

from any well on the leased premises, or lands pooled therewith, or is drilling upon said lands across the expiration of the primary term as provided for in the body of the lease, and does not allow more than 180 days to elapse between the completion...of one well on such land and the commencement of another well thereon”

See Exhibits “A” and “B” at paragraph 12.

A. The Original Stokes Leases Are Properly Pooled

The Original Stokes Leases are perpetuated because TMBR/Sharp was drilling upon lands properly pooled with the lands covered by the Original Stokes Leases across the expiration of the primary term as provided for in Paragraph 5 of the Original Stokes Leases. “Pooling is defined as ‘the bringing together of small tracts sufficient for the granting of a well permit under the applicable spacing rules’.” *Uhden v. New Mexico Oil Conservation Commission*, 112 N.M. 528; 817 P.2d 721, 723 (1991) (quoting 8 H. Williams and C. Meyers, *Oil and Gas Law* 727 (1987)). The written unit designation filed in Lea County with the District I Office of the OCD on November 17, 2000, brought together small tracts sufficient for the granting of a well permit, therefore, satisfying both the definition of “pooling” and the contractual pooling requirements of Paragraph 5 of the Original Stokes Leases to properly pool the NW/4 SW/4 of Section 25, T-16-S, R-35-E, into a unit comprised of the W/2 of said Section 25.

Although the Original Stokes Leases are not the drill site location for the Well, forty (40) acres of the Original Stokes Leases are within the unit designation filed with the District I Office of the OCD in Lea County prior to drilling during the primary term and in the County Clerk’s Records of Lea County, New Mexico after completion of the Well beyond the primary term. *See Exhibits “E,” “F,” and “G”.* Therefore, in order to obtain its drilling permit, TMBR/Sharp

pooled the required 320 acres (including 40 acres out of the Original Stokes Leases) to form a unit. *See Exhibits "E", "F," and "G"*. Because TMBR/Sharp conducted drilling operations on lands pooled with the Original Stokes Leases, production was obtained, and there has been no cessation of operations on the pooled Leases for more than 180 consecutive days. Therefore, the Original Stokes Leases are still valid. *See supra Section II.B.* In short, "that thing" permitted by the Original Stokes Leases to save them was the pooling, which as prescribed by the Leases must be evidenced by a written unit designation filed in the county where the land is situated, and TMBR/Sharp clearly did "that thing."

TMBR/Sharp exercised its power "to pool or combine" forty (40) acres of the Original Stokes Leases with other acreage to form a 320-acre pooled unit, which is the size unit required for a gas well by the OCD,³ in the Townsend; Mississippian, North (Gas) Pool. *See Exhibits "F" and "G"*. TMBR/Sharp exercised its pooling power by filing a plat designation outlining the pooled acreage with the OCD District I Office in Lea County, New Mexico, the county of the premises covered by the Leases. *See Exhibit "F"*. The OCD approved the requested drilling permit and drilling commenced before the expiration of the primary term and continued thereafter. *See supra Section II.B.* After the completion of the Well, a reconfirming unit designation was filed in the County Clerk's Records of Lea County, New Mexico. *See Exhibit*

³ *See 19 NMAC 15.C.104.B(1)(a)* which provides, in pertinent part, "...any such wildcat gas well which is projected to the Wolfcamp or older formations shall be located on a drilling tract consisting of 320 surface contiguous acres, more or less, ...". The Well is a wildcat well as defined in New Mexico Oil Conservation Division Rule 104.A. *See Exhibit "D"*. The Well was drilled to the Mississippian Formation, which is older than the Wolfcamp Formation as provided in New Mexico Oil Conservation Division Rule 104.B(1)(a). *See Exhibit "D"*.