Correspondence

Denovo

Case No. 12744

Jan. / Feb. 2802



NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

GARY E. JOHNSON Governor Carol Leach Acting Cabinet Secretary Lori Wrotenbery Director Oil Conservation Division

بريديه بمبعي

January 25, 2002

W. Thomas Kellahin Kellahin and Kellahin 117 North Guadalupe P.O. Box 2265 Santa Fe, New Mexico 87504-2265

Ernest L. Carroll Losee, Carson, Haas & Carroll PA P.O. Box 1720 Artesia, New Mexico 88211-1720

Re: Case No. 12731, Application of TMBR/Sharp Drilling Inc., de novo Case No. 12744, Application of TMBR/Sharp Drilling Inc., de novo

Dear Counsel,

The Commission members have requested that copies of each exhibit which is to be offered during the hearing of this matter be provided to the Commission Secretary no later than one week prior to the date set for hearing in this matter. As the matter is now set for hearing on February 15, exhibits should be submitted to Florene Davidson no later than Friday, February 8, 2002. If an agreed continuance results in the matter being set in a subsequent month, exhibits should be submitted no later than one week prior to the rescheduled hearing.

It would also helpful if you could provide a more detailed statement of your positions in the pre-hearing statement than is customary.

The Commission members believe that review of detailed pre-hearing statements and the documentary evidence to be offered will help them to be better prepared for the issues and testimony. As always, if you have any questions, please do not hesitate to give me a call at 476-3451.

Sincerely

Stephen C. Ross Assistant General Counsel

Cc: Florene Davidson, Commission Secretary

Oil Conservation Division * 1220 South St. Francis Drive * Santa Fe, New Mexico 87505 Phone: (505) 476-3440 * Fax (505) 476-3462 * <u>http://www.enurd.state.nm.us</u>

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

APPLICATION OF TMBR/SHARP DRILLING, INC. CASE NO. 12731 FOR AN ORDER STAYING DIVISION APPROVAL OF TWO APPLICATIONS FOR PERMIT TO DRILL BY DAVID H. ARRINGTON OIL & GAS, INC. LEA COUNTY, NEW MEXICO

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

CASE NO. 12744

11. 12.14

MOTION OF TMBR/SHARP DRILLING, INC. TO REOPEN CASES 12731 AND 12744 AND AMEND ORDER R-11700 BASED UPON NEW EVIDENCE

Comes now TMBR/Sharp Drilling, Inc. ("TMBR/Sharp") by its attorneys, Kellahin & Kellahin, applies to the New Mexico Oil Conservation Division to reopen Cases 12731 and 12744 and to amend Division Order R-11700 based upon new evidence,

And in support states:

INTRODUCTION

On July 19, 2001, David H. Arrington Oil & Gas Inc. ("Arrington") filed an application for permit to drill ("APD") and obtained approval from the OCD-Hobbs to drill the Triple Hackle Dragon 25 Well No. 1 to be drilled in Unit E and dedicated to a 320-acre gas spacing unit consisting of the W/2 of Section 25, T16S, R35E, Lea County, New Mexico.

NMOCD Cases 12731 and 12744 TMBR/Sharp Drilling, Inc.'s Motion to Reopen -Page 2-

On July 30, 2001, Arrington filed an application for permit to drill ("APD") and obtained approval from the OCD-Hobbs to drill the Blue Drake 23 Well No. 1 to be located in Unit I and dedicated to a 320-acre gas spacing unit consisting of the E/2 of Section 23, T16S, R35E, Lea County, New Mexico.

Seven days later, TMBR/Sharp filed (i) its APD for the N/2 of Section 25 and (ii) its APD for the E/2 of Section 23, but both were denied approval by the Division District because Arrington's APDs for the W/2 of Section 25 and for the E/2 of Section 23 had already been issued.¹

Arrington's right to drill and operate these wells was predicated upon its assumption that two oil & gas leases held by TMBR/Sharp had expired and that two "top leases" obtained by James D. Huff and claimed by Arrington are in effect.² Without its claim of interest in these two "top leases" Arrington has no interest in either the E/2 of Section 23 or the W/2 of Section 25.

In fact the two "top leases" were obtained on March 27, 2001 by James D. Huff and filed of record in Lea County on June 11, 2001. Huff's assignment of these "top leases" was not recorded until September 19, 2001, some 6 weeks after the Division had approved Arrington's APDs.

Except for Arrington's action in claiming this top leased interest, TMBR/Sharp's APD would have been approved. TMBR/Sharp appealed this action to the Division which held a hearing on September 20, 2001.

On December 13, 2001, the Division entered Order R-11700, which concluded, among other things in paragraph (22), that "Arrington has demonstrated at least a colorable claim of title that would confer upon it a right to drill its proposed wells, no basis exists to reverse or overrule the action of the District Supervisor in approving the Arrington APDs."

¹ TMBR/Sharp's APDs were filed on August 6, 2001 for its Leavelle "23" Well No. 1 to be located in Unit G and dedicated to the E/2 of Section 23, T16S, R35E and for its Blue Fin "25" Well No. 1 to be located in Unit E and dedicated to the N/2 of Section 25, T16S, R35E, Lea County, New Mexico.

 $^{^2}$ James D. Huff "top leased" the NW/4 of Section 25 and the SE/4 of Section 23 and other lands.

NMOCD Cases 12731 and 12744 TMBR/Sharp Drilling, Inc.'s Motion to Reopen -Page 3-

Contrary to Division Order R-11700, Arrington failed to demonstrate "colorable title" at the time its APDs were approved.

In addition, Division Order R-11700 denied TMBR/Sharp's Applications for Permit to Drill ("APDs") because the Division had previously approved David H. Arrington's APDs and stated that:

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

However, the Division concluded in paragraph (25) of Order R-11700 that "...the Division has jurisdiction to revoke its approval of any APD in an appropriate case..."

On August 21, 2001, TMBR/Sharp filed litigation in the Fifth Judicial District Court, Lea County, New Mexico seeking a judicial determination, among other things, the validity of Arrington's claim of title.

On December 27, 2001, the District Court entered a final order holding that Arrington's assumptions were wrong and entered Summary Judgment in favor the TMBR/Sharp. Arrington's claim of interest in the top leases has failed and TMBR/Sharp's leases are still valid.

In the meantime, and in an effort to trump the Commission's ability to approve the TMBR/Sharp APD at the DeNovo hearing, on December 17, 2001, Arrington obtained approval of an APD for the E/2 of Section 25 which conflicts with TMBR/Sharp's APD for the N/2 of Section 25 which is pending appeal before the Commission.

Once again, Arrington has obtained an APD from the Division District for a spacing unit in which Arrington has no working interest of record.

On January 8, 2002, TMBR/Sharp filed a timely application for a DeNovo hearing of these cases before the New Mexico Oil Conservation Commission which have been set on the February 15. 2002 docket.

NMOCD Cases 12731 and 12744 TMBR/Sharp Drilling, Inc.'s Motion to Reopen -Page 4-

NEW EVIDENCE

Based upon new evidence, TMBR/Sharp is now entitled to have its APDs approved and Arrington's APD revoked.

The Court decides for TMBR/Sharp:

This matter involves a title dispute between the parties which has now been decided in TMBR/Sharp's favor by the Fifth Judicial District Court, Lea County, New Mexico.

On December 27, 2001, the District Court entered an order denying Arrington's title claims to the interest held by TMBR/Sharp and, as a result of this new evidence, Arrington has no operating interest in either the E/2 of Section 23 nor the W/2 of Section 25. See Exhibit "A" attached.

This matter has been conclusively resolved against Arrington and demonstrates that Arrington wrongfully obtained the approval of its APDs from the Division. Based upon this conclusive new evidence, TMBR/Sharp is entitled to have its APDs approved and Arrington's revoked.

Arrington's manipulations continue:

First, Arrington's wrongful actions in claiming an operating interest in the W/2 of Section 25 precluded the Division from approving TMBR/Sharp's APD for the N/2 of Section 25. Then on December 17, 2001, while this matter was pending a decision in the District Court, Arrington wrongfully obtained approval of yet another APD from the Hobbs District Supervisor--this time for the E/2 of Section 25 in which Arrington has no interest and which conflicts with TMBR/Sharp's previously filed APD for the N/2 of Section 25 now pending before the Commission.³ Exhibit "B"

 $^{^3}$ As of January 17, 2002, James D. Huff had a 14.6875% working interest in the E/2 of Section 25; Arrington had no interest.

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Arrington's purpose is obvious. This latest effort by Arrington is simply an effort to avoid taking responsibility for its actions. This latest manipulation by Arrington is an attempt to circumvent the probability that it would lose the District Court case and to frustrate the Division's ability to finally approve TMBR/Sharp's APD for the N/2 of Section 25.

The Division should not tolerate this gamesmanship. This is the "appropriate case" for the Division to exercise its jurisdiction to revoke all three of Arrington's APDs.

RELIEF REQUESTED

The Division now has primary jurisdiction to revoke Arrington's APDs and to correspondingly reverse the Hobbs District Supervisor's denial of the TMBR/Sharp APDs. The Division should do so without further hearing or delay.

RESPECTFULLY SUBMITTED:

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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was sent Federal Express this 24th day of January, 2002 to Earnest Carroll, Esq., attorney for Arrington Oil & Gas, Inc.

Thomas Kellahin

FIFTH JUDICIAL DISTRICT COURT COUNTY OF LEA STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC., Plaintiff, CITED OF ALL DISTRICT DUNITY MA OFFICE CIDEC 27 AM 9: 33 DISTRICT COURT CLERK No. CV2001-315C

VS.

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

ORDER GRANTING PARTIAL SUMMARY JUDGMENT -REGARDING FILING OF UNIT DESIGNATIONS

THIS MATTER having come before the Court upon Motion of the Plaintiff's TMBR/Sharp Drilling Company's Motion for Partial Summary Judgment regarding Filing of Unit Designations and the Defendant Arrington Oil and Gas Inc.'s and Defendant Huff's Motion for Summary Judgment Regarding Filing of Unit Designations and the Court being fully advised FINDS that the Plaintiff's Motion is well taken and should be and IS GRANTED and the Defendant's Motion is not well taken and should be and IS DENIED.

Gary L. Clingman District Judge

CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice was mailed to all parties on the 27^{44} day of 4264, 2001:

Richard Montgomery, Esquire P.O. Box 2776 Midland, Texas 79702-2776 Phil Brewer, Esquire P.O. Box 298 Roswell, NM 88202-0298 Ernest L. Carroll, Esquire P.O. Box 1720 Artesia, NM 88221-1720

Michael J. Canon, Esquire 303 W. Wali, Suite 1100 Midland, Texas 79701

By:

rial Court Administrative Assistant



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KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW EL PATIO BUILDING 117 NORTH GUADALUPE POST OFFICE BOX 2265 SANTA FE, NEW MEXICO 87504-2265

TELEPHONE (505) 982-4285 TELEFAX (505) 982-2047

W. THOMAS KELLAHIN*

NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

January 24, 2002

To Mariasut 1 plag

HAND DELIVERED

David K. Brooks, Esq. Oil Conservation Division -1220 South Saint Francis Drive Santa Fe, New Mexico 87505

Re: Motion of TMBR/Sharp Drilling, Inc. to Reopen Cases 12731 and 12744 and to amend Order No. R-11700

> NMOCD Case 12731 Application of TMBR/Sharp Drilling, Inc. for an order staying David H. Arrington Oil & Gas, Inc. from commencing operations, Lea County, New Mexico.

NMOCD Case 12744 Application of TMBR/Sharp Drilling, Inc. appealing the Hobbs District Supervisor's decision denying approval of two applications for permit to drill filed by TMBR/Sharp Drilling, Inc., Lea County, New Mexico

Dear Mr. Brooks:

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On behalf of TMBR/Sharp Drilling, Inc., please find enclosed our motion to reopen the referenced cases based upon new evidence.

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W. Thomas Kellahin

cc: Earnest Carroll, Esq. **Attorney for Arrington** cc: TMBR/Sharp Rick Montgomery, Esq.

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

APPLICATION OF TMBR/SHARP DRILLING, INC. CASE NO. 12731 FOR AN ORDER STAYING DIVISION APPROVAL OF TWO APPLICATIONS FOR PERMIT TO DRILL BY DAVID H. ARRINGTON OIL & GAS, INC. LEA COUNTY, NEW MEXICO

APPLICATION OF TMBR/SHARP DRILLING, INC. APPEALING THE HOBBS DISTRICT SUPERVISOR'S DECISION DENYING APPROVAL OF TWO APPLICATIONS FOR PERMIT TO DRILL FILED BY TMBR/SHARP DRILLING INC. LEA COUNTY, NEW MEXICO CASE NO. 12744

02 JAN 24 AH 11: 27

MOTION OF TMBR/SHARP DRILLING, INC. TO REOPEN CASES 12731 AND 12744 AND AMEND ORDER R-11700 BASED UPON NEW EVIDENCE

Comes now TMBR/Sharp Drilling, Inc. ("TMBR/Sharp") by its attorneys, Kellahin & Kellahin, applies to the New Mexico Oil Conservation Division to reopen Cases 12731 and 12744 and to amend Division Order R-11700 based upon new evidence,

And in support states:

INTRODUCTION

On July 19, 2001, David H. Arrington Oil & Gas Inc. ("Arrington") filed an application for permit to drill ("APD") and obtained approval from the OCD-Hobbs to drill the Triple Hackle Dragon 25 Well No. 1 to be drilled in Unit E and dedicated to a 320-acre gas spacing unit consisting of the W/2 of Section 25, T16S, R35E, Lea County, New Mexico.

NMOCD Cases 12731 and 12744 TMBR/Sharp Drilling, Inc.'s Motion to Reopen -Page 2-

On July 30, 2001, Arrington filed an application for permit to drill ("APD") and obtained approval from the OCD-Hobbs to drill the Blue Drake 23 Well No. 1 to be located in Unit I and dedicated to a 320-acre gas spacing unit consisting of the E/2 of Section 23, T16S, R35E, Lea County, New Mexico.

Seven days later, TMBR/Sharp filed (i) its APD for the N/2 of Section 25 and (ii) its APD for the E/2 of Section 23, but both were denied approval by the Division District because Arrington's APDs for the W/2 of Section 25 and for the E/2 of Section 23 had already been issued.¹

Arrington's right to drill and operate these wells was predicated upon its assumption that two oil & gas leases held by TMBR/Sharp had expired and that two "top leases" obtained by James D. Huff and claimed by Arrington are in effect.² Without its claim of interest in these two "top leases" Arrington has no interest in either the E/2 of Section 23 or the W/2 of Section 25.

In fact the two "top leases" were obtained on March 27, 2001 by James D. Huff and filed of record in Lea County on June 11, 2001. Huff's assignment of these "top leases" was not recorded until September 19, 2001, some 6 weeks after the Division had approved Arrington's APDs.

Except for Arrington's action in claiming this top leased interest, TMBR/Sharp's APD would have been approved. TMBR/Sharp appealed this action to the Division which held a hearing on September 20, 2001.

On December 13, 2001, the Division entered Order R-11700, which concluded, among other things in paragraph (22), that "Arrington has demonstrated at least a colorable claim of title that would confer upon it a right to drill its proposed wells, no basis exists to reverse or overrule the action of the District Supervisor in approving the Arrington APDs."

¹ TMBR/Sharp's APDs were filed on August 6, 2001 for its Leavelle "23" Well No. 1 to be located in Unit G and dedicated to the E/2 of Section 23, T16S, R35E and for its Blue Fin "25" Well No. 1 to be located in Unit E and dedicated to the N/2 of Section 25, T16S, R35E, Lea County, New Mexico.

 $^{^2}$ James D. Huff "top leased" the NW/4 of Section 25 and the SE/4 of Section 23 and other lands.

NMOCD Cases 12731 and 12744 TMBR/Sharp Drilling, Inc.'s Motion to Reopen -Page 3-

Contrary to Division Order R-11700, Arrington failed to demonstrate "colorable title" at the time its APDs were approved.

In addition, Division Order R-11700 denied TMBR/Sharp's Applications for Permit to Drill ("APDs") because the Division had previously approved David H. Arrington's APDs and stated that:

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

However, the Division concluded in paragraph (25) of Order R-11700 that "...the Division has jurisdiction to revoke its approval of any APD in an appropriate case..."

On August 21, 2001, TMBR/Sharp filed litigation in the Fifth Judicial District Court, Lea County, New Mexico seeking a judicial determination, among other things, the validity of Arrington's claim of title.

On December 27, 2001, the District Court entered a final order holding that Arrington's assumptions were wrong and entered Summary Judgment in favor the TMBR/Sharp. Arrington's claim of interest in the top leases has failed and TMBR/Sharp's leases are still valid.

In the meantime, and in an effort to trump the Commission's ability to approve the TMBR/Sharp APD at the DeNovo hearing, on December 17, 2001, Arrington obtained approval of an APD for the E/2 of Section 25 which conflicts with TMBR/Sharp's APD for the N/2 of Section 25 which is pending appeal before the Commission.

Once again, Arrington has obtained an APD from the Division District for a spacing unit in which Arrington has no working interest of record.

On January 8, 2002, TMBR/Sharp filed a timely application for a DeNovo hearing of these cases before the New Mexico Oil Conservation Commission which have been set on the February 15, 2002 docket.

NMOCD Cases 12731 and 12744 TMBR/Sharp Drilling, Inc.'s Motion to Reopen -Page 4-

NEW EVIDENCE

Based upon new evidence, TMBR/Sharp is now entitled to have its APDs approved and Arrington's APD revoked.

The Court decides for TMBR/Sharp:

This matter involves a title dispute between the parties which has now been decided in TMBR/Sharp's favor by the Fifth Judicial District Court, Lea County, New Mexico.

On December 27, 2001, the District Court entered an order denying Arrington's title claims to the interest held by TMBR/Sharp and, as a result of this new evidence, Arrington has no operating interest in either the E/2 of Section 23 nor the W/2 of Section 25. See Exhibit "A" attached.

This matter has been conclusively resolved against Arrington and demonstrates that Arrington wrongfully obtained the approval of its APDs from the Division. Based upon this conclusive new evidence, TMBR/Sharp is entitled to have its APDs approved and Arrington's revoked.

Arrington's manipulations continue:

First, Arrington's wrongful actions in claiming an operating interest in the W/2 of Section 25 precluded the Division from approving TMBR/Sharp's APD for the N/2 of Section 25. Then on December 17, 2001, while this matter was pending a decision in the District Court, Arrington wrongfully obtained approval of yet another APD from the Hobbs District Supervisor--this time for the E/2 of Section 25 in which Arrington has no interest and which conflicts with TMBR/Sharp's previously filed APD for the N/2 of Section 25 now pending before the Commission.³ Exhibit "B"

 3 As of January 17, 2002, James D. Huff had a 14.6875% working interest in the E/2 of Section 25; Arrington had no interest.

NMOCD Cases 12731 and 12744 TMBR/Sharp Drilling, Inc.'s Motion to Reopen -Page 5-

Arrington's purpose is obvious. This latest effort by Arrington is simply an effort to avoid taking responsibility for its actions. This latest manipulation by Arrington is an attempt to circumvent the probability that it would lose the District Court case and to frustrate the Division's ability to finally approve TMBR/Sharp's APD for the N/2 of Section 25.

The Division should not tolerate this gamesmanship. This is the "appropriate case" for the Division to exercise its jurisdiction to revoke all three of Arrington's APDs.

RELIEF REQUESTED

The Division now has primary jurisdiction to revoke Arrington's APDs and to correspondingly reverse the Hobbs District Supervisor's denial of the TMBR/Sharp APDs. The Division should do so without further hearing or delay.

RESPECTFULLY SUBMITTED:

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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was sent Federal Express this 24th day of January, 2002 to Earnest Carroll, Esq., attorney for Arrington Oil & Gas, Inc.

Thomas Kellahin

CUITON, BLEDSUE

FIFTH JUDICIAL DISTRICT COURT COUNTY OF LEA STATE OF NEW MEXICO

TMBR/SHARP DRILLING, INC., Plaintiff,

RICT 01 DEC 27 AM 9: 33 RICT COURT CLERK No. CV2001-315C

VS.

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

ORDER GRANTING PARTIAL SUMMARY JUDGMENT -REGARDING FILING OF UNIT DESIGNATIONS

THIS MATTER having come before the Court upon Motion of the Plaintiff's TMBR/Sharp Drilling Company's Motion for Partial Summary Judgment regarding Filing of Unit Designations and the Defendant Arrington Oil and Gas Inc.'s and Defendant Huff's Motion for Summary Judgment Regarding Filing of Unit Designations and the Court being fully advised FINDS that the Plaintiff's Motion is well taken and should be and IS GRANTED and the Defendant's Motion is not well taken and should be and IS DENIED.

Gary L. Clingman District Judge

CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice was mailed to all parties on the 27th day of Lecentry, 2001:

Richard Montgomery, Esquire P.O. Box 2776 Midland, Texas 79702-2776 Phil Brewer, Esquire P.O. Box 298 Roswell, NM 88202-0298 Ernest L. Carroll, Esquire P.O. Box 1720 Artesia, NM 88221-1720

Michael J. Canon, Esquire 303 W. Wall, Suite 1100 Midland, Texas 79701

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Trial Court Administrative Assis



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