

found that "...[B]y exercising that right [to pool] within sixty days of drilling the dry hole on the leased premises, Superior saved the lease for as long as production is maintained." *Id.*

By exercising its right to pool and by drilling prior to the expiration of the primary term, TMBR/Sharp, like Superior in Owens, perpetuated the Original Stokes Leases. There is no question that TMBR/Sharp exercised its right to pool by filing the plat designation with the OCD District I Office in Lea County, New Mexico during the primary term. *Exhibit "F"*. Without OCD's approval of the pooled acreage designation which included 40 acres of the Original Stokes Leases, TMBR/Sharp could not have drilled. Drilling operations were commenced on the pooled acreage prior to the expiration of the primary term of the Leases, and the Well once completed has produced oil and gas without a cessation of production or operations for more than 180 days (the grace period provided for in the Original Stokes Leases), and the pooled unit was reconfirmed by filing a Unit Designation in the County Clerk's Records of Lea County, New Mexico after the completion of the Well. *See Exhibit "G"*. TMBR/Sharp, like Superior, has done the things it needed to do, e.g. pool, drill, and file, to extend the Original Stokes Leases beyond the primary term and to keep them in full force and effect as of this date.

Filing with the OCD to obtain a drilling permit is an unequivocal act of pooling. The OCD rules set out the procedure for permitting for the drilling of wells. The Division Rules promulgated by the OCD are authorized by NMSA, 1979, Section 70-2-11-A which states:

The division is hereby empowered and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided. To that end, the division is empowered to make and enforce rules, regulations and orders, and to do whatever may