

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

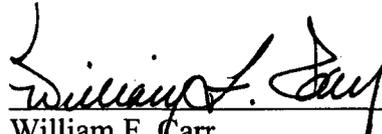
**IN THE MATTER OF THE APPLICATION OF
YATES PETROLEUM CORPORATION FOR AN
ORDER RESCINDING APPROVAL OF A
CHANGE OF OPERATOR, EDDY COUNTY,
NEW MEXICO.**

CASE NO. 13270

AFFIDAVIT

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

William F. Carr, attorney in fact and authorized representative of Yates Petroleum Corporation, the Applicant herein, being first duly sworn, upon oath, states that notice of the above-referenced Application was mailed to the addresses shown on Exhibit "A" attached hereto, and that true and correct copies of the notice letter and proof of receipt are attached hereto.

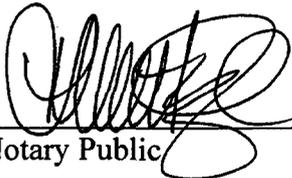


William F. Carr

SUBSCRIBED AND SWORN to before me this 7th day of ^{July} ~~May~~ 2004 by William F. Carr.



**OFFICIAL SEAL
LISAMARIE ORTIZ
NOTARY PUBLIC-STATE OF NEW MEXICO**
My commission expires 01/14/07



Notary Public

My Commission Expires: 01/14/07

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

NOTICE LIST

EXHIBIT A

**C. W. Trainer
Post Office Box 754
Midland, Texas 70702**

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Received by (Please Print Clearly)	B. Date of Delivery
1. Article Addressed to:		C. Signature	
<p>C.W. Trainer P.O. Box 754 Midland, TX 79702</p>		<input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
2. Article Number (Copy from sender)		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
7001 1140 0002 5602 3831		3. Service Type	
PS Form 3811, July 1999		<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
Domestic Return Receipt		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
102595-00-M-0952			

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL RECEIPT	
Postage	\$.60
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.65



Sent To

C.W. Trainer

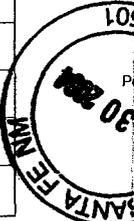
Street, Apt. No., or PO Box No. P.O. Box 754

City, State, ZIP+ 4 Midland, TX 79702

**U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage)**

OFFICIAL USE

44519 0095	Postage	\$.60
	Certified Fee	2.30
	Return Receipt Fee (Endorsement Required)	1.75
	Restricted Delivery Fee (Endorsement Required)	
	Total Postage & Fees	\$ 4.65



Sent To
C.W. Trainer
 Street, Apt. No., or PO Box No. **P.O. Box 754**
 City, State, ZIP+4 **Midland TX 79702**

PS Form 3800, January 2001 See Reverse

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
C.W. Trainer
P.O. Box 754
Midland, TX 79702

2. Article Number (Copy of) **7001 1140 0002 5602 3848**

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery
5-4-04

C. Signature
x Doug Van Claver Agent Addressee

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

HOLLAND & HART



William F. Carr
wcarr@hollandhart.com

April 29, 2004

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

C. W. Trainer
Post Office Box 754
Midland, Texas 70702

Re: Application of Yates Petroleum Corporation for an order rescinding approval of a change of operator, Eddy County, New Mexico.

Ladies and Gentlemen:

This letter is to advise you that Yates Petroleum Corporation has filed the enclosed application with the New Mexico Oil Conservation Division seeking the rescission of its approval of a change of operator form filed by C. W. Trainer for the Vandiver Com Well No. 1 located in Unit M of Section 18, Township 18 South, Range 26 East, NMPM.

This application has been set for hearing before a Division Examiner on May 27, 2003. You are not required to attend this hearing, but as an owner of an interest that may be affected by this application, you may appear and present testimony. Failure to appear at that time and become a party of record will preclude you from challenging the matter at a later date.

Parties appearing in cases are required by Division Rule 1208.B to file a Pre-Hearing Statement with the Oil Conservation Division's Santa Fe office located at 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505, three days in advance of a scheduled hearing. This statement must include: the names of the parties and their attorneys; a concise statement of the case; the names of all witnesses the party will call to testify at the hearing; the approximate time the party will need to present its case; and identification of any procedural matters that are to be resolved prior to the hearing.

Very truly yours,

William F. Carr
ATTORNEY FOR YATES PETROLEUM CORPORATION

Holland & Hart LLP

Phone (505) 988-4421 Fax (505) 983-6043 www.hollandhart.com

110 North Guadalupe Suite 1 Santa Fe, NM 87501 Mailing Address: P.O. Box 2208 Santa Fe, NM 87504-2208

Billings Boise Boulder Cheyenne Colorado Springs Denver Denver Tech Center Jackson Hole Salt Lake City Santa Fe Washington, D.C. ☻

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

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

CASE NO. _____

APPLICATION

YATES PETROLEUM CORPORATION ("Yates"), through its undersigned attorneys, applies for an order of the Division rescinding the July 28, 2003 approval of a change of operator form (Form C-104A) filed by C.W. Trainer's seeking a change of operator of the Vandiver Com Well No. 1 located in Unit M, Section 18, Township 18 South, Range 26 East, NMPM, Eddy County, New Mexico from Yates Petroleum Corporation to C. W. Trainer, and in support of this application states:

1. The Vandiver Com State Well No. 1 ("Vandiver Well") located 990 feet from the South line and 660 feet from the West line (Unit M) Section 18, Township 18 South, Range 35 East, NMPM Eddy County, New Mexico was drilled in 1972 and, since May 1990, Yates Petroleum Corporation has been the Division designated operator of record of the well.

2. On December 17, 2002, C. W. Trainer filed Oil Conservation Division Form C-104A seeking a change of operator of the Vandiver Well. The form was not signed by Yates Petroleum Corporation. This Change of Operator form was accompanied by a letter to the Division's District Supervisor from Brian Lasley, RLP, landman for Trainer dated December 16, 2002. This letter stated in part:

Please be advised that we have not included on the form, as required, the signature of previous Operator.... Mr. Trainer feels the operator of record will refuse to sign the enclosed C-104A form.”

3. With knowledge that Yates would not agree to the change in operator and without providing notice or an opportunity to respond to Yates, the District Supervisor of the Oil Conservation Division District II, nonetheless, contrary to Division policy approved the Change of Operator form filed by C. W. Trainer.

4. The Oil Conservation Division is a creature of statute and its powers are expressly defined and limited by the Oil and Gas Act. See, **Continental Oil Co. v. Oil Conservation Commission**, 70 N.M.310, 373 P.2d 809 (1966).

5. The Oil Conservation Division is authorized by the Oil and Gas Act to identify the ownership of oil and gas producing leases and wells. NMSA 1978, §70-2-12B(8)(1986).

6. Nothing in the Oil and Gas Act authorizes the Division to to determine the title to or the operating rights of the owner of oil and gas interests. In fact, the New Mexico Supreme Court long ago recognized that this agency exceeds its delegated authority when it attempts to determine ownership of property. **Continental** at 819.

7. By approving Trainer's request for Change of Operator, the Division through its District Supervisor has exceeded its statutory authority, and impaired the property right of Yates. Its action is arbitrary, capricious and contrary to law and must now be reversed.

8. Since obtaining the Division's approval for change of operator, C. W. Trainer has failed or refused to operate the property in accordance with the rules and regulations of the Oil Conservation Division. As a result of Trainer's failure to comply with Division Rules, he has received from the Division a Notice of Violation.

9. This failure by Trainer creates additional problems for Yates. The Division has approved a change of operator to someone who is refusing or failing to operate within the Rules of the Division.

WHEREFORE, Yates Petroleum Corporation hereby requests that this application be set for hearing before a Division examiner on May 27, 2004 and that, following notice and hearing as required by law, the Division enter its order rescinding its July 28, 2004 approval of the Change of Operator form filed by Trainer in December 2002 for the Vandiver Well.

Respectfully submitted,

HOLLAND & HART, LLP

By: 

WILLIAM F. CARR
Post Office Box 2208
Santa Fe, New Mexico 87504
Telephone: (505) 988-4421

ATTORNEYS FOR YATES PETROLEUM
CORPORATION

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	0620
RECIPIENT ADDRESS	1196#44519*0095#14326872625
DESTINATION ID	
ST. TIME	04/30 10:17
TIME USE	00'43
PAGES SENT	5
RESULT	OK



Friday, April 30, 2004

To: C. W. Trainer

Fax : 432-687-2625

Phone:

From: Katherine E. Hawkins for
William F. Carr

Fax : (505) 983-6043

Phone: (505) 988-4421

Message:

Mr. Carr asked that I fax the attached to you so that you would have it in a timely fashion. The original has been sent by certified mail. Thank you.