> liable as a naked trespasser and would lose a large sum of money necessarily expended in development of the property' in the event appellees should fail to recover title at the end of their suit. Assuming that such danger of loss is present in the circumstances as asserted by appellees, still the appointment of a receiver and development of the property under him does not eliminate but only shifts such loss from appellees to appellants, and for improvements not needed should appellants recover the land in the end. We do not think these facts authorize the appointment of a receiver under the equitable powers of the court."[5]

Would the court have authorized the appointment of a receiver in this case if the additional wells would have been of benefit to defendants as well as to plaintiffs? Perhaps if this fact situation had been presented, the parties would have been able to agree upon a plan of development or the appointment of a receiver *pendente lite.*

In contrast to the two preceding cases, *Magnolia Petroleum Co. v. Jackson*[6] sustained the application of appellee, after a trial judgment in its favor on the title question, for a receiver with power to produce and conserve oil under the property. The appointment of a receiver was based on a showing that appellant was in possession of the property,

ership was not in possession of the property over which a receivership was sought.

> "But nowhere in said opinion does he intimate that a party in possession with a judgment in his favor is entitled to have a receiver administer his property. . . . The mere fact that they [appellees] find it difficult and hazardous to develop said premises for oil would not in anywise justify the appointment of a receiver."

Some other jurisdictions adopt a different position. Where there is a good faith title dispute, a court of equity may appoint a receiver to explore and develop minerals or may authorize one party to do so. Under these circumstances, there is a right to reimbursement of costs out of the proceeds of production.[8]

The existence of a bona fide title dispute does not deprive the regulatory agency of power to issue a well permit. Thus in *Magnolia Petroleum Co. v. Railroad Commission,* at the petition of plaintiff, a claimant to the small tract in issue, the trial court cancelled the permit given by the Railroad Commission to drill a well. This action was reversed, the court declaring:

> "No permit was then [at common law] required to drill for

If it later developed that he had no title, he had to account to the true owner for the value of the oil removed. . . . Pending settlement of the controversy in a suit brought for that purpose, either party in a proper case might have an injunction to preserve the status quo. . . . Or, upon proper showing, in order to prevent waste, a receiver might be appointed to drill the well and hold the proceeds of the oil to await the outcome of the title suit. . . .

"In our opinion, the situation is not materially changed by the conservation laws. In cases where the Court of Civil Appeals has considered the matter, it seems to have been erroneously assumed that such a permit affirmatively authorizes the permittee to take possession of the land and drill. Consequently, it has been held that unless the applicant has an undisputed title to the leasehold, the Commission has no power to grant him a permit. . . . We do not think the permit has this effect. The function of the Railroad Commission in this connection is to administer the conservation laws. When it grants a permit to drill a well it does not undertake to adjudicate questions of title or rights of possession. These questions must be settled in the courts. When the permit is granted, the permittee may still have no such title as will authorize him to drill on the land. If other parties are in possession of the property, as in the present case, they may defend their possession by self-help, or by injunction proceedings. Before the

In such a suit the fact that a permit to drill has been granted would not be admissible in support of permittee's title.

"Of course the Railroad Commission should not do the useless thing of granting a permit to one who does not claim the property in good faith. The Commission should deny the permit if it does not reasonably appear to it that the applicant has a good-faith claim in the property. If the applicant makes a reasonably satisfactory showing of a good-faith claim of ownership in the property, the mere fact that another in good faith disputes his title is not alone sufficient to defeat his right to the permit; neither is it ground for suspending the permit or abating the statutory appeal pending settlement of the title controversy."[9]

[Expenses of receivership]

When a receiver is appointed pending resolution of a title controversy, the allocation of the expenses of receivership may present some difficulty, particularly when the winning party in the title controversy derived no benefit from the appointment of the receiver. The trial court may have discretion in this matter, but normally it may be expected that such costs will be assessed against the losing party. Thus in a Texas case, *Jones v. Strayhorn,* [10] the majority opinion commented as follows:

a result of the receivership. It is not sufficient to establish an abuse of discretion simply to show that the receivership would have benefitted the parties who applied for the receivership had they been successful in litigation. . . .[12]

"The only 'benefit,' if such it can be called, that the Jones plaintiffs received from the receivership proceedings was one which they obviously did not desire, but sought to prevent, namely, having the receiver collect their money, hold it a certain length of time and eventually turn it over to them as the rightful owners, less $39,052.01, receiver's costs.

"This is not the type of 'benefit' which will justify an appellate court in saying, as a matter of law, that a trial judge has abused his discretion in adjudging costs against the losing party in litigation. . . .[13]

"We do not wish to be understood as holding that a trial judge upon sufficient equitable grounds may not adjudge receivership costs either in whole or in part against the prevailing party even where no benefit from the receivership accrues to such party. This is a matter which, under the rules, lies within the discretion of the trial court."[14]

Dissenting judges urged that the winning parties derived benefit from the receivership in the fact that but for the receivership it would not have been possible to effect a pooling agreement under which production was obtained.

The economic difficulty faced by the petitioner in obtaining financing for drilling operations or his inability to obtain a well permit from the regulatory agency is apparently considered irrelevant to the request for equitable relief. In other states, the appointment of a receiver to operate premises subject to a title dispute appears more readily available.

§ 231.4 Adjusting the interests of the parties following the resolution of the title controversy

Considerable difficulty is encountered in adjusting the interests of the parties when drilling operations have been long delayed pending final judgment in a title dispute. Is the ultimate loser in the title suit liable to the winner for the loss suffered by reason of the drainage during the pendency of the dispute,[1] or for any decrease in the speculative value during the pendency of the title dispute by reason of the drilling of a dry hole on adjacent premises?[2] Can (and should) the regulatory agency take steps to correct the nonratable taking during the pendency of the dispute by permitting additional wells to be drilled or by granting a larger allowable for the land, the development of which has been hindered by the title dispute?

The last question was raised in *Potter v. Sun Oil Co.*[3] Liti-

issue a permit despite a bona fide title dispute.[4] During the pendency of the litigation, 33,623 barrels of oil were drained from the land, some of it by adjoining wells operated by the losing parties in the litigation. After final judgment was entered, the winning parties drilled two wells on the land and sought permits for additional wells. Two permits were granted and the wells drilled. Apparently the basis for granting the additional wells was to permit the landowners to equalize production between their tract and adjoining land. The Texas Court of Civil Appeals disapproved of this basis for granting well permits and enjoined production.[5]

The Supreme Court of Texas, however, reversed the judgment of the Court of Civil Appeals, and dissolved the injunction. The opinion of the court is sketchy indeed. Its discussion of the legal questions raised by the controversy is limited, in essence, to the following statement:

> "The decision of this case may be placed on the rule that if there is any testimony of probative force to sustain the order of the Railroad Commission and the judgment of the trial court, it is the duty of the courts to uphold such order and judgment, unless they are clearly illegal, unreasonable, or arbitrary. This record will not justify the holding that the Railroad Commission and the trial court acted illegally, unreasonably, or arbitrarily in this matter."[6]

This brief opinion leaves many questions unanswered. Does it represent a holding that the Commission may grant a permit as an exception to Rule 37 in order to permit a mineral owner or lessor to equalize per acre production when such mineral owner or lessee has been prevented by suit from drilling a well?

Court rather summarily disposes of the waste argument, but perhaps the Supreme Court decision was based on that ground.

§ 232. Slander of Title.[1]

Another theory of recovery for loss of speculative value of oil and gas property is slander of title, sometimes called injurious falsehood or disparagement of title. The elements of this cause of action are:

(1) ownership by plaintiff of an interest in the property in question,

(2) publication to a third person,

(3) of a false and injurious statement regarding the title to the property,

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§ 232

[1] For detailed discussions of this matter, see Kuntz, "Liability for Clouding Title to Oil and Gas Interests," 8 *Sw. Legal Fdn. Oil & Gas Inst.* 331 (1957);

E. Smith & J. Weaver, *Texas Law of Oil and Gas* § 7-1 (1989);

Renegar, *Slander of Title in the State of Oklahoma,* 65 Okla. B.A.J. 1773 (1994);

Binder, "Slander of Title and Assorted Slings and Arrows of the Property Bar," 13 *Eastern Min. L. Inst.* 13-1 (1992).

In Huie, Woodward and Smith, *Cases and Materials on Oil and Gas* 201 (2d ed. 1972), the authors observe:

> "Slander of title is the historic name of an action which modern writers frequently include within the broader labels of disparagement, or injurious falsehood. . . . [I]t is almost

It was held in *Home-Stake Royalty Corp. v. Corporation Commission*[6.1] that the applicant for a pooling order is not required to make available private geological information possessed by the applicant, but the sufficiency of the price offered for nonparticipating interests was to be determined on the basis of present market value as evidenced by the terms and price paid for recent leases in the surrounding area. In this instance the well to be drilled was a wildcat in an undeveloped region in which the only well in the vicinity was a thirty-year-old non-producer.

> "Geologic studies in such areas are closely guarded by their owners as proprietary information. Any conclusion reached relative to future production from the contemplated well derived from these tests remains problematical, conjectural, and depends in great part upon the expertise of the persons making the evaluation."

[Surface rights in unleased land]

The owner of unleased lands should not be able to avoid the effect of a compulsory pooling order by denying surface rights in the unit operator. Thus [redacted] declaring:

> [redacted]

[redacted]

6.1 Home-Stake Royalty Corp. v. Corporation Comm'n, 594 P.2d 1207, 63 *O.&G.R.* 340 (Okla. 1979).

Not surprisingly, there may be substantial dispute over the bonus appropriate under the circumstances of any particular case. See Miller v. Corporation Comm'n, 635 P.2d 1006, 70 *O.&G.R.* 314 (Okla. 1981). The Corporation Commission established that a bonus of $75 per acre and a one-eighth royalty interest be paid mineral owners in lieu of participation. Dispute centered on the fact that the state had received a larger bonus and royalty on a sealed-bid sale of an 80–acre state-owned tract located in the same unit. The majority of the court concluded that the price secured through the statutorily mandated sealed-bid process for leasing state-owned minerals did not represent a sale in the open market. The Commission order was sustained.

[redacted] *O.&G.R.* (Okla. 1974).

8 534 P.2d at 1279, 51 *O.&G.R.* at 68.

See also the following:

[redacted] 91 *O.&G.R.* 246 (La. 1986), *cert. denied,* 479 U.S. 925 (1986);

[redacted] (La. Ct. App.), *writs denied,* 608 So. 2d 1010 (La. 1992) (on subsequent appeal of suit seeking removal of alleged trespassing well and damages);

[redacted] *O.&G.R.* — (1997) (follows *Texas Oil & Gas v. Rein and Nunez v. Wainoco;* [redacted]).

from J.M. Bruce

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[redacted], 121 *O.&G.R.* 467 (La. Ct. App.), *writs* [redacted] appeal of suit seeking removal of alleged trespassing well and damages);

[redacted] *O.&G.R.* — (1997) (follows *Texas Oil & Gas v. Rein and Nunez v. Wainoco;* [redacted]

Brace/Olem

70-2-18. Spacing or proration unit with divided mineral ownership.

A. Whenever the operator of any oil or gas well shall dedicate lands comprising a standard spacing or proration unit to an oil or gas well, it shall be the obligation of the operator, if two or more separately owned tracts of land are embraced within the spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil or gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, to obtain voluntary agreements pooling said lands or interests or an order of the division pooling said lands, which agreement or order shall be effective from the first production. Any division order that increases the size of a standard spacing or proration unit for a pool, or extends the boundaries of such a pool, shall require dedication of acreage to existing wells in the pool in accordance with the acreage dedication requirements for said pool, and all interests in the spacing or proration units that are dedicated to the affected wells shall share in production from the effective date of the said order.

B. Any operator failing to obtain voluntary pooling agreements, or failing to apply for an order of the division pooling the lands dedicated to the spacing or proration unit as required by this section, shall nevertheless be liable to account to and pay each owner of minerals or leasehold interest, including owners of overriding royalty interests and other payments out of production, either the amount to which each interest would be entitled if pooling had occurred or the amount to which each interest is entitled in the absence of pooling, whichever is greater.

C. Nonstandard spacing or proration units may be established by the division and all mineral and leasehold interests in any such nonstandard unit shall share in production from that unit from the date of the order establishing the said nonstandard unit.

History: 1953 Comp., § 65-3-14.5, enacted by Laws 1969, ch. 271, § 1; 1977, ch. 255, § 52.

Constitutionality. - Standards of preventing waste and protecting correlative rights, as laid out in 70-2-11 NMSA 1978, are sufficient to allow commission's power to prorate and create standard or nonstandard spacing units to remain intact, and this section is not unlawful delegation of legislative power under N.M. Const., art. III, § 1. Rutter & Wilbanks Corp. v. Oil Conservation Comm'n, 87 N.M. 286, 532 P.2d 582 (1975).

The terms "spacing unit" and "proration unit" are not synonymous and commission has power to fix spacing units without first creating proration units. Rutter & Wilbanks Corp. v. Oil Conservation Comm'n, 87 N.M. 286, 532 P.2d 582 (1975).

Authority to pool separately owned tracts. - Since commission has power to pool separately owned tracts within a spacing or proration unit, as well as concomitant authority to establish oversize nonstandard spacing units, the commission also has authority to pool separately owned tracts within an oversize nonstandard spacing unit. Rutter & Wilbanks Corp. v. Oil Conservation Comm'n, 87 N.M. 286, 532 P.2d 582 (1975).

Creation of proration units, force pooling and participation formula upheld. - Commission's (now division's) findings that it would be unreasonable and contrary to spirit of conservation statutes to drill an unnecessary and economically wasteful well were held sufficient to justify creation of two nonstandard gas proration units, and force pooling thereof, and were supported by substantial evidence. Likewise,

participation formula adopted by commission, which gave each owner a share in production in same ratio as his acreage bore to the acreage of whole, was upheld despite limited proof as to extent and character of the pool. Rutter & Wilbanks Corp. v. Oil Conservation Comm'n, 87 N.M. 286, 532 P.2d 582 (1975).

Proceedings to increase oil well spacing. - A proceeding on an oil and gas estate lessee's application for an increase in oil well spacing was adjudicatory, and the lessor was entitled to actual notice under the due process requirements of the New Mexico and United States Constitutions. Uhden v. New Mexico Oil Conservation Comm'n, 112 N.M. 528, 817 P.2d 721 (1991).

Law reviews. - For comment on geothermal energy and water law, see 19 Nat. Resources J. 445 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 38 Am. Jur. 2d Gas and Oil §§ 159, 164, 172.

58 C.J.S. Mines and Minerals §§ 230, 240.

70-2-17. Equitable allocation of allowable production; pooling; spacing.

A. The rules, regulations or orders of the division shall, so far as it is practicable to do so, afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as such can be practicably obtained without waste, substantially in the proportion that the quantity of the recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for this purpose to use his just and equitable share of the reservoir energy.

B. The division may establish a proration unit for each pool, such being the area that can be efficiently and economically drained and developed by one well, and in so doing the division shall consider the economic loss caused by the drilling of unnecessary wells, the protection of correlative rights, including those of royalty owners, the prevention of waste, the avoidance of the augmentation of risks arising from the drilling of an excessive number of wells, and the prevention of reduced recovery which might result from the drilling of too few wells.

C. When two or more separately owned tracts of land are embraced within a spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.

All orders effecting such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas, or both. Each order shall describe the lands included in the unit designated thereby, identify the pool or pools to which it applies and designate an operator for the unit. All operations for the pooled oil or gas, or both, which are conducted on any portion of the unit shall be deemed for all purposes to have been conducted upon each tract within the unit by the owner or owners of such tract. For the purpose of determining the portions of production owned by the persons owning interests in the pooled oil or gas, or both, such production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit. The portion of the production allocated to the owner or owners of each tract or interest included in a well spacing or proration unit formed by a pooling order shall, when produced, be considered as if produced from the separately owned tract or interest by a well drilled thereon. Such pooling order of the division shall make definite provision as to any owner, or owners, who elects not to pay his proportionate share in advance for the

prorata reimbursement solely out of production to the parties advancing the costs of the development and operation, which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, but which shall include a reasonable charge for supervision and may include a charge for the risk involved in the drilling of such well, which charge for risk shall not exceed two hundred percent of the nonconsenting working interest owner's or owners' prorata share of the cost of drilling and completing the well.

In the event of any dispute relative to such costs, the division shall determine the proper costs after due notice to interested parties and a hearing thereon. The division is specifically authorized to provide that the owner or owners drilling, or paying for the drilling, or for the operation of a well for the benefit of all shall be entitled to all production from such well which would be received by the owner, or owners, for whose benefit the well was drilled or operated, after payment of royalty as provided in the lease, if any, applicable to each tract or interest, and obligations payable out of production, until the owner or owners drilling or operating the well or both have been paid the amount due under the terms of the pooling order or order settling such dispute. No part of the production or proceeds accruing to any owner or owners of a separate interest in such unit shall be applied toward the payment of any cost properly chargeable to any other interest in said unit.

If the interest of any owner or owners of any unleased mineral interest is pooled by virtue of this act, seven-eighths of such interest shall be considered as a working interest and one-eighth shall be considered a royalty interest, and he shall in all events be paid one-eighth of all production from the unit and creditable to his interest.

D. Minimum allowable for some wells may be advisable from time to time, especially with respect to wells already drilled when this act takes effect, to the end that the production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

E. Whenever it appears that the owners in any pool have agreed upon a plan for the spacing of wells, or upon a plan or method of distribution of any allowable fixed by the division for the pool, or upon any other plan for the development or operation of such pool, which plan, in the judgment of the division, has the effect of preventing waste as prohibited by this act and is fair to the royalty owners in such pool, then such plan shall be adopted by the division with respect to such pool; however, the division, upon hearing and after notice, may subsequently modify any such plan to the extent necessary to prevent waste as prohibited by this act.

F. After the effective date of any rule, regulation or order fixing the allowable production, no person shall produce more than the allowable production applicable to him, his wells, leases or properties determined as in this act provided, and the allowable production shall be produced in accordance with the applicable rules, regulations or orders.

History: Laws 1935, ch. 72, § 12; 1941 Comp., § 69-2131/2; Laws 1949, ch. 168, § 13; 1953, ch. 76, § 1; 1953 Comp., § 65-3-14; Laws 1961, ch. 65, § 1; 1973, ch. 250, § 1; 1977, ch. 255, § 51.

Meaning of "this act". - The term "this act," referred to in this section, means Laws 1935, ch. 72, §§ 1 to 24, which appear as 70-2-2 to 70-2-4, 70-2-6 to 70-2-11, 70-2-15, 70-2-16, 70-2-21 to 70-2-25,

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

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

DE NOVO
CASE NO. 11666
CASE NO. 11677
Order No. R-10731-B

APPLICATION OF KCS MEDALLION RESOURCES, INC. (FORMERLY INTERCOAST OIL AND GAS COMPANY) FOR COMPULSORY POOLING AND UNORTHODOX GAS WELL LOCATION, EDDY COUNTY, NEW MEXICO.

APPLICATION OF YATES PETROLEUM CORPORATION FOR COMPULSORY POOLING AND AN UNORTHODOX GAS WELL LOCATION, EDDY COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m. on February 13, 1997, at Santa Fe, New Mexico, before the Oil Conservation Commission, hereinafter referred to as the "Commission."

NOW, on this 28th day of February, 1997, the Commission, a quorum being present, having considered the testimony, the record, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) Case Nos. 11666 and 11677 were consolidated at the time of the hearing for the purpose of testimony, and, inasmuch as approval of one application would necessarily require denial of the other, one order should be entered for both cases.

(3) The applicant in Case No. 11666, KCS Medallion Resources, Inc. ("Medallion") formerly known as InterCoast Oil and Gas Company, seeks an order pooling all mineral interests from the surface to the base of the Morrow formation underlying the E/2 of Section 20, Township 20 South, Range 28 East, NMPM, Eddy County, New Mexico, thereby forming a standard 320-acre gas spacing and proration unit for any and all formations and/or pools spaced on 320 acres within said vertical extent, which presently includes but is not necessarily limited to the Burton Flat-Morrow Gas Pool and the Undesignated West Burton Flat-Atoka Gas Pool. Said unit is to be dedicated to the applicant's proposed State of New Mexico "20" Well No. 1 to be drilled at an unorthodox gas well location 990 feet from the North and East lines (Unit A) of Section 20.

(4) The applicant in Case No. 11677, Yates Petroleum Corporation ("Yates"), seeks an order pooling all mineral interests from the surface to the base of the Morrow formation underlying the E/2 of Section 20, Township 20 South, Range 28 East, NMPM, Eddy County, New Mexico, thereby forming a standard 320-acre gas spacing and proration unit for any and all formations and/or pools spaced on 320 acres within said vertical extent, which presently includes but is not necessarily limited to the Burton Flat-Morrow Gas Pool and the Undesignated West Burton Flat-Atoka Gas Pool. Said unit is to be dedicated to the applicant's proposed Stonewall "AQK" State Com Well No. 1 to be drilled at an unorthodox gas well location 990 feet from the North and East lines (Unit A) of Section 20.

(5) The subject wells and proration unit are located within the Burton Flat-Morrow Gas Pool and within one mile of the West Burton Flat-Atoka Gas Pool, both of which are currently governed by Rule No. 104.C. of the Division Rules and Regulations which require standard 320-acre gas spacing and proration units with wells to be located no closer than 1650 feet from the end boundary nor closer than 660 feet from the side boundary of the proration unit nor closer than 330 feet from any quarter-quarter section line or subdivision inner boundary.

(6) Both Yates and Medallion have the right to drill within the proposed spacing unit and both seek to be named operator of their respective wells and the subject proration unit.

(7) Yates and Medallion have conducted negotiations prior to the hearing but have been unable to reach a voluntary agreement as to which company will drill and operate the well within the spacing unit.

e) the controlling percentage under a 160 or 40 acre proration unit would be different from the controlling percentage under the subject 320 acre unit. If the State of New Mexico "20" Well No. 1 was completed from the Delaware, Bone Spring or Strawn formation the resultant proration unit would probably be 40 or 160 acres depending upon whether it is an oil or Permian gas completion. Paying interest for these completions would be different than paying interest under the 320 acre proration unit and would reflect acreage ownership under the assigned 40 or 160 acres. In analyzing which parties have the most at stake in drilling the well, additional weight must be given to secondary objectives and the resultant ownership under those prospective proration units. The breakdown of interest under 40 or 160 acre proration units under the currently drilling State of New Mexico "20" Well No. 1 is as follows: Yates (Stonewall Unit) 5% and Medallion 95%;

f) the most important consideration in awarding operations to competing interest owners is geologic evidence as it relates to well location and recovery of oil and gas and associated risk. Since Yates and Medallion agree on geology and location, this is not a factor;

g) good faith negotiation prior to force pooling is a factor. If the force pooling party does not negotiate in good faith, the application is denied and the applicant is instructed to try to negotiate an agreement prior to refiling the force pooling application. Both Yates and Medallion conducted adequate discussions prior to filing competing force pooling applications, so this is not a factor in awarding operations;

h) both parties stipulated that 200% was the appropriate risk factor for non-consulting working interest owners pooled under this order so this is not a factor in awarding operations;

i) both parties are capable of operating the property prudently so this is not a factor in awarding operations;

j) differences in AFE's (well cost estimates) and other operational criteria are not significant factors in awarding operations and have only minor significance in evaluating an operator's ability to prudently operate the property.

(24) In the absence of compelling factors such as geologic and prospect differences, ability to operate prudently, or any reason why one operator would economically recover more oil or gas by virtue of being awarded operations than the other, "working interest control," as defined and modified by findings 23 (d), and (e) should be the controlling factor in awarding operations.

(25) Since the adjusted "working interest control" under the proration unit was relatively even, Medallion 47.5% to Yates 52.5%, the fact that Medallion would have 95% of the "working interest control" over completions in all formations spaced on 40 or 160 acres should be the critical factor in deciding who operates the State of New Mexico "20" Well No. 1 and the proposed spacing unit.

(26) Medallion should be designated operator of the State of New Mexico "20" Well No. 1 and the proposed spacing unit.

(27) The application of Yates Petroleum Corporation in this case should be denied.

(28) To avoid the drilling of unnecessary wells, to protect correlative rights, to avoid waste, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the production in any pool completion resulting from this order, the application of Medallion Resources, Inc. should be approved by pooling all mineral interests, whatever they may be, within the E/2 of Section 20.

(29) Any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(30) Any non-consenting working interest owner who does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(31) Any non-consenting working interest owner should be afforded the opportunity to object to the actual well costs but actual well costs should be adopted as the reasonable well costs in the absence of such objection.

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
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, INC. FOR AN ORDER STAYING DAVID H. ARRINGTON OIL & GAS, INC. FROM COMMENCING OPERATIONS, LEA COUNTY, NEW MEXICO. **CASE NO. 12731**

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

ORDER NO. R-11700-B

ORDER OF THE OIL CONSERVATION COMMISSION

BY THE COMMISSION:

THIS MATTER came before the Oil Conservation Commission (hereinafter referred to as "the Commission") on March 26, 2002, at Santa Fe, New Mexico, on application of TMBR/Sharp Drilling Inc. (hereinafter referred to as "TMBR/Sharp"), *de novo*, and opposed by David H. Arrington Oil and Gas Inc. (hereinafter referred to as "Arrington") and Ocean Energy Inc. (hereinafter referred to as "Ocean Energy") and the Commission, having carefully considered the evidence, the pleadings and other materials submitted by the parties hereto, now, on this 26th day of April, 2002,

FINDS,

1. Notice has been given of the application and the hearing on this matter, and the Commission has jurisdiction of the parties and the subject matter herein.

2. In Case No. 12731, TMBR/Sharp seeks an order voiding permits to drill obtained by Arrington and awarding or confirming permits to drill to TMBR/Sharp concerning the same property.

3. In Case No. 12744, TMBR/Sharp appeals the action of the Supervisor of District I of the Oil Conservation Division denying two Applications for Permit to Drill.

4. Arrington and Ocean Energy oppose both applications.

5. The cases were consolidated before the Division and were treated as consolidated for purposes of presentation before the Commission.

6. Still pending before the Division are two applications for compulsory pooling
<>

7. The Commission conducted an evidentiary hearing on March 26, 2002, heard testimony from witnesses called by TMBR/Sharp, accepted exhibits from TMBR/Sharp and accepted exhibits offered by Arrington. The Commission also accepted pre-hearing statements from TMBR/Sharp and Arrington and heard opening statements from TMBR/Sharp, Arrington and Ocean Energy and accepted brief closing statements from TMBR/Sharp and Arrington.

8. Applications for permit to drill were filed with the Division in Sections 23 and 25 by both Arrington and TMBR/Sharp. The applications filed by TMBR/Sharp and Arrington in Section 25 both proposed a well in the NW/4 of that section. The application for permit to drill filed by TMBR/Sharp in Section proposed a well in the NE/4, and the application of Arrington in Section 23 proposed a well in the SE/2 of that section.

9. The TMBR/Sharp and Arrington applications identified the Townsend Mississippian North Gas Pool as the pool to which the well would be dedicated.

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

11. The District Supervisor of District I, Lea County, issued permits to drill to Arrington in Sections 23 and 25 and denied the subsequent applications of TMBR/Sharp on the grounds of the previously-issued permits to Arrington.

12. Except for the question of whom was to operate the proposed wells, discussed below, both the TMBR/Sharp and Arrington applications conformed to the requirements of Rule 104.C(2), NMAC 19.15.3.104, and each application could properly be approved by the Division.

13. Multiple applications for a deep gas well in the same quarter section may not have been approved because only one well per 320 acres is permitted (Rule 104.C) and any infill well must be operated by the same operator as the initial well (Rule 104.C(2)(c)).

14. Thus, at the time the application was denied, Rule 104.C compelled the District Supervisor to deny TMBR/Sharp's application as permits had already been issued in favor of Arrington .

15. During the hearing of this matter, TMBR/Sharp argued that because the Fifth Judicial District Court found that Arrington's "top lease" had failed, TMBR/Sharp was entitled to permits to drill in Sections 23 and 25 and Arrington was not entitled to permits to drill and its permits should be rescinded. TMBR/Sharp also argued that Arrington had filed applications to prevent TMBR/Sharp from being able to drill and to place its obligations under the continuous drilling clauses of the oil and gas leases in jeopardy. TMBR/Sharp argued that Ocean Energy's letter agreement with Arrington could not revive Arrington's claim of title and that Ocean Energy's pending pooling application with the Division is essentially irrelevant to the question of whether TMBR/Sharp should have been granted a permit to drill.

16. Arrington argued that the title issue ruled upon by the District Court with respect to section 25 is irrelevant because Arrington acquired an independent interest in that section by virtue of a farm out agreement in September of 2001. Arrington also argued it was willing to assign the disputed acreage in Section 23 to TMBR/Sharp in order to resolve the present controversy. Arrington also argued that it doesn't intend to actually drill at the present time under either approved permit to drill and argued, citing Order No. R-10731-B, that the Commission's practice has not been to rely on "first in time, first in right" principles in decided competing applications on compulsory pooling, but instead on geological evidence. Arrington seemed to argue that a compulsory pooling proceeding, not the present proceeding, is the place to present such geologic evidence. Arrington argues that these proceedings are unnecessary and that the Commission should rely upon the Division's pending pooling cases to decide who should properly posses the permit to drill as between the various parties.

17. Ocean Energy argues that since its farm out agreement terminates on July 1, 2002 time is of the essence and that the matters at issue should be resolved in the penbding compulsory pooling proceeding. Ocean Energy argued that the permit to drill is meaningless in this context, and argued that TMBR/Sharp is essentially asking the Commission to determine pooling in the context of the permit to drill, that the dedication of acreage on the acreage dedication plat should not determine what acreage would be pooled to the well. If the Commission were to adopt this approach, Ocean Energy argues, the compulsory pooling statutes would be written out of existence.

18. This controversy is essentially a matter for the courts because of the disputed title in both section 23 and 25 as between Arrington and TMBR/Sharp. Until those matters are finally resolved, the outcome of this proceeding may well change. As of the present time, TMBR/Sharp has prevailed on the title question and the remainder of this Order reflects that (present) reality. Jurisdiction of this matter should therefore be retained until matters are finally resolved within the courts.

19. The question of the disputed title in sections 23 and 25 requires a more detailed discussion than otherwise would be appropriate.

20. TMBR/Sharp is the owner of oil and gas leases comprising the NW/4 of Section 25 and the SE/4 of Section 23 (along with other lands) pursuant to leases dated August 25, 1997 granted by Madeline Stokes and Erma Stokes Hamilton. TMBR/Sharp Exhibit 6. The leases were granted to Ameristate Oil & Gas, Inc. (hereinafter referred to as "Ameristate") and were recorded respectively in Book 827 at Page 127 and in Book 827 at Page 124 in Lea County, New Mexico.

21. TMBR/Sharp and Ameristate entered into a Joint Operating Agreement along with other parties on July 1, 1998 in which TMBR/Sharp was designated as the operator in Section 25. See TMBR/Sharp Exhibit 7.

22. Although the primary terms of the TMBR/Sharp leases have apparently expired, TMBR/Sharp alleges that the leases were preserved by the drilling of the "Blue Fin 24 Well No. 1" and subsequent production from that well. The Blue Fin 24 Well No. 1 is located in the offsetting section 24.

23. Subsequent to Stokes and Hamilton's execution of leases in favor of Ameristate Oil & Gas Inc., they granted leases in the same property to James D. Huff pursuant to oil and gas leases dated March 27, 2001. See TMBR/Sharp Exhibit 9. The leases to Mr. Huff were recorded in Book 1084 at Page 282 and in Book 1084 at Page 285 in Lea County, New Mexico. These leases were referred to by the parties as "top leases," meaning that according to their terms, the leases would not take effect until the prior or "bottom" lease becomes ineffective. See TMBR/Sharp Exhibit 9, ¶ 15.

24. Arrington alleges Mr. Huff is an agent of Arrington but presented no evidence to this body to support that contention.

25. In July and August, 2001, Ocean acquired a number of farm out agreements in Section 25. See TMBR/Sharp Exhibit 10, Schedule 1. By an assignment dated September 10, 2001, Ocean assigned a percentage of the farm out agreements to

Arrington, the terms of which require Arrington to drill a test well in Section 25 known as the Triple Hackle Dragon 25 No. 1 well, in the NW/4 of that section.

26. On July 17, 2001, apparently relying on its ownership interest in Section 25 by virtue of its belief that the TMBR/Sharp leases had become ineffective and its reliance on the agency of Mr. Huff, Arrington filed an application for permit to drill for its proposed "Triple-Hackle Dragon "25" Well No. 1." Arrington proposed that this well would be located in the W/2 of Section 25, Township 16 South, Range 35 East, Lea County, New Mexico, at a standard location in the SW/4 NW/4 (Unit E), 750 feet from the west line and 1815 feet from the north line of the section. This application was approved on or about July 17, 2001 by Paul Kautz, acting District Supervisor.

27. On July 25, 2001, Arrington next filed an application for a permit to drill a well in Section 23, and proposed a well named the "Blue Drake "23" Well No. 1" to be located in the E/2 of Section 23, Township 16 South, Range 35 East, Lea County. The proposed well was to be located at a standard location in NE/4 SE/4 (Unit I), 660 feet from the east line and 1980 feet from the south line of the section. This application was approved on July 30, 2001 by Paul Kautz, acting District Supervisor.

28. On or about August 7, 2001, TMBR/Sharp filed an application for a permit to drill a well in Section 25 also. This well was to be its "Blue Fin "25" Well No. 1" to be located in the N/2 of Section 25, Township 16 South, Range 35 East, Lea County, at a standard location in SW/4 NW/4 (Unit E), 924 feet from the west line and 1913 feet from the north line of the section. On August 8, 2001, Paul Kautz, acting for the District Supervisor of the Division, denied this application because of the previously issued permit for Arrington's Triple-Hackle Dragon "25" Well No. 1.

29. On or about August 6, 2001, TMBR/Sharp filed an application for permit to drill for a proposed "Leavelle "23" Well No. 1," to be located in the E/2 of Section 23, Township 16 South, Range 35 East, Lea County, New Mexico, at a standard location in SW/4 NE/4 (Unit F), 1998 feet from the east line and 2038 feet from the north line of the section. On August 8, 2001, Paul Kautz, acting District Supervisor, denied this application because of the previously issued permit for Arrington's Blue Drake "23" Well No. 1.[1]

30. On August 21, 2001, after receiving the denials from the District office, TMBR/Sharp filed suit against Arrington and others in the Fifth Judicial District Court of Lea County, New Mexico. In that case, styled TMBR/Sharp Drilling, Inc. v. David H. Arrington Oil & Gas, Inc., *et al.* ("the TMBR/Sharp suit"), cause No. CV-2001-315C,

[1] Apparently after receipt of the Court's Order of <>, Mr. <> issued the permits to drill to TMBR/Sharp on <>.

TMBR/Sharp alleged that its leases were still effective and the Arrington top leases were ineffective. The District Court, in its Order Granting Partial Summary Judgment, dated December 24, 2001, submitted to this body as TMBR/Sharp's Exhibit No. 12, agreed with TMBR/Sharp's contention.

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31. Mr. Mark Nearburg, President of Ameristtae Oil & Gas Inc., testifying on behalf of TMBR/Sharp, testified that Ameristate had first acquired interests in the general area that is the subject of the present dispute in 1991 and acquired leases from Stokes Hamilton in 1994. In 1997, it sold <what> to TMBR/Sharp who drilled the first well in section 23. After acquiring 3-D sesmic data of the area during 1999-2000, TMBR/Sharp drilled the Blue Fin Well No. <> in section 25 on March 29, 2001. Mr. Nearburg testified that the focus of TMBR/Sharp's focus was section 24, the N/2 of section 25 and the E/2 of section 23. Since 1991, TMBR/Sharp and Ameristate have spent $7.5 million developing the prospect.

32. Mr. Nearburg acknowledged that the prospect was a risky one, because of the peculiar geology, but the tactics paid off in section 24, and that well was very successful. Mr. Nearburg noted that Ocean Energy had been invited to join <what> but declined because it felt the prospect was "low" and "wet."

33. Mr. Nearburg testified that when the Blue Fin well <> was drilled, written designations were attached to its C-102 which dedicated acreage of 320 acres to the unit. Mr. Nearburg testified that notice to third parties of the unit designation were filed in the County Clerk's office in Lea County. Mr. Nearburg maintained that the Stokes and Hamilton leases had no expired because it had drilled a well in section 24, had properly designated acreage, had produced hydrocarbons form the well ande had recorded notice in the County Clerk's office.

34. Mr. Nearburg noted it has been the industry practice for the top lessee to request the bottom lessee execute a release if the underlying lease has failed. If the bottom lessee refuses to acknowledge a failure, the parties jointly go to District Court to resolve the issue. Mr. Nearburg argued that Arrington's failure to honor this practice and file an application to drill deviated from this practice. <necessary??>

35. Mr. <> Phillips, testifying on behalf of TMBR/Sharp, stated he first became aware of the Huff top leases when TMBR/Sharp attempted to file expedited applications to drill; the applications were expedited because he had learned of Arrington's top leases and had learned that Arrington believed the top lease was valid.

36. Mr. Phillips testified that Huff assigned the top leases to Arrington long after Arrington had filed the applications to drill. <WHEN, FINDING?>

37. Mr. Phillips testified that it was TMBR/Sharp's intention to obtain a permit to drill and drill the wells to address concerns raised in the continuous drilling clause, and then pool the tracts later when time was less of an issue and when more was known about the formations above the target formations.

38. Mr. Phillips testified that Ocean Energy had not filed any application to drill in either sections 23 or 25.

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DISCUSSION

39. As noted previously, the competing applications of Arrington and TMBR/Sharp raise the issue of who may validly obtain a permit to drill. As the parties are aware, before an oil or natural gas well may be drilled within the State of New Mexico, a permit to drill must be obtained. See NMAC 19.15.3.102.A, 19 NMAC 15.M.1101.A. Only an "operator" may obtain a permit to drill, 19 NMAC 15.M.1101.A, and an "operator" is a person or persons who is "duly authorized" and "is in charge of the development of a lease or the operation of a producing property." NMAC, 19.15.1.7.O(8). The pending pooling applications in cases <> and <> present the same title issues present in this case. The compulsory pooling statute, NMSA 1978, § 70-2-17(C), permits an "owner" or "owners" to invoke the Division's compulsory pooling powers. **As the District Court has ruled that Arrington has no interest in sections 23 or 25 arising from the top leases, it seems that the Division will have to take up as an initial matter whether Arrington can invoke the compulsory pooling powers given the Court's ruling and given the <date> farm out. And the possibility of a successful appeal by Arrington of the District Court's ruling will make it very difficult for the Division to decide how to handle the pending pooling cases; both Arrington and TMBR/Sharp question the others' title and Ocean's farmouts expire in July of this year. It would not be unreasonable for the Division to hear the pending applications for compulsory pooling and assume, as this body is doing in this matter, that the title issues have been decided against Arrington.**

40. The parties seem to agree that a person owning a top lease where the bottom lease has not failed is not a person duly authorized to be in charge of the development of a lease or the operation of a producing property, and is therefore not be entitled to a permit to drill. See also 1 Kramer & Martin, The Law of Pooling and Unitization, 3rd

ed., § 11.04 at 11-10 (2001). As the remedy of compulsory pooling is limited to an "owner," it seems that a person owning a top lease where the bottom lease has not failed might not be entitled to compulsory pooling either.

41. When an application for permit to drill is filed, the Division does not make a determination whether an applicant is "duly authorized" and "is in charge of the development of a lease or the operation of a producing property." It is not within the Division's province to question the title of any person applying for a permit to drill in this State or whether that person is duly authorized to file an application. It is certainly not the province of the Division to examine title and determine whether an applicant's authority derives from a top lease or otherwise. The 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. The Division so found in its Order in this matter. See Order No. R-<> (<date>).

42. It is the responsibility of the operator to determine filing an application for permit to drill to do so under a good faith claim to title and a good faith belief that it is authorized to drill the well applied-for. It appears to this body that Arrington had such a good faith belief when it filed its application, but subsequently the District Court found otherwise. It is not within the purview of this body to question that decision and it should not do so in this case.

43. As of the date of this order, TMBR/Sharp, by Court declaration, is the owner of an oil and gas lease in both Section 23 and Section 25, and Arrington, also by Court declaration, is not an owner in those sections.

<deal with allegation of farm out>

44. As such, the permits to drill issued by the Division in July, 2001 to Arrington were issued erroneously and should be rescinded. The applications to drill submitted by TMBR/Sharp in August, 2001 should have been issued. Arrington's later acquisition of an interest in section 23 and 25 through a farm out agreement doesn't change this analysis; Arrington had no interest by virtue of farm out as of the date of TMBR/Sharp's applications and those applications would have been approved before Arrington acquired the farm out.

45. Since Arrington has indicated a willingness to appeal the decision of the District Court, there remains the possibility that a higher court may reverse the District Court's decision and title vest in Arrington's top lease; therefore, jurisdiction should be retained of this matter in the event that a reversal is obtained. <duplicative?>

46. Arrington and Ocean Energy have both urged this body to stay these proceedings pending the resolution of the applications for compulsory pooling, arguing that a decision on those matters will effectively resolve the issues surrounding the permits to drill.

47. Arrington and Ocean Energy's conclusion does not necessarily follow. An application for a permit to drill serves different objectives than an application for voluntary or compulsory pooling and the two processes should not be confused. <add APD stuff from textbook> Compulsory pooling seeks to <>.

48. It has long been the practice in New Mexico that the operator is free to choose whether to drill first, whether to pool first, or whether to pursue both contemporaneously. The Oil and Gas Act explicitly permits an operator to apply for compulsory pooling after the well is already drilled. See NMSA 1978, § 70-2-17(C) (the compulsory pooling powers of the Division may be invoked by an owner or owners "... who has the right to drill has drilled or proposes to drill a well ..."). That is not to say that issuance of a permit to drill prejudges the results of a compulsory pooling proceeding, and any suggestion that the acreage dedication plat attached to an application to drill somehow "pools" acreage is expressly disavowed. If acreage included on an acreage dedication plat is not owned in common, it is the obligation of the operator to seek voluntary pooling of the acreage pursuant to NMSA 1978, § 70-2-18<> and, if unsuccessful, to seek compulsory pooling pursuant to NMSA 1978, § 70-2-17(C). If the acreage comprising the acreage dedication is not owned separately, formal pooling is unnecessary.

49. Thus, where compulsory pooling is not required because of voluntary agreement or because of unitary ownership, the practice of dedicating acreage during the application for a permit to drill furthers administrative expedience. Once the application is approved, no further proceedings are necessary. An operator may first apply for a permit to drill a well and may thereafter pool (on a voluntary or compulsory basis) separately owned tracts to the well. Alternatively, the operator may first pool and later seek a permit to drill. The two are not mutually exclusive, and there is no preferred methodology.

50. Thus, the present process fosters efficiency by permitting a simple approach to pooling in cases where ownership is common and pooling, voluntary or compulsory, is not needed. There is no "first in time, first in right" rule that applies to issuance of a permit to drill or ordering compulsory pooling, except as Rule 104 and NMSA 1978, § 70-2-<> (prevention of unneccsary wells) require. Moreover, the Division's practice on reciept of competing applications for compulsory poling, has to be to consolidate both and decide on the basis of geology and other relevant factors. See R-<>. The fact that parties engage in gamesmanship to obtain advantage in these proceedings is well known

to this body; but gaining an advantage over another party by filing an early application for permit to drill is a problem of the parties' creation and resolution of such issues requires reference to the rules and regulations - it should not be construed as condoning the gamesmanship or creating a situation where the "first in time" rule prevails.

51. Ocean's expiring farm outs present a difficult problem because the delay occasioned by this proceeding and the pending compulsory pooling cases may well extend beyond the expiration date of those agreements. It is worth noting that Ocean seems to be free of the title issues plaguing the other parties' interests, but also doesn't seem to be presenting interested in drilling - Ocean Energy intended that Arrington drill and become operator of the wells <ALL?>. However, Ocean Energy has not petitioned this body for any relief, save denial of TMBR/Sharp's applications *in toto*. Perhaps Ocean should avail itself of the remedy already obtained by TMBR/Sharp in the pending action in District Court: an order staying expiration of the farm out pending final decisions in the pending administrative matters, and trial of the remaining issues before the District Court and any appeal.

CONCLUSIONS OF LAW:

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

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

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

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

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

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

IT IS THEREFORE ORDERED:

1. TMBR/Sharp's application in Case No. 12731, seeking to void permits to drill obtained by Arrington and awarding or confirming permits to drill to TMBR/Sharp is granted.

2. TMBR/Sharp's application In Case No. 12744, TMBR/Sharp, appealing the decision of the Supervisor of District I of the Oil Conservation Division denying two Applications for Permit to Drill, is granted and the decision shall be and hereby is overruled.

3. The motions to continue this proceeding until after the decision in Cases No. <> and <M> of Arrington and Ocean Energy shall be and hereby are denied.

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

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

LORI WROTENBERY, CHAIR

JAMI BAILEY, MEMBER

ROBERT LEE, MEMBER

S E A L

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
HOBBS DISTRICT OFFICE

May 10, 2000

1625 N. FRENCH DRIVE
HOBBS, NM 88240

TMBR/Sharp Drilling Inc

P O Drawer 10970

Midland, TX 79702

RE: CANCELLATION OF INTENT TO DRILL

Blue Fin 24 #1-K

24-16s-35e, 1980/S & 1650/W

API #30-025-34608

Gentlemen:

Twelve months or more have elapsed since Division Form C-101, Notice of Intention to drill, for the subject well was approved. To date no progress reports, Forms C-103, have been received. Therefore, approval of your permit to drill this well has now expired and no drilling operations are to be initiated without further notice to and approval by the Oil Conservation Division. Pending such approval, this location will be considered as an abandoned location.

Very truly yours,

OIL CONSERVATION DIVISION

Chris Williams

Chris Williams
District I, Supervisor

CW:dp

cc: OCD Santa Fe
BLM
State Land Office
OCD Hobbs well file

....VOID

JUN 07 2000

District I
PO Box 1980, Hobbs, NM 88241-1980
District II
811 South First, Artesia, NM 88210
District III
1000 Rio Brazos Rd., Aztec, NM 87410
District IV
2040 South Pacheco, Santa Fe, NM 87505

State of New Mexico
Energy, Minerals & Natural Resources Department

OIL CONSERVATION DIVISION
2040 South Pacheco
Santa Fe, NM 87505

Form C-101
Revised October 18, 1994
Instructions on back
Submit to Appropriate District Office
State Lease - 6 Copies
Fee Lease - 5 Copies

☐ AMENDED REPORT

APPLICATION FOR PERMIT TO DRILL, RE-ENTER, DEEPEN, PLUGBACK, OR ADD A ZONE

[1] Operator Name and Address.	[2] OGRID Number
TMBR/Sharp Drilling, Inc. P. O. Drawer 10970 Midland, TX 79702	036554
	[3] API Number 30-025-34608

[4] Property Code	[5] Property Name	[6] Well No.
24469	Blue Fin "24"	1

[7] Surface Location

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
K	24	16S	35E		1980	South	1650	West	Lea

[8] Proposed Bottom Hole Location If Different From Surface

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

[9] Proposed Pool 1	[10] Proposed Pool 2
Townsend (Morrow)	

[11] Work Type Code	[12] Well Type Code	[13] Cable/Rotary	[14] Lease Type Code	[15] Ground Level Elevation
N	G	R	P	3956
[16] Multiple	**[17] Proposed Depth**	**[18] Formation**	**[19] Contractor**	**[20] Spud Date**
No	12,800	Morrow	TMBR/Sharp	4/29/99

[21] Proposed Casing and Cement Program

Hole Size	Casing Size	Casing weight/foot	Setting Depth	Sacks of Cement	Estimated TOC
17½	13⅜	48	450	440	Surface
11	8⅝	32	5,000	1800	Surface
7⅞	5½	17	12,800	1200	4,800

[22] Describe the proposed program. If this application is to DEEPEN or PLUG BACK give the data on the present productive zone and proposed new productive zone. Describe the blowout prevention program, if any. Use additional sheets if necessary.

It is proposed to drill a 17½" hole to ±450' with FW, set 13⅜" casing and cement casing back to surface. An 11" intermediate hole will then be drilled to ±5,000' w/brine-cut brine system and an 8⅝" casing string will be set and cemented back to surface. A 3000 psi annular preventer and 3000 psi dual ram BOP will be used on the intermediate hole. A 7⅞" hole will be drilled to an approximate TD of 12,800' w/FW mud. The 5½" casing will be set at TD and cemented back to the intermediate casing @ 5,000'. A 3000 psi annular preventer and a 5000 psi dual ram BOP will be used on the 7⅞" hole. Mud up will occur between 9,000' and 11,000' and several DST's are planned.

Permit Expires 1 Year From Approval Date Unless Drilling Underway

[23] I hereby certify that the information given above is true and complete to the best of my knowledge and belief.

Signature: Jeffrey D. Phillips

Printed name: Jeffrey D. Phillips

Title: V. P. Production

Date: 4/14/99 Phone: (915) 699-5050

OIL CONSERVATION DIVISION

Approved by: ORIGINAL SIGNED BY CHRIS WILLIAMS DISTRICT I SUPERVISOR

Title:

Approval Date: APR 16 1999 Expiration Date:

Conditions of Approval:
Attached ☐

DISTRICT I
P.O. Box 1980, Hobbs, NM 88241-1980

DISTRICT II
P.O. Drawer DD, Artesia, NM 88211-0719

DISTRICT III
1000 Rio Brazos Rd., Aztec, NM 87410

DISTRICT IV
P.O. BOX 2088, SANTA FE, N.M. 87504-2088

State of New Mexico
Energy, Minerals and Natural Resources Department

Form C-102
Revised February 10, 1994
Submit to Appropriate District Office
State Lease - 4 Copies
Fee Lease - 3 Copies

OIL CONSERVATION DIVISION
P.O. Box 2088
Santa Fe, New Mexico 87504-2088

☐ AMENDED REPORT

WELL LOCATION AND ACREAGE DEDICATION PLAT

API Number	Pool Code	Pool Name
30-025-34608	86400	Townsend (Morrow)

Property Code	Property Name	Well Number
24469	BLUE FIN 24	1

OGRID No.	Operator Name	Elevation
036554	TMBR/SHARP DRILLING, INC.	3956

Surface Location

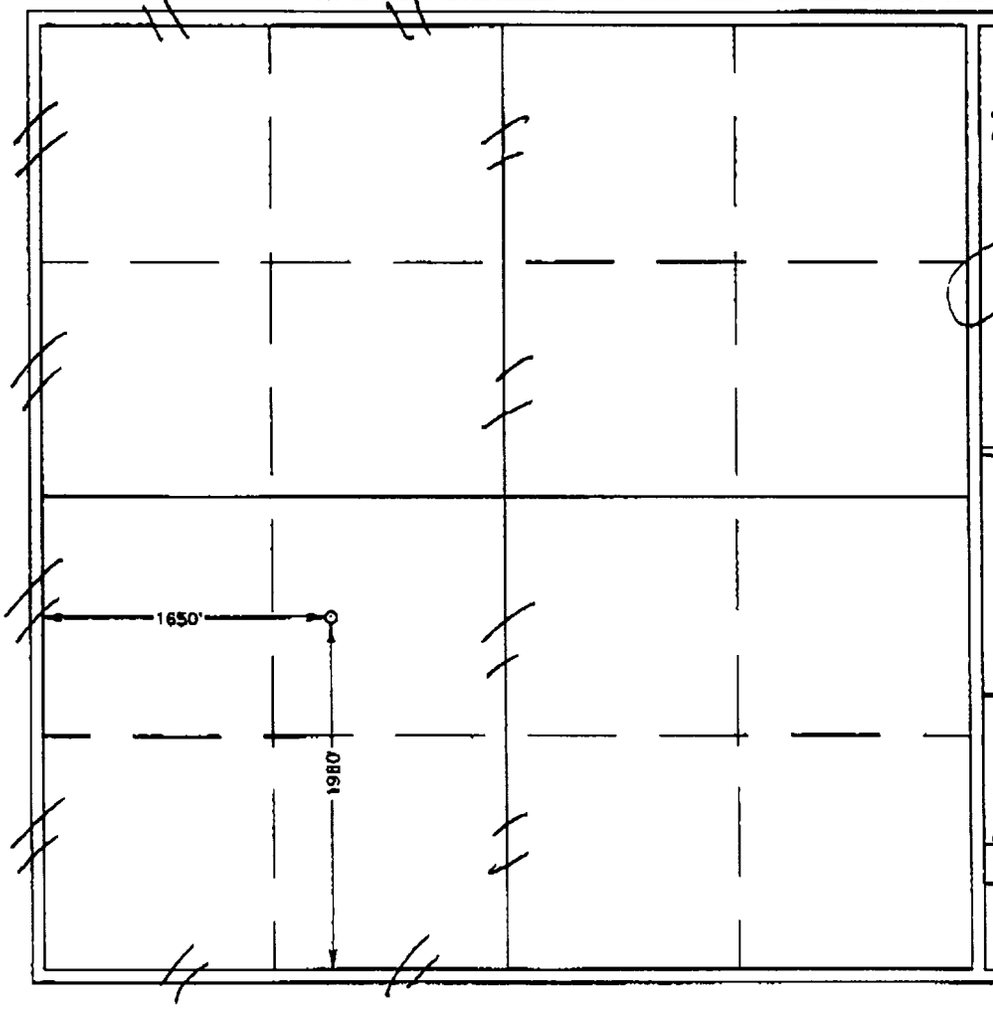
UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
K	24	16 S	35 E		1980	SOUTH	1650	WEST	LEA

Bottom Hole Location If Different From Surface

UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

Dedicated Acres	Joint or Infill	Consolidation Code	Order No.
320			

NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION



OPERATOR CERTIFICATION

I hereby certify the the information contained herein is true and complete to the best of my knowledge and belief.

Signature: Jeffrey D. Phillips

Jeffrey D. Phillips
Printed Name

Vice President
Title

4/14/99
Date

SURVEYOR CERTIFICATION

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervison, and that the same is true and correct to the best of my belief.

April 5, 1999
Date Surveyed DMCC

Signature & Seal of Professional Surveyor

RONALD J. EIDSON
NEW MEXICO
3239
REGISTERED PROFESSIONAL SURVEYOR

99-11-0526

4-06-99

Certificate No. RONALD J. EIDSON 3239
GARY L. EIDSON 12641
JOHN W. McDONALD 12185

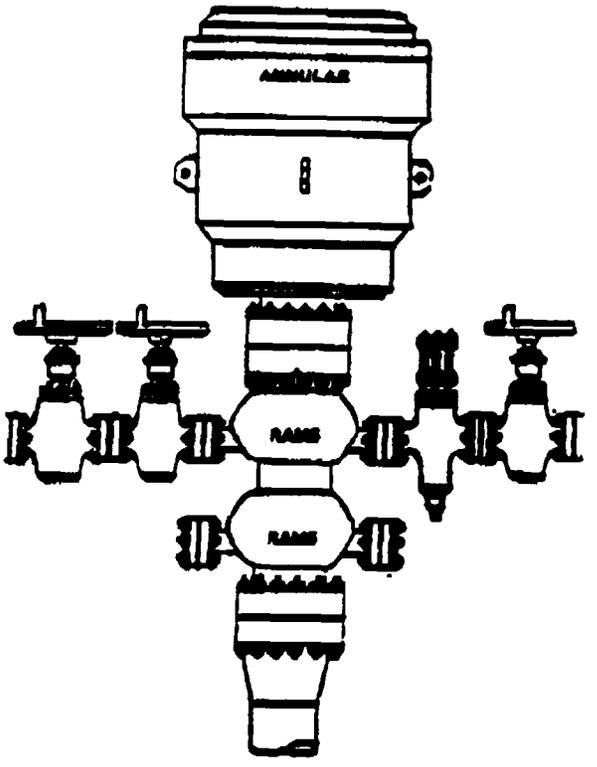
TIMBR/SHARP DRILLING

B.O.P. Equipment intended for use on Rig # 23
Well To Be drilled for Timbr/Sharp Drilling, Inc.

' All B.O.P equipment is H2S Trim '
' All Accumulators are Koomey Type-80 : Dual Power Electric/Air '
' Choke Manifold: " See sheet 2
4' Valves : Cameron F/FC, Shaffer DB Hydraulic
2" Check Valve: Cameron Type R
2' Valves : Cameron or Shaffer
Annular: Shaffer Type: Spherical
Annular PSI: 3000
(If Shaffer: Spherical , If Hyard: Type GK)
BOP Type LWS 2 Gate
(If Shaffer: LWS or SL, If Cameron: Type U)
BOP Size: 11 " - 5000 PSI
Rotating Head Type Smith
Rot-Head Furnished By Timbr/Sharp
Rams in top gate: Blinds
Rams in bottom: 4 1/2" pipe

Side Outlets used:
Bottom X Top ___

4" Valves on Tee



TIMBERSHARP DRILLING

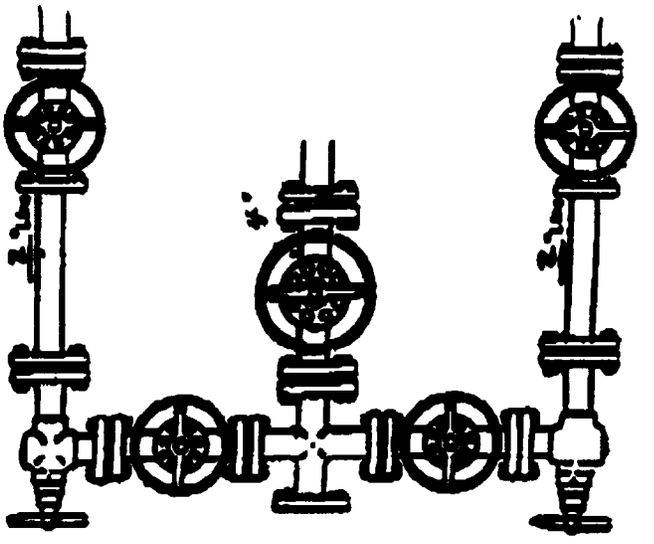
B.O.P. Equipment Intended for use on Rig # 23
Well To Be drilled for Timbersharp Drilling, Inc.

'All Valves (H2S)'

Choke Manifold:

Pressure Rating 3,000 or 5,000 (as Req.)
1 - 4" Valves (2 If Required)
4 - 2" Valves
2 - 2" Adjustable Chokes

Valve Types Used:
Cameron - F or FC
Shaffer - B Floseal
WKM - type 2
Chokes - Cameron H2 or TC unibolt



Ross, Stephen

From: Bailey, Jami
Sent: Thursday, April 18, 2002 11:29 AM
To: Ross, Stephen
Subject: RE: The REAL TMBR/Sharp Order

Looking good! Umm, I like it a lot better than the first one.....

On the bottom of page 2, there is a footnote missing a verb. "the Division recently *approved?* the permits" ✓

Top para on page 5, the last sentence of para 24 would read a lot easier if the last part was "pending pooling cases to decide who of the various parties should properly possess the permit to drill." ✓

Page 7, para 34. Should there be a comma just prior to the italicized "has drilled" Mistake in statute added [sic] ✓

Picky, picky, picky, but it's a good order. Thank you for your work on it.

-----Original Message-----
From: Ross, Stephen
Sent: Thursday, April 18, 2002 9:55 AM
To: Wrotenbery, Lori; Bailey, Jami; 'lee@nmt.edu'
Subject: The REAL TMBR/Sharp Order

Commissioners,

When I'm working on an Order, I sometimes create a file of junk I've removed from the Order. I do this to remember arguments for appeal that I haven't directly addressed in the order.

Jami pointed out that I hadn't sent the right order. She's right; I sent the junk file. Ooops. Yesterday was a long day.

Here's the real order. Thanks, Jami!

<< File: Order-No-11700-B.doc >>

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