

**Chuck Moran***Yates Petroleum Corporation**Case No. 14597**Exhibit 5***From:** Chuck Moran**Sent:** Tuesday, January 25, 2011 9:32 PM**To:** 'Russell Wickman'**Subject:** RE: Dagger Draw #11 recompletion

Russell: I have not had time to address all of your question from this and previous emails. Please consider this an update.

- As of the 17<sup>th</sup> of January 5 parties have signed the JOA.
- The force pooling hearing is currently on the docket for February 17<sup>th</sup> in Santa Fe to address parties that have not signed the JOA.

As for your questions below, I will look at them and get back with you.

**Chuck Moran**

*Yates Petroleum Corporation*  
575-748-4349

-----Original Message-----

**From:** Russell Wickman [mailto:rwickman@nearburg.com]**Sent:** Monday, January 24, 2011 2:47 PM**To:** Chuck Moran**Subject:** Dagger Draw #11 recompletion

Chuck:

Rather than continue to quibble over the apparent miscommunication between Yates and Nearburg on the form of JOA that we thought we had previously agreed to, Nearburg proposes that the form Yates recently sent for our review be revised as follows:

1. ARTICLE III.B: Yates added the following language that appears to indicate that each party is responsible for paying royalty owners rather than the operator. Nearburg proposes this language be deleted or revised to make it clear that unless otherwise agreed upon the operator will pay royalty owners under all leases within the contract area.

*It is agreed that, regardless of whether each party markets or contracts for its share of gas, including the royalty gas under the leases which it contributed to the Contract Area, such party agrees to pay or cause to be paid to the royalty owners under its lease or leases the proceeds attributable to their respective royalty interest and to hold all other parties hereto harmless for its failure to do so.*

2. ARTICLE VI.A.: Specify the recompletion of the DD #11 as the initial well. As you mentioned on the phone, this Article contemplates a new well, however it is easily adapted to apply to a recompletion. The term of the agreement set out in Article XIII is tied to production established from the initial well, and Nearburg is opposed to a JOA that does not provide a time frame in which to drill the initial well.
3. ARTICLE VI.B.2: Reduce the non-consent penalty from 200%/500% to

2/14/2011

100%/300%.

4. Set out the correct ownership of each oil and gas lease described in Exhibit "A".

Please contact me regarding these changes at your convenience.

**Russell H. Wickman**

Senior Landman  
Nearburg Producing Company  
3300 North "A" Street  
Building 2, Suite 120  
Midland, Texas 79705  
Phone: 432-818-2913  
Fax: 432-686-7806

**Chuck Moran**

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**From:** Chuck Moran  
**Sent:** Friday, January 14, 2011 2:12 PM  
**To:** 'Russell Wickman'  
**Subject:** RE: Dagger Draw Prospect - Dagger Draw 30SE # 11 Well (fka NDDUP # 131)  
Russell:

I have reviewed the information below. It is apparent to me that certain assumptions have been made. My correspondence below does not indicate that when I referred to a "new" JOA that I would use a 1977 version base form. Yates Petroleum Corporation switched to using a modified 1989 base form JOA over two years ago and that is what I presented to you, a new JOA. Additionally, when you rejected my earlier idea of how to proceed with the JOA issue, I had to ask for reasoning which you eventually provided. My review of your reasoning acknowledged some of your points. However, I made no agreement to accept your points, but did consider them and direct you to reviewing the proposed overhead rates.

With regards to your current demands, I will gladly consider requests for changes to the 1989 JOA you are reviewing. However, your current demands are a step backwards and not in concert with previous demands. I advise you that my instructions are to proceed with getting the land work done so that this project moves forward.

As such, I ask you to review the information before you, make your decisions and return the signed JOA and AFE.

**Chuck Moran**  
Yates Petroleum Corporation  
575-748-4349

-----Original Message-----

**From:** Russell Wickman [mailto:rwickman@nearburg.com]  
**Sent:** Friday, January 14, 2011 1:34 PM  
**To:** Chuck Moran  
**Subject:** RE: Dagger Draw Prospect - Dagger Draw 30SE # 11 Well (fka NDDUP # 131)

Any response to this?

**Russell H. Wickman**  
Senior Landman  
Nearburg Producing Company  
3300 North "A" Street  
Building 2, Suite 120  
Midland, Texas 79705  
Phone: 432-818-2913  
Fax: 432-686-7806

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**From:** Russell Wickman  
**Sent:** Monday, January 10, 2011 2:46 PM  
**To:** 'Chuck Moran'  
**Cc:** Terry Gant

2/14/2011

**Subject:** FW: Dagger Draw Prospect - Dagger Draw 30SE # 11 Well (fka NDDUP # 131)

Chuck:

Please refer to the e-mails below. You will note that Nearburg agreed with Yates that it would be easier to get other parties to the proposed operation to agree to a new JOA if it were in a form similar to one they had previously used, therefore, in order to expedite the proposed recompletion, Nearburg agreed to accept a new JOA using the 1977 form Yates had previously used with such other parties, as long as such new JOA was modified to fit the specific situation and to account for the issues discussed in the attached e-mails. Further, you will see that Yates indicated that it was preparing a new JOA in accordance with Nearburg's terms. Nevertheless, the JOA Yates proposed instead was a 1989 form that did not contain a number of the modifications, and was also inconsistent with portions of the 1977 form that were not to be modified.

As you know, Nearburg began discussing the proposed recompletion with Yates well over a year ago, and has been prepared to propose the well itself in the past, and only recently refrained from doing so based on the understanding that Yates had proposed the operation under the agreed to 1977 JOA form.

As you also know, it is Nearburg's preference that Yates retain operations and perform the proposed recompletion, however we do not find the recently proposed JOA to be acceptable, and do not wish to proceed with the operation under said JOA. Had Nearburg known that the JOA would not be in accordance with our discussions we would have proceeded with our plan to propose the well ourselves.

Accordingly, Nearburg asks that Yates repropose such well using the 1977 form of JOA with the agreed to modifications, and do so on or before this Friday (January 14, 2011) in order to avoid further delays in commencing the proposed recompletion. In addition, Nearburg asks that Yates promptly indicate its acceptance of this request to repropose such well.

If you wish to discuss this matter further, please contact myself at the number provided below, or Terry Gant, Midland Manager, at 432-818-2901.

**Russell H. Wickman**

Senior Landman  
Nearburg Producing Company  
3300 North "A" Street  
Building 2, Suite 120  
Midland, Texas 79705  
Phone: 432-818-2913  
Fax: 432-686-7806

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**From:** Chuck Moran [mailto:Charles@yatespetroleum.com]

**Sent:** Tuesday, November 09, 2010 10:29 AM

**To:** Russell Wickman

**Subject:** RE: Dagger Draw Prospect - Dagger Draw 30SE # 11 Well (fka NDDUP # 131)

I have assistant building Exhibit A for the new JOA you requested.

**Chuck Moran**

Yates Petroleum Corporation  
575-748-4349

-----Original Message-----

**From:** Russell Wickman [mailto:rwickman@nearburg.com]

**Sent:** Tuesday, November 09, 2010 7:59 AM

**To:** Chuck Moran

2/14/2011

**Subject:** RE: Dagger Draw Prospect - Dagger Draw 30SE # 11 Well (fka NDDUP # 131)

Any progress on this?

**Russell H. Wickman**

Senior Landman  
Nearburg Producing Company  
3300 North "A" Street  
Building 2, Suite 120  
Midland, Texas 79705  
Phone: 432-818-2913  
Fax: 432-686-7806

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**From:** Chuck Moran [mailto:Charles@yatespetroleum.com]

**Sent:** Tuesday, November 02, 2010 9:48 AM

**To:** Russell Wickman

**Subject:** RE: Dagger Draw Prospect - Dagger Draw 30SE # 11 Well (fka NDDUP # 131)

Russell: Points well taken and will consider.

**Chuck Moran**

Yates Petroleum Corporation  
575-748-4349

-----Original Message-----

**From:** Russell Wickman [mailto:rwickman@nearburg.com]

**Sent:** Tuesday, November 02, 2010 8:32 AM

**To:** Chuck Moran

**Subject:** RE: Dagger Draw Prospect - Dagger Draw 30SE # 11 Well (fka NDDUP # 131)

The issue isn't the basic form itself, but alterations that need to be made for this situation. Rather than have to propose and get approved amendments to the old JOA, and then get ratifications from NEX (and others?) of the JOA as amended, It might actually be easier and less complicated to push through a new JOA signed by all parties by presenting it as the same form modified to fit the new situation.

Here are the alterations I am talking about.

1. The proposed recompletion should be the "initial well".
2. Article VII.E. contains added language, the last sentence of which appears to indicate that each party to the agreement is responsible for paying the royalty owners under the leases it contributes to the agreement. We want the operator to handle paying the lease burdens.
3. Since it is my understanding that there are no unleased interests, the added Article XV.A isn't necessary.
4. The old agreement is not depth limited. We want a depth limitation from surface to base of Wolfcamp. In any event the JOA does not need to cover into or below the unitized interval.
5. Exhibit "A" needs to reflect ownership in the contract area and Nearburg

prefers that the leases and lease burdens also be set out

6. This agreement should supersede our previous JOA covering the SE/4, which should terminate.
7. We need to know what the overhead rates will be. Has Yates escalated the rates in the old JOA?
8. Exhibit "D" (Insurance) should be updated to reflect current coverage limits.

**Russell H. Wickman**

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Nearburg Producing Company  
3300 North "A" Street  
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Midland, Texas 79705  
Phone: 432-818-2913  
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**From:** Chuck Moran [mailto:Charles@yatespetroleum.com]  
**Sent:** Monday, November 01, 2010 5:39 PM  
**To:** Russell Wickman  
**Subject:** RE: Dagger Draw Prospect - Dagger Draw 30SE # 11 Well (fka NDDUP # 131)

Russell: Only difference is people are more likely to agree to the old agreement apposed to a new agreement.

Out of curiosity only, what did you not like about the 77 joa?

**Chuck Moran**

*Yates Petroleum Corporation*  
575-748-4349

-----Original Message-----

**From:** Russell Wickman [mailto:rwickman@nearburg.com]  
**Sent:** Monday, November 01, 2010 12:53 PM  
**To:** Chuck Moran  
**Subject:** RE: Dagger Draw Prospect - Dagger Draw 30SE # 11 Well (fka NDDUP # 131)

Check:

We believe this needs to be a new JOA that supersedes the previous JOAS's covering the different parts of the S/2. To make it easier we will agree to use the previous form with a few modifications that I am working on now. Since it will still take all parties to sign off on whatever we do, I don't see why doing a new JOA would really be any more difficult than doing amendments and ratifications of the previous one.

**Russell H. Wickman**

Senior Landman

Nearburg Producing Company  
3300 North "A" Street  
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**From:** Chuck Moran [mailto:Charles@yatespetroleum.com]  
**Sent:** Friday, October 15, 2010 4:22 PM  
**To:** Russell Wickman  
**Subject:** RE: Dagger Draw Prospect - Dagger Draw 30SE # 11 Well (fka NDDUP # 131)

Russell: As you know the S/2 spacing unit brings in new owners. Looking at whom they are, I do not anticipate problems with them. Saying that, there are common owners in both the SE and SW that do not cooperate.

Process:

1. Make proposal JOA & AFE to parties for S/2 re-completion of well.
2. Determine who is in agreement
3. Deal with the non participants through force pooling
4. Proceed with the work (Item 4 will commence in timely order with #3, but should not wait on completion of #3)

Have a good weekend.

**Chuck Moran**  
Yates Petroleum Corporation  
575-748-4349

-----Original Message-----

**From:** Russell Wickman [mailto:rwickman@nearburg.com]  
**Sent:** Friday, October 15, 2010 3:07 PM  
**To:** Chuck Moran  
**Cc:** Terry Gant  
**Subject:** RE: Dagger Draw Prospect - Dagger Draw 30SE # 11 Well (fka NDDUP # 131)

I will start looking at this JOA Monday. IF we can get the JOA worked out do you know when you plan to do the work?

**Russell H. Wickman**  
Senior Landman  
Nearburg Producing Company  
3300 North "A" Street  
Building 2, Suite 120  
Midland, Texas 79705  
Phone: 432-818-2913  
Fax: 432-686-7806

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**From:** Chuck Moran [mailto:Charles@yatespetroleum.com]  
**Sent:** Friday, October 15, 2010 3:28 PM  
**To:** Russell Wickman  
**Cc:** Terry Gant  
**Subject:** FW: Dagger Draw Prospect - Dagger Draw 30SE # 11 Well

(fka NDDUP # 131)

Russell: I would presume Terry will give this to you when he sees it.  
This will speed it up.

**Chuck Moran**  
Yates Petroleum Corporation  
575-748-4349

-----Original Message-----

**From:** Chuck Moran  
**Sent:** Friday, October 15, 2010 2:23 PM  
**To:** 'Terry Gant'  
**Subject:** RE: Dagger Draw Prospect - Dagger Draw 30SE # 11 Well (fka NDDUP # 131)

Terry: As you remember, we discussed that a 320 acre spacing unit will be necessary for the well and that the SW/4 is governed by one operating agreement and the SE/4 is governed by multiple agreements.

In looking over the agreements and who has signed which agreement, I am leaning towards proposing the SW/4 operating agreement as the controlling agreement for the re-completion attempt on this well. My reasoning is that most the parties are already a party to this agreement and it is not a 1956 agreement. Nearburg Exploration Company, LLC is not a party to the agreement and thus would need to ratify this agreement as the controlling agreement for the operations. Would you ratify and adopt this agreement as the controlling JOA for a S/2 spacing unit attaching an Exhibit A to the ratification with the revised ownership attached?

Thanks,

**Chuck Moran**  
Yates Petroleum Corporation  
575-748-4349

-----Original Message-----

**From:** Terry Gant [mailto:tgant@nearburg.com]  
**Sent:** Wednesday, October 13, 2010 9:21 AM  
**To:** Chuck Moran  
**Cc:** Mike Hill; Russell Wickman; Tim Speer  
**Subject:** RE: Dagger Draw Prospect - Dagger Draw 30SE # 11 Well (fka NDDUP # 131)  
**Importance:** High

Status of the proposal – has it gone out? If not, go out tomorrow?

Terrence (Terry) Gant, Midland Manager  
Nearburg Producing Company  
3300 North "A" Street  
Building 2, Suite 120  
Midland, Texas 79705  
Work Phone (432) 818-2901



Cell (432) 528-1121  
Fax (432) 686-7806  
[tgant@nearburg.com](mailto:tgant@nearburg.com)

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**From:** Terry Gant  
**Sent:** Wednesday, September 29, 2010 2:14 PM  
**To:** 'Chuck Moran'  
**Cc:** 'mikeh@yatespetroleum.com'; Russell Wickman; Tim Speer  
**Subject:** RE: Dagger Draw Prospect - Dagger Draw 30SE # 11 Well (fka NDDUP # 131)  
**Importance:** High

Per our discussion, it is my understanding that Yates feels that the Wolfcamp will be gas, with a 320 acre drilling unit being needed. Nearburg is OK with that, and respectfully requests that the drilling unit be the S/2 of said Sec. 30 in connection with our mapping of the Wolfcamp. Further, we are agreeable to entering into a new OA covering the S/2 – let us know as to the desired draft and we will review. Lastly, as discussed, since none of the existing OAs cover the S/2, we respectfully request that when you do re-propose, you do it in a manner that will allow the well to be Force Pooled, so that in the event you cannot get voluntary agreement, you can go down the FP route. My understanding is that you should be able to get the re-proposal out the week of October 10<sup>th</sup> – if it will take longer than that, please advise.

Please keep us in the loop as to status of the re-proposal. We appreciate any thing you can do to speed up the process and get the re-proposal out to the WIOs as soon as possible. Let us know if there is anything we can do to help you.

Terrence (Terry) Gant, Midland Manager  
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