

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

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

CASE NO. 13,270

APPLICATION OF YATES PETROLEUM)
CORPORATION FOR AN ORDER RESCINDING)
APPROVAL OF A CHANGE OF OPERATOR,)
EDDY COUNTY, NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: WILLIAM V. JONES, JR., Hearing Examiner

July 8th, 2004

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, WILLIAM V. JONES, JR., Hearing Examiner, on Thursday, July 8th, 2004, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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 Examiner Hearing
 CASE NO. 13,270

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A P P E A R A N C E S

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* * *

1 WHEREUPON, the following proceedings were had at
2 10:42 a.m.:

3 EXAMINER JONES: At this time let's call Case
4 13,270, Application of Yates Petroleum Corporation for an
5 order rescinding approval of a change of operator, Eddy
6 County, New Mexico.

7 Call for appearances.

8 MR. CARR: May it please the Examiner, my name is
9 William F. Carr with the Santa Fe office of Holland and
10 Hart, L.L.P. We represent Yates Petroleum Corporation in
11 this matter, and I intend to examine two witnesses, Mr.
12 Chuck Moran who is an employee of Yates, and I have some
13 questions for Mr. Gum who is District Supervisor of the OCD
14 in Artesia?

15 EXAMINER JONES: Any other witnesses -- I mean,
16 I'm sorry, any other appearances in this case?

17 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,
18 representing C.W. Trainer. I do not have a witness.

19 EXAMINER JONES: Will the witnesses --

20 MS. MacQUESTEN: Mr. Examiner, Gail MacQuesten
21 for the OCD.

22 EXAMINER JONES: Any witnesses?

23 MS. MacQUESTEN: We will not be presenting a
24 witness. However, we are making Mr. Gum available as a
25 witness for either party in this case.

1 EXAMINER JONES: No other appearances, will the
2 witnesses please stand or stand by to be sworn in?

3 (Thereupon, the witnesses were sworn.)

4 EXAMINER JONES: Okay.

5 MR. CARR: At this time we'd call Chuck Moran.

6 CHARLES E. MORAN,

7 the witness herein, after having been first duly sworn upon
8 his oath, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. CARR:

11 Q. Would you state your name for the record, please?

12 A. My name is Charles Moran, and I reside in
13 Artesia, New Mexico, employed by Yates Petroleum
14 Corporation as a landman.

15 Q. And Mr. Charles Moran, have you previously
16 testified before the Oil Conservation Division?

17 A. Yes, I have.

18 Q. At the time of that testimony were your
19 credentials as an expert in petroleum land matters accepted
20 and made a matter of record?

21 A. Yes.

22 Q. Are you familiar with the Application filed in
23 this case on behalf of Yates Petroleum Corporation?

24 A. Yes, I am.

25 Q. Are you familiar with the Vandiver State Com Well

1 Number 1 and the status of Yates' operations on this well?

2 A. Yes, the well name is the Vandiver Com Number 1.
3 It's not a state lease.

4 MR. CARR: May it please the Examiner, at this
5 time we tender Mr. Moran as an expert in petroleum land
6 matters.

7 EXAMINER JONES: Mr. Moran is qualified as an
8 expert petroleum landman.

9 Q. (By Mr. Carr) Mr. Moran, would you briefly state
10 what Yates seeks with this Application?

11 A. Yates Petroleum Corporation seeks the rescission
12 of the Division's approval of the change of operator from
13 C.W. Trainer for the Vandiver Com -- or for the Vandiver
14 Well Number 1 -- the Vandiver Com Number 1 well, located
15 990 feet from the south line, 660 feet from the west line
16 of Section 18, Township 18 South, Range 26 East.

17 Q. Could you briefly review the history of this well
18 for the Examiner?

19 A. The well was drilled in 1972 by C and K
20 Petroleum, Inc. The well was drilled to test the Atoka-
21 Morrow formations. It was completed successfully, included
22 in the West Atoka-Morrow Gas Pool. The spacing unit for
23 the well is the south half, composed of 317.24 acres, and
24 it's all fee lands. And the unorthodox location was
25 approved under Order Number R-4455 in December 19th of

1 1972.

2 Q. Who has operated this well?

3 A. The operators, is my understanding, have been N
4 Star Petroleum Company, Union Texas, Marathon Oil Company
5 and Yates Petroleum Corporation.

6 Q. From what formation has this well produced?

7 A. The Atoka-Morrow formation.

8 Q. And what is Yates' ownership in the acreage?

9 A. We believe we are the working interest owner and
10 own 100 percent of the south-half spacing unit.

11 Q. And from what dates did Yates actually operate
12 and produce this well?

13 A. The well was operated by Yates from 1990 -- and
14 produced from 1990 to 1999.

15 Q. Since 1999 has Yates paid shut-in royalties
16 pursuant to our lease?

17 A. Yates has paid shut-in royalties pursuant to all
18 leases on the lands involved herein.

19 Q. Have you reviewed those payment records?

20 A. I have reviewed payment records.

21 Q. Do they show continuous payments of shut-in
22 royalties on these leases?

23 A. They show continuous payment. In my research I
24 determined that the checks had been tendered and accepted
25 by the royalty owners.

1 Q. And there were no gaps in these records?

2 A. There were no gaps.

3 Q. In 1990 did Yates become the Division-designated
4 operator of the Vandiver well?

5 A. In May of 1990, yes.

6 Q. Mr. Moran, what does it mean to you to be the
7 Division-designated operator of the well?

8 A. That means, as defined by the OCD Rules, the
9 operator means any person or persons who are duly
10 authorized, is in charge of the development of the lease or
11 the operation of a producing well.

12 Q. Until the Division approved Mr. Trainer's C-104,
13 the request for change of operator, to your knowledge was
14 there any dispute that Yates was duly authorized by the OCD
15 and in charge of the development of this lease and this
16 well?

17 A. No, there was no dispute to my understanding.

18 Q. Have you seen the prehearing statement filed by
19 the Division in this case?

20 A. I have.

21 Q. Are you aware that in this statement the Division
22 states that it takes no position on the current ownership
23 dispute -- current operator dispute between Yates and Mr.
24 Trainer?

25 A. I think they're taking a position on the dispute

1 as to the operator. They have removed us as the operator
2 and placed C.W. Trainer as operator. As to the ownership,
3 I don't think they're taking any position. That's not
4 their position to take.

5 Q. Are we asking the Division here today to rescind
6 the approval of this change of operator and let the parties
7 proceed to resolve the underlying ownership issues?

8 A. Yes.

9 Q. Is it your opinion that the Division should not
10 accept representations of only one party in deciding to
11 approve a change-of-operator form?

12 A. I do believe they should talk to both operators,
13 or the proponent of the change and who they show to be the
14 current registered operator.

15 Q. Now, I have some questions for you concerning the
16 change of operator that's the issue in this case. When did
17 Yates first learn of Trainer's interest in this property?

18 A. Interest being defined as wanting to do something
19 out there, I don't think he has an ownership interest.

20 Q. Well, when was Yates first aware that there was
21 some interest in the property expressed by C.W. Trainer?

22 A. That was in December of 2002 when he filed an
23 application for a nonstandard spacing unit.

24 MR. CARR: Mr. Gum, do you have the exhibits that
25 we're going to present in this case?

1 MR. GUM: Yes, I do.

2 Q. (By Mr. Carr) Okay. We're ready to go to
3 Exhibit Number 1, and Mr. Moran, I would ask you if you
4 could identify that for the Examiner, please.

5 A. Exhibit Number 1 is a letter written by Dave
6 Boneau of our office protesting the nonstandard location,
7 stating that we believe we were the operator of the well.

8 Q. Let's go to Exhibit Number 2. Would you identify
9 and review that, please?

10 A. Exhibit Number 2 is a letter that we received
11 from the OCD, written to Tim Gum, stating -- or requesting
12 Mr. Gum to approve the change in operatorship.

13 Q. Now, what is the date on that letter?

14 A. That letter is dated December 16th, 2002.

15 Q. And it's signed by who?

16 A. A Brian L. Lasley.

17 Q. Do you know Mr. Lasley?

18 A. I personally do not know him.

19 Q. Let's take this letter and let's review it for
20 the Examiner. Would you review initially what is covered
21 by the first paragraph of the letter?

22 A. The first paragraph of the letter is the request
23 -- the providing of the form and the request that the OCD
24 approve the change.

25 If you'll note in the second sentence, the OCD is

1 put on notice that the previous operator -- the presumed
2 previous operator, that being Yates Petroleum Corporation
3 -- had not signed the form as required, but --

4 Q. And this letter states, "Please be advised we
5 have not included on the form, as required, the signature
6 of previous Operator", correct?

7 A. Correct.

8 Q. I'd ask you to drop down and read the first
9 sentence in the third paragraph.

10 A. The first sentence in the second paragraph --
11 third paragraph -- reads, "Mr. Trainer feels the Operator
12 of record will refuse to sign the enclosed C-104A form."

13 Q. Okay. So based on this letter, Mr. Trainer was
14 requesting a change in operator and advising the Division
15 that Yates would refuse to execute the form. Do you
16 believe that's a fair interpretation of the letter?

17 A. I believe it is.

18 Q. If we go on in that third paragraph, I'd ask you
19 to go to the third line, on the right-hand side, where it
20 starts, "...it is..." Would you read that sentence,
21 please?

22 A. "...it is Mr. Trainer's intention to obtain the
23 Operating Rights by appointment from the Oil Conservation
24 Division and assume all responsibilities of Operator in
25 this well."

1 Q. Is it your understanding of the Rules of the
2 Division that a person becomes operator of a property by
3 appointment from the Oil Conservation Division?

4 A. No, it's not by appointment.

5 Q. Now, did Yates sign the Form C-104 that was
6 submitted to the Division by Mr. Trainer?

7 A. No.

8 Q. Prior to the Division's approval of the change of
9 operator, are you aware of any contact by the OCD
10 concerning this matter?

11 A. I'm not aware of any contact from the OCD to us.

12 Q. Prior to the Division's approval of the change of
13 operator, were you included in any meetings of the OCD
14 concerning the status of this acreage or your lease?

15 A. I have no knowledge of any meetings that
16 occurred, if they did occur.

17 Q. And prior to the OCD's approval, are you aware of
18 any conversations with the OCD or inquiries about the
19 status of Yates' leases on this property?

20 A. No, there was no inquiries.

21 Q. Okay, would you identify what has been marked
22 Yates Exhibit Number 3?

23 A. Yates Exhibit Number 3 is the change-of-operator
24 form, which I believe is what the OCD acted on to change
25 the operatorship from Yates Petroleum Corporation to C.W.

1 Trainer.

2 Q. And what is the date of the approval?

3 A. The date of the approval is July 28th, 2003.

4 Q. And that's where Mr. Gum has signed this as the
5 District Supervisor?

6 A. On the form I do believe I see a signature of Tim
7 W. Gum.

8 Q. All right. Now, if we look at the form, the
9 bottom lower left portion of the form says, "Previous
10 operator complete below:" Do you see that?

11 A. Yes.

12 Q. It identifies Yates Petroleum Corporation?

13 A. Yes, it does.

14 Q. Did Yates execute this agreement?

15 A. There is no execution by Yates Petroleum
16 Corporation.

17 Q. When did Yates first receive notice that the
18 Division had, in fact, designated someone else operator of
19 their well?

20 A. It became apparent to us upon receiving an error
21 report on the C-115s as being reported, and that was the
22 August 19th report provided from the OCD.

23 Q. Is a copy of that report marked Yates Exhibit
24 Number 4?

25 A. Yes, it is.

1 Q. And if you go to the second page of that exhibit,
2 about two-thirds of the way down, there's a handwritten
3 asterisk?

4 A. It's actually on the first page. There's also
5 one on the first page.

6 Q. All right. And that shows the Vandiver column?

7 A. That shows that there was an error report kicked
8 out, showing our records show another operator for this
9 well, and that is where it's referring to the Vandiver Com
10 Number 1 well.

11 Q. And if we go to the second page it states,
12 "Error...Our records show another operator for the
13 property?"

14 A. Yes, that would be the September report.

15 Q. Let's go now to Yates Exhibit Number 5. What is
16 this?

17 A. Yates Exhibit Number 5 is a letter written by
18 Michelle Taylor of Yates Petroleum Corporation requesting
19 that -- or objecting to the change of operator and
20 addressing this matter and reinstating Yates Petroleum
21 Corporation.

22 Q. Did we request that the approval of the C-104 be
23 rescinded?

24 A. Yes, we did.

25 Q. Did Yates receive any response from the Division

1 to this letter?

2 A. To my knowledge, we did not receive any response.

3 Q. What was the next communication concerning this
4 well that you are aware of, from the OCD?

5 A. From researching the files, we noticed a notice
6 of violation of the well, requesting that the operator --
7 the designated operator by the OCD take immediate action to
8 restore the well to production, injection or disposal, if
9 applicable, or conduct the necessary mechanical integrity
10 tests to plug and abandon the well.

11 Q. And what was the date of that letter?

12 A. That letter is dated January 12th, 2004.

13 Q. And it is addressed to Mr. Trainer?

14 A. It is addressed to C.W. Trainer.

15 Q. It states that the well is in violation of
16 Division Rule 201, does it not?

17 A. Yes, it does.

18 Q. And that would be the well [sic] concerning
19 temporary abandonment or plugging and abandonment of wells?

20 A. Yes.

21 Q. What problems does this situation present for
22 Yates Petroleum Corporation?

23 A. It puts our leasehold in jeopardy, because we're
24 not designated as operator to go out and conduct the
25 necessary operations to maintain our leases.

1 Q. Have you been maintaining the lease in accordance
2 with the terms of the leases?

3 A. We have been maintaining the lease in accordance
4 with the terms of the leases by payment of shut-in
5 royalties.

6 Q. Since the Division has designated Mr. Trainer or
7 approved a change of operator, is it your understanding
8 that Mr. Trainer is, from at least a regulatory point of
9 view, in charge of the operations of the wells?

10 A. Yes.

11 Q. And if activity is not taken on the well, could
12 it cause -- could it risk the underlying leases?

13 A. Yes, it could.

14 Q. If the OCD does not rescind its approval of this
15 C-104, is it possible that Yates could lose its property
16 interest?

17 A. Yes, it is.

18 Q. You're simply at the mercy of someone else?

19 A. Correct.

20 Q. What did Yates do after discovering this notice
21 of violation?

22 A. We -- Various people in the company tried to work
23 with the OCD to get the matter resolved. This matter has
24 continued -- the information we received that they were not
25 able to do anything, that we needed to schedule this for a

1 hearing.

2 Q. Is Yates Exhibit Number 7 an affidavit confirming
3 that notice of our Application for hearing has been
4 provided to Mr. Trainer in accordance with Division Rules?

5 A. Yes.

6 Q. Does approval of Trainer as the designated
7 operator of the Vandiver well create operational problems
8 and potentially impair the correlative rights of Yates?

9 A. Yes, it does.

10 Q. Were Exhibits 1 through 7 prepared by you or
11 compiled under your direction and supervision?

12 A. Yes, they were.

13 MR. CARR: At this time, Mr. Examiner, we move
14 the admission into evidence of Yates Exhibits 1 through 7.

15 MR. BRUCE: No objection.

16 MS. MacQUESTEN: No objection.

17 EXAMINER JONES: Exhibits 1 through 7 will be
18 admitted to evidence.

19 MR. CARR: And that concludes my direct
20 examination of Mr. Moran.

21 MR. BRUCE: Just a few, Mr. Moran.

22 EXAMINATION

23 BY MR. BRUCE:

24 Q. You said the well was drilled -- the Vandiver
25 Well Number 1 was drilled in 1972 to the Atoka and the

1 Morrow. I just want to clarify, based on what you have
2 reviewed, it is producing -- it was producing from the
3 Atoka, not the Morrow?

4 A. Yeah, I believe it was.

5 Q. Okay. Now, it produced until 1999. Do you know
6 why the well was shut in?

7 A. I do not know.

8 Q. I mean, it obviously had a pipeline connection
9 before that?

10 A. My understanding, it did have a pipeline
11 connection. My understanding is, the well is a weak
12 producer but capable of producing.

13 Q. Do you know if it's capable of producing in
14 paying quantities?

15 A. I have not reviewed anything to determine that.

16 Q. You also said you looked at Yates' records
17 regarding payment of -- tendering an acceptance of shut-in
18 royalties by the mineral owners?

19 A. Yes.

20 Q. And do the records you have show that the --
21 referring to your Exhibit 2, which contains copies of
22 various -- I think four oil and gas leases --

23 A. Yes.

24 Q. -- do Yates' records show that the lessors named
25 in these oil and gas leases accepted and cashed shut-in

1 royalty checks?

2 A. Yates Petroleum Corporation does not know -- has
3 not researched and identified these parties, because our
4 leasehold was taken a long time ago. That principal has
5 deceased. Our records indicate we've been making payment
6 to the estate of that individual.

7 Q. Oh, okay.

8 A. I understand these to be the heirs of that
9 person, but I've not researched that so I can't identify
10 that to be them.

11 But the other thing I would like to note is that
12 these leases don't represent all the leases in that 320.
13 If you'll look at the lease, all they do is represent 80
14 acres.

15 Q. I understand that, yeah, these leases only cover
16 what, the equivalent of the --

17 A. -- south half, southwest.

18 Q. -- south half, southwest quarter, yeah --

19 A. That's correct.

20 Q. -- correct. They do not cover the entire 320-
21 acre well unit, or 317-acre-plus-acre well unit?

22 A. Right.

23 Q. Okay, yeah.

24 A. And I have to worry about all 317 acres.

25 Q. I understand that. And so Yates' lease was from

1 -- was an older lease, probably predating 1972, from an
2 individual who has died, and Yates has been tendering shut-
3 in royalty payments to the estate of that person?

4 A. To the estate, because it is my understanding
5 they have not finished their probate proceedings in
6 accordance with New Mexico law and provided us the
7 information as required by the lease that there's been a
8 change of ownership.

9 Q. Okay. Exhibit 2 also gives a last producing --
10 last production figure in June of 1999. Did you look at
11 production figures at all, Mr. Moran?

12 A. I don't remember if I scanned them. I know I did
13 over the last year, but I don't know how far back I would
14 say that my look went.

15 Q. If you looked at them over the last year, what
16 was monthly production? Do you recall?

17 A. The well was shut in.

18 Q. Oh, you mean this past year?

19 A. Yeah, this past --

20 Q. 2003-2004?

21 A. Right.

22 Q. Okay, so you didn't look at 1999 and previous?

23 A. No, I did not.

24 Q. Okay, that's what I was getting at. Okay.

25 And regarding the letter from the Division to

1 C.W. Trainer, I take it Yates does not want to P-and-A or
2 TA the well?

3 A. That is correct.

4 Q. You do not even want to TA the well? I mean, you
5 obviously don't --

6 A. Right.

7 Q. -- want to P-and-A the well.

8 A. Right, we do not want to plug and abandon the
9 well --

10 Q. And you don't --

11 A. -- and we have operational plans for the well.

12 Q. So you do not want to temporarily abandon the
13 well either?

14 A. Right.

15 MR. BRUCE: That's all I was getting at.

16 That's all I have. Thank you, Mr. Moran.

17 EXAMINER JONES: Ms. MacQuesten?

18 MS. MacQUESTEN: Just a few questions to clarify
19 some things.

20 EXAMINATION

21 BY MS. MacQUESTEN:

22 Q. Mr. Moran, that Exhibit Number 1, the letter from
23 Yates to Michael Stogner, did you receive any response to
24 that letter?

25 A. If we did, I'm not aware what it was. It may

1 have just been telephone follow-up.

2 Q. So the matter wasn't resolved at that time?

3 A. The matter is unresolved as of today.

4 Q. But you didn't get any answer to your question
5 about the confusion surrounding the Vandiver Com Number 1
6 well?

7 A. My understanding, review of the files, was that
8 we were told that we needed to, through various
9 communications, proceed to a hearing, which is what we are
10 doing.

11 Q. Okay, but this letter was written back on
12 December 12th of 2002, and I'm asking if at that time in
13 response to this letter in particular, do you --

14 A. I have not seen any indication of correspondence
15 directed back to this letter. The people that compiled
16 this work would have been the ones that received the
17 letter, and they were thorough in what they provided me, in
18 that -- in what was provided to me for review, there was no
19 response.

20 Q. Did Yates, in fact, protest the Trainer
21 application that's referenced in this letter?

22 A. By the letter I believe we did protest. I'm not
23 sure what the disposition of that case was.

24 Q. Do you know if the issue of operation of the
25 Vandiver Com Number 1 was addressed in that protest?

1 A. Based on the letter, we did state we believed we
2 were the operator. And at that time, it was predating the
3 change of operatorship by the OCD. So I believe at that
4 time they thought we were the operator.

5 I don't know how -- with the full authority being
6 decided in July of that year, the confusion being that we
7 believed we were the operator.

8 Q. You don't know if any resolution of the matter
9 was made at the hearing on that application and protest?

10 A. I don't know the disposition of that hearing at
11 all.

12 Q. Okay. Exhibit Number 2, that's the letter from
13 Brian Lasley to Tim Gum, and I notice at the bottom it says
14 a carbon copy to Yates Petroleum Corporation. Did you
15 receive a copy of this letter?

16 A. Well, I would like to state that looks like it
17 was sent to "Yates Petroleum Corporation; David Brooks,
18 Attorney", and I understand him to be the Commission
19 attorney.

20 Q. That's correct.

21 A. I don't know what happened to this letter.

22 Q. So it's your testimony that Yates didn't receive
23 a copy of this letter back in 2002 when it was mailed?

24 A. My testimony is, we may -- I don't know if we
25 received a copy of it or not. I know that with the source

1 of this letter provided to me was derived from the
2 Division, the letter presented right here.

3 Q. All right. So is it your testimony, then, that
4 you did not -- Yates did not know that the operation of the
5 well had been changed until you received the notice that
6 your C-115 has had an error report?

7 A. That is my understanding, based on the work
8 presented to me, that that was our first notice that the
9 operatorship had changed. The people that were responsible
10 for that, that's what they have reported to me.

11 Q. You've had a chance, now, though, to look at the
12 copies of oil and gas leases that were attached to Mr.
13 Lasley's letter of December 16th?

14 A. Yes.

15 Q. And if I understand your testimony earlier, you
16 say these leases only cover a part of the area that's in
17 dispute?

18 A. If you'll note, Mr. Lasley's letter says, We've
19 acquired 100 percent of the working interest in the subject
20 lands, that being the 80 acres described. But for
21 operation of that well, being dedicated to a 320-acre
22 spacing unit, in this case 317, the letter does not address
23 other ownerships out there.

24 Currently I believe -- and I need to verify this,
25 but the Yates entities own 100 percent of that south half,

1 and it was all owned by us. I would dispute that these
2 leases are valid, based on our underlying leases.

3 Q. So you're saying that not only are these leases
4 not complete to cover the area that's in dispute, but you
5 don't believe they are valid?

6 A. I believe they probably covered the ownership of
7 the mineral owners, if they were the owner. But you have a
8 problem with an existing oil and gas lease that is not
9 terminated yet, and thus -- these people, I understand,
10 would be possible heirs or devisees of the mineral
11 interest. But I believe I would categorize them as top
12 leases over our existing lease.

13 Q. Now, you stated that if Yates became recognized
14 as the operator again on this well, that you don't want to
15 plug and abandon the well?

16 A. That is correct.

17 Q. But you also don't want to place the well on
18 temporary abandonment status?

19 A. This well is one of many wells that we operate.
20 This well, through the negotiations to try to settle this
21 matter between the parties, has risen up the ladder, and we
22 have plans to conduct the well -- or conduct operations on
23 the well.

24 Q. So you intend to return it to production?

25 A. Yes.

1 Q. If the operation of the well is returned to
2 Yates?

3 A. Yes.

4 MS. MacQUESTEN: Thank you, that's all I have.

5 MR. CARR: Mr. Jones, I just have a follow-up.

6 EXAMINER JONES: Okay.

7 FURTHER EXAMINATION

8 BY MR. CARR:

9 Q. Mr. Moran, if you'd look at Exhibit Number 1,
10 that is the December 12th, 2002, letter from Yates. The
11 subject of that letter is an application filed by C.W.
12 Trainer; is that correct?

13 A. Correct.

14 Q. The letter starts by stating, Yates Petroleum
15 Corporation hereby protests the referenced application?

16 A. Yes.

17 Q. And as the reason for that, we stated we though
18 there could be some confusion, and then we state, Yates
19 Petroleum owns and operates the Vandiver Com Number 1 well;
20 do you see that?

21 A. Yes.

22 Q. In the course of conducting Yates' business,
23 there are actually numerous occasions when you are called
24 upon to file protests to various kinds of applications
25 filed with the Division?

1 A. Yes.

2 Q. Once these protests are filed, do these cases all
3 go to hearing?

4 A. No.

5 Q. Is it possible that on receipt of this, that the
6 Application is simply withdrawn?

7 A. That is a possibility.

8 Q. And when that occurs, is there any way, often,
9 that you get notice of that withdrawal?

10 A. The only notice would be through publication
11 later in the day.

12 Q. You just watch for it?

13 A. Yeah, you just watch for it. The OCD, to my
14 knowledge, doesn't notify us.

15 MR. CARR: That's all.

16 MR. BRUCE: I have a couple questions.

17 EXAMINER JONES: Okay, Mr. Bruce.

18 EXAMINATION

19 BY MR. BRUCE:

20 Q. Mr. Moran, looking at Exhibit 2, you -- obviously
21 Mr. Lasley on Mr. Trainer's behalf is claiming that these
22 leases are valid?

23 A. Correct.

24 Q. So there is a title dispute?

25 A. Title dispute, yes.

1 Q. Between Yates and Mr. Trainer?

2 A. Yes.

3 Q. Over these 80 acres?

4 A. Correct.

5 Q. Okay. And the leases, when you look at them -- I

6 mean, Mr. Moran, you've been in the business for quite a

7 while. Top leases often have a delayed effective date?

8 A. They would. I -- Why I categorize them as top
9 leases is because you have a valid existing underlying
10 lease.

11 Q. Yates is claiming that it's leased from the --
12 whoever it was, the estate --

13 A. The lessor --

14 Q. -- you referred to --

15 A. Right.

16 Q. -- is still valid --

17 A. Correct.

18 Q. -- and Mr. Trainer is claiming that these leases
19 are valid --

20 A. Right.

21 Q. -- as to this 80 acres?

22 A. Correct, that's what I understand his claim to
23 be. I believe they made several assumptions and did not go
24 in making those leases. Through some conversations I've
25 had, they told me they just assumed the leases had expired

1 on their own terms. That was their belief, so they would
2 not believe there would be a top lease, and that's why they
3 would not have addressed that. But those were assumptions
4 made by them that I do not agree with.

5 MR. BRUCE: Okay, thank you, Mr. Moran.

6 EXAMINATION

7 BY EXAMINER JONES:

8 Q. Mr. Moran, this application for a nonstandard
9 proration unit, it didn't go anywhere, did it?

10 A. I do not know the disposition. I do not believe
11 it did.

12 Q. Okay, and this was originally a Com -- 320-acre
13 communitized area?

14 A. It would be subject to the designation of pooled
15 unit because all the lands involved are fee.

16 EXAMINER JONES: And -- Okay, I think that's all
17 the questions I've got of this witness.

18 MR. CARR: That concludes my examination, then,
19 of Mr. Moran.

20 EXAMINER JONES: Thank you, Mr. Moran.

21 MR. CARR: Are we ready to go to Mr. Gum?

22 EXAMINER JONES: Mr. Gum, are you there?

23 MR. GUM: Yes, I am.

24 MR. CARR: Mr. Gum, can you hear me?

25 MR. GUM: I can, Bill. Can you?

1 MR. CARR: Yes, sir. Mr. Gum, I'm going to be
2 asking -- as you can tell from what we've already heard in
3 this case, there's a lot we don't know and a lot we haven't
4 really nailed down, and so just to give you sort of a
5 heads-up as we go in, I have questions about what actually
6 happened here, and -- because we've got some factual things
7 we just don't really know.

8 And my questions also are going to be about what
9 you understand the role of the OCD to be in approving
10 changes of this nature. And if you get into an area where
11 I'm going outside your area of expertise, I'll argue that
12 with Gail MacQuesten at a later time, but -- so don't
13 hesitate to tell me if I'm marching into inappropriate
14 areas of testimony, okay?

15 MR. GUM: All right.

16 TIM W. GUM (Present by telephone),
17 the witness herein, after having been first duly sworn upon
18 his oath, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. CARR:

21 Q. Would you state your name for the record, please?

22 A. Tim W. Gum.

23 Q. And Mr. Gum, by whom are you employed?

24 A. The State of New Mexico, the Oil Conservation
25 Division.

1 Q. And what is your position with the Oil
2 Conservation Division?

3 A. District Supervisor.

4 Q. And you're in the Artesia Office?

5 A. That's correct.

6 Q. And your duties as District Supervisor in Artesia
7 really involve the supervision of the development of
8 properties in the area that is included in Division 2; is
9 that right?

10 A. That's right.

11 Q. As the District Supervisor, your duties require y
12 you to be familiar with the Rules of the Oil Conservation
13 Division; is that right?

14 A. Yes.

15 Q. And you are familiar with the rules that govern
16 changes of operators and the forms that are filed in
17 conjunction with these changes of operators?

18 A. Yes.

19 Q. When we look at the rules, when I look at the
20 rules, it defines "operator" as any person or persons who,
21 duly authorized, is in charge of the development of a lease
22 or the operation of a producing property. When it says
23 "duly authorized", do you understand that to be designated
24 by the Division?

25 A. Yes.

1 Q. Okay. And you understand that the right to
2 operate a well is an important issue for the owners of
3 interest in oil and gas properties?

4 A. That's correct.

5 Q. All right. I'd like to talk a little bit about
6 the Vandiver well. You are the person who actually
7 approved the change in operator for Mr. Trainer, the form
8 that was filed back with the letter from Mr. Lasley, dated
9 December 16 of 2002; is that correct?

10 A. That's correct.

11 Q. Prior to the approval of that change, Yates
12 Petroleum Corporation was the Division-designated operator;
13 is that right?

14 A. Yes.

15 Q. Now, in this case, the Division filed a
16 prehearing statement. Did you see that?

17 A. I did not see that until we had these exhibits --

18 Q. Okay, let me just tell you what it said. It said
19 in the prehearing statement -- this is a quote, the
20 following -- the Oil Conservation Division believes it
21 acted correctly in approving the change of operator from
22 Yates to Trainer, based on the information it had before it
23 at the time of that decision. All right?

24 A. Yes.

25 Q. And do you agree with that statement?

1 A. Yes, I do.

2 Q. And that decision and the decision we're talking
3 about is your approval of that form, which was July 28th of
4 2003; that's the date of the approval. All right?

5 A. That's correct.

6 Q. Now, I'd like to explore with you for a minute
7 what information it was that you had before you at the time
8 you made this decision, okay?

9 A. Okay, basically I had the Form C-104-A, the
10 letter, and the attachments of the lease assignment.

11 Q. Okay.

12 A. I utilized these documents, and realizing that
13 Yates had not signed the C-104A, I had a conversation with
14 Mr. Brooks, our Division attorney at that time, discussing
15 this matter, and he advised me that it would be appropriate
16 to sign this C-104 with the change of operator, based on
17 the fact that C.W. Trainer had come forward with
18 documentation stating that they did have a valid lease
19 under the wellbore.

20 Q. Okay, Tim, if I understand it, you have the
21 letter from Trainer that's our Exhibit Number 2; is that
22 right?

23 A. Right.

24 Q. And attached to that are certain leases, and I
25 attached to that letter and the copy that you have a list

1 of -- attached three or four leases and I think one
2 assignment, and we got those from the Division.

3 A. Yes.

4 Q. Are those all the leases that you looked at?

5 A. Yes.

6 Q. Okay. You didn't have additional leases that
7 were provided by Mr. Trainer and later data that were
8 provided by anyone else?

9 A. No, this is all that I'm aware of that was ever
10 submitted. This was also, I believe, a result of his
11 request for the nonstandard proration unit in regard that
12 he only had what -- seventy-eight-point-something acres.

13 Q. Okay. When you -- In your job are you called on
14 periodically to review an oil and gas lease?

15 A. No.

16 Q. And when questions like this come up, would it be
17 typical for you to refer those to the Division attorneys,
18 as you did here?

19 A. Yes, I did.

20 Q. Okay, I just want to be sure that what you had
21 before you were just the leases that are included in the
22 exhibit package, and from what you've said it seems to me
23 that that's what you had. Is that fair to say?

24 A. That's correct.

25 Q. Okay. Did you have any meetings with Mr. Lasley

1 or Mr. Trainer?

2 A. I do not know that I had a meeting. I slightly
3 recall having a phone conversation with Mr. Lasley --

4 Q. Okay.

5 A. -- but none with Mr. Trainer.

6 Q. Okay, and do you know when, about, that might
7 have occurred?

8 A. No, sir, I sure don't.

9 Q. Okay. And did he discuss with you the -- was it
10 after his letter was submitted to you?

11 A. Yes, it was after the letter was submitted but
12 prior to our approval.

13 Q. Okay, and did he ask you to go ahead and approve
14 the change?

15 A. Yes.

16 Q. Okay. In the context of the letter and the
17 documents that were provided, did you look at any of your
18 well files or any other records of the Division before you
19 made the decision to approve this form?

20 A. Yes, we did verify that Yates was the operator of
21 record.

22 Q. A minutes ago we were discussing what has been
23 marked Yates Exhibit 1. That's a response, a letter that
24 was sent to Mr. Stogner by Yates concerning an application
25 for a nonstandard unit. Is that a letter that would ever

1 come to you, Mr. Gum?

2 A. Not directly, unless it was actually going to be
3 set for hearing, then very probably it would be sent to us.

4 Q. Were you aware of this letter at the time you
5 approved the --

6 A. I do not have a direct recollection, no.

7 Q. Okay, but you did, at the time you approved this,
8 know just from Mr. Lasley's letter that Yates claimed it
9 was the operator of the well and would not sign the change-
10 of-operator form; is that right?

11 A. Yes.

12 Q. Did you --

13 A. On this letter, are you referring to the one
14 from --

15 Q. I'm referring to our Exhibit Number 2, Mr.
16 Lasley's letter --

17 A. Yes, okay.

18 Q. -- where he stated that Mr. Trainer felt the
19 operator would refuse to sign the enclosed C-104A.

20 So did you contact Yates about this matter before
21 you signed the form?

22 A. No.

23 Q. Any other information? We've covered everything.
24 You had the leases and just the things that you told me; is
25 that right?

1 A. That's all I have, yes.

2 Q. Okay. If we look at the letter from Lasley,
3 certain things, I guess, are clear, at least to me -- tell
4 me if I'm wrong -- that was that they were filing a form
5 that did not contain signatures -- the signature of Yates,
6 correct?

7 A. That's correct.

8 Q. So the form was in that regard incomplete; is
9 that right?

10 A. Yes.

11 Q. Now, you're familiar with this form, you've
12 signed a number of them?

13 A. I've signed a few, yes.

14 Q. Okay. It does have a space on it for the current
15 operator to sign?

16 A. That's correct.

17 Q. Does the Division require that signature before
18 they approve one of these forms?

19 A. Well apparently it does not, since we approved
20 this one in this particular case. Under normal procedure,
21 where both parties are willing to sign or are available to
22 sign, it's a requirement.

23 Q. Why would -- What would the purpose of that line
24 be? Would it be to perhaps prevent someone from coming in
25 and saying they should operate a well, and maybe they

1 should not?

2 A. I really don't know what the intent would be on
3 that.

4 Q. Okay. But there is a space on the form for the
5 signature of the previous operator?

6 A. That's correct.

7 Q. Okay. You've stated, as has the prehearing
8 statement in this case, that you believe the Division,
9 based on the data before them, acted properly. My question
10 is, is that comment by you based on the advice you received
11 from your counsel?

12 A. Yes, and also from procedures that we utilize in
13 other situations which operators come forward with an APD
14 stating that they do have mineral rights, and we do approve
15 those. I do believe this procedure was correct.

16 Q. When you got the form and you looked at it, did
17 you suggest to Mr. Trainer or his representative that they
18 ought to try and get the prior operator to sign off, or did
19 you just accept their representation that they couldn't get
20 it?

21 A. No, I recommended to them that they make all
22 efforts in order to get this resolved.

23 Q. And then it was sometime later that the next
24 contact you had was the call from Mr. Lasley; is that
25 right?

1 A. That's correct.

2 Q. When we look at this letter and we go down -- and
3 I'm talking about the letter which is our Exhibit Number 2
4 -- and we go down into the third paragraph, and I had Mr.
5 Moran read this, and the sentence that I'm concerned about
6 -- or the portion of the sentence -- well, it reads -- the
7 last sentence in the third paragraph of Exhibit 2 reads, 0
8 "With respect to the Oil Conservation Division's time and
9 energy, it is Mr. Trainer's intention to obtain the
10 Operating Rights by appointment from the Oil Conservation
11 Division and assume all responsibilities of Operator in
12 this well."

13 Do you know if, in fact, an oil and gas interest
14 owner can obtain operating rights by appointment from the
15 Division, or is it simply a recognition by the Division of
16 underlying agreements and relationships of the parties, or
17 do you know?

18 A. I believe it is the latter, Mr. Carr. I believe
19 that the Division's position on that is that they assign
20 the operating rights only, not that they're assigning
21 mineral rights.

22 Q. Okay. Do you believe that the operating rights
23 are obtained by appointment from the Division, or are you
24 recognizing the agreements of the underlying parties?

25 A. That's correct.

1 Q. It would recognizing the agreement of the
2 underlying parties? I had a question there, Tim, that had
3 two parts, and they can't both be correct.

4 First, do you appoint someone as operator, do
5 they obtain the right by designation of the Division, or
6 does the Division acknowledge and accept the designation of
7 operator that is entered into by the parties, or do you
8 know?

9 MS. MacQUESTEN: Objection. At this point I
10 think Mr. Carr is asking some very subtle legal questions
11 here, and I'm not sure even the OCD could answer these
12 questions. All we have are the rules as written.

13 Q. (By Mr. Carr) Well, let me ask you this: When
14 you saw this question did it give you any pause?

15 A. No.

16 Q. You just -- You didn't discuss with Mr. Trainer
17 whether or not maybe there were ways to get operating
18 rights other than appointment?

19 A. No, I was taking that as he was asking for the
20 transfer of operator only.

21 Q. All right. Why is it important, do you know,
22 from a Division point of view, to have a duly authorized
23 operator?

24 A. It is very important for us to know who we have
25 that will stand before the Commission to be liable or --

1 not liable, but be responsible for compliance with the OCD
2 Rules and Regulations.

3 Q. You want to assure that they have bond coverage;
4 isn't that one of the things you would want?

5 A. Sir, would you repeat that?

6 Q. One of the things you as a Division would want to
7 be certain of is that the designated operator had proper
8 bond coverage to ensure they perform properly?

9 A. That's correct.

10 Q. And you would want an individual identified who
11 could file reports as required by the Rule?

12 A. Yes.

13 Q. And when you decide to change an operator, you're
14 not really -- the past operator has already been designated
15 and they would, I think it's safe to say, have a bond and
16 be able to file reports; isn't that fair to say?

17 A. Yes.

18 Q. And so what you're looking at is, you're really
19 looking at the qualifications of the new operator?

20 A. Yes.

21 Q. Okay. The letter from Mr. Lasley in the middle
22 paragraph, the second paragraph, talks about Yates'
23 operations on this property. It's my understanding that no
24 inquiry was made of Yates concerning whether or not the
25 statements in that paragraph were true; is that right?

1 A. That's true.

2 Q. All right. Is it fair to say, Mr. Gum, that you
3 approved the change-of-operator form for the well because
4 the information before you -- and that's the documents that
5 we have in Exhibit Number 2 -- show that Trainer, not
6 Yates, was actually the owner of the underlying leases?

7 A. Yes.

8 Q. Now let me ask you, in that regard, then, didn't
9 you have to decide that the Yates leases -- or accept
10 Trainer's representation that the late Yates leases were no
11 longer continued in full force and effect?

12 A. I believe that statement to me was this, Mr.
13 Carr, that Mr. Trainer had the rights to develop this
14 particular acreage, not -- whatever other problem might
15 have existed, how he obtained the leases, but he did have
16 the leases.

17 Q. And you therefore concluded that Yates did not?

18 A. Yes.

19 Q. In your job do you also stay informed or review
20 Division that -- I'm sorry, orders that are entered by this
21 Commission?

22 A. I didn't hear all of the question, sir.

23 Q. I'm sorry. In your job do you review and stay
24 informed on orders that are entered by the Oil Conservation
25 Commission?

1 A. As best we can, yes.

2 Q. And if we -- a couple of -- a year and a half
3 ago, there was an order entered in a dispute between
4 Arrington, TMBR/Sharp, Ocean and others, and in that order
5 the Division -- the Commission found that the Division has
6 no jurisdiction to determine the validity of any title or
7 continuation in force of any oil and gas lease. Isn't what
8 you were being asked to do by Mr. Trainer to decide whether
9 or not the Yates lease was continuing in full force and
10 effect?

11 A. I had no knowledge that the Yates lease was still
12 in effect.

13 Q. Okay. But what you did do is, you did determine
14 ownership should be transferred to Trainer?

15 A. Yes.

16 Q. You accepted the information from Trainer, based
17 on the attached leases?

18 A. That's correct.

19 Q. You didn't check the information with anybody
20 else, but you did confer with your attorney?

21 A. Yes.

22 Q. You knew Yates would object?

23 A. Yes.

24 Q. You knew the form was incomplete?

25 A. Yes.

1 Q. And you still think the Division acted properly;
2 is that right?

3 A. That's correct.

4 Q. Okay. Now when you changed operator, you were
5 changing operator of the entire south-half spacing unit;
6 isn't that right?

7 A. We were changing the operator in the Vandiver
8 only.

9 Q. But the Vandiver had dedicated to it the south
10 half of this section, did it not?

11 A. That was a previous acreage, yes, but Mr.
12 Trainer, I believe, recognized the fact he only had the
13 rights to 78 acres, plus or minus. That's why he made the
14 Application.

15 Q. But you have then given him operations of a well
16 on 78 acres that had a -- previously dedicated to it by
17 Yates, 320 acres?

18 A. Yes, but the well was shut in, and he was not
19 producing that particular well. In order for him to
20 produce it, it had to have the proper proration size.

21 Q. But the question would be whether or not he had a
22 lease that was in effect on that; isn't that right?

23 A. Well, he did have a lease on that 78 acres.

24 Q. Had you determined that that lease was a valid
25 lease, or was it just a top lease, or did you know?

1 A. I did not determine whether it was valid. He
2 just -- based on the documentation that they provided.

3 Q. You know, Mr. Gum, if we look at the leases that
4 are attached to Exhibit 2 -- and you don't have to read
5 these in any detail -- there are provisions in paragraph 3
6 of these new leases that provide for the payment of shut-in
7 royalties, and it provides that so long as said shut-in
8 royalties are paid or tendered, the lease shall not
9 terminate, and it shall be considered under all clauses
10 hereof that gas is being produced from the lease premises
11 in paying quantities.

12 Did you look at the previous Yates lease at all?

13 A. No.

14 Q. So you don't know if there was a provision like
15 this in the prior lease?

16 A. No.

17 Q. And you wouldn't know whether or not Yates was
18 making payments of shut-in royalties and keeping the lease
19 maintained or not?

20 A. No.

21 Q. When you looked at the names of the people on
22 these leases, Sandra Wernli and Fred Marosko and others,
23 did you make any effort to determine whether or not they
24 owned the lease or were authorized to sign a lease on the
25 property?

1 A. No.

2 Q. Now, I would like to ask you a couple of
3 questions about the current status of the well. Do you
4 know what the status of the well is at this time?

5 A. My latest knowledge indicates it is still
6 currently inactive, nonproducing.

7 Q. And has it been brought into compliance with
8 Division Rule 201?

9 A. No.

10 Q. When you had discussions with Mr. Lasley, were
11 there any discussions about any kind of problems or
12 exposure that might come from any subsequent operations on
13 the well?

14 A. No.

15 Q. Did they discuss with you their plans to maintain
16 the lease?

17 A. Yes, they did have plans to return the well to
18 production.

19 Q. Did they talk to you about their testing plans?

20 A. No.

21 Q. Did you discuss their obligations to plug the
22 well or any site-remediation issue?

23 A. No.

24 Q. Now, the Division in the prehearing statement has
25 stated -- and this is a quote -- However, the Division

1 takes no position on the current operator dispute between
2 Yates and Trainer. Do you agree with that?

3 A. That's correct.

4 Q. Now, the Division has changed the designated
5 operator of the well from Yates to Trainer. Isn't that
6 taking a position on the operator dispute?

7 A. I do not believe that it's the operator dispute.
8 It may be the mineral-rights dispute, who has the rights?

9 Q. And follow up on that now. Isn't it fair to say
10 that maybe what we have here are two questions, one
11 involving the mineral ownership, and another question
12 involving the designation of the operator of the well?

13 A. There could be two issues here, yes.

14 Q. You're not taking a position on the status of the
15 leases or who owns what; isn't that fair to say?

16 A. That's fair to say, yes.

17 Q. But as to the question as who is the operator of
18 the well, you have approved changing the operator of the
19 well; isn't that right?

20 A. That's correct.

21 Q. So you have taken a position on changing the
22 operator, but you haven't taken a position on the
23 underlying ownership; is that fair?

24 A. That's fair, yes.

25 MR. CARR: Okay, thank you, Mr. Gum. That's all

1 I have. I appreciate this. I know more about it than I
2 did ten minutes ago, but I don't know if I have an answer
3 to anything.

4 EXAMINER JONES: Mr. Bruce?

5 MR. BRUCE: I think Mr. Carr's questioning lasted
6 longer than ten minutes.

7 EXAMINATION

8 BY MR. BRUCE:

9 Q. Mr. Gum, this is Jim Bruce. I only have a few
10 questions. I think Mr. Carr covered most of the ground.

11 But when you got the letter from Mr. Lasley, or
12 whenever he called you, did you look at the Division's
13 records or the State's records regarding production from
14 the well?

15 A. Yes, we knew that it was an inactive well.

16 Q. Okay, okay. So besides the leases Mr. Lasley
17 sent you, you did at least glance at the production data to
18 make sure it was inactive?

19 A. Yes.

20 Q. Okay. Now, I guess that gets to my next
21 question, is, you know, regarding a change of operator,
22 now, this well has been inactive since 1999, and of course,
23 as you well know, Yates Petroleum is quite a good company
24 and it's still out there producing wells in the state. And
25 perhaps this is speculative and you don't want to answer

1 it, but what would have happened if, say, the well hadn't
2 been producing since 1989 or 1979 or 1969, and was inactive
3 but you still have an operator claiming to be the current
4 operator of that well and claiming those leases are valid?
5 You know, it's a difficult question to answer, Mr. Gum, but
6 wouldn't that have some effect on whether or not you
7 determine someone was the current operator or should be the
8 current operator?

9 A. Well, not necessarily about who should be the
10 operator, but those wells would be addressed under our
11 current inactive well project in order to bring them into
12 compliance.

13 Q. Which is what you've spent a lot of your time
14 doing over the last couple of years, isn't it?

15 A. The last four years.

16 Q. One other thing you would have had to have looked
17 at, and I guess you would contact the Santa Fe Division
18 Office for that regarding operatorship, Mr. Trainer does
19 have a bond, does he not?

20 A. Yes, he does.

21 Q. Okay, so you also did look at that, or called
22 Dorothy up in the Santa Fe Office?

23 A. That's correct.

24 Q. Okay. One other thing, and I think it gets back
25 to Mr. Carr's issue regarding operatorship. The Division

1 does approve APDs as well as C-104s for wells, especially
2 gas wells with 320-acre units, where the operator may not
3 own an interest in the well site, although it may own an
4 interest in the unit; is that correct?

5 In other words, Mr. Gum, what I'm saying is,
6 let's take this well, for instance, and just assume for
7 purposes of argument that Yates owned everything except the
8 south half, southwest quarter of this section. Yates could
9 still be operator of the Vandiver well if 320 acres are
10 dedicated to that unit, correct?

11 A. That's correct.

12 Q. Even if it doesn't own an interest in the quarter
13 quarter section where the well is located?

14 A. Yes, it just depends on what kind of agreement
15 they would have with the other mineral interests.

16 Q. Yeah, either a JOA or a pooling order?

17 A. Yes.

18 Q. Okay. And so when you are just looking at Form
19 C-104s or even the APDs, what you're looking at -- As Mr.
20 Carr said, the Division isn't determining mineral title; is
21 that correct?

22 A. That's correct.

23 MR. BRUCE: Thank you, Mr. Gum, that's all I
24 have.

25 EXAMINER JONES: Ms. MacQuesten?

EXAMINATION

BY MS. MacQUESTEN:

Q. Mr. Gum --

A. Yes.

Q. -- when Bill Carr was asking you questions, you discussed the fact that Trainer is not currently in compliance with Rule 201; is that right?

A. That's correct.

Q. Back in 2002 when Yates was still recognized as the operator of this property, the well had been inactive for several years; is that right?

A. Yes.

Q. And it hadn't been plugged and abandoned or temporarily abandoned?

A. That's correct.

Q. So they weren't in compliance with 201 either, right?

A. That's correct.

Q. Now, at the time that you approved the change of operator from Yates to Trainer, was it your understanding that there was not a lease dispute?

A. I don't believe I can say that. I believe it was stated in Exhibit 2 that there was some dispute about the lease.

Q. Was it your understanding that the lease had

1 expired --

2 A. Yes.

3 Q. -- that Yates had, and that Trainer had now
4 presented you with the documentation showing the current
5 leases?

6 A. That's correct.

7 Q. But at this point now, at least after the
8 testimony today, you understand that Yates believes it has
9 the lease, and Trainer also believes it has the lease; is
10 that right?

11 A. That's correct.

12 Q. And so now that there's a lease dispute, rather
13 than decide between the parties at the district level,
14 we've placed this before the Hearing Examiner to decide; is
15 that right?

16 A. That's correct.

17 MS. MacQUESTEN: Okay, thank you. That's all I
18 have.

19 EXAMINER JONES: Go ahead, Mr. Carr.

20 FURTHER EXAMINATION

21 BY MR. CARR:

22 Q. Tim, I want to follow up on one thing. Yates was
23 not in compliance with Rule 201 when they were operating
24 the well; that's what you've testified, correct?

25 A. Yes.

1 Q. And Yates was presented with a list of a number
2 of wells that were not in compliance with Rule 201; that's
3 also correct?

4 A. Yes.

5 Q. This well was not on that list, was it?

6 A. I'm not for sure when or -- the well was on the
7 list or taken off, but once it was changed over in
8 operatorship, it would be off of Yates's list.

9 Q. Okay. If Yates was today interested in going out
10 and bringing that well into compliance, they couldn't do
11 that, could they? You'd have to do that through Mr.
12 Trainer?

13 A. That's correct, unless the order is written to
14 make the change of operator change.

15 Q. Basically, Mr. Gum, in your experience you've
16 really worked more in the operations end of this industry
17 than in the lease drafting and interpretation part of this
18 game; isn't that fair to say?

19 A. Yes.

20 Q. And that's the reason when there were questions
21 about whether or not you should sign this, you sent it to
22 your attorneys in Santa Fe; isn't that fair to say?

23 A. I guess my expertise would be this, Mr. Carr,
24 that I did realize that this was a legal question that
25 needed legal advice.

1 MR. CARR: Good, that's all I have.

2 EXAMINER JONES: Mr. Bruce?

3 FURTHER EXAMINATION

4 BY MR. BRUCE:

5 Q. Tim, one more question. You did send the letter
6 out requesting the well be brought in compliance, but just
7 out of curiosity, other than being shut in for the last
8 five years, are there any particular problems with the
9 well? In other words, does anything need to be cleaned up
10 at the well site, et cetera?

11 A. No environmental issues, no, I think it's just to
12 -- well, a minor violation, other than being shut in.

13 MR. CARR: Thank you.

14 EXAMINATION

15 BY EXAMINER JONES:

16 Q. Tim, this notice of violation, can you tell us
17 what it means, the one that's Exhibit Number 6?

18 A. Number 6? All right, let me find it first, Mr.
19 Examiner.

20 Okay, basically this is a form letter based on a
21 physical inspection of the well site, and the upper portion
22 just states the Rule 201 and the requirements of 201.

23 Down in the middle section is the well specific
24 information, the well name, number, location, API number,
25 inspection date and time.

1 Then over in the upper right-hand corner it's
2 just an inspection number.

3 Then a comment as to what the particular
4 violation was at this particular time, which it was that
5 the current operator was not named on the well sign, which
6 was a violation of Rule 103, and also stating that the last
7 production date was in 1999, and the violation of Rule 201,
8 being inactive.

9 Q. Okay, thanks, Tim. This letter that -- sent to
10 Mike Stogner about nonstandard proration unit, you say you
11 didn't get a copy of that letter?

12 A. I do not recall getting a copy of the letter. I
13 may have, but it does not ring a bell with me at this point
14 in time, no.

15 Q. Okay. The procedure when a well hasn't produced
16 for a long time and an operator applies for a nonstandard
17 proration unit, it sounds like you need to be in on the
18 loop on that to know whether it's -- the original proration
19 unit is going to be inactive or nonvalid anymore and the
20 new one is possibly going to be assigned?

21 A. Sometimes we do get the data requesting hearings.
22 Sometimes we do, sometimes we do not.

23 Q. Okay. So basically when it goes to hearing,
24 you're going to hear about it. Or if it's approved
25 administratively, you would --

1 A. -- hear the final order, or have it copied --

2 Q. Get a copy of it?

3 A. Yes.

4 Q. Okay. So, Mr. Tim Gum, let me go ahead and
5 summarize what I think we're all saying here, is that
6 instead of you making the decision on a lease dispute at y
7 our level, you want me to make that decision?

8 A. Well, you're closer to the legal representation.
9 It would be my opinion, Mr. Examiner, that if, in fact, Mr.
10 Trainer has legal rights to the minerals, he should be
11 granted the operatorship.

12 Q. Okay, this change-of-operator form, on the back,
13 the attachment is always a list of the wells that's going
14 to be changed.

15 A. Yes.

16 Q. That's very hard to read here. Is it always hard
17 to read when you look at it?

18 A. No, we normally get a much better copy. But see,
19 this has been copied and faxed several different times. If
20 you can look at the copy on the imaging system in the well
21 files, it's readable there.

22 Q. Okay, so you're convinced we're all talking about
23 the same well here?

24 A. The same well and same location, yes, sir.

25 Q. To your knowledge, has there been any other wells

1 drilled to the Atoka or the Morrow? In this case, it looks
2 like this is West Atoka-Morrow Gas Pool. To your
3 knowledge, has there been any other wells drilled or
4 completed in this south half of Section 18?

5 A. It would have to be after the change in Rule 104,
6 and I have no direct knowledge, no.

7 EXAMINER JONES: Okay, that's all my questions
8 for Mr. Gum. Does anybody else have questions?

9 MR. CARR: No further questions.

10 MR. BRUCE: (Shakes head)

11 EXAMINER JONES: Any closing statements?

12 MR. CARR: I have.

13 EXAMINER JONES: Mr. Carr.

14 MR. BRUCE: I have a brief one.

15 MR. CARR: Well, Jim goes first since I'm the
16 Applicant.

17 MR. BRUCE: Very briefly, Mr. Examiner.

18 Regarding the notice of violation, obviously
19 Yates Petroleum and Mr. Trainer think there is potential in
20 this well and it can be brought into production. And
21 therefore, since there are no environmental problems at the
22 well, we certainly don't think it should be ordered to be
23 P-and-A'd.

24 Insofar as a TA, temporary abandonment of the
25 well, I don't think Yates would like that because that

1 could affect their argument, their legal argument. And
2 because there are no environmental problems, we don't --
3 Mr. Trainer doesn't think it should be TA'd, because that's
4 just a needless cost at this point to do so.

5 And I think Mr. Carr was correct in saying there
6 are two issues. There's one, how do you deal with the
7 change of operator? The other one is, there's obviously a
8 title dispute here. And I don't think the Division does
9 have authority to determine legal title leasehold ownership
10 or mineral title.

11 So we do not believe any order issued by the
12 Division should address whether Yates Petroleum leases are
13 valid or Mr. Trainer's leases are valid. I think that is
14 something that they have to work out themselves or go to
15 district court for.

16 Now, regarding the change of operator, as Mr.
17 Carr knows, this has happened -- I've been involved in a
18 few of these, and so has Mr. Carr. In this case I would
19 ask that the Division leaves things as they are until the
20 underlying title dispute is resolved.

21 The reason I say that is, just as I don't think
22 Yates wants the well officially TA'd, because that could
23 affect its title claim, it's my position that if Yates is
24 named operator and then it brings the well back on
25 production, then it will say ah-hah to the district court

1 and say Mr. Trainer does not have valid title. And that
2 would adversely affect my client's rights.

3 So we would ask that the Application be denied
4 but that the well not be ordered P-and-A'd or TA'd at this
5 point.

6 That's all I have.

7 EXAMINER JONES: Ms. MacQuesten?

8 MS. MacQUESTEN: When Mr. Gum stated that he
9 wanted this case heard at the Hearing Examiner level rather
10 than at the District level, I just wanted to clarify that
11 we're not trying to foist a hard decision onto the
12 Examiner. The real issue is who gets to decide these
13 mineral interest disputes. And frankly, neither the
14 District nor the Examiner will be the final decision-maker
15 in that. It's very likely that this will have to go to
16 district court to be resolved. And it is really not the
17 OCD's intent to take a position on the mineral interest
18 ownership in this case, and that is why we're not taking a
19 position in this action. It really needs to be resolved at
20 a different level.

21 The only -- Your decision will decide who gets to
22 hold the title of operator when this case goes to district
23 court, basically.

24 That is all.

25 EXAMINER JONES: Mr. Carr?

1 MR. CARR: One of the unfortunate things about
2 being a Division-designated Examiner is that certain cases
3 come before you that you have to decide. I think the only
4 real way to analyze this problem is to recognize that there
5 are two issues, two questions. One is, who owns the
6 mineral estate? And the other is, who is the Division-
7 designated operator?

8 Who owns the mineral estate is something that
9 will be decided at a different level, it will have to be
10 resolved either by agreement or in the courts.

11 But the only place we get a decision on who is
12 the Division-designated Examiner [sic] is from the
13 Division. And the question is not before you as to who
14 owns what in this property. The question is, did the
15 Division properly change the operator of this well?
16 Because I will tell you, we won't go to another level until
17 we get some resolution here. We're not going to stand in a
18 courtroom opposite Mr. Trainer and have someone say, Yeah,
19 but the Division says you're the operator of the well, Mr.
20 Trainer, they took it away from Yates. We can't go there.
21 We're going to resolve it here first. And the question is,
22 who is the operator?

23 And we're asking you to reset the clock, to stand
24 down. I don't know how you draft the order to do that, but
25 that's what we believe you must do. And you've got to do

1 it because, you know, we have rules concerning *ex parte*
2 communications with Examiners. One party that's -- run in
3 and lobby you on the result. I can't come in without Jim
4 and try and get you to do something in this case.

5 Well, in fact, the way this is played out is, one
6 owner, through a representative, Mr. Lasley, came in and
7 lobbied Mr. Gum. And Mr. Gum sat there with leases that
8 he's not trained to analyze. He did what he should have
9 done, he sent them to Santa Fe, to the law department here.

10 And they had part of the story in front of them.
11 In looking at the document they said one thing, but they
12 didn't know we were paying shut-in royalties, they didn't
13 know we were maintaining the lease. And what they did was
14 took away operatorship on the 320-acre spacing unit because
15 somebody had new leases on 80 of those acres.

16 And you did it without asking Yates. Yates is,
17 you know, a five-minute walk from where Mr. Gum is standing
18 right now. No one contacted them. And what you did is,
19 without even looking at the Yates lease, you determined, at
20 least indirectly, that it wasn't in effect. In these *ex*
21 *parte* communications you decided, in fact, that the Yates
22 lease was not continuing in force and effect.

23 And I would direct you to what this Commission
24 said in an order entered April 26th, 2002. It's Order
25 11,700-B, it's Finding 27. And they're talking in that

1 case about an APD, but what they say is absolutely
2 applicable here. And it says, The Division has no
3 jurisdiction to determine the validity of any title -- we
4 all agree on that -- or the validity or continuation in
5 force, effect, of any oil and gas lease.

6 You violated that finding here. You determined
7 when you changed operator that Yates' lease was not valid,
8 was not continuing in force and effect, and we're asking
9 you to undo that.

10 If you don't do that -- You can't say, Well, it's
11 a different game now, we knew something else then. The
12 bottom line is, you have done something that you were not
13 authorized to do, and refusing to undo it is taking a
14 position on the operator dispute. And that is the reason
15 you must rescind the approval and let the matter stand as
16 it was before you took an action that you're not authorized
17 to take so that we can then go forward and resolve who owns
18 what in the south half of this section.

19 EXAMINER JONES: Thank you. Anything further?

20 MR. CARR: Nothing further.

21 MR. BRUCE: I hope not.

22 MS. MacQUESTEN: (Shakes head)

23 EXAMINER JONES: With that, let's take Case
24 13,270 under advisement. And we'll adjourn for lunch.

25 MR. GUM: Mr. Examiner, am I excused?

1 EXAMINER JONES: Yes, sir.

2 MR. CARR: Mr. Gum, thank you, sir.

3 MR. GUM: You all have a good day up there in the
4 big city now.

5 (Thereupon, these proceedings were concluded at
6 11:55 a.m.)

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CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL July 12th, 2004.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006