pooling order entered by the Division. The
9 pooling cases are filed, they're set for hearing next week,
10 let them go forward.

11 At such time as a pooling order is issued by the
12 Division or on appeal by the Commission, then the
13 Commission can decide which APD to validate.

14 Basically, I think this is the tail wagging the
15 dog. As I now understand it -- I've seen the exhibit
16 booklet -- we've got an approved APD for David Arrington,
17 we've got an approved APD for TMBR/Sharp. And again I will
18 represent to the Commission that Ocean is filing its own
19 APD. Based on the fact that these other two are approved,
20 I presume this third one by Ocean will be approved.

21 If you go back to the pooling statute, it says
22 what the Division and the Commission must do is avoid the
23 drilling of unnecessary wells. That's in subsection C of
24 70-2-17, bottom of the first paragraph, the Division, to
25 avoid the drilling of unnecessary wells, shall pool the

1 lands at issue. That cannot be done without pooling
2 hearings. It can't be done simply by the filing of an APD.

3 What do I think should happen? I think the
4 Division and the Commission should either approve all the
5 APDs or deny them all. It doesn't matter, but hold in
6 abeyance, in essence, pending a force-pooling hearing.
7 Then on appeal of the pooling order, the Commission can
8 decide which well unit orientation is correct, who should
9 operate it, and where the well should be located. And at
10 that time, one of the parties will win, and there's nothing
11 they can do about it.

12 But this is not the proper forum. And my
13 suggestion here, frankly, I don't even see the need for
14 testimony. Hold it in abeyance, continue this for a couple
15 of months and let it come forward up through the force-
16 pooling process, and make your decision at that time.

17 Thank you.

18 CHAIRMAN WROTENBERY: Thank you, Mr. Bruce.

19 Mr. Kellahin, did you want to say something more?

20 MR. KELLAHIN: Yes, ma'am, please.

21 Members of the Commission, this is a case of
22 first impression. I've been practicing before you for more
23 than 30 years. I cannot find a case like this. I was in
24 the Yates case, I did the Yates case that Mr. Bruce wants
25 to rely on. I was in that case. And that case involved

1 contemporaneous competing pooling cases between the two
2 operators, and the order before the Commission simply set
3 forth a method by which you decide that dispute.

4 What's occurred here is, but for the wrongful
5 actions of Arrington, TMBR/Sharp would have received its
6 APD approval in August of last year, some six months before
7 this pooling proceeding was initiated by Ocean. There's a
8 substantial difference in time.

9 When I have an open section with no spacing units
10 in it, I get to decide the orientation when I file my APD.
11 There's no examination by the District Supervisor of the
12 geology or any of that. You simply file it and get it
13 approved if you fill in the blanks right, and on Form C-102
14 it calls it a declaration. You dedicate a certain spacing
15 unit orientation and a certain amount of acreage. It's
16 right on the form.

17 There's absolutely no case I can find like this
18 where a party waits six or seven months later to raise the
19 arguments Mr. Bruce has raised about how we have dealt
20 historically with contemporaneous pooling disputes. This
21 well would have been drilled by now, except for the
22 wrongful actions of Mr. Arrington in blocking the
23 TMBR/Sharp applications.

24 The pooling statute, as we all should know, and I
25 think do know, allows you to pool before or after you drill

1 the well. It says so right in the statute. It is not
2 unusual to have pooling orders issued after the fact.

3 In fact, I think that was TMBR/Sharp's intention.
4 They had 80-plus percent of the north half. Ocean's not
5 involved in it. Mr. Arrington has no interest of record in
6 the north half. They're proceeding under the presumption
7 they'll just drill and carry the rest. It happens, and
8 they intended to do it in that fashion. Had he not blocked
9 their APD, we wouldn't be here talking about it.

10 We've followed the outline and guidance the
11 Division established in Mr. Brooks' order about how you get
12 an APD. He said the APD approval is based upon a
13 representation of color of title. That title has failed
14 for Mr. Arrington. We would have gotten our permit six
15 months ago, had it not been for his wrongful action.

16 Ocean wants to step in that position and take
17 advantage of the wrongful action and now turn this into a
18 contested technical dispute on geology. That's not the
19 standard, I can find no cases like that anywhere in any of
20 your books. I've never done one like that.

21 What we're looking for is relief from Arrington's
22 actions that he had undertaken some six months ago and for
23 which we are entitled to relief. We have followed the
24 guidance of the Division Examiner order in seeking relief
25 in district court as to the title, and we invite Ocean to

1 do the same thing. They may have an expiring farmout, but
2 there is nothing that precludes them from going to district
3 court, like we were forced to do, and getting declaratory
4 relief from their problem. We didn't create it, it's their
5 problem. There's a remedy for them, and it's not here.

6 We are back before this agency to make a decision
7 of first impression about what it means to have an
8 application for permit to drill.

9 MR. CARROLL: Ms. Wrotenbery, may I have just two
10 sentences?

11 CHAIRMAN WROTENBERY: Certainly.

12 MR. CARROLL: In response to the very lengthy
13 rebuttal that Mr. Kellahin made, I direct the
14 Commissioners' attention to the second page of the APD, and
15 this is the --

16 CHAIRMAN WROTENBERY: Is this --

17 MR. CARROLL: -- well dedication plat.

18 CHAIRMAN WROTENBERY: Which exhibit?

19 MR. CARROLL: This is Exhibit 17.

20 CHAIRMAN WROTENBERY: I don't have it yet.

21 MR. CARROLL: Well --

22 CHAIRMAN WROTENBERY: In --

23 MR. CARROLL: -- this is the standard form, and
24 all I want to call attention to is some language that I
25 think reflects on what Mr. Kellahin very lengthily tried to

1 state.

2 It says, "No allowable will be assigned to this
3 completion until all interests have been consolidated or a
4 non-standard unit has been approved by the Division." I
5 think that rebuts just about everything that Mr. Kellahin
6 made in his last comments.

7 MR. KELLAHIN: It doesn't say you can't drill.
8 You get an allowable after you drill the well.

9 MR. CARROLL: But then why drill if it you don't
10 get an allowable, Mr. Kellahin?

11 CHAIRMAN WROTENBERY: Okay, thank you, we
12 understand the different perspectives.

13 Mr. Bruce?

14 MR. BRUCE: Same thing. And Madame Chair, I have
15 obligations to get out of town, I may not be here all day.
16 So if I suddenly disappear I beg the Commission's
17 permission to do that.

18 CHAIRMAN WROTENBERY: Okay, we understand.

19 MR. BRUCE: I would say -- and there is -- I
20 believe Mr. Kellahin is right, there is no written order of
21 the Commission in a similar situation at this time.

22 I would refer the Commission, however, to Case
23 11,887. In that case, Santa Fe Energy Resources filed an
24 Application to pool a standup unit, just like Ocean is
25 doing today. The interest owner being owner, the only

1 interest owner, was Phillips Petroleum Company. Phillips
2 Petroleum has controlled, in effect, the north-half unit,
3 went out after getting a pooling application and filed and
4 APD for a north-half unit. And they said, You can't move
5 forward. This acreage is dedicated already, you can't
6 force-pool our acreage because we've dedicated a north-half
7 unit.

8 Now, although there was no written decision,
9 there was a motion to dismiss filed by Phillips Petroleum
10 in that matter, and the Division Hearing Examiner, Mr.
11 Stogner, denied it. He said APD is meaningless and allowed
12 the Santa Fe Energy pooling case to proceed. Now, the
13 parties eventually settled their differences, but that's as
14 close as you're going to find to a decision on this matter.

15 But clearly the Division recognized at the time
16 that merely having an APD doesn't control over a force
17 pooling. An APD is an OCD form.

18 What you have here is a statute enacted by the
19 Legislature, and we believe that controls.

20 Thank you.

21 MR. KELLAHIN: I did the Phillips case --

22 CHAIRMAN WROTENBERY: Thank you, Mr. Bruce.

23 MR. KELLAHIN: -- would you like to hear the rest
24 of the story?

25 CHAIRMAN WROTENBERY: Okay, please go ahead.

1 MR. KELLAHIN: After Phillips is served with the
2 force-pooling application, and after the fact, Phillips
3 races out and gets an APD approved in an effort to
4 circumvent and avoid the force-pooling. Mr. Stogner says
5 after you've been served you can't engage in that kind of
6 gamesmanship, and therefore he denied their ability to
7 avoid force pooling in that fashion.

8 There's no case I can find where the APD activity
9 that was blocked by Arrington occurred some seven months
10 prior to the pooling dispute.

11 CHAIRMAN WROTENBERY: Thank you, Mr. Kellahin.

12 Mr. Bruce, since you said you may need to duck
13 out, may I ask you one question related to Section 17 and
14 paragraph C, and it's the -- these are long sentences; it
15 looks like it's the second sentence: "Where, however, such
16 owner or owners have not agreed to pool their interests,
17 and where one such separate owner, or owners...has the
18 right to drill has drilled or proposes to drill a well on
19 said unit to a common source of supply, the division, to
20 avoid the drilling of unnecessary wells or to protect
21 correlative rights, or to prevent waste, shall pool all or
22 any part of such lands or interests or both in the spacing
23 or proration unit as a unit."

24 My question is about the part that describes, you
25 need to have a right to drill, to have drilled or to

1 propose to drill a well on said unit, and how that applies
2 in a case like this one where Ocean has an interest in the
3 southwest quarter and has filed a pooling application
4 involving a well in the northwest quarter.

5 MR. BRUCE: Okay.

6 CHAIRMAN WROTENBERY: What can you tell the
7 Commission about the law in New Mexico on --

8 MR. BRUCE: Okay, drilling --

9 CHAIRMAN WROTENBERY: -- the right to drill a
10 well on acreage in which the applicant does not have an
11 interest?

12 MR. BRUCE: A couple of things, Madame Chair.
13 First of all, for that matter -- Let me digress a minute
14 first.

15 If on appeal it's determined TMBR/Sharp has also
16 proposed drilling in the northwest quarter. All of the
17 parties here have proposed drilling in the northwest
18 quarter. And if TMBR/Sharp is ultimately not successful on
19 its appeal on the title dispute, it won't own an interest
20 in the northwest quarter either. I just want to point that
21 out.

22 But as to drilling, there are two things. The
23 statute says "drill a well on said unit". It doesn't
24 restrict -- Subparagraph C, first paragraph, third line
25 from the bottom, "proposes to drill a well on said unit".

1 It is not restricted to on said unit on a lease owned by
2 the operator.

3 Secondly, if you go down to the next paragraph,
4 to the third sentence, it says "All operations for the
5 pooled oil or gas, or both, which are conducted on any
6 portion of the unit shall be deemed for all purposes to
7 have been conducted upon each tract within the unit by the
8 owner or owners of such tract." I think that clearly
9 evidences that unit operations anywhere are considered
10 operations on your tract. Since Ocean clearly owns an
11 interest in the west half well unit, operations on the
12 northwest quarter would be considered operations on its
13 tract.

14 There has been no court case in this state, but
15 there is Oklahoma law, and Oklahoma has a similar pooling
16 statute to New Mexico. If you look at the statute, it's
17 quite similar with respect to how pooling decisions are
18 made, and Oklahoma case law says, in effect, that you are
19 allowed to drill on somebody else's tract, because if
20 you're not it would do away with the pooling statute.

21 How could you -- You would be restricted to
22 drilling on your tract, even if a better location was on
23 another tract, which everybody in this case thinks is the
24 case. And if you couldn't drill on that other tract that
25 could lead to waste, which is the primary mandate of this

1 Commission, to prevent waste.

2 There is also Louisiana case law. I don't have
3 the cite. I believe the case is *Nunez vs. Wainoco Oil and*
4 *Gas*, which in that case it was -- Nunez said, Wainoco Oil
5 and Gas, you're drilling on my tract despite the pooling
6 order that occurred, and sued for trespass.

7 And the court in that case -- and I can get you
8 the cite; it would take me an hour or two -- said that, No,
9 once there's a pooling order issued by the commission in
10 Oklahoma, the Conservation Commission, operations on a
11 separately owned tract cannot be trespassed because you are
12 authorized by the state to enter on that tract and drill.
13 And furthermore, in deciding that case the Louisiana court
14 said that Louisiana's conservation statutes were fashioned
15 after New Mexico's statutes.

16 So I think based on those two cases, the Oklahoma
17 case and the Louisiana case, Ocean has the perfect right to
18 drill on the northwest quarter.

19 CHAIRMAN WROTENBERY: Okay, Mr. Kellahin or --

20 MR. KELLAHIN: Thank you.

21 CHAIRMAN WROTENBERY: -- Mr. Carroll, would you
22 like to comment on that particular point?

23 MR. KELLAHIN: Louisiana --

24 MR. CARROLL: I agree with Mr. Bruce --

25 MR. KELLAHIN: Louisiana is a foreign country.

1 Lord knows what they do down there. There is no case law
2 in New Mexico on the issue of whether you drill on your own
3 lease. Mr. Brooks and Mr. Bruce and I chased that money
4 last Monday at the prehearing conference on the pooling
5 cases, and Mr. Brooks said he'd done research and couldn't
6 find any law in New Mexico, and I told him there wasn't
7 any.

8 If you'll look for a moment at the pooling
9 statute and you look at your own Form C-102, it says well
10 location and acreage dedication plat. You're dedicating
11 the acreage when you file this thing, and you filed with
12 your application for permit to drill.

13 And the first sentence of the pooling statute,
14 70-2-17, says whenever the operator of any well, oil or gas
15 well, shall dedicate lands, you dedicate it by means of the
16 C-102. And then your obligation under the rest of the
17 pooling statute is to consolidate it. And you can
18 consolidate it before or after.

19 And but for Arrington, we would have proceeded
20 with the drilling of the well, and then we could have
21 consolidated after the fact. That's permitted.

22 CHAIRMAN WROTENBERY: Okay, thank you.

23 And I think it's time for the Commission to take
24 a lunch break. So we'll do that now and start back up at a
25 quarter of 2:00. Will that give everybody plenty of time?

1 Thank you very much.

2 (Thereupon, a recess was taken at 12:50 p.m.)

3 (The following proceedings had at 1:48 p.m.)

4 CHAIRMAN WROTENBERY: We'll go back on the
5 record.

6 Mr. Bruce, are you standing for --

7 MR. BRUCE: I wonder if I could make one request.
8 The Commission's last question to me was on the issue of
9 drilling on a tract that you didn't own --

10 CHAIRMAN WROTENBERY: Uh-huh.

11 MR. BRUCE: -- and I scurried back to my office,
12 and I will copy this one page and give it to all the
13 counsel, including Mr. Ross, so that they have the cites.
14 But most of these cases take a step back. I mean, I don't
15 think there's any question that if the parties enter into a
16 voluntary agreement they can drill on whosever tract it
17 is, and I submit that the effect of a force-pooling order
18 is substitute for a voluntary agreement, and therefore it
19 should allow drilling on somebody else's tract.

20 Most of these cases have come up where somebody
21 drilled on another person's tract, and the owner of the
22 drill site sued the operator for trespass, saying he didn't
23 have the right to go on that tract. And the cases
24 uniformly hold -- there's Oklahoma cases, Louisiana cases
25 and North Dakota cases that basically say that the property

1 law of trespass is superseded by a pooling order.

2 And I will -- rather than cite those cases now on
3 the record, I will run upstairs and copy it and leave it
4 for all counsel and for the Commission.

5 CHAIRMAN WROTENBERY: Thank you, Mr. Bruce.

6 MR. BRUCE: And with that, you probably won't
7 hear from me again today.

8 CHAIRMAN WROTENBERY: Thank you.

9 Mr. Kellahin, are you ready to proceed here?

10 MR. KELLAHIN: We're ready to proceed with our
11 witness.

12 CHAIRMAN WROTENBERY: Okay, please call your
13 first witness.

14 MR. KELLAHIN: I'd like to turn this over to
15 Susan Richardson.

16 MS. RICHARDSON: Thank you, Madame Chairman. If
17 we could call Mark Nearburg, please.

18 MARK K. NEARBURG,
19 the witness herein, after having been first duly sworn upon
20 his oath, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. RICHARDSON:

23 Q. Mr. Nearburg, would you please state your name?

24 A. Mark Nearburg.

25 Q. And who are you affiliated with?

1 A. Ameristate Oil and Gas.

2 Q. And if you could give us a little background
3 about yourself, where did you grow up?

4 A. I was born and raised in Roswell, New Mexico,
5 grew up there. I went to school at Texas A&M University
6 and received an undergraduate degree in economics. I
7 received a graduate degree in communication from the
8 University of Texas, then I returned to Roswell and was
9 trained there as a landman by a man named Don Blackmore.

10 Q. Okay. And what kind of work have you been
11 engaged in for the last 20, 25 years?

12 A. Land work in the oil and gas business, first
13 checking court records, then taking leases, then doing
14 industry agreements, and now I run my own company.

15 Q. And you're aware that the matter before the
16 Commission *de novo* today involves portions -- or actually
17 all of Section 23, 24 and 25 in Lea County, New Mexico?

18 A. Yes.

19 Q. Okay. And could you please explain how you and
20 your group, including TMBR/Sharp Drilling, the operator,
21 came to be involved in this part of New Mexico in
22 developing oil and gas prospects?

23 A. For the 20-plus years I've worked in oil and gas,
24 95 percent of my work has been in Eddy, Lea and Chaves
25 Counties, New Mexico.

1 This project began in the late 1980s as a
2 geologic study. In 1991 we purchased our first leases on
3 the west side of this township. We continued to drill
4 wells, take leases and understand the township.

5 In 1994, we purchased the first leases in
6 Sections 23 and 24, among others, that are directly related
7 to what we're here for today.

8 Q. And Mr. Nearburg, I think you prepared an exhibit
9 for the Commission, which is Number 16, the other map that
10 we have?

11 A. Yes.

12 Q. Okay. And while you're testifying, if you could
13 just make reference to that map and to where the sections
14 are located?

15 A. Okay. We took the first leases in 1994 from
16 Stokes Hamilton and other mineral owners in Sections 23,
17 24, 25, 26 and 13.

18 In 1997 we sold the first stage of the prospect
19 to TMBR/Sharp Drilling, Inc. They proceeded to drill the
20 well highlighted by a red dot in the southwest quarter of
21 Section 23. This well was drilled to test the Atoka and
22 Morrow formations.

23 We followed that with a well in the northwest
24 quarter of Section 26, indicated by the red dot. Based on
25 the results of the first well, we took that well down to

1 the Mississippian formation to begin evaluating the deeper
2 zones which are the subject of this hearing.

3 Following that, we drilled the well in the
4 northeast quarter of Section 23, and those wells were both
5 drilled on north-half units. The Number 1 well at that
6 time had been plugged back to a zone on less than 320-acre
7 spacing, so we were free to drill the Number 2 well, again,
8 down to the Mississippian. Okay.

9 Following that, in -- sometime in 1999, the well
10 that is in the southeast quarter of Section 23 -- that's
11 the old Del Apache Stokes well -- we attempted to re-enter
12 that well and drill down to the Mississippian. It had not
13 been drilled deep enough to give us an evaluation of the
14 Morrow or the deeper zones. We attempted to re-enter that
15 well and deviate it to the bottomhole location indicated on
16 the map, but mechanically it was unsuccessful, we were not
17 able to do that.

18 Q. Mr. Nearburg, let me interrupt you just a moment.
19 The area on Exhibit 16 which you have shaded in orange --

20 A. Uh-huh.

21 Q. -- what was that prospect known as among you and
22 the other investors?

23 A. That was known as the Edsen Ranch prospect.

24 Q. Okay, and that involved all of Section 23 and the
25 north half of Section 26?

1 A. That's right.

2 Q. Okay. And then the area that you have shaded in
3 blue, what did you all call that prospect?

4 A. We called that the Big Tuna prospect. And
5 following up the geologic work we had done, we purchased --
6 I'm going to go back to the early 1990s. We had done the
7 geologic work, then we started drilling. We incorporated
8 2-D seismic into our evaluations.

9 In 1999 to 2000 we incorporated 3-D seismic into
10 our evaluations. The result of that was the drilling of
11 the Blue Fin well on a west-half Section 24 unit, and
12 that's the red dot in the southwest quarter of Section 24.

13 Q. Okay. And the Big Tuna prospect that you all
14 began developing in the early 1990s, you and your company
15 and TMBR/Sharp Drilling and others entered into an
16 agreement in 1998?

17 A. Uh-huh.

18 Q. And I believe that's Exhibit 7 in the black
19 volume.

20 You also entered into an operating agreement at
21 the same time involving the Edson Ranch, which is the area
22 shaded in orange on Exhibit 16?

23 A. Uh-huh, yes.

24 Q. Thank you. The focus of the Big Tuna prospect
25 was on Section 24 and the north half of Section 25?

1 A. That's correct, we -- after evaluating the 3-D,
2 the priority of operations were to drill the southwest
3 quarter of 24 on a west-half unit and a well located in the
4 northwest quarter of Section 25 on a north-half unit. We
5 intended to follow that up with a well on the east half of
6 Section 23 with a well in the northeast quarter.

7 Q. And the Blue Fin Tuna was drilled when?

8 A. The Blue Fin was drilled in May and June of last
9 year.

10 Q. Okay, actually spudded March 29th, 2001?

11 A. Okay.

12 Q. Okay. I think in front of you is a time line
13 which we have marked as Exhibit 15.

14 A. Okay.

15 MS. RICHARDSON: There's several pages here, but
16 if the Commissioners would turn their attention to the
17 outline that says "Timeline of Events Relating to Section
18 25", if you can find that in the packet, which is Exhibit
19 16, it's probably the last three pages. Thank you.

20 Q. (By Ms. Richardson) In order to get ready and
21 bring us to the time that the Blue Fin was drilled in March
22 of 2001, you said that you all had geological information
23 you relied on, correct?

24 A. Yes.

25 Q. Who were the geologists that you got involved in

1 the project?

2 A. Originally John Herbig had done our mapping on
3 the west side of the township. In 1995 I started working
4 with Louis Mazzullo, and at that time we had both Louis
5 Mazzullo and John Herbig begin work in the lands in the
6 Edson Ranch and the Big Tuna prospect.

7 Q. Did you also purchase 2-D seismic?

8 A. Yes, we did.

9 Q. And then at some point did you acquire 3-D
10 seismic?

11 A. Yes, we did.

12 Q. Okay, and what did you do with your 3-D seismic?

13 A. We employed Ed Luckabaugh in Midland to evaluate
14 the 3-D, interpret it, process it, and give us his
15 interpretation of the 3-D seismic. We coordinated that
16 with work that Louis Mazzullo had done on the subsurface
17 geology as a result of the wells we had drilled. This was
18 prior to the Blue Fin.

19 We also had the 3-D seismic independently
20 interpreted by Robert Scolman in Denver, Colorado.

21 Q. Okay. And then, of course, the Blue Fin was
22 drilled, so you got additional information from the logging
23 of that well?

24 A. Yes.

25 Q. From the time you all started putting this

1 prospect together in 1991, to the time we sit here in 2002,
2 how much money has your group spent on developing this
3 acreage which is represented by 23, 24 and 25?

4 A. We have spent approximately \$7.5 million.

5 Q. And was it the group's intention after drilling
6 the Blue Fin to immediately proceed to drill a well on
7 Section 25 and a well on Section 23?

8 A. Yes, we felt it prudent to evaluate the
9 production from the Blue Fin and proceed with drilling the
10 northwest quarter of Section 25 on a north-half unit and
11 then the east half of Section 23 with a well in the
12 northeast quarter.

13 Q. I want to take you a little bit back into time,
14 to put into context the Arrington Oil and Gas and Ocean
15 Energy involvement in this matter.

16 Prior to drilling the Blue Fin, in the fall of
17 2000, was your group looking for additional investors in
18 order to participate in these drilling projects on 23, 24
19 and 25?

20 A. Yes, TMBR/Sharp was the operator, and their
21 partners had the majority working interest in this project.
22 Some of the TMBR/Sharp investors were concerned about the
23 risk of drilling. They did not want to take that risk.
24 And we were put in the position, then, of having to find
25 other investors to carry forward with the drilling of the

1 Blue Fin well.

2 Q. Okay. And did you have occasion to show this
3 prospect and give fairly detailed information about it to
4 Ocean Energy?

5 A. Yes, we did, on several occasions, sometimes at
6 our calling Ocean and talking to them about it, sometimes
7 when they called us and asked us to see more information,
8 we would show them the prospect and go through it with
9 them. Each time, they declined to participate in the
10 prospect because of the risk associated with where we were
11 drilling.

12 Q. What's the earliest date you can recall showing
13 the prospect to Ocean?

14 A. On meetings in which I was involved, in the fall
15 of 2000.

16 Q. Okay. And then in January of 2000, did you
17 provide Mr. Maney, who's a landman with Ocean, a land map
18 of the Big Tuna area?

19 A. Yes, they have a prospect exposition in Houston
20 each year that's put on by the Independent Petroleum
21 Association of New Mexico and the American Association of
22 Petroleum Landmen. We were going to Houston for that
23 exposition, and Ocean called and asked if they could have a
24 land map of our land position under this prospect.

25 I forwarded, in the first week of January, I

1 believe, a land map to Mr. Maney outlining where we held
2 acreage.

3 Q. Did that indicate to you that Ocean was
4 interested in participating with the group?

5 A. Yes, they specifically stated that they were
6 interested in reviewing the prospect again and that they
7 wanted to see it before we exhibited it at the exposition,
8 the reason being they wanted a private showing to evaluate
9 the prospect before it was shown publicly.

10 Q. Okay. And did you give them a private showing at
11 the NAP conference where you showed them science, maps,
12 gave them any information that they asked for, basically?

13 A. Well, the showing was actually in their offices.
14 It was not at the convention, it was in Ocean's offices in
15 Houston the day before the convention started.

16 Q. Okay. Well, tell us what you talked about, what
17 you showed them.

18 A. We talked about -- Well, let me just point out on
19 this map, Ocean had drilled a well targeting the formation
20 that was targeted in the Blue Fin, and they drilled that
21 well up in Section 10. And that was a good well, and for
22 that reason they were interested in our project.

23 We showed them our regional geology, we talked
24 about the setting and how we saw this location on a
25 regional basis.

1 Their reaction was that we are low regionally, by
2 dip, to their location in Section 10, and they felt that we
3 would be wet and not have a reservoir in our well. They
4 felt the risk of being low and wet regionally precluded
5 them from pursuing the prospect.

6 Q. In discussing the prospect with them, did you
7 specifically pinpoint for them the Blue Fin 24 location,
8 the Blue Fin 25 location and the Leavelle location on
9 Section 23?

10 A. Yes, we identified each of those three locations
11 and the proration units upon which we wanted to drill them.

12 Q. And they concluded that they didn't want to
13 participate because they thought you were too low and too
14 wet?

15 A. Yes.

16 Q. At any time did you ask them to sign a
17 confidentiality or a noncompete agreement in exchange for
18 viewing your scientific information?

19 A. No, we did not, we did not. Normally in dealings
20 with the industry, that's not necessary.

21 Q. Okay. Did they disclose to you that they had any
22 AMI with David Arrington or that they themselves were
23 pursuing farm-ins in this same area? Did they tell you
24 that?

25 A. No, they did not.

1 Q. If they had told you they were independently
2 pursuing acreage in the area, didn't have it but were
3 pursuing it, would you have showed them all of your
4 scientific information and discussed the prospect with
5 them?

6 A. Probably not without a confidentiality agreement
7 and noncompete.

8 Q. Did the information that was available about the
9 prospect at the NAP convention, not the private showing
10 that Ocean got but the public showing at the NAP
11 convention, did anyone from Mr. Arrington's business or
12 company have occasion to drop by your booth and look at
13 that?

14 A. There were approximately 8000 people at that
15 conference, and I was showing five different prospects in
16 our booth, and I'm sure that Arrington's employees had
17 occasion, if they wanted to, to come by and look, but I do
18 not specifically remember them coming by.

19 Q. Okay. Do you know if --

20 A. I did not make a presentation to them.

21 Q. Do you know if David Arrington or some people
22 from his company attended the conference?

23 A. I believe at least one of his geologists was at
24 the conference.

25 Q. Okay. I want to talk just a few minutes about

1 the Stokes Hamilton leases and that acreage position in
2 Sections 23, 24 and 25. You were the one, or someone
3 working with you, obtained leases from the Stokes Hamilton
4 group?

5 A. Yes.

6 Q. First time, in 1994?

7 A. Yes.

8 Q. Okay. If you'll look with me at Exhibit 6 in
9 your book, there are two leases here. One is a lease
10 between Ms. Stokes and Ameristate Oil and Gas Company.
11 That's your company?

12 A. Yes.

13 Q. Okay. This was really the replacement lease,
14 this 1997 lease was the replacement lease for the 1994
15 lease?

16 A. Yes.

17 Q. But you had already leased their acreage for a
18 prior three-year period?

19 A. Are you talking before 1997?

20 Q. Right.

21 A. Yes.

22 Q. Right. Okay, you took new leases from then,
23 then, effective December 7th, 1997?

24 A. Correct.

25 Q. Okay. I believe the first one is the Stokes

1 lease and the second one is the Hamilton lease?

2 A. Yes.

3 Q. If you would look with me at paragraph 5 -- and I
4 apologize, the copies are really difficult to read, but in
5 paragraph 5 it says, "Lessee shall file written unit
6 designations in the county in which the premises are
7 located..."

8 A. Yes.

9 Q. Do you see that language?

10 A. Yes, ma'am.

11 Q. Okay. And did TMBR/Sharp, on behalf of the
12 group, file written designations in Lea County describing
13 the premises and including the Stokes Hamilton acreage?

14 A. Yes, we did, when we proceeded to drill the Blue
15 Fin 24 Number 1 well, we filed the C-102 with the
16 Commission in Hobbs. It had attached the acreage
17 dedication plat showing the west-half unit and specified
18 320 acres for that proration unit.

19 Q. And the Stokes Hamilton acreage, is that shown in
20 green on the colored map? And I don't know if you have one
21 of those.

22 A. I don't have that. That is a portion of the
23 lease -- That's a portion of the acreage covered by the
24 Stokes Hamilton lease.

25 Q. Okay. After the lease this paragraph 5 also

1 says, "Lessee shall file a written unit designation in the
2 county in which the premises are located..."

3 A. I'm sorry, could you begin again?

4 Q. Sure. Paragraph 5 talked about filing written
5 unit designations in the county, and you've talked about
6 the TMBR/Sharp file in the county, in the OCD, in Lea
7 County, its designation of unit.

8 Did you also, subsequent to the drilling of the
9 well, file in the county clerk's records?

10 A. Yes, we did, we filed the C-102 for a notice
11 between lessor and lessee as required by the lease.

12 Subsequent to drilling the well, when we could
13 determine the proration unit from which we would produce,
14 we filed a notice to third parties in the county.

15 Q. And reading from the lease, the lease says that
16 "...such units may be designated from time to time and
17 either before or after the completion of the well..." is
18 filed?

19 A. Yes.

20 Q. Okay. Was it your group's belief that after the
21 Blue Fin was drilled across the primary term of the Stokes
22 Hamilton lease, that its lease was still alive?

23 A. Of course, yes.

24 Q. In fact, you had obtained a six-month extension.
25 The lease was originally due to expire in December of 2000?

1 A. Correct.

2 Q. And what kind of extension did you obtain?

3 A. We obtained a six-month extension to June 17th of
4 2001, in anticipation of drilling the Blue Fin well.

5 Q. Okay. Looking at your time line of events
6 relating to Section 25, the well was spudded March 29th --

7 A. Section 24?

8 Q. No, your time line on Section 25.

9 A. 25?

10 Q. Uh-huh. It's the last three pages.

11 A. Okay.

12 Q. Okay? The Blue Fin 24 was spudded on March 29th,
13 2001?

14 A. Yes.

15 Q. You see there's another entry there that on March
16 27th, 2001, that Huff had acquired top leases from Madeline
17 Stokes?

18 A. Yes.

19 Q. Okay, and Erma Stokes Hamilton.

20 At that time did the TMBR/Sharp group know that
21 Huff had acquired top leases?

22 A. No, we did not.

23 Q. Please explain to the Commission what a top lease
24 is.

25 A. A top lease is a lease that is taken subject to

1 the underlying lease. We have the valid underlying lease,
2 which is our -- a 1997 lease that was extended to June
3 17th. The top lease was taken -- any top lease is taken to
4 become effective upon the termination of rights under the
5 underlying lease. Is that --

6 Q. And in other words, the top lease doesn't ever
7 come into effect until the base lease has expired?

8 A. Correct.

9 Q. And it was you and your investors' belief that
10 the base lease had not expired, because it had been pooled
11 prior to expiration?

12 A. Well, it had not expired. We performed under the
13 terms of the lease, drilled the well -- We filed the unit
14 designation with the OCD, dedicating the 320 acres on the
15 west half, then we drilled the well. We continuously
16 worked on the well under the provisions of the lease until
17 it began producing, and we filed the notice in the country
18 subsequent to that.

19 Q. Okay. And because a controversy had arisen,
20 whose lease was the good one, did TMBR/Sharp and your group
21 file a declaratory judgment action in District Court in Lea
22 County?

23 A. Yes, we did.

24 Q. And has the group now obtained a ruling from
25 Judge Clingman that TMBR/Sharp and your Stoke Hamilton base

1 lease is still valid, and the Huff top lease is invalid?

2 A. That's correct, the ruled that we continue to
3 have a valid lease, and therefore the top lease is not
4 effective.

5 Q. Okay. In your experience as a landman and
6 working in oil and gas prospects, what does a top lessee do
7 in order to ensure that the base lease is no longer valid
8 and the top lease has, in fact, come into being?

9 A. In instances where Ameristate is top-leased, when
10 we feel that the top lease has become effective, we go to
11 the holder of the lease that we have top-leased, the
12 lessee, and we ask that they release their lease as to the
13 lands that the top lease is now effective, the lands it
14 covers that are now affected.

15 If the lessee of the underlying lease will not
16 release those lands, we go to the District Court and ask
17 for a determination of the status of the leases.

18 Q. In your experience, have you ever seen a top
19 lessee file for and receive a permit on a top lease, such
20 as Mr. Arrington did in this instance? Have you ever seen
21 someone do that without first getting a release of the base
22 lease or a declaration from a district court as to whose
23 lease is the valid one?

24 A. No.

25 Q. Do you know whether -- if Mr. Arrington had

1 wanted to review whether we had complied with the lease and
2 filed in the county, that the OCD District records would
3 have been available to him to review so that he could see
4 that we had dedicated acreage that included Stokes
5 Hamilton?

6 A. Well, the filing of the permit in Hobbs is public
7 notice of our actions.

8 In addition, there are reports that are filed
9 with the Commission as you drill that detail your
10 activities. Those all go in the well file. I feel like
11 there's many ways they could have determined and did know
12 of our actions.

13 Q. And you were aware that Arrington Oil and Gas had
14 filed for and received an application to drill both Section
15 25 and 23?

16 A. Yes.

17 Q. Okay. And you understand that his having filed
18 for those and received them is what prevented your group
19 from getting their permits?

20 A. That's correct.

21 Q. TMBR/Sharp did file for both a Section 25 and
22 Section 23 permit to drill --

23 A. That's correct.

24 Q. -- which was denied?

25 A. Yes.

1 Q. Okay. And was it the intention of TMBR/Sharp to
2 drill those wells pretty immediately after the getting new
3 permit?

4 A. Yes, I'll let Mr. Phillips testify to the details
5 of that, since TMBR/Sharp is the operator that filed the
6 permits. But I do believe we had reasonably fast
7 commencement of drilling operation dates in the permits.

8 Q. Okay. You have heard Mr. Carroll speaking on
9 behalf of his client, Arrington Oil and Gas, say that even
10 though they applied for and received permits to drill in 25
11 and 23, that they never intended to drill a well. Is that
12 unusual in your experience?

13 MR. CARROLL: I object to that characterization
14 of my statement because I did not say that. I just said at
15 this time there was no intent to drill the well.

16 Q. (By Ms. Richardson) Thank you. Is that unusual
17 in your experience, that someone would apply for and
18 receive a permit in July, August, 2001, but not drill?

19 A. Normally we wait to file a permit, and -- we wait
20 until we're ready to drill, and we follow that up in a
21 timely manner with drilling.

22 MS. RICHARDSON: I'll pass the witness. Thank
23 you.

24 CHAIRMAN WROTENBERY: Mr. Carroll?

25 MR. CARROLL: Thank you.

CROSS-EXAMINATION

BY MR. CARROLL:

Q. Mr. Nearburg, with respect to the decision to file the designation as required by paragraph 5 of the Stokes Hamilton leases, who made that decision to file it in the OCD's office rather than the county clerk's office? Did you make it?

A. We made that because the lease says that's what we need to do.

Q. Well now, no, Mr. Nearburg, who actually made that decision? Did you participate in it before the decision was made?

A. Well, we had many conversations with TMBR/Sharp as operator as to how to proceed with development of the prospect, so --

Q. Well, again, Mr. Nearburg, who is "we", and did these conversations occur prior to the filing of the C-102?

A. You mean did we talk about what proration unit we were going to drill on?

Q. No, did you talk about what filing would be necessary to comply with paragraph number 5 of the Stokes Hamilton leases?

A. Sure.

Q. Who did the conversations and when did they occur?

1 A. Oh, I can't give you the exact dates, but it was
2 conversations between the working interest owners and
3 TMBR/Sharp as operator.

4 Q. Did you actually have a conversation?

5 A. About where to file?

6 Q. Where to file, what agency, what office, whether
7 it was the county clerk's office or with the office of the
8 OCD?

9 A. No, we filed under the terms that the lease
10 required, which is in the OCD.

11 Q. No. No, no. Mr. Nearburg, did you have a
12 conversation with someone concerning where the proper place
13 to file was?

14 A. Yes.

15 Q. Okay, that was you. You had a conversation; is
16 that correct?

17 A. Uh-huh.

18 Q. With whom?

19 A. Mr. Phillips and the other working interest
20 owners.

21 Q. When did that conversation occur?

22 A. Prior to the drilling.

23 Q. Prior to the drilling of --

24 A. -- of the Blue Fin.

25 Q. -- the Blue Fin 21. And you made a determination

1 that the C-102 would comply with paragraph number 5 of the
2 lease; is that correct?

3 A. No, that only occurred after we were forced into
4 a lawsuit by Mr. Arrington.

5 Q. All right. In fact, who was responsible, then,
6 what parties were responsible for filing a unit designation
7 in compliance with paragraph number 5?

8 A. The operator, TMBR/Sharp drilling.

9 Q. All right, do you know who those persons would
10 have been with the operator that would have been
11 responsible?

12 A. Well, the people in TMBR/Sharp that file the
13 permits.

14 Q. Do you know who those people are?

15 A. Well, why don't -- you should ask Mr. Phillips,
16 since he is --

17 Q. No, Mr. Nearburg, I want -- I asked you. Do you
18 know who -- You have given us testimony about how these
19 things progress, what happened and how they occurred, and I
20 am trying to find out if you really knew what was going on,
21 other than just broad generalizations. And that's why I'm
22 asking, do you know who was responsible for doing that?

23 A. Well, I would say the person that signed the
24 permit on behalf of TMBR/Sharp drilling would be my answer.
25 That's as clear as I can make it.

1 Q. Mr. Nearburg, have you operated wells?

2 A. No, sir, I do not operate.

3 Q. You do not operate. Mr. Nearburg, you understand
4 that paragraph number 5 of the lease required that the
5 pooling designation be filed in the county; is that
6 correct?

7 A. Yes.

8 Q. And that's the county where the lease is located,
9 or the premises that are leased; is that correct?

10 A. That's correct.

11 Q. You also know that there is not an OCD office in
12 every county of the State of New Mexico, do you not?

13 A. I did not know that.

14 Q. You do not know that. You were present this
15 morning when Mr. Tim Gum testified that his office in
16 Artesia actually represented 10 separate counties, did he
17 not?

18 A. No, sir, I was not here then.

19 Q. You weren't in here. Well, Mr. Nearburg, if
20 there is not an OCD office -- if there had not been an OCD
21 office in Lea County, where would you have filed that
22 notice?

23 A. Well, since our operations were in Lea County, we
24 filed it in Lea County. That's a hypothetical question, I
25 can't answer it.

1 Q. You just can't answer, or you don't want to
2 answer it?

3 A. It's a question for which I doubt there's an
4 answer.

5 Q. Well, Mr. Nearburg, there is not an OCD office in
6 Chaves County. Where would you have filed it, had the
7 lease premises been in Chaves County.

8 MS. RICHARDSON: Madame Chairman, I just think
9 it's irrelevant what would have happened in another county.
10 The lease was in Lea County, and we just had to comply with
11 the lease in Lea County.

12 CHAIRMAN WROTENBERY: I do believe Mr. Nearburg
13 has answered your question, so please go on.

14 MR. CARROLL: I have no other questions.

15 MS. RICHARDSON: Just a couple.

16 CHAIRMAN WROTENBERY: Excuse me, Mr. Bruce first.

17 MS. RICHARDSON: Sorry, I apologize.

18 CHAIRMAN WROTENBERY: That's okay.

19 EXAMINATION

20 BY MR. BRUCE:

21 Q. Mr. Nearburg, I kind of came in in the middle
22 when you were testifying about your contacts with Ocean.

23 You're aware, aren't you, that Ocean Energy or
24 its predecessor UMC Petroleum has had a substantial
25 interest in Township 16 South, 35 East for a number of

1 years, aren't you?

2 A. Oh, yes, they're up in -- they're about, as I
3 understand their activity, in the top two tiers of sections
4 in the township.

5 Q. Okay. And as a matter of fact, a couple of years
6 ago, right about maybe May or June -- Your company is
7 Ameristate Exploration?

8 A. Correct.

9 Q. And Ameristate Exploration --

10 A. Well, Ameristate Oil and Gas.

11 Q. Ameristate -- Excuse me. About two years ago
12 Ameristate Oil and Gas and some other companies made a deal
13 with Ocean Energy to farm out their leases in another --
14 probably just to the west or northwest of the acreage we're
15 here about today?

16 A. Are you speaking of Section 17, 20, 28, 29?

17 Q. Yes, sir.

18 A. And 27 and 34?

19 Q. Uh-huh.

20 A. Yes, I am.

21 Q. So Ocean has been acquiring property out here for
22 quite some time?

23 A. Well, they acquired the leases from us last year
24 on the western side of this township.

25 Q. And it's not unusual for companies to go out and

1 acquire leases all the time, is it?

2 A. No.

3 MR. BRUCE: Thank you.

4 CHAIRMAN WROTENBERY: Thank you, Mr. Bruce.

5 Commissioners, do you have any questions?

6 EXAMINATION

7 BY COMMISSIONER BAILEY:

8 Q. When you're talking about the -- the Blue Tuna?

9 A. The Blue Fin?

10 Q. The Blue Fin.

11 A. Well, it's the Big Tuna prospect.

12 Q. That's right, the Big Tuna prospect.

13 A. And the Blue Fin well.

14 Q. Okay. When you were discussing the prospect, you
15 mentioned that you had chosen the north half of Section 25
16 based on seismic and on geological --

17 A. Yes.

18 Q. -- interpretation. Will there be any testimony
19 today at all, that you know of, concerning those two areas?

20 A. No.

21 Q. What was the time delay between the unsuccessful
22 re-entry in Section 23 and spudding of the Blue Fin in 24?

23 A. Well, Mr. Phillips will have a better idea of
24 that, but I think about a year to a year and a half.

25 Q. Is that normal, to take a year to a year and a

1 half between wells when you're exploring your prospect?

2 A. Given what happened to gas prices and the
3 interpretation process on the 3-D, yes.

4 COMMISSIONER BAILEY: That's all I have.

5 CHAIRMAN WROTENBERY: Commissioner Lee?

6 COMMISSIONER LEE: (Shakes head)

7 CHAIRMAN WROTENBERY: Mr. Ross, would you have
8 any questions?

9 THE WITNESS: Oh, ma'am?

10 CHAIRMAN WROTENBERY: Yes.

11 THE WITNESS: Also, the situation with the
12 partners was the main delay in moving between the Del
13 Apache Stokes over to the Blue Fin. Because of the risk of
14 drilling the Blue Fin we had partners in between the Del
15 Apache Stokes attempted re-entry and the drilling of the
16 Blue Fine but decided not to participate in the Blue Fin
17 due to its risk.

18 CHAIRMAN WROTENBERY: I just had one question
19 about your time line of events leading to Section 25.

20 The second page of that time line where you talk
21 about the application for permit to drill the Blue Fin 25
22 Number 1 well, the time line says it would be on the east
23 half of Section 25.

24 Is that supposed to be the north half?

25 MS. RICHARDSON: Yes, your Honor, that is an

1 error. Thank you so much for pointing that out.

2 CHAIRMAN WROTENBERY: So there, and then --
3 That's for 8-6-01.

4 And then the event on 8-8-01 where the OCD denied
5 the application, that was also --

6 MS. RICHARDSON: Yes, thank you. I can't tell
7 you how many times we have -- the word processor just eats
8 it up. Thank you for that change.

9 CHAIRMAN WROTENBERY: Okay. Did you have some
10 redirect?

11 MS. RICHARDSON: Just a couple, please.

12 REDIRECT EXAMINATION

13 BY MS. RICHARDSON:

14 Q. We knew that in order to drill the Blue Fin, that
15 we had to file a permit to drill?

16 A. Yes.

17 Q. And that that acreage had to be dedicated, a
18 proration unit had to be dedicated in the C-102 and
19 described for the Commission, in order to get the permit?

20 A. That's correct, that's why we outline -- well,
21 everybody outlines the proration unit that they're going to
22 dedicate to the well, and we outlined the west half and
23 spelled out 320 acres under the number of acres dedicated
24 to the unit.

25 Q. And that that dedication was filed in Lea County?

1 A. Yes.

2 Q. Okay, and that there had been discussions about
3 the well location, the orientation of the proration unit
4 and all the matters relating to the filing of that permit?

5 A. Yes, all of those discussions culminated in the
6 filing of the C-102 that we filed on the Blue Fin.

7 Q. I think you said the west half. You meant the
8 north half?

9 A. If we're talking about the Blue Fin, it's the
10 west half. If we're talking about --

11 Q. Okay.

12 A. -- the second well we want to drill --

13 Q. You're right.

14 A. -- it's the north half --

15 Q. You're right.

16 A. -- of 25.

17 Q. You're right, and I'm sorry.

18 A. That's okay.

19 MS. RICHARDSON: No further questions.

20 CHAIRMAN WROTENBERY: Anybody else?

21 Thank you for your testimony --

22 THE WITNESS: Thank you.

23 CHAIRMAN WROTENBERY: -- Mr. Nearburg.

24 MS. RICHARDSON: Madame Chairman, we would call
25 Jeff Phillips to the stand.

1 JEFFREY D. PHILLIPS,
2 the witness herein, after having been first duly sworn upon
3 his oath, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. RICHARDSON:

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

7 A. My name is Jeff Phillips.

8 Q. And by whom are you employed?

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

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

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

12 Q. And your title?

13 A. My title is now president.

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

16 A. I grew up in west Texas, Odessa primarily. I was
17 educated in Lubbock, received an undergraduate degree in
18 petroleum engineering in May of 1985, went to work for an
19 independent operator named Adobe Oil and Gas in Midland,
20 Texas, moved to south Louisiana and became the manager of
21 offshore and onshore Gulf Coast gas district down there,
22 left Adobe in a merger in 1992 and came back to west Texas,
23 consulted for a year, worked for a couple independents and
24 went to work for TMBR/Sharp Drilling, Inc., in March of
25 1995.

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

5 A. Yes, they had.

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

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

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

13 A. Yes, it is.

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

16 A. That's correct.

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

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

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

1 2001?

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

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

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

16 A. We did.

17 Q. -- and drilled the well?

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

20 A. That's correct.

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

23 A. When we conducted the drill stem test of the
24 primary or Chester zone, we found a prolific gas interval.
25 It was about a 35 interval. It is a chert detritus, it was

1 very prolific on the drill stem test, good bottomhole
2 pressures, we definitely had found a reservoir in what was
3 a very risky -- it was one of the reasons we had trouble
4 getting investors is, we were drilling in a low, and most
5 people are used to drilling on a bump.

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

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

12 A. That's correct.

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

16 A. At June 29th?

17 Q. Right.

18 A. No.

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

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

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

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

7 Q. And what did you all tell him?

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

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

12 A. No, we didn't.

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

15 A. I did.

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

18 A. On July 24th we knew at that time that Huff had
19 taken the top leases, because we had investigated the
20 county records and saw Huff's name in the record. We
21 speculated that Arrington may have been involved, because
22 Huff leases for him sometimes. And I ran into David
23 Arrington in the Midland Petroleum Club at noon on July the
24 24th and we spoke topically for a few minutes, as we had
25 known each other previously, and were cordial and civil.

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

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

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

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

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

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

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

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

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

21 A. That's correct.

22 Q. Another investor in these wells?

23 A. Another investor.

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

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

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

7 A. By July 24th, no.

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

10 A. Right.

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

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

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

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

25 Q. Is there a 180-day continuous drilling clause in

1 the Stokes Hamilton lease?

2 A. There is.

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

6 A. That's correct.

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

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

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

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

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

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

24 Q. And what did you do in response to hearing that
25 he had permits that were going -- that were on the acreage

1 you planned to drill next?

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

7 Q. Okay, and you filed your applications for a
8 permit to drill the Blue Fin 25 Number 1 well on August
9 6th, 2001?

10 A. That's correct.

11 Q. Okay. If you would look at Exhibit 5 in your
12 book -- Excuse me, if you'd look at Exhibit 4 in your book,
13 and then we'll look at 5. All right, if you'll look at the
14 C-102 filing, it says the surveyor's certification was July
15 26th, 2001, only two days after you had your conversation
16 with Mr. Arrington at the Petroleum Club. Did you already
17 have the survey process in the works before you even had
18 the conversation with Mr. Arrington?

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

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

24 A. That's correct.

25 Q. And what happened when -- Well, who filed them

1 for you? Who actually in your shop filed them?

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

5 Q. And what happened at the Hobbs District Office?

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

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

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

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

18 A. Right.

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

25 A. That's correct, I did not personally examine the

1 title records, but that's what we believe to be true.

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

4 A. Okay.

5 Q. -- do you see that entry?

6 A. I do.

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

11 A. That is correct.

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

17 A. Yes.

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

21 A. He has not.

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

24 A. Yes, we did.

25 MS. RICHARDSON: And -- I'm sorry, Madame

1 Chairman, I don't know the exhibit number of that most
2 recent supplemental filing.

3 MR. CARROLL: It was 17.

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

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

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

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

19 A. That's correct.

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

23 A. That is correct.

24 Q. When we filed our Section 25 Application for
25 permit to drill originally, did we intend at that time to

1 obtain the permit and file a pooling action, or did we
2 intend to obtain the permit and drill the well, and then
3 file a pooling action if necessary?

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

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

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

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

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

23 Q. And with the 180-day clock ticking, because we
24 had completed the well sometime in June, 2001, we basically
25 had till the end of the year 2001 to drill the next well

1 before the rest of the lease expires?

2 A. That's correct.

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

7 A. Obviously.

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

11 A. That's correct.

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

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

21 MS. RICHARDSON: I'll rephrase.

22 CHAIRMAN WROTENBERY: Thank you.

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

24 What advantage would we get from being able to go
25 ahead drill the Blue Fin with respect to the Stokes

1 Hamilton lease?

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

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

8 A. In the permit applications --

9 Q. Right, Exhibits 4 and 5.

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

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

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

17 Q. Are you aware of any action on the part of
18 Arrington to -- currently, to drill either Section 25 or
19 23?

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

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

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

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

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

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

9 A. That's correct.

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

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

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

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

20 Q. You heard Mr. Carroll's statements earlier about
21 Section 23, and I want to see if we can get that one
22 cleared up. And I advised you that my understanding of
23 what Arrington Oil and Gas was willing to do with respect
24 to Section was to agree to withdraw their permit to drill
25 on Section 23, advise -- we would jointly advise the

1 Commission that our permit should be granted and that if we
2 had a permit then we would proceed at some point, rig
3 availability and other things all being equal, to drill
4 that well. Did I advise you about that?

5 A. That's correct, you did.

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

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

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

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

22 MR. CARROLL: I'm going to object to the
23 characterizations of the witness. I think that's totally
24 outside the scope of the question and it's just he's got
25 the floor and he wants to bad-mouth David Arrington, and I

1 think that's improper, and I think the witness should be
2 instructed to answer the question, period.

3 THE WITNESS: I'll rephrase.

4 CHAIRMAN WROTENBERY: Thank you.

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

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

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

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

24 A. Well, the compulsory pooling process will be
25 science and geological information. If we drill a well,

1 we'll have that much more science and geological
2 information. We'll have logging, information about the
3 thickness of the zone, we'll be able to tie it to our 3-D
4 seismic. We'll just be that much better off.

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

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

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

12 A. That's correct.

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

19 A. Now, restate that for me, please.

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

1 longer claimed an interest in the Stokes Hamilton top
2 leases?

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

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

6 A. That's correct.

7 MS. RICHARDSON: Nothing further, pass the
8 witness.

9 CHAIRMAN WROTENBERY: Mr. Carroll?

10 CROSS-EXAMINATION

11 BY MR. CARROLL:

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

17 A. That is correct.

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

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

24 Q. All right. It's your testimony that TMBR/Sharp
25 has waited some six months to file the force pooling on the

1 north half of Section 25, until just recently, and that was
2 because you thought it was necessary to beat Ocean to the
3 filing of a force-pooling action; is that correct?

4 A. That was one of the reasons, yes.

5 Q. Was there any other reasons?

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

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

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

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

19 A. Right.

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

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

25 MR. CARROLL: I have nothing else.

1 CHAIRMAN WROTENBERY: Commissioners?

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

5 MR. KELLAHIN: May I have counsel?

6 (Laughter)

7 MR. KELLAHIN: Mr. Carr is back here.

8 CHAIRMAN WROTENBERY: He wants to take the Fifth.

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

11 MR. KELLAHIN: In the Oil and Gas Act?

12 COMMISSIONER BAILEY: Yes.

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

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

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

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

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

24 COMMISSIONER BAILEY: Right.

25 MR. KELLAHIN: You can find it in the forms in

1 terms of a declaration by the applicant, the operator, to
2 the Division as to his spacing unit. We do that with the
3 C-102, and that permitting process is a disclosure to the
4 Division that I propose the dedication of a certain
5 configuration.

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

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

14 MR. KELLAHIN: You can certainly make that
15 argument.

16 COMMISSIONER BAILEY: Okay.

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

24 Now, there is one additional statute, and this is
25 one of the issues that has been argued in the District

1 Court and which will be one of the issues that will be
2 appealed to the Court of Appeals, is that there is a
3 statute that says all filings that deal with the ownership
4 of real property, of which minerals are one, have to be in
5 the county. And that has been the argument of Arrington,
6 is that this filing in the OCC is not sufficient.

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

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

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

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

1 I do have another question, though.

2 EXAMINATION

3 BY COMMISSIONER BAILEY:

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

7 Is the Blue Fin 24 still producing?

8 A. It is.

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

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

15 COMMISSIONER BAILEY: Okay, thank you.

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

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

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

1 THE WITNESS: Correct.

2 MS. RICHARDSON: But the remaining acreage --

3 THE WITNESS: The remaining acreage --

4 MS. RICHARDSON: -- under 25 --

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

7 CHAIRMAN WROTENBERY: Thank you.

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

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

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

22 We anticipate frac'ing that well in the morning.

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

25 CHAIRMAN WROTENBERY: Commissioner Lee, any

1 questions?

2 COMMISSIONER LEE: (Shakes head)

3 CHAIRMAN WROTENBERY: Mr. Ross?

4 MR. ROSS: Maybe one.

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

7 Okay.

8 EXAMINATION

9 BY MR. ROSS:

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

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

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

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

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

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

25 MS. RICHARDSON: And may I say, there is no

1 question that Judge Clingman on the title has addressed all
2 the concerns, all the arguments that Mr. Arrington has
3 raised, and has concluded as a matter of law -- no fact
4 questions -- as a matter of law, that our lease is valid,
5 that we did what we needed to do to pool it and extend it
6 beyond the primary term. So I think insofar as what the
7 Commission does with this matter, that title matter has
8 been decided by Judge Clingman. It is certainly subject to
9 appeal.

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

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

16 MS. RICHARDSON: Yes.

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

18 MS. RICHARDSON: If you had the motion.

19 MR. ROSS: -- the motions, right.

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

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

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

5 MR. ROSS: I have nothing further. Thanks.

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

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

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

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

22 MR. ROSS: Oh, no. Thanks.

23 CHAIRMAN WROTENBERY: -- for Mr. Phillips?

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

1 MS. RICHARDSON: Nothing further, thank you.

2 CHAIRMAN WROTENBERY: Mr. Carroll?

3 MR. CARROLL: No.

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

6 THE WITNESS: Thank you.

7 MR. KELLAHIN: That concludes our presentation of
8 witnesses.

9 CHAIRMAN WROTENBERY: Okay, and we need to take
10 care of these exhibits, I think. What do you want to do
11 with these?

12 MR. KELLAHIN: I've lost track of the next
13 sequence.

14 MS. RICHARDSON: We would like to admit 1 through
15 17, which was the original ones we gave you, and then to
16 make what we just handed you, which was our Motion for
17 Summary Judgment, Number 18, and to ask that that be
18 admitted also.

19 MR. CARROLL: There is no objection, and that was
20 a prior agreement between counsel.

21 CHAIRMAN WROTENBERY: Okay.

22 MS. RICHARDSON: Thank you.

23 CHAIRMAN WROTENBERY: Then Exhibits 1 through 18
24 will be admitted as evidence.

25 And Mr. Ross has also asked for a copy of the

1 filing that was made --

2 MS. RICHARDSON: Yes.

3 CHAIRMAN WROTENBERY: -- with the county of the
4 unit designation for the --

5 MS. RICHARDSON: Yes, why don't we designate that
6 as Number 19, and we'll try to get that over to you as soon
7 as possible?

8 CHAIRMAN WROTENBERY: Any objection, Mr. Carroll?

9 MR. CARROLL: No.

10 CHAIRMAN WROTENBERY: Okay, when we receive that
11 we'll make that part of the record as well.

12 MS. RICHARDSON: Thank you.

13 CHAIRMAN WROTENBERY: Okay, thank you. Anything
14 further, then?

15 MR. KELLAHIN: If you'd like a closing summary?

16 CHAIRMAN WROTENBERY: Well, we need to hear from
17 Mr. Carroll, but I would like to take just a short break
18 here for just five minutes before we --

19 MR. CARROLL: All we have to do is just put in
20 our exhibits, and then we'll be through, because -- we sent
21 our witnesses home, because they were going to identify
22 these four exhibits --

23 CHAIRMAN WROTENBERY: Uh-huh.

24 MR. CARROLL: And that's all that remains --

25 CHAIRMAN WROTENBERY: Okay.

1 MR. CARROLL: -- Commissioner Wrotenbery.

2 CHAIRMAN WROTENBERY: Okay, so we should go
3 ahead, then?

4 MR. CARROLL: Well, we could, and then we'll be
5 through.

6 CHAIRMAN WROTENBERY: Okay, sounds good.

7 MR. CARROLL: Prior to today's hearing we have
8 submitted Exhibits 1 through 4, they were sent -- and give
9 the court reporter a copy and Mr. Ross a copy, I believe.

10 These four exhibits, by stipulation of counsel
11 we've agreed to allow them to come in on behalf of David
12 Arrington.

13 Those four exhibits are -- Exhibit 1 is the
14 farmout agreement dated September 10, 2001, between David
15 Arrington and Ocean Energy.

16 Exhibit 2 is the letter dated 2-11-02. This
17 would be the letter from myself to Mr. Kellahin advising
18 him of our offer to release Section 23 APD.

19 Exhibit 3 is the -- there has been some mention
20 of an Ocean AMI agreement with David Arrington. That
21 agreement predates a lot of this stuff. It goes back to --
22 if I can read my typing here, it was December 12th of 2000.
23 That is Exhibit 3.

24 And then there has been one other order, and
25 frankly I don't know that it has a lot of relevance. There

1 was a motion for summary judgment filed with respect to
2 tortious interference claimed in the state court case.
3 That motion was denied, and that's what Exhibit Number 4
4 is, just a denial of that.

5 And with that, I think there's been a tremendous
6 amount of argument that has already preceded this case. I
7 don't know that we need any further, but -- I would opt
8 that we would not have any further, but I think all of this
9 has been explained quite adequately by counsel prior to
10 this point in the hearing.

11 CHAIRMAN WROTENBERY: Thank you, Mr. Carroll. We
12 will admit Exhibits Number 1 through 4 into the record as
13 evidence.

14 The Commissioners may have some questions for
15 you.

16 Commissioner Bailey?

17 COMMISSIONER BAILEY: I can't think of any.

18 CHAIRMAN WROTENBERY: Commissioner Lee?

19 COMMISSIONER LEE: (Shakes head)

20 CHAIRMAN WROTENBERY: Mr. Ross?

21 MR. ROSS: No, I don't believe so. Thank you.

22 CHAIRMAN WROTENBERY: I may be the only one.

23 I did want to ask you --

24 MR. CARROLL: Certainly.

25 CHAIRMAN WROTENBERY: -- about Arrington's

1 position on the title question, now that the Court has
2 entered a ruling on the motion for summary judgment. What
3 does that do to Arrington's claim to title and the right to
4 drill the well in Section 5 and -- 25 in particular?

5 MR. CARROLL: Well, first of all, the order is
6 interlocutory. It's not a final order. And there will be
7 no final order until such time as the whole case is
8 decided.

9 I think Mr. Ross was quite apt and -- when he
10 looked at that order he said it was quite terse. Well, it
11 didn't say anything, and it didn't order that anything be
12 done. It just said that the motion for summary judgment
13 was granted with respect to their motion, the Plaintiff's
14 motion, and it was denied with respect to the Defendant's
15 motion.

16 With respect to that issue, David Arrington feels
17 that that's totally incorrect, that the District Court
18 misconstrued the law, it misconstrued the fact that there
19 is a controlling state statute which says that no filing
20 can affect a real property interest unless it's done with
21 the county clerk. Judge Clingman ignored that statute.

22 So, you know, there are a number of good legal
23 issues that are still out there that need to be resolved.

24 The Court was not inclined to grant the decree,
25 the language would have -- which would have allowed an

1 interlocutory appeal. He kept it in-house, so to speak, he
2 did not do that language. So we are now going to have to
3 wait until the entire case is through before we can appeal
4 it and get some finding as to the correctness of the
5 District Court's ruling.

6 So in a nutshell, we think the District Court was
7 absolutely wrong, and we won't back down from that
8 position.

9 We still believe that there is a strong issue
10 here as to the title questions about the Stokes Hamilton
11 lease. Who owns it? That issue is not decided.

12 However, I think that you might guess from my
13 earlier statements, that really is not that important when
14 you look at what we have when we have a force-pooling
15 statute. That will allow parties to move ahead and --
16 actually, if they have to -- you know, if there is a need
17 to drill a well, what have you, that force-pooling statute
18 sets up the -- in other words, a party in this state...

19 Now, Texas is different. As you are aware, there
20 is no force-pooling statute. But in the State of New
21 Mexico, Oklahoma and a few other states, there is a force-
22 pooling statute which allows or keeps some holdout from
23 keeping a well from being drilled. And that's the -- I
24 guess, the main impetus behind a force-pooling statute.
25 And if the parties want to -- You know, all they have to do

1 is file a force-pooling action, and you get it -- and of
2 course we've had -- there's plenty of guidance in the
3 statute itself and from prior hearings and orders that have
4 been entered by the Commission and the Division as to what
5 are the important issues?

6 CHAIRMAN WROTENBERY: Did Arrington have an
7 interest in the Huff top leases at the time Arrington
8 applied for drilling permits in Section 25 and Section 23?

9 MR. CARROLL: I think if you have to say
10 equitable, yes, most definitely.

11 Mr. Huff was out there acquiring those top leases
12 at the request of Mr. Arrington. The money that was used
13 to pay for them was Mr. Arrington's money.

14 So it was -- This was a true situation where you
15 had a contract landman doing your work for you. So -- It
16 was always Mr. Arrington's interest that was being pursued
17 out there in the process of acquiring the top leases.

18 CHAIRMAN WROTENBERY: Okay, I think that's all I
19 have for Mr. Carroll.

20 Anybody else have anything?

21 Mr. Kellahin and Ms. Richardson --

22 MS. RICHARDSON: We'd just like to make a closing
23 statement, but we surely would like that break, if you
24 don't mind.

25 CHAIRMAN WROTENBERY: Okay, I could use one too,

1 so we'll take just five minutes. Thank you.

2 (Thereupon, a recess was taken at 3:20 p.m.)

3 (The following proceedings had at 3:25 p.m.)

4 CHAIRMAN WROTENBERY: Okay, I'm not sure who's
5 going to do the closing statement. Ms. Richardson?

6 MS. RICHARDSON: Thank you.

7 May it please the Commission, we're really here
8 today in these *de novo* hearings asking the same question
9 and seeking the same relief as we did from the Division,
10 and that is, we're asking for our permit to drill and that
11 Mr. Arrington's permit be vacated.

12 The Division instructed us that there are two
13 rules about permitting, or perhaps three. You have to fill
14 out an appropriate APD, you have to have colorable title,
15 and you have to have dedicated the acreage.

16 There is no question in this record but that when
17 Mr. Arrington obtained his Section 25 permit in July of
18 2001, he had no title, no record title. Mr. Carroll has
19 argued he had equitable title from Mr. Huff in the top
20 leases, and in the same breath he says if you're going to
21 affect title you've got to file it in the county records.
22 When Mr. Arrington received his permit, there was nothing
23 filed in the county records that gave him any interest in
24 the Stokes Hamilton lease.

25 But even if you assumed you could link Huff's

1 interest in the top leases to Arrington when Arrington got
2 his permit in July of 2001, the Court in Lea County has
3 decided -- and the District said that was his job, to
4 decide title. And he has done that.

5 He has said, based on all the evidence -- there
6 are no fact questions, and as a matter of law, matter of
7 law, our base lease is good and the top lease is not good.
8 Therefore, we're at a crossroads.

9 Two permits have been granted on 25, one for us,
10 one for Arrington. The Commission has said -- or the
11 Division has said that you need to be first in time for
12 your permit with colorable title. Colorable title has now
13 been removed for Mr. Arrington. We're now the one with
14 title, not just colorable title but title decided by a
15 district judge.

16 What we would ask is that the Commission vacate
17 his permit, honor our permit, let us drill and then let us
18 pool, because that's the position we would have been in but
19 for Arrington obtaining his permit at a time when he knew
20 he didn't know whether his top lease was any good.

21 That's the only thing you know for sure about top
22 leases. Unless you have a release or a court declaration,
23 you can't be sure your leases become effective.

24 Based on Mr. Arrington's conversation with Mr.
25 Phillips, Arrington never intended to drill. He only

1 intended to block us from obtaining our permits so that our
2 lease would run out and we would lose our acreage in 25 and
3 23. That was his sole purpose. He didn't commit any
4 money, any time, any effort. All he did was obtain his
5 permits and block our drilling, which as of this time he
6 has successfully done.

7 We would ask the Commission not to retrade what
8 Judge Clingman had already done, because he said our title
9 is good and the top lease is not good, but to do what the
10 Commission has jurisdiction over, and we believe the fair
11 and right thing to do: Validate our permit, withdraw his,
12 let us drill and then pool.

13 As for protection of correlative rights for the
14 promotion of drilling, for the production of oil and gas,
15 our client has spent north of \$7 million, not just in the
16 area, but in these three sections, 23, 24 and 25.

17 I think the law is in our favor, I think the
18 equities are in our favor. And we have been having to
19 fight this battle several different places, in Lea County,
20 in two different applications before the Division, pooling
21 application, and now before the Commission. And we're not
22 complaining about that, because that's the process it is.
23 But I think that the Commission at this point has the power
24 to shut this down if they vacate his, grant ours and let us
25 drill and then pool.

1 The risk that we're wrong on our title and that
2 he's right, we're taking on our shoulders. Mr. Carroll is
3 extremely able counsel, and I know he is going to make
4 compelling arguments to the Court of Appeals and the New
5 Mexico Supreme Court about title later. But if we're wrong
6 it will be answerable in damages, and that will be a matter
7 for the court system to take up. All that this Commission
8 can do here is to decide whose permit is good. If we can't
9 get a permit, obviously we can't drill. And that's why
10 we're here.

11 CHAIRMAN WROTENBERY: Thank you, Ms. Richardson.
12 Mr. Carroll?

13 MR. CARROLL: I think I could go on and on and on
14 and bore the Commissioners to tears. I think my only
15 comments in closing are directed towards two things.

16 One, remember the opening statements that were
17 made in this case and do not allow your attention to be
18 drawn away from the real issues here, and this is the
19 applicability of the force-pooling statute and how it
20 really controls this issue, because I think the issues
21 about an APD are just side issues.

22 The other thing is, I think the Commission should
23 discount Counsel's remarks about Mr. Arrington's motives,
24 that he was doing -- he was out there, up to no good, and
25 he was doing things just to hurt TMBR/Sharp. The problem

1 is, should the Court reverse -- the Court of Appeals
2 reverse itself, then those statements are out the window.
3 Arrington was doing what it was supposed to be doing, it
4 was protecting its rights.

5 Those issues are not germane to this case.
6 They're done to try to garner support where they don't
7 belong. We have legal issues, and those are the force-
8 pooling statute and its applicability and how you go about
9 it and what it says.

10 And I think those are the things that this
11 Commission must focus itself upon, is what is the real
12 legal issues here? Not about the issues that someone wants
13 to make up about how they've been hurt, how much money
14 they've spent. We know Ocean's spent a tremendous amount
15 of money, David Arrington's been in this area forever.

16 Oil and gas, when you pursue it, you've hitched
17 yourself to that wagon, you're going to spend a tremendous
18 amount of money. Some people make it back and make a
19 profit, but not everyone does. That's just one of the --
20 That's what happens in the game that's played here.

21 So with that, I would ask that the Commission
22 remember my representations as to what David Arrington's
23 position is now because of what has happened in the
24 District. It has made certain representations, and we
25 stand by those representations.

1 Thank you.

2 CHAIRMAN WROTENBERY: Thank you, Mr. Carroll.

3 With that, I think we'll take this case under
4 advisement.

5 I did want to clarify one item for the record.
6 Ms. Davidson and I had promised Ms. Johnson that we would
7 clarify one finding that was in my order ruling on the
8 motion of Arrington to continue this case past today's
9 date.

10 There was a finding in that order that
11 Arrington's motion filed on this date just two business
12 days prior to the hearing is untimely.

13 We learned after this order was issued that that
14 motion had been filed earlier in the week, and we had
15 inadvertently returned it to Mr. Carroll's office.

16 So just for the record, we had received that
17 motion earlier the same week, and apologize for the
18 confusion there. It wouldn't have changed the results of
19 the decision on the motion, but we just wanted to clarify
20 for the record.

21 MS. RICHARDSON: Madame Chairman, we just wanted
22 the record to be clear that we are not denying the
23 applicability of the pooling statutes. We understand that
24 we are bound by them.

25 But since the pooling statutes talk about if

1 you're going to pool, you must dedicate lands -- and that's
2 what you do when you file for an APD, you dedicate acreage.
3 And because it also says you can utilize the pooling
4 statute after you drill, our position simply is because the
5 permitting process preceded the pooling processes by six
6 months, that the first in time ought to be dominant and
7 that the permitting, in effect, ought to trump the pooling
8 prior to drilling. Post-drilling, if we have not gotten
9 everybody's agreement to participate, then we must follow
10 the compulsory pooling statutes.

11 Just to clarify that point. Thank.

12 CHAIRMAN WROTENBERY: Okay, at this time, then,
13 we'll take this case under advisement. We'll do our very
14 best to issue an order in this case at the next Commission
15 meeting, which will be on April 26th, 2002.

16 MR. KELLAHIN: Thank you.

17 CHAIRMAN WROTENBERY: Thank you very much for
18 your testimony and your presentations.

19 Thereupon, these proceedings were concluded at
20 3:36 p.m.)

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CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL April 6th, 2002.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002

STEVEN T. BRENNER, CCR
(505) 989-9317