

## MODRALL, SPERLING, ROEHL, HARRIS &amp; SISK, P.A.

Bank of America Centre, Suite 1000  
500 Fourth Street N.W. - 87102  
Post Office Box 2168  
Albuquerque, New Mexico 87103-2168  
[www.modrall.com](http://www.modrall.com)

Las Cruces, New Mexico

Roswell, New Mexico

Santa Fe, New Mexico

Lynn H. Slade  
[lslade@modrall.com](mailto:lslade@modrall.com)

Telephone No.: (505) 848-1800  
Direct Dial: (505) 848-1828  
Fax: (505) 848-1889 (9th Floor)

August 31, 2001

**VIA FACSIMILE (476-3462)**  
and **VIA FIRST CLASS MAIL**

Mr. Richard Ezeanyim  
Bureau Chief, Engineering Bureau  
Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

**Re: Application of Yates Petroleum Corporation for Compulsory Pooling,  
Chaves County, New Mexico - Case No. 12683**

Dear Mr. Ezeanyim:

This Firm represents Bryan Solsbery and Dean Solsbery, Jr. ("Solsberys"), claimants to an interest in the mineral estate in the property that is the subject of this proceeding. This letter presents the position of the Solsberys regarding this proceeding.

1. A. D. Solsbery died intestate in Roswell, New Mexico on July 6, 1986. Mr. Solsbery was a resident of Roswell, New Mexico, Chaves County, New Mexico.

2. Dean Solsbery, Jr. and Bryan Solsbery are the surviving sons, and the only surviving children, of Mr. Solsbery.

3. At the time of his death, Mr. Solsbery owned a one-sixteenth (1/16) undivided interest in and to all oil, gas and other minerals underlying the following lands:

Township 8 South, Range 26 East, N.M.P.M.  
Section 3: NE/4,  
Chaves County, New Mexico

containing 160 acres, more or less

Mr. Richard Ezeanyim  
August 31, 2001  
Page 2

(the "Property"). A copy of the Mineral Deed from Coronet Trading Corporation to A. D. Solsbery conveying such interest, dated August 27, 1973, is attached as Exhibit A to this filing.

4. Opal Solsbery Wright was married to Mr. Solsbery at the time of his death and served as personal representative of the Estate in the probate proceedings in Chavez County, New Mexico, IN THE MATTER OF THE ESTATE OF A.D.SOLSBERY, Deceased, No. PB-86-65 ("the Probate Action").

5. On approximately December 6, 1991, Opal Solsbery Wright assigned all remaining oil and gas properties of the Estate, including the Property, to her daughter by a former marriage, Roxy Burkfield.

6. A dispute is presented in the Probate Action regarding the rights to ownership of the Property. Bryan Solsbery and Dean Solsbery have filed a petition to adjudicate their interests in properties they contend were not properly adjudicated in the earlier probate proceeding. Bryan Solsbery and Dean Solsbery, Jr. have moved to include the Property in the Probate Proceeding and, although the motion was denied preliminarily, they intend to renew their motion to amend to include the Property based on a recent ruling of the Court in the Probate Action. Roxy Burkfield claims all ownership interest in the property. Solsberys claim an undivided three-fourths interest in the Property under the New Mexico law of intestate succession.

7. The undersigned counsel for Solsberys has had several discussions with Mr. Chuck Moran of Yates Petroleum Corporation ("Yates"), and Mr. Moran has provided me with a copy of Yates' proposed Order of the Division in this Case that is attached as Exhibit B to this filing.

8. By letter dated May 18, 2001, Yates offered to enter into a lease with the Solsberys bearing a one-quarter (25%) landowners royalty but offering no bonus consideration. ~~When the undersigned counsel for Solsberys called Mr. Moran to discuss the offer, Mr. Moran advised that Yates no longer desired to lease the Property and would proceed with this proceeding.~~ Solsberys stand ready to renew negotiations to lease their interest in the Property to Yates, including appropriate provisions to address the uncertainty arising from the estate dispute.

9. On August 28, 2001, the undersigned counsel received a voicemail from Mr. Moran advising that Yates has been advised that the Division may enter an order which is substantially broader than that Yates provided to Solsberys, attached as Exhibit B to this filing. In a subsequent conversation on August 29, 2001, Mr. Moran advised that the order may contain numerous provisions additional to or different from those reflected in Exhibit A to this filing regarding the responsibility of non-consenting parties for the cost of operations. Mr. Moran advised that those provisions would arise, at least in part, from an industry working group that met in an earlier period.

Mr. Richard Ezeanyim  
August 31, 2001  
Page 3

10. Solsberys have no knowledge or notice of the additional or different provisions that may be contained in such an order and request an opportunity to review and comment upon any such proposed order before it is entered. Solsberys object to the entry of any order before they have had such opportunity for review and comment.

11. Solsberys request a full opportunity to review the proposed order and any proposed provisions of the proposed order. Additionally, given their willingness to negotiate with Yates regarding a lease of the Property, Solsberys object to any provisions of a proposed order that would be punitive or onerous to a non-consenting owner. Solsberys specifically object to any "non-consent penalty", however defined, that exceeds the 200% figure reflected in the proposed order attached as Exhibit A to this filing and § 70-2-17.C, NMSA 1978.

12. Solsberys will file an appropriate pleading in the case file by approximately September 6, 2001.

Respectfully submitted,



Lynn H. Slade

LHS/pw

cc: Mr. Bryan Solsbery  
Mr. Dean Solsbery, Jr.  
Mr. Ernest L. Carroll (Via Facsimile: 1(505)746-6316)  
Mr. Chuck Moran (Via Facsimile: 1(505)748-4572)

W0187143.WPD