

**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. 13531
ORDER NO. R-12547**

**APPLICATION OF YATES PETROLEUM CORPORATION FOR AN ORDER
(1) DIRECTING PRIDE ENERGY COMPANY TO REIMBURSE YATES FOR
THE WELL COSTS INCURRED BY YATES IN ITS ATTEMPT TO RE-ENTER
THE STATE "X" WELL NO. 1 (API NO. 30-025-01838) LOCATED IN SECTION
12, TOWNSHIP 12 SOUTH, RANGE 34 EAST, NMPM, PRIOR TO THE TIME
PRIDE ENERGY COMPANY ASSUMED OPERATIONS OF THE WELL; (2)
DIRECTING PRIDE ENERGY COMPANY TO ACCOUNT FOR AND PAY ALL
SUMS IT IS NOW IMPROPERLY HOLDING PURSUANT TO EXPIRED
ORDERS OF THE DIVISION AND COMMISSION; AND, (3) REQUIRING
PRIDE ENERGY COMPANY TO PLUG AND ABANDON THE STATE "X"
WELL NO. 1, LEA COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on January 5, 2006, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 8th day of May, 2006, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner,

FINDS THAT:

- (1) Due public notice has been given, and the Division has jurisdiction of this case and its subject matter.
- (2) The applicant, Yates Petroleum Corporation ("Yates"), seeks: (1) an order directing Pride Energy Company ("Pride") to reimburse Yates for the well costs Yates incurred while conducting re-entry operations on the State "X" Well No. 1 (API No. 30-025-01838) located 1980 feet from the North line and 660 feet from the West line (Unit E) of Section 12, Township 12 South, Range 34 East, NMPM, Lea County, New Mexico, prior to the time Pride assumed operations of the well; (2) an order directing Pride to

account and refund to Yates all of the portion of the estimated share of well costs for the State "X" Well No. 1 now improperly held by Pride pursuant to an order of the Oil Conservation Commission ("Commission"); and (3) an order directing Pride to plug and abandon the State "X" Well No. 1.

(3) Pride appeared at the hearing through legal counsel in opposition to the application.

(4) At the hearing, Yates requested that the portion of its application seeking an order directing Pride to plug and abandon the State "X" Well No. 1 be dismissed.

(5) A brief chronological summary of the events leading up to this case is described as follows:

On September 5, 2003, Yates moved a rig onto and commenced re-entry operations on the plugged and abandoned State "X" Well No. 1 in order to test the Mississippian formation. The N/2 of Section 12 was to be dedicated to the well forming a standard 320-acre spacing and proration unit;

On September 10, 2003, Pride filed an application with the Division to: i) re-instate its drilling permit to re-enter the State "X" Well No. 1; ii) cancel Yates' drilling permit to re-enter the State "X" Well No. 1; iii) halt Yates' re-entry operations on the State "X" Well No. 1; and iv) compulsory pool all mineral interests in the W/2 of Section 12, this 320-acre spacing and proration unit to be dedicated to the State "X" Well No. 1. This application was assigned Case No. 13153;

Prior to the hearing in Case No. 13153, which was heard by the Division on October 23, 2003, Yates voluntarily moved off the State "X" Well No. 1;

On March 2, 2004, Order No. R-12108 was issued in Case No. 13153. This order approved the application of Pride, thereby effectively awarding Pride the operatorship of the State "X" Well No. 1. Pursuant to the provisions of the order, Pride was required to commence re-entry operations on the State "X" Well No. 1 by June 1, 2004;

On September 9, 2004, Order No. R-12108-A was issued by the Commission in *de novo* Case No. 13153. This order awarded Pride the operatorship of the State "X" Well No. 1 and required Pride to commence re-entry operations on the State "X" Well No. 1 by December 31, 2004. The order also required that Yates, within 30 days from the date of the order, provide Pride an itemized schedule of actual well costs incurred by Yates in conducting re-entry operations on the State "X" Well No. 1 after August 25, 2003 and prior to the time Yates received notice of the filing of the original application in this case;

On October 14, 2004, Order No. R-12108-B was issued by the Commission upon the application of Yates for rehearing *de novo* Case No. 13153. This order granted Yates' request for rehearing to the extent that the issues for consideration upon rehearing shall

be limited to the determination of costs for which Yates shall be allowed reimbursement from Pride;

On December 9, 2004, Order No. R-12108-C was issued in the rehearing of *de novo* Case No. 13153. This order again awarded Pride operatorship of the State "X" Well No. 1 and; i) required Pride to commence re-entry operations on the State "X" Well No. 1 within 90 days from the date of the order; ii) required Yates, within 5 days from the date of the order, to provide Pride and the Division an itemized schedule of actual well costs incurred by Yates in conducting re-entry operations on the State "X" Well No. 1 during the period after August 25, 2003 and prior to October 7, 2004; and iii) rescinded Division Order No. 12108-A;

On February 10, 2005, Order No. R-12108-D was issued upon Pride's Motion for Stay of Order No. R-12108-C. This order denied Pride's Motion to Stay Order No. R-12108-C;

On February 15, 2005, Pride commenced re-entry operations on the State "X" Well No. 1; and

On March 27, 2005, Pride ceased re-entry operations on the State "X" Well No. 1.

(6) The evidence presented demonstrates that Pride complied with Order No. R-12108-C by commencing re-entry operations on the State "X" Well No. 1 in a timely manner. The evidence further shows that Pride ceased re-entry operations on March 27, 2005, and that the State "X" Well No. 1 has not yet been completed. Order No. R-12108-C provides that:

"(4) Should the subject well not be completed within 120 days after resumption of re-entry operations pursuant to this order, then this order shall be of no further effect, and the unit created by this order shall terminate, unless the operator obtains a time extension from the Division Director following notice and hearing."

Issue No. 1: Well Costs Incurred by Yates in Its Attempt to Re-enter the State "X" Well No. 1 and Its Request for Reimbursement from Pride.

(7) Order No. R-12108-C provided that:

"(9) Within 5 days after the issuance of this order, Yates shall furnish the Division and Pride an itemized schedule of actual well costs incurred by Yates in conducting re-entry operations on the subject well after August 25, 2003 and prior to October 7, 2004, the time when Yates voluntarily ceased operations on the subject well. If no objection to such actual costs is received by the Division, and the Division has not objected on or before December 31, 2004, such costs shall be deemed to be the reasonable well costs. If there is objection to the reasonableness of such costs within the time allowed by this order, the Division will determine the amount thereof that constitutes reasonable well costs after notice and hearing."

(8) The evidence and testimony presented at the hearing relating to the well costs incurred by Yates in its re-entry attempt on the State "X" Well No. 1 is summarized as follows:

- a. Yates first provided Pride its schedule of well costs to re-enter the State "X" Well No. 1 on October 13, 2004. There is no evidence to demonstrate whether or not Yates provided Pride any other well cost schedule subsequent to that time;
- b. Yates' well costs to re-enter the State "X" Well No. 1 after August 25, 2003 and prior to October 7, 2004 are \$84,391.58; and
- c. By letter dated September 30, 2005, Pride notified Yates that it objected to certain of Yates' well costs in the amount of \$25,442.21.

(9) It is Yates' position that since Pride did not object to the "reasonableness" of its well costs on or before December 31, 2004, as provided by Order No. R-12108-C, then the provisions of Order No. R-12108-C should be final and binding upon Pride, and Pride should not be given the opportunity to object to the well costs at this time.

(10) It is Pride's position that:

- a. it should be given the opportunity to object to Yates' well costs;
- b. certain of Yates' well costs had to be duplicated by Pride once it commenced re-entry operations on the State "X" Well No. 1, and therefore these duplicative costs should not be allowed; and
- c. Pride should only have to pay 50% of the well costs incurred by Yates in its re-entry attempt on the State "X" Well No. 1 because Yates owns a 50% interest in the well unit.

(11) Pride did not object to the "reasonableness" of Yates' well costs until September 30, 2005, nearly nine months after the deadline to object imposed by Order No. R-12108-C had passed.

(12) Pride failed to utilize the opportunity to object to Yates' well costs afforded by Order No. R-12108-C.

(13) Because Pride did not object to Yates' itemized schedule of actual well costs on or before December 31, 2004, under the terms of Order No. R-12108-C, such costs were deemed at that time to be the reasonable well costs. The Division does not have the authority to re-determine that issue, which was decided by the Commission.

(14) The Commission also determined that Pride shall pay to Yates the full amount of the actual well costs identified in Yates' schedule. Ordering paragraphs 10 and 11 of Order No. R-12108-C set out two possible scenarios for payment of Yates' actual well costs, and in each scenario Pride is required to pay the full amount of Yates' actual well costs. Each scenario also takes into account that Pride had previously submitted an AFE for the well by letter dated September 14, 2004 and that Yates, in order to be certain that it was not in a non-consent position under Commission Order No. R-12108-A, had paid to Pride its share of those AFE costs. Each scenario also assumes that Pride will submit a new AFE for the well as required by Ordering Paragraph 8 of Order No. R-12108-C, and that Yates will have a second opportunity to decide whether to participate.

(a) Ordering Paragraph 10 of Order No. R-12108-C applies if Yates elects to pay in advance its share of costs of the re-entry of the well. Under this scenario, Order No. R-12108-C provides that "Yates may deduct the amount of such actual costs from its share of estimated well costs to be paid pursuant to ordering paragraph 8." If the amount is less than the amount already paid by Yates pursuant to Order No. R-12108-A, Pride is to refund the excess to Yates;

(b) Ordering paragraph 11 of Order No. R-12108-C applies if Yates elects not to pay in advance its share of costs of the re-entry. Under this scenario, Order No. R-12108-C provides that "Pride shall refund all amounts paid by Yates at the time of its election pursuant to Order No. R-12108-A, and shall pay to Yates the amount of actual costs included by Yates."

(15) Nothing in Order No. R-12108-C precludes Pride, once it has paid to Yates its actual well costs, from including those costs in Pride's schedule of actual well costs. Inclusion of all of Pride's actual well costs, including payments made to Yates to reimburse Yates for its costs in conducting re-entry operations after August 25, 2003 and prior to October 7, 2004, is contemplated by NMSA 1978, Section 70-2-17, which provides that each owner should pay his proportionate share of actual expenditures required for development and operation of the well. Order No. R-12108-C echoes this language in its provisions regarding owners paying "their share" or a proportionate share, of well costs. See ordering paragraphs 8, 10, 11, 13, 14(a), 15 and 16.

(16) Order No. R-12108-C determined that Pride shall reimburse Yates for actual well costs incurred in its re-entry attempt on the State "X" Well No. 1 during the period after August 25, 2003 and prior to October 7, 2004. Consequently, Pride should be required to pay Yates the amount of \$84,391.58.

**Issue No. 2: Pride's Actual Well Costs for Re-entry of the State "X" Well
No. 1 and Overpayments Made by Yates to Pride**

(17) The evidence and testimony presented at the hearing relating to the well costs incurred by Pride in its re-entry attempt on the State "X" Well No. 1 is summarized as follows:

- a. Yates and its affiliated companies, Yates Drilling Company, Abo Petroleum Corporation, and Myco Industries, Inc. (hereinafter collectively referred to as "Yates") own 50% of the interest in the W/2 of Section 12. On October 13, 2004, Yates paid to Pride a total of \$376,647.43 for its share of the estimated well costs to re-enter the State "X" Well No. 1. Yates' 50% share of estimated well costs was based upon Pride's Authority for Expenditure (AFE) dated September 14, 2004 which showed total completed well costs to be \$753,294.85;
- b. Pride's actual well costs for the State "X" Well No. 1 as shown in Exhibit No. 7, and not including the \$84,391.58 Pride is required to pay Yates, is \$708,402.78. Included in these actual wells costs are the following charges to which Yates is objecting:

Legal Fees:	\$15,215.11
NuTech Energy Alliance:	\$ 3,163.60
Heartland Equipment Co.:	\$ 888.46
Phillips Casing & Tubing, LP:	\$ 248.97
Title Opinion:	\$ 1,363.71
 Total:	 \$20,879.85

- c. at the hearing, legal counsel for Pride withdrew the charges for NuTech Energy Alliance (\$3,163.60), Heartland Equipment Company (\$888.46) and Phillips Casing & Tubing, LP (\$248.97). Legal counsel for Pride further stated that subsequent to the hearing, Pride will provide a copy of the title opinion to Yates;
- d. in its closing statement submitted subsequent to the hearing, Yates stated that they have not yet received a copy of the title opinion from Pride, and therefore requested that this cost be included in its objected charges;

- e. subsequent to the time Yates filed its closing statement, Pride stated to the Division that it has provided a copy of the title opinion to Yates. Consequently, this cost should not be considered in dispute at this time;
- f. taking into consideration the charges withdrawn by Pride at the hearing, the total charges currently in dispute are \$15,215.11 for legal fees.

(18) Yates' position with regards to the legal fees is that these fees may be charged against another party only where authorized by contract or by statute, and further contends that neither of these facts is present in this dispute.

(19) Pride stated that these legal fees are costs relating to the various Division and Commission pooling hearings in this matter, and contends that these costs would not have been incurred if the Division had not cancelled Pride's APD for the State "X" Well No. 1 in August 2003.

(20) Legal fees for compulsory pooling hearings are not customarily included as well costs. Furthermore, there is no evidence to demonstrate that these costs were authorized by contract or statute, therefore these costs are deemed by the Division to be "non-reasonable" well costs and should not be included in the actual well costs.

(21) Pride's actual total well costs for the State "X" Well No. 1 should be established as follows:

	\$708,402.78 (Actual Well Costs, Exhibit No. 7)
-	\$ 3,163.60 (NuTech Energy Alliance)
-	\$ 888.46 (Heartland Equipment Company)
-	\$ 248.97 (Phillips Casing & Tubing, LP)
-	<u>\$ 15,215.11 (Legal Fees)</u>
=	\$688,886.64 (Actual Total Well Costs)

(22) Yates's share of the total well costs are: \$344,443.32 determined as follows: $(0.5) \times \$688,886.64$.

(23) Pride should be required to reimburse Yates the amount of \$32,204.11. This amount was determined by subtracting from the amount Yates has already paid to Pride (\$376,647.43), Yates' share of actual total well costs (\$344,443.32).

IT IS THEREFORE ORDERED THAT:

- (1) The application of Yates Petroleum Corporation is hereby approved.

(2) Pride Energy Company shall reimburse Yates Petroleum Corporation for actual well costs incurred in Yates' re-entry attempt on the State "X" Well No. 1 during the period after August 25, 2003 and prior to October 7, 2004, as required by Order No. R-12108-C.

(3) Within 14 days from the date of this order, Pride Energy Company shall reimburse Yates the following well costs and overpayments:

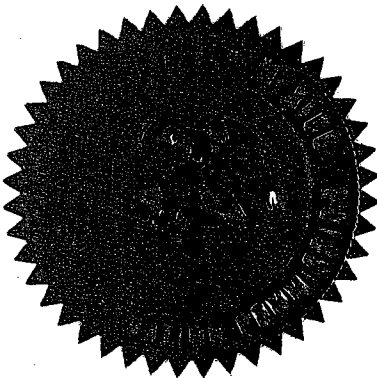
\$84,391.58---The actual well costs incurred by Yates in its re-entry attempt on the State "X" Well No. 1 after August 25, 2003 and prior to October 7, 2004; and

\$32,204.11---The amount that Yates' actual payments to Pride exceeded its share of actual well costs.

(4) The portion of Yates' application seeking an order directing Pride Energy Company to plug and abandon the State "X" Well No. 1 is hereby dismissed.

(5) Jurisdiction is hereby retained for the entry of such further orders as the Division may deem necessary.

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



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION



MARK E. FESMIRE, P.E.
Director