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W. THOMAS KELLAHIN*

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NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

January 16, 1998

Mr. Michael E. Stogner
Hearing Examiner

HAND DELIVERED

Rand Carroll, Esq.
Division Attorney

HAND DELIVERED

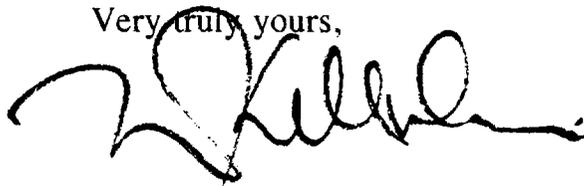
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: NMOCD Case 11900
Application of Yates Petroleum Corporation
to Rescind Manzano's Order SWD-657
Lea County, New Mexico

Gentlemen:

On behalf of Manzano Oil Corporation, please find enclosed our **Motion to Dismiss** Yates Petroleum Corporation's referenced application which is currently set for hearing on January 22, 1998.

Very truly yours,



W. Thomas Kellahin

Federal Express:

Ernest L. Carroll, Esq.

Attorney for Yates Petroleum Corporation

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

**IN THE MATTER OF THE APPLICATION OF
YATES PETROLEUM CORPORATION TO
RESCIND DIVISION ADMINISTRATIVE
ORDER SWD-657 APPROVING THE APPLICATION
OF MANZANO OIL CORPORATION FOR A SALT
WATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO**

CASE 11900

MOTION TO DISMISS

MANZANO OIL CORPORATION ("Manzano") hereby moves that the Division dismiss with prejudice the application of Yates Petroleum Corporation ("Yates") on the grounds that:

- (1) Yates has no standing to object because it farmed out its operating rights in this leasehold to UMC Petroleum Corporation who received notice on March 21, 1997 and who failed to object of this application.
- (2) Yates negligently failed to timely file an objection with the Division to Manzano's administrative application and has waived its right to object;
- (3) Administrative Order SWD-657 is "res judicata";
- (4) Allowing Yates to now object after the issuance of this administrative order sets a precedent that undermines the time limitations established by the Division rules for all administrative orders issued by the Division;
- (5) Allowing Yates to now object after the issuance of this administrative order renders administrative orders of the Division meaningless;
- (6) In reliance on the validity of this order, Manzano has spent in excess of \$175,000 to convert this wellbore for disposal and to now rescind said order would violate Manzano's property rights and cause substantial damage to Manzano.

FACTUAL SUMMARY

This factual summary is based upon the Division's case file for Administrative Order SWD-657, the affidavits of Donnie Brown (Exhibit A) Mike Brown (Exhibit B) and Kenneth Barbe (Exhibit C) attached to this motion and the affidavits of Jim Brown, Mecca Mauritsen and Dave Boneau which are attached to the Yates application.

1997:

- March 11: Manzano (Donnie Brown) signs C-101 application to re-enter P&A Devonian well located in the SE/4 of Section 22, T10S, R37E and convert it to a San Andres SWD well
- March 11: Manzano (Donnie Brown) signs C-108 form (Application for salt water disposal ("SWD")).
- March 17: Manzano mails copy of C-108 to Yates by certified mail-return receipt.
- March 18: Yates receives Manzano C-108 and Jim Brown (PE-Yates) reviews.
- March 19: Brown (Yates-PE) calls Donnie Brown (Manzano's PE) to tell him Yates objects.
- March 21: UMC Petroleum Corporation to who Yates farmed out its leasehold operating rights in this lease received notice
- March 25: Mecca retains Campbell firm to represent Yates in opposition to Manzano. Campbell firm verifies that as of March 25, the OCD has not received the Manzano form C-108.
- March 28: OCD (Sexton) approved Manzano's C-101 Re-entry APD for a San Andres SWD.
- March 27: OCD-Santa Fe receives Manzano SWD application (Form C-108) which has attached to it Donnie Brown affidavit dated March 17th showing that Manzano sent notice to Yates and attaching proof of service on Yates on 3/18/97

- March 28: Yates (Dave Boneau) prepares letter to OCD using PO Box 2088 (Good Friday) copy to Manzano objecting to Manzano SWD well. (deadline is Tuesday-April 2)
- NOTE:** OCD never received Yates' objection
- April 1: Manzano receives copy of Yates objection.
- April 3: Ken Barbe of Manzano calls Boneau to discuss Yates' objection. Boneau said they typically object to all SWD applications on their O&G leases. Ken tells Boneau that his geologist (Mike Brown) had spoken to their geologist (Mike Hayes) who indicated that there was nothing of interest to Yates in that wellbore. Boneau's response was "Well, you know John."
- April 10: Yates farmouts out its leasehold operating rights to UMC Petroleum Corporation.
- May 5: Mecca Mauritsen (a Yates landman) called Ken and told Ken that Yates preferred that Manzano not attempt to convert well to SWD and Ken said he would review this matter and decide what they were going to do.
- May 19: OCD issues Administrative Order SWD-657 approving application.
- May 22: Manzano receives OCD approval of C-108
- May 28: Ken Barbe called the Division and explained that Yates objected to its application and was advised that the Division had no record of such a protest and assured him that Manzano had Division approval to proceed with its well.
- May 28: Ken Barbe calls Paul Owen who says "it should be safe to proceed."
- July 15: Manzano commences operations

August 9: Manzano completes re-entry operations

September: Yates discovers Manzano has converted well to disposal.

November 14: Yates files application for hearing with Division

ARGUMENT

Division Rule 701.B(2) provides that:

"The Applicant shall furnish, by certified or registered mail, a copy of the application to the owner of the surface and to each leasehold operator within one-half mile of the well."

Division Rule 701.C(2) provides that:

"No application for administrative approval may be approved until 15 days following receipt by the Division of Form C-108 *complete with all attachments including evidence of mailing as required under paragraph B(2) above...*" (emphasis added).

Manzano did exactly what the rule required them to do--to serve Yates with a copy of the C-108 and then, after Manzano got back proof of service on Yates, to then file the C-108 with the Division.

Form C-108 provides as follows:

"NOTICE: Surface owners or offset operators must file any objection or request for hearing of administrative applications within 15 days from the date this application was mailed to them."

Manzano sent the C-108 to Yates on March 17, 1997 and to comply with the objection requirements on Form C-108, Yates had until April 1, 1997 to make sure its written objection had been received by the Division. Yates made absolutely no effort to verify with the Division that its objection had been received by the Division. Yates failed to timely object.

Division Rule 701.C(3) provides that:

"If no objection is received within said 15-day period, and a hearing is not otherwise required, the application may be approved administratively."

Arguably, Rule 701.C(3) can be interpreted to mean that Yates could have objected any time within 15-days after the Division actually received the C-108. The Division received the C-108 on March 27, 1997 and under this interpretation Yates would have had until April 11, 1997 to make sure its objection had been received by the Division. Yates made no such effort.

YATES HAS NO STANDING TO OBJECT

Yates has no standing to object because it farmed out its operating rights in this leasehold to UMC Petroleum Corporation. Division rules provide that only offsetting leasehold operators have standing to object to a salt water disposal application. On April 10, 1997, Yates farmed out its leasehold operating rights in the SE/4 of Section 22 to UMC Petroleum Corporation. On March 17, 1997, Manzano sent a copy of the Form C-108 to UMC Petroleum Corporation who received the notice on March 21, 1997. UMC Petroleum Corporation did not object to this application.

On November 14, 1997, Yates filed the subject application with the Division some six (6) months after it farmout out its operating rights to UMC Petroleum Corporation. Yates' application must be dismissed because it is UMC Petroleum Corporation and not Yates who has the proper standing in this matter.

YATES HAD AN OPPORTUNITY TO PROTEST BUT WAIVED THAT OPPORTUNITY AS A RESULT OF ITS OWN NEGLIGENCE

Yates had the required opportunity to protest but waived that opportunity. Yates failed to take any action to assure that they had properly filed an objection. The absence of any action by Yates to ask the Division about the status of their objection should not be the responsibility of the Division nor Manzano. Yates says it mailed its objection to the Division on March 28th but the work on the well did not commence until July 15th. During that entire time, almost four (4) months, Yates did not call Division to find out status of its objection or why there had been no hearing scheduled.

Yates was negligent. Yates' objection letter was sent to the wrong zip code and to a post office box no longer used by the Division. Yates should have known that the Division's mailing address was changed more than three years ago. Yates should have known that the forwarding notice expired more than two years ago and since then mail sent to this post office box is returned to the sender. Yates does business with the Division on almost a daily basis and it knows or should know how to properly file an objection.

Instead of taking responsibility for its own failure to timely file an objection, Yates seeks to blame the Division and Manzano. In an attempt to overcome its own negligence in failing to timely object, Yates makes three arguments, all of which are fatally flawed.

There was no "delay" in filing this application:

First, Yates contends that Manzano "delayed" the filing of its application which caused Yates to assume that Manzano had decided not to proceed with this application.

This "delayed" filing issue is irrelevant and has nothing to do with an assumption that Manzano was not proceeding with its application. Any discussion about the sequence of notice and filing is only relevant if Yates had in fact actually filed an objection which resulted in a dispute over whether it had been timely filed. Here, Yates did not file an objection with the Division timely or otherwise. After March 27, 1997 when the Division received the completed C-108 and until May 19th when the Division issued its order, Yates never called the Division to check on this case. Yates' failure to make sure its objection was timely and properly filed is not excused by focusing attention on the sequence of when it got notice as it relates to when the Division got the application. Despite Yates' efforts to create confusion where none exists, Manzano complied with Rule 701.

Yates apparently contends that the C-108 must be filed with Division and on the same date sent to Yates and that Manzano cannot send it to Yates before it is filed with Division. Yates wants to believe it cannot file an objection to an application before that application is actually filed with Division. The problem with Yates' position is that not only is it wrong, it does not matter.

Yates says that on March 28th it mailed its objection to Division. Even though Yates at that point believes no application has yet been received by Division, Yates says it filed an objection. Why did it do that? Because Division Rule 701 requires it to do so. Yates' smoke screen over the date the application was filed disappears when you realize that Yates mailed its objection on March 28th. Why did Yates file an objection to an application not yet received by Division? Why did it go to the trouble to hire an attorney on March 25th to search to see if the Division had received the application and then go ahead and file the objection under its assumption that no application had yet been received by the Division? Why did Yates do that and yet never check the Division about the status of either the application or its objection? Because Yates was negligent.

Yates failed to make any inquiry why there was an "absence" of a hearing on their objection:

Second, Yates contends that the absence of any hearing caused Yates to assume that Manzano had decided not to proceed with this application. To the contrary, it should have induced Yates into action, not inaction. Instead, Yates did absolutely nothing at the Division after March 28th (the date of its objection letter) to verify with the OCD that the Division got the objection, to determine if the Division now had the application; or to find out when they might expect a hearing or in any of its communications with Manzano to verify if Manzano had dropped its application.

On March 25, 1997, Yates went to the trouble of asking the Campbell Law Firm to check on this application and were told that the Division had not yet received the application. Inexplicably, Yates never again had either its lawyers or any of its personnel call the Division for a status report.

During the period from March 25, 1997 until September, 1997, Yates: (1) did not call the Division for a status report; and (2) did not write or call Manzano to confirm status. Yates negligently failed to protect its opportunity to timely object and has now waived that opportunity.

No representations were made to Yates that Manzano would not proceed with this application:

Third, in its application for hearing, Yates contends that Manzano made representations to Yates which caused Yates to assume that Manzano had decided not to proceed with this application. In support of their allegation, Yates attached the affidavits of Mecca Mauritsen, Dave Boneau and Jim Brown, all of whom attest to this matter and then under oath state that "further affiant sayeth naught". However, an examination of these affidavits fails to disclose any evidence to support the allegation concerning this alleged representation by Manzano. The reason is simple--there is no evidence to support this unfounded claim.

Jim Brown's affidavit states that on March 19th he called Manzano to object. The fact that "at the time it filed its application, Manzano knew Yates opposed the proposed SWD well" does not infer or support any claim of a representation that Manzano would not proceed with this case.

Boneau's affidavit says his only contact was on April 3rd with Ken Barbe and he told Mr. Barbe that Yates would review and see if they would allow Ken to proceed and that Ken Barbe said he would call back about May 1st to see what Yates had decided.

Calling back to see if Yates would change its mind is not the equivalent of saying Manzano will not proceed without calling Yates. To the contrary, after this single call, Boneau did not call or write Manzano to determine the status of this matter.

All Mauritsen's affidavit says is that on May 5th she told Ken Barbe that Yates preferred that Manzano not attempt to convert the well to disposal and Ken Barbe said "he would review this matter and decide what they were going to do." So what was the representation(s)? You cannot find any representation that Manzano was withdrawing its application or promising not to proceed over Yates' objection.

Yates relies upon the fact that Manzano knew Yates objected. So what? Does it now become Manzano's obligation to remind Yates to make sure that the Division actually got the Yates objection?

**UTILIZATION OF THIS WELLBORE DOES NOT
CAUSE WASTE OR IMPAIR YATES' CORRELATIVE
RIGHTS.**

Manzano has determined that Yates could not have re-entered this well and returned the subject well to production. (See affidavits of Mike Brown and Donnie Brown). There is no evidence presented by Yates to support their allegation that the San Andres or any other zone in this wellbore has any remaining potential for further hydrocarbon production.

Manzano has determined that disposal into the San Andres **does not** interfere with Yates ability to drill offset wells deeper than the San Andres. (See Affidavits of Donnie Brown and Mike Brown). Yates has failed to identify any deeper zones below the San Andres which have any potential in this area which will be adversely affected by salt water disposal into the San Andres. Yates fails to explain how water in the San Andres creates any problem. How is this any different than drilling through other water bearing zones? It is not.

**FAILURE TO DISMISS YATES' APPLICATION
ESTABLISHES A NEW PRECEDENT FOR THE
DIVISION AND RENDERS MEANINGLESS THE
FINALITY OF ALL ADMINISTRATIVE ORDERS**

Having approved this salt water disposal application, the Division should not now allow an untimely objection from a party who received the notice required by Rule 701. If the Division allows this case to proceed, then the notice requirements of Rule 701 have meaning.

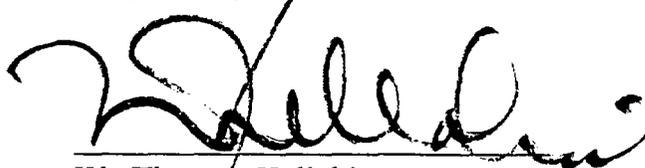
Prior to this case, objecting operators have been denied the opportunity to have their objection heard at a hearing if they fail to timely file that objection. In the Texaco case (Administrative Order NSL-3479(P), the Division denied Doyle Hartman's objection because it was filed on February 17, 1995 some nine (9) days after the February 8, 1995 filing deadline. (See Exhibit D attached)

The only exception to the timely filing of an objection was made in Division Case 11713 where Bass filed an objection to a Mewbourne well which was received by the Division only two days after the twenty day filing deadline. (See Exhibit E attached) The unusual circumstances of that case are unique to that case and are no support for Yates. At least Bass got its objection filed with the Division and checked on its status. Yates did nothing to assure its objection was received and the Division never got the Yates objection which had been mailed to the wrong zip code and an out of date mailing address.

CONCLUSION

The Division should dismiss the application of Yates. Such a dismissal is consistent with the Division rules and with prior cases before the Division. An operator such as Yates should not be excused from failure to timely file an objection because of their own negligence.

Respectfully submitted,



W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504 (505) 982-4285

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been send Federal Express to Earnest Carroll, Esq. attorney for Yates Production Corporation this 16th day of January, 1998.



W. Thomas Kellahin

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

IN THE MATTER OF THE APPLICATION OF
YATES PETROLEUM CORPORATION TO
RESCIND DIVISION ADMINISTRATIVE
ORDER SWD-657 APPROVING THE APPLICATION
OF MANZANO OIL CORPORATION FOR A SALT
WATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO

CASE 11900

AFFIDAVIT OF DONNIE BROWN

STATE OF NEW MEXICO)
) SS.
CHAVES COUNTY)

Donnie Brown, being first duly sworn under oath, states as follows:

1. My name is Donnie Brown. I reside in Roswell New Mexico. I am a petroleum engineer employed by Manzano Oil Corporation ("Manzano").

2. I prepared Manzano's Application for permission to complete the State "22' Well No 1 located in Unit I of Section 22, T10S, R37E, Lea County, New Mexico as a salt water disposal well in the San Andres formation. (Division Form C-108.

3. On March 11, 1997, with the exception of the notice affidavit, I completed and signed the Form C-108. In addition, I signed Manzano's application for permit to re-enter this well (Division Form C-101).

4. As part of my preparation I reviewed Division Rule 701 and understood this rule to require that I send a copy of this application to all offset operators prior to it filing with the Division office in Santa Fe, New Mexico.

5. I determined that Yates Petroleum Corporation ("Yates") was an offset operator to whom notice needed to be sent.

6. On March 17, 1997, I mailed a copy of the C-108 to Yates by certified mail-return receipt.



7. By March 25, 1997, I had received back from the post office all of the return receipt cards from notification of the offset operators and attached copies to my affidavit dated March 17, 1997 verifying that I had sent the required notices. The notice I sent to Yates indicated that they had received this application on March 18, 1997. I then sent the completed C-108 with the required affidavit and copies of the return receipt cards showing proof of service to the Oil Conservation Division-Santa Fe, New Mexico.

8. On March 19, 1997, I received a phone call from Jim Brown, one of Yates' petroleum engineers advising me that Yates objected to our plan to use this wellbore for salt water disposal.

9. I had no other conversations or communications with Yates personnel about this matter.

10. I did not represent to Jim Brown of Yates that Manzano would withdraw its application for approval of this salt water disposal well.

11. On July 15, 1997, Manzano commenced operations to convert the State "22" Well No 1 to salt water disposal.

12. I have reviewed data on this well and I am of the professional opinion that there is no potential to use this wellbore for hydrocarbon production for any formation from the Devonian to the surface.

13. Based upon my study, I am of the professional opinion that the use of this wellbore for salt water disposal in the San Andres formation does not interfere with the drilling of a deeper new well on any portion of this lease. I have reviewed the affidavit of David Boneau and reject his assumption to the contrary.

Further affiant sayeth naught


Donnie Brown

SUBSCRIBED AND SWORN to before me this 15th day of January, 1998, by Donnie Brown.

My Commission Expires:
9/23/2001




Notary Public

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

IN THE MATTER OF THE APPLICATION OF
YATES PETROLEUM CORPORATION TO
RESCIND DIVISION ADMINISTRATIVE
ORDER SWD-657 APPROVING THE APPLICATION
OF MANZANO OIL CORPORATION FOR A SALT
WATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO

CASE 11900

AFFIDAVIT OF MIKE BROWN

STATE OF NEW MEXICO)
) SS.
CHAVES COUNTY)

Mike Brown, being first duly sworn under oath, states as follows:

1. My name is Mike Brown. I reside in Roswell New Mexico. I am a petroleum geologist employed by Manzano Oil Corporation ("Manzano").

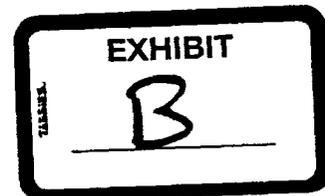
2. I am familiar with Manzano's Application for permission to complete the State "22' Well No 1 located in Unit I of Section 22, T10S, R37E, Lea County, New Mexico as a salt water disposal well in the San Andres formation.

3. On April 2, 1997, I had a phone conversation with Mike Hayes, one of Yates' petroleum geologists, who advised me that in his opinion there was "nothing of interest to Yates in this wellbore."

4. I had no other conversations or communications with Yates personnel about this matter.

5. I did not represent to Mike Hayes of Yates that Manzano would withdraw its application for approval of this salt water disposal well.

6. I have reviewed data on this well and I am of the profession^{al} opinion that there is no potential to use this wellbore for hydrocarbon production for any formation from the Devonian to the surface.



7. Based upon my study, I am of the professional opinion that the use of this wellbore for salt water disposal in the San Andres formation does not interfere with the drilling of a deeper new well on any portion of this lease. I have reviewed the affidavit of David Boneau and reject his assumption to the contrary.

Further affiant sayeth naught

Mike Brown
Mike Brown

SUBSCRIBED AND SWORN to before me this 15th day of January, 1998, by
Mike Brown.

M. Allison Demant
Notary Public

My Commission Expires:

12/31/2001
NOTARY PUBLIC

6. I did not represent to Mr. Boneau that Manzano would withdraw its application for approval of this salt water disposal well. Mr. Boneau told me that Yates would review this matter and get back to me about May 1st.

7. On May 5, 1997, I had a phone conversation with Mecca Mauritsen (a Yates landman). She told me that Yates preferred that Manzano not attempt to convert well to SWD. She did not ask me the status of our application with the Division. She did not ask me not to proceed. She did not ask me to keep her informed. I did not tell her I would call her and let her know. I made no representations to her that we were withdrawing our application or that we would not proceed in light of the Yates objection.

8. I had no other conversations or communications with Yates personnel about this matter.

9. At no time during this entire matter, did any representative of Yates ask Manzano to withdraw its application or call to determine the status of our application

10. On May 22, 1997, Manzano received the Division's order SWD-657 approving our application.

11. On May 28, 1997, I called the Division and explained that Yates objected to our application. I was advised that the Division had no record of such a protest and was assured that we had Division approval to proceed with our well.

12. On May 28, 1997, I called Bill Carr of the Campbell Law Firm who was not available. Mr. Paul Owen, Mr. Carr's associate, reviewed this situation with me and advised me that we had followed the proper procedures and should be safe to proceed.

13. I had no other conversations or communications with Yates personnel about this matter.

14. On June 24, 1997, we filed our Form C-104 with the Division

15. On July 15, 1997, Manzano commenced operations to convert the State "22" Well No 1 to salt water disposal.

16. On August 6, 1997, Manzano filed its Form C-103 (Notice of proposed operations)

17. On August 9, 1997, Manzano completed re-entry operations for this well

18. August 11, 1997, Manzano filed Form C-105 (Well Completion Report)

19. On August 13, 1997, Manzano filed Form C-103 (Casing and Cementing Report)

20. As of October 31, 1997, Manzano had spent \$173,965.05 on approved operations for converting this well to salt water disposal.

21. On November 17, 1997, Manzano received a copy of Mr. Carr's application on behalf of Yates Petroleum Corporation to vacate our SWD order for this well.

22. I have also reviewed data on this well and I am of the professional^{opinion} that there is no potential to use this wellbore for hydrocarbon production for any formation from the Devonian to the surface.

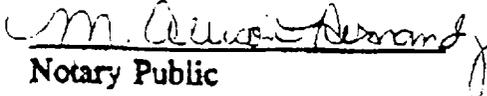
23. Based upon my study, I am of the professional opinion that the use of this wellbore for salt water disposal in the San Andres formation does not interfere with the drilling of a deeper new well on any portion of this lease. I have reviewed the affidavit of David Boneau and reject his assumption to the contrary.

Further affiant sayeth naught

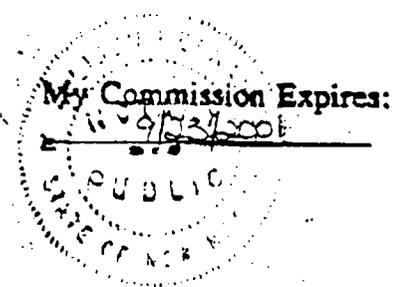


Kenneth Barbe, Jr.

SUBSCRIBED AND SWORN to before me this 15 day of January, 1998, by
Kenneth Barbe, Jr.



Notary Public





OIL CONSERVATION DIVISION



February 20, 1995

Doyle Hartman - Oil Operator
c/o Gallegos Law Firm, P.C.
141 East Palace Avenue
Santa Fe, New Mexico 87501

Attention: J. E. Gallegos

RE: Division Administrative Order NSL-3479(P). - Approval of Texaco Exploration and Production Inc.'s Application of an Unorthodox Eumont Gas Well Location for its J. R. Phillips Well No. 12 (API No. 30-025-05965); 2269'FNL - 2266'FWL (Unit F) of Section 6, Township 20 South, Range 37 East, NMPM, Lea County, New Mexico.

Dear Mr. Gallegos:

The Division received your letter of objection, dated February 17, 1995, on behalf of Doyle Hartman - Oil Operator on the same day.

Please be advised, the subject application by Texaco was received in this office on January 19, 1995 and was approved 20 calendar days later on February 10, 1995 by Administrative Order NSL-3479(P). The "Special Rules and Regulations for the Eumont Gas Pool", as promulgated by Division Order No. R-8170, as amended, provides for a 20-day waiting period for objections.

Sincerely,

Michael E. Stogner
Chief Hearing Officer/Engineer

cc: OCD - Hobbs
William J. LeMay, Director - OCD, Santa Fe
Terry L. Frazier (Texaco) - Hobbs
Doyle Hartman - Dallas, Texas

VILLAGRA BUILDING - 408 Galisteo

Forestry and Resources Conservation Division
P.O. Box 1948 87504-1948
827-5830

Park and Recreation Division
P.O. Box 1147 87504-1147
827-7465

2040 South Pacheco

Office of the Secretary
827-5950

Administrative Services
827-5925

Energy Conservation & Management
827-5900

Mining and Minerals
827-5970

Oil Conservation





STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

2040 S. PACHECO
SANTA FE, NEW MEXICO 87505
(505) 827-7131

April 3, 1997

File

William F. Carr, Esq.
Campbell, Carr, Berge & Sheridan, P.A.
P.O. Box 2208
Santa Fe, NM 87504-2208

James Haas, Esq.
Ernest L. Carroll, Esq.
Losee, Carson, Haas & Carroll
P.O. Box 1720
Artesia, NM 88211-1720

RE: Motion for Reconsideration of Mewbourne Oil Company in
OCD Case No. 11713: Application of Bass Enterprises Production Co. and Santa Fe
Energy Company for rescission of Division Administrative Order No. NSL-3745

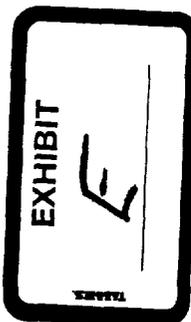
Dear Messrs. Carr and Haas:

Reference is made to the above-referenced Motion for Reconsideration filed March 26, 1997 by Mr. Carr which was copied to Mr. Haas.

Upon reconsidering this matter and the issues involved, the Division stands by its prior decision to stay Administrative Order No. NSL-3745 and allow and hold a hearing on the Application to Rescind filed by Bass and Santa Fe (together referred to as "Bass"). However, the circumstances under which such an Application to Rescind will be entertained by the Division are and will be very limited and it is the particular facts and circumstances of this case that allow the subject application to be heard. The normal rule is that the 20 day period allowed for the filing of objections to unorthodox location administrative applications in Rule 104.F.(4) will be strictly followed.

In this case, the following factors have persuaded the Division to hear the Bass objection to Mewbourne's proposed unorthodox location even though Bass' objection was received two days past the 20-day deadline of December 25:

- (1) a good faith effort was made by Bass to comply with the 20 day period expiring December 25, i.e., (i) Bass mailed the objection on December 20, 5 days prior to expiration of the 20 day period, which, if not for the Christmas holiday mail rush which fell in the interim, should normally have been sufficient time for the objection to reach the Division and (ii) counsel for Bass represented to the Division that an attempt was



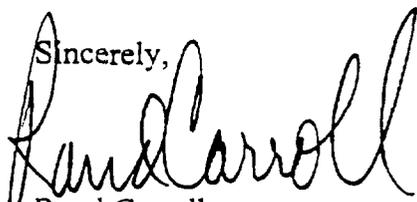
made to fax the objection to the Division on the date that the objection was mailed but for some reason the fax did not reach the Division (Note: the Division fax machine printout did not show any faxes received from the office of counsel for Bass on that day);

- (2) the good faith effort to comply resulted in a filing only two days late; and
- (3) the burden of proof will be placed on Bass to show that its correlative rights are being violated and so the case is styled as Bass' "Application to Rescind" rather than Mewbourne's "Application for an Unorthodox Location" where the burden would have been on Mewbourne to show that Bass' correlative rights were not being violated.

Caution is thus advised in the future to counsel for Bass since this is notice to Bass and counsel for Bass that future objections to administrative applications will have to meet the 20 day deadline and a similar type situation will not result in their objection being heard. Counsel should in the future ensure that the objection is filed within the 20 day period and that documentation of that filing is obtained.

The letter order dated February 17, 1997 is withdrawn and this letter will be substituted in its place. The Division believes its position as stated in this letter will better serve the needs of industry as well as allow the Division to better perform its regulatory function.

If you have any questions, please call me at 505/827-8156.

Sincerely,

Rand Carroll
Counsel

cc: William LeMay, Director
Michael Stogner, Examiner
David Catanach, Examiner