

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

**APPLICATION OF YATES PETROLEUM CORPORATION FOR
A NON-STANDARD SPACING UNIT AND PRORATION UNIT FOR
A DIRECTIONAL WELL PROJECT AREA, FOR COMPULSORY POOLING,
AND FOR RECISION OF A PERMIT TO DRILL,
CHAVES COUNTY, NEW MEXICO**

CASE NO. 14367

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RESPONSE TO MOTION TO DISMISS APPLICATION

Marshall & Winston suggests Yates' Application should be dismissed because Yates' federal drilling permit mistakenly contains an erroneous certification and/or because Marshall & Winston has subsequently obtained a drilling permit from the Division for a competing horizontal well project. Neither point supports dismissal of this Application.

The Competing Development Proposals before the Division

Yates holds a federal oil and gas lease covering the SE/4 of Section 9 and Marshall & Winston holds a fee oil and gas lease covering the SW/4 of Section 9. Yates' application places before the Division two competing proposals for development of the Abo-Wolfcamp formations in the S/2 of Section 9. Yates seeks to combine the S/2 S/2 of Section 9 to form a 160-acre non-standard spacing and proration unit for a horizontal well to be drilled in a northwesterly direction from a surface location in the SE/4 of Section 9 to a standard bottom hole location in the SW/4 of Section 9. *See* Exhibit D to Motion to Dismiss. Yates' proposal conforms with the geology in the area and will result in the most efficient drainage, thereby preventing waste.

After receiving Yates' horizontal well proposal in June, Marshall & Winston filed and obtained from the Division in July a permit to drill a horizontal well in a southwesterly direction from a surface location in Unit K to a bottom hole location in Unit M of the SW/4 of Section 9.

See Exhibit B to Motion to Dismiss. Yates believes Marshall & Winston's competing development proposal will not efficiently and economically drain the area, will force Yates to drill unnecessary wells in the SE/4 of Section 9, and will result in waste.

Accordingly, the September 3rd hearing in this matter is for the purpose of determining which of the two competing proposals will efficiently and economically drain the area, avoid the drilling of unnecessary wells, and is in the best interests of conservation, the prevention of waste and the protection of correlative rights.

There is no Basis to Dismiss the Application

The Oil and Gas Act authorizes the Division to create spacing and proration units for the purpose of establishing an area that "can be efficiently and economically drained and developed by one well...." NMSA 1978, § 70-2-17(B). This authority extends to the creation of non-standard spacing and proration units where appropriate. See NMSA 1978, § 70-2-18(C). In determining the appropriate area for a spacing and proration unit, the Division considers:

....the economic loss caused by the drilling of unnecessary wells, the protection of correlative rights, including those of royalty owners (in this case the federal government), the prevention of waste, the avoidance of the augmentation of risks arising from the drilling of an excessive number of wells, and the prevention of reduced recovery which might result from the drilling of too few wells.

NMSA 1978, § 70-2-17(B). Yates believes that when the Division takes these matters into consideration, it will conclude a non-standard S/2 S/2 spacing unit is appropriate for horizontal well development of the Abo-Wolfcamp formations in the S/2 of Section 9. Since Yates holds an interest in the SE/4 of Section 9, it has standing to bring this Application for approval of a S/2 S/2 spacing and proration unit. NMAC 19.15.4.8.

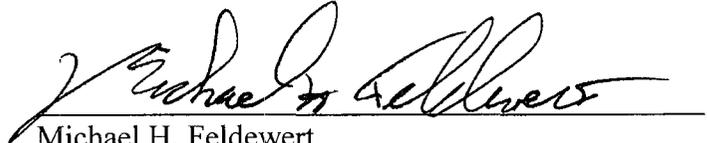
Once the Division has determined a S/2 S/2 non-standard spacing and proration unit is appropriate for horizontal well development of the Abo-Wolfcamp formations in the S/2 of Section 9, then the Division is authorized to pool the acreage if the interest owners have been unable to reach agreement. *See* NMSA 1978, § 70-2-17(C). That is the case here. Yates has the right to drill, and in June of 2009 submitted to Marshall & Winston a proposal to drill, a horizontal well on a S/2 S/2 spacing unit through the Abo-Wolfcamp formations. Marshall & Winston expressed disagreement with Yates' proposed development plan by subsequently obtaining a drilling permit from the Division for a competing horizontal well in the Abo-Wolfcamp formations in the SW/4 of Section 9. Accordingly, Yates has properly applied to the Division for an order pooling the acreage in the S/2 S/2 of Section 9, and to rescind the permit to drill issued in July of 2009 for Marshall & Winston's competing horizontal well proposal (API No. 30-005-29098).

What is now properly before the Division is the question of which of the two competing development proposals will efficiently and economically drain the area, avoid the drilling of unnecessary wells, and is in the best interests of conservation, the prevention of waste and the protection of correlative rights. Whether or not Yates has mistakenly "certified" to the BLM that it holds a current interest in the bottom-hole location of its proposed well, or the fact that Marshall & Winston holds a permit to drill for a competing horizontal well in the SW/4 of Section 9, is of no consequence to these development issues. More importantly, neither of these points provide any basis to dismiss this Application.

WHEREFORE Yates respectfully requests that the Division deny the Motion to Dismiss filed by Marshall & Winston.

Respectfully submitted,

HOLLAND & HART, L.L.P.



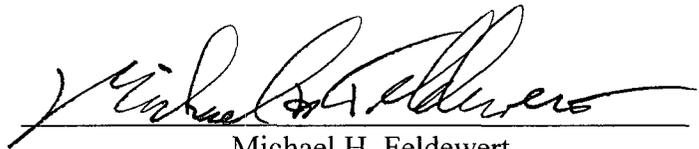
Michael H. Feldewert
Post Office Box 2208
Santa Fe, New Mexico 87504
(505) 988-4421
(505) 983-6043 Facsimile

**ATTORNEYS FOR
YATES PETROLEUM CORPORATION**

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2009, I served a copy of the foregoing document to the following counsel of record via U.S. Mail, postage prepaid to:

W. Thomas Kellahin
Kellahin & Kellahin
706 Gonzales Road
Santa Fe, New Mexico 87501
(505) 982-4285



Michael H. Feldewert