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Denovo

Case No. 12744

June 2002

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FACSIMILE TRANSMISSION COVER SHEET

DATE: June 13, 2002

TO: Lori Wrotenberg

FAX NO.: 476-3462

FROM: J. Scott Hall, Esq.

OPERATOR: Ginny Bell

MESSAGE: Please see attached.

NUMBER OF PAGES INCLUDING COVER SHEET: 6

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PLEASE REPLY TO SANTA FE

June 13, 2002

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

Re: NMOCD Case No. 12876; Application of David H. Arrington Oil and Gas, Inc. To
Reinstate Drilling Permit, Lea County, New Mexico

Dear Ms. Wrotenbery:

Enclosed is David H. Arrington Oil and Gas, Inc.'s Response to TMBR/Sharp's Motion to
Dismiss in the referenced matter.

Thank you.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall

J. Scott Hall

JSH/glb
Enclosure

cc: Mr. Michael Stogner
David Brook, Esq.
W. Thomas Kellahin, Esq.
James Bruce, Esq.
William F. Carr, Esq.

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

IN THE MATTER OF THE APPLICATION OF
DAVID H. ARRINGTON OIL AND GAS, INC.
TO REINSTATE DRILLING PERMIT,
LEA COUNTY, NEW MEXICO

CASE No. 12876

ARRINGTON'S RESPONSE
TO
TMBR/SHARP'S MOTION TO DISMISS

DAVID H. ARRINGTON OIL AND GAS, INC., the Applicant in the above matter, hereby responds to the Motion To Dismiss¹ filed on behalf of TMBR/Sharp Drilling, Inc.:

The TMBR/Sharp motion should be denied for the reasons that (1) it advances issues and arguments wholly immaterial to the Application, (2) is vague, and (3) otherwise sets forth no grounds to justify dismissal.

Background

Arrington seeks the reinstatement its previously approved C-101 and C-102 drilling permit for its proposed Glass-Eyed Midge 25 Well No. 1 (API No. 30-025-35787) to be drilled at a standard 320-acre spacing and proration unit gas well location 803 feet from the North line and 902 feet from the East line in E/2 of Section 25. Township 16-South, Range 35-East, NMPM, in Lea County. Arrington's APD was originally approved by the Division on December 17, 2001. On May 1, 2002, the Division's District I office notified Arrington that its APD was being cancelled. The purported cancellation was made despite the fact that Arrington owned interests in the E/2 of Section 25 and has all along had the right to drill and operate on those lands.

Arrington's interests in the E/2 are independent from, and are not affected by, the competing claims to lease title in the NW/4 of Section 25 presently pending before the 5th Judicial District Court.

Points and Authorities

First, TMBR/Sharp gets no awards for originality.

Paragraphs 1 through 7 of the TMBR/Sharp Motion To Dismiss were lifted almost verbatim from its May 22, 2002 "Consolidated Response To Applications For Rehearing Filed By David H. Arrington Oil and Gas, Inc. And Ocean Energy, Inc." in Case Nos. 12731 and 12744 following the issuance by the Commission of Order No. R-11700-B.² That order, the Arrington and Ocean Energy Applications for Rehearing and TMBR/Sharp's Consolidated Response all dealt with the conflicting APD's for TMBR/Sharp's proposed unit for the N/2 of Section 25 for its Blue Fin 25 No. 1 well and Arrington's proposed W/2 unit for its proposed Triple-Hackle Dragon 25 Well No. 1 in the same section.³ Order No. R-11700-B did not address the E/2 of Section 25 and Arrington's right to drill and operate thereon. Therefore, Paragraphs 1 through 7 of the Motion To Dismiss are wholly irrelevant to this discussion and are to be disregarded altogether.

Paragraph 8 of the Motion To Dismiss refers to Arrington arguments pointing out that TMBR/Sharp failed to consolidate the ownership interests underlying the N/2 of Section 15. Again, the arguments in Paragraph 8 were made in the TMBR/Sharp Response to Arrington's

1 Styled as: TMBR/Sharp Drilling, Inc.'s Response To Arrington Oil And Gas, Inc. For Reinstatement And Motion To Dismiss Same.

2 The only relevance Order R-11700-B may have to this Application is the finding at Paragraph 14 of the Order: "The central issue in this case is whether Arrington was eligible to become operator of the wells in question. If not, Arrington should not have received the permits to drill. If Arrington was eligible to become the operator, then the permits were properly issued to Arrington."

3 Conflicting APD's for acreage in Section 23, T-16-S, R-35-E were also the subject of Order No. R-11700-B.

Application For Rehearing in Case Nos. 12731 and 12744. Paragraph 8 of the Motion is immaterial and, like Paragraphs 1 through 7, it, too, should be disregarded.

In Paragraph 9 of its Motion To Dismiss, TMBR/Sharp gets a little warmer. That paragraph refers to the allegations in Paragraph 14 of the Application in this case to the effect that geological, engineering and equitable considerations justify an E/2 unit. It appears to be TMBR/Sharp's complaint that Arrington has not offered any evidentiary support for what TMBR/Sharp characterizes as a "conclusory statement".

Why such a complaint would constitute a basis for dismissal is lost on us. Arrington's Application in this case fully complies with Rule 1203 of the Division's rules and is otherwise complete. If TMBR/Sharp is suggesting that the Application should be dismissed for the reason that it "fails to state a claim", it is a disingenuous argument. Arrington is fully entitled by law and the Division's administrative procedures to protect its rights that have been affected by an "agency action". (In this case, the cancellation of its APD.)

Morcover, TMBR/Sharp cannot challenge the Division's jurisdiction over this case as a basis for dismissal. Although it's argument is vague and difficult to discern, TMBR/Sharp's motion seems to suggest that the Application be dismissed and that Arrington pursue judicial remedies instead. (Pg. 5, Motion to Dismiss) If, indeed, TMBR/Sharp is challenging the Division's primary jurisdiction over this subject matter, we are fully prepared to further brief that issue as the Division may direct. If requested to do so, however, we can be counted-on to remind everyone that TMBR/Sharp similarly invoked the Division's administrative jurisdiction in Case No. 12744 when it challenged the District I supervisor's action denying the approval of APD's for its Leavell 23 No. 1 and Blue Fin 25 No. 1 wells.

Conclusion

The TMBR/Sharp Motion To Dismiss is vague, ambiguous and largely immaterial. It presents no legitimate basis for the dismissal of this Application and should thus be denied.

MILLER, STRATVERT & TORGERSON, P.A.

By: 

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Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 13th day of June 2002 as follows:

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J. Scott Hall