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**IN RE: DRILLING & DIVISION ORDER TITLE OPINION—NO. 2188**

**Township 8 South, Range 26 East, N.M.P.M.**

**Section 3: Lots 1 and 2 (N/2NE/4), S/2NE/4, SE/4  
(Limited to those depths below 4698' in the NE/4)**

**Chaves County, New Mexico**

**Containing approximately 319.73 acres, more or less**

**TRACT I:**

**Township 8 South, Range 26 East, N.M.P.M.**

**Section 3: SE/4**

**Chaves County, New Mexico**

**Containing approximately 160.0 acres, more or less**

**TRACT II:**

**Township 8 South, Range 26 East, N.M.P.M.**

**Section 3: Lots 1 and 2 (N/2NE/4), S/2 NE/4  
(Below the depth of 4,698 feet)**

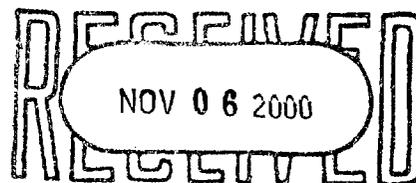
**Chaves County, New Mexico**

**Containing approximately 159.73 acres, more or less**

**PERCENTAGE APR #1**

**YATES PETROLEUM CORPORATION NUMBER: \_\_\_\_\_**

Chuck Moran  
Landman  
Yates Petroleum Corporation  
105 South Fourth Street  
Artesia NM 88210-2118



Dear Mr. Moran:

At your request and in connection with title to the oil and gas mineral estate underlying the captioned lands, we have today examined the following:

New Mexico Oil Conservation Division  
**YATES PETROLEUM CORP.**  
Case No. 12683 - 07/12/01  
Examiner Catanach or Brooks  
**EXHIBIT NO. 3**

**II.  
 OWNERSHIP OF MINERAL ESTATE**

**Tract I:**

Owner	Interest
Marley Ranches Ltd. a New Mexico Limited Partnership	50.0000%
Rita Johnson Peck, dealing in her separate property	50.0000%
<b>TOTAL:</b>	<b>100.0000%</b>

**Tract II:**

Owner	Interest
*Roxy Burkfield, a married woman, dealing in her separate property	6.2500%
J. A. Davidson, as his sole and separate property	50.0000%
Robert E. Hamlin, whose wife is Mabane E. Hamlin	21.2500%
D. S. Lampkin, a single woman	6.2500%
E. M. Vaughan, a single woman	6.2500%
<b>TOTAL:</b>	<b>100.0000%</b>

Q. 983105

79.865

49.915605

Q. 983105

Q. 983105

\* Currently the subject of litigation, see related requirement.

**III.  
 OWNERSHIP OF LEASEHOLD ESTATE**

**\*Tracts I and II:**

Owner	Interest
Yates Petroleum Corporation	70.0000%
Yates Drilling Company	10.0000%
Myco Industries, Inc.	10.0000%
Abo Petroleum Corporation	10.0000%
<b>TOTAL:</b>	<b>100.0000%</b>

\* 1/16th of mineral estate underlying Tract II titled in the name of Roxy Burkfield is unleased, see related requirement.

<b>OTHER TERMS</b>	<p>This lease has been specifically annotated to include the following:</p> <ol style="list-style-type: none"><li>1. Any title defect which renders the Lessor's title unmerchantable is to be either waived by Lessee or corrected as Lessee's sole expense.</li><li>2. This lease will terminate at the end of the primary term as to all lands not included within a proration unit upon which is located a well producing in commercial quantities. This lease will also terminate at the end of the primary term as to all depths 100 feet above and 100 feet below the producing formations within those producing proration units. There is a continuous operations clause that will extend the term of the lease.</li><li>3. This lease may not be maintained in force solely by the payment of shut-in gas royalties for a period in excess of two years beyond the expiration of the primary term.</li></ol> <p>You should closely review all of the terms of this lease and ensure proper compliance therewith at all phases of exploration and production.</p>
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**VI.  
EXCEPTIONS TO TITLE,  
COMMENTS AND REMARKS**

**Tract I:**

1. **Status of Leases:** Both of these leases are beyond their primary term. In order to continue these leases, commercial production or a contractual substitute therefore must be continuously in place. This is advisory.

2. **Unreleased Oil and Gas Leases:** We have examined an Oil and Gas Lease dated April 25, 1946, and recorded on May 22, 1946, in Book 16, Page 310 of the Oil and Gas Lease Records of the Chaves County Clerk from Glen C. Wheeler and his wife, Alta V. Wheeler, and Clarence Wheeler and his wife, Dorothy Wheeler, to Bruce K. Matlock, covering the exact captioned lands for a primary term of ten years. This Lease was assigned on April 25, 1946, by Assignment recorded on August 1, 1946, in Book 18, Page 37 of the Oil and Gas Lease Records of the Chaves County Clerk to DeKalb Agricultural Association, Inc. The Lease is well beyond its primary term and appears to have terminated, but no release thereof appears in the Records of the Chaves County Clerk.

We have also examined an Oil and Gas Lease dated March 23, 1978, and recorded on June 28, 1978, at Book 173, Page 31, of the Chaves County Clerk's Records from Everna Moore Faircloth, a widow, to Hanagan Petroleum Corporation covering the captioned lands, among others, for a primary term of ten years. This lease was joined with others and assigned numerous times from 1978 through the early 1980's. This lease is beyond its primary term and appears to have terminated, but no release thereof appears in the Records of the Chaves County Clerk.

**Requirement A:** Obtain and submit for our examination a release of each of these oil and gas leases or an affidavit of non-production by the mineral estate owners at the termination of the primary term of each of these leases after proper

recording in the Chaves County Clerk's Records or absolutely satisfy yourselves that these leases have expired for lack of production.

## Tract II:

3. **Lot acreage:** Because of irregular acreage therein, portions of the captioned lands are described as lots rather than regular subdivisions. Lots 1 and 2 (N/2NE/4) are irregular subdivisions and contain 79.73 acres. We cannot determine from the abstracts the acreage in each of these two lots. Under present conservation practices in New Mexico, your allowable for any wells drilled on allocated to the above lots will be reduced as the actual lot acreage bears to the normal 40-acre drill site. This is advisory.

4. **Depth Limitation:** The Oil and Gas Leases covering the shallow depths and held by the Coronet Wells operated by Yates Petroleum Corporation provide that they cover the lands in the NE/4 of Section 3 "limited to 100 feet below total depth drilled." We have not examined the Well Completion Report on the Coronet "TI" No. 1 Well. However, second-hand information we have reviewed indicates that the total depth drilled in the Coronet "TI" No. 1 Well was 4,850 feet, so that the depth held by the shallow Leases should be from the surface down to 4,950 feet. However, subsequent leasing activity, including the referenced Tract II Leases tend to indicate that the shallow Leases hold only from the surface down to 4,698 feet. The Coronet "TI" No. 1 Well is shown to be producing gas from the Abo formation through perforations between 4,434 feet and 4,598 feet. It appears that the depths held by these shallow Leases have been based upon 100 feet below the lowest producing perforation instead of from 100 feet below the total depth drilled or 4,950 feet. This may be immaterial since Yates Petroleum Corporation has 15/16ths of the mineral estate leased below 4,698 feet. However, you should note this discrepancy in your files. This is advisory.

5. **Estate of A. D. Solsbery:** A. D. Solsbery a/k/a Dean A. Solsbery acquired a 1/16th interest in the mineral estate underlying the Tract II lands by Mineral Deed dated August 27, 1973 from Coronet Trading Corporation. This Mineral Deed was filed on August 28, 1973 at Book 265 of the Warranty Deed Records of the Chaves County Clerk at Page 962. A. D. Solsbery married Opal R. Solsbery on October 7, 1974. Consequently, it would appear that these minerals were the separate property of A. D. Solsbery. A. D. Solsbery died intestate in Roswell, on July 6, 1986. He had two sons from a previous marriage, Dean Solsbery, Jr. and Brian Solsbery. His only other remaining heir was Opal Solsbery. Under the intestate laws of New Mexico at the time of A. D. Solsbery's death, due to the separate character of these minerals, 1/4th of the mineral estate should have passed to Opal Solsbery as his surviving spouse and 3/4ths of said minerals should have passed to the sons of A. D. Solsbery. However, by Assignment of Oil and Gas Lease dated December 5, 1991, Opal Solsbery as Personal Representative of the Estate of A. D. Solsbery conveyed all right, title and interest of the Estate of A. D. Solsbery in the minerals underlying the Tract II lands to Roxy Burkfield, a married woman dealing in her sole and separate property. This Assignment was filed with the Chaves County Clerk on December 6, 1991, at Chaves County Clerk's Record Book 120, Page 856. Roxy Burkfield was the daughter by a prior marriage of Opal Solsbery. On that same date, Opal Solsbery conveyed any interest she had individually in the minerals underlying the Tract II lands to Ms. Burkfield by Assignment of Oil and Gas Lease recorded at Book 120, Page 857, of the Chaves County Clerk's Records. These conveyances were subsequent to, and therefore ineffective to modify the parties' respective rights under the Solsbery fee lease described above.

On August 2, 1993, an Order of Complete Settlement was entered in the Estate of A. D. Solsbery. On August 1, 1997, A. D. Solsbery's two sons brought a Petition for Determination of Heirship in Certain Properties and for the Institution of a Constructive Trust against Opal Solsbery who had subsequently remarried and was now known as Opal Solsbery Wright. This lawsuit has passed through several different attorneys and two and one-half year's worth of discovery. On July 17, 2000, the sons of A. D. Solsbery filed a Motion to Amend their Complaint to include Roxy Burkfield as a co-defendant along with other parties. The basic allegations contained in the original Complaint and the Amended Complaint are based upon Opal Solsbery Wright's improper conversion of minerals and production proceeds which were the separate property of A. D. Solsbery, and

therefore should have been conveyed 1/4th to Opal Solsbery Wright and 3/4ths to the sons of A. D. Solsbery.

The Solsbery Sons seek to re-open the Estate of A. D. Solsbery, obtain a judicial declaration that they are the owners of 3/4ths of the separate minerals of A. D. Solsbery, for damages due to the conversion of these minerals and the proceeds attributable to them by Opal Solsbery Wright subsequent to the death of A. D. Solsbery, for the imposition of a constructive trust on the proceeds of these minerals, and for a finding of conspiracy between Opal Solsbery Wright and Roxy Burkfield, among others to commit tortious acts against the sons of A. D. Solsbery.

It certainly appears that the minerals which were owned by A. D. Solsbery under the Tract II lands were his separate property, and therefore upon his death without a Will, the Personal Representative should have distributed 3/8ths of said minerals to Dean Solsbery, Jr. and 3/8ths of the minerals to Brian Solsbery, the remaining 1/4 being conveyed to Opal Solsbery Wright. Instead Opal Solsbery, as Personal Representative of the Estate of A. D. Solsbery conveyed all of the Estate's interest in the minerals to Roxy Burkfield. This conveyance is specifically mentioned in the proposed Amended Complaint filed by the sons of A. D. Solsbery as being an act of conversion against the sons of A. D. Solsbery.

We have not attempted to weigh the merits of the claims of the sons of A. D. Solsbery, apart from the obvious conclusion that these minerals appear to have been the separate property of A. D. Solsbery at the time of his death. The action is being actively and aggressively defended by Opal Solsbery Wright and Roxy Burkfield, and it is impossible to predict how this action will eventually conclude. Although there is not a Lis Pendens regarding this lawsuit filed against the Tract II minerals, we are on notice of its existence due to our review of the Probate File of the Estate of A. D. Solsbery. We have left the title to these minerals in the name of Roxy Burkfield, pending the outcome of this litigation which may very well require a change in the ownership of this mineral estate.

**Requirement B:** Suspend all proceeds attributable to the interest of Roxy Burkfield until such time as the above-referenced litigation has been settled or finally adjudicated and we have had an opportunity to review file-marked settlement documents or final judgment.

6. **Unleased Roxy Burkfield Mineral Interest:** Regardless of who owns the 1/16th mineral interest underlying the Tract II lands that are presently titled in the name of Roxy Burkfield, this mineral interest is presently unleased. Our calculations of ownership are based upon our assumption that these interests will be force-pooled by you in accordance with the New Mexico Statutes and the Oil Conservation Commission's Rules and Regulations. We have not made any allowance for any provision to be made by the OCD for the consenting owners to recoup the expenses attributable to this mineral interest or for any penalty which would be attributable to this mineral interest. You should note however, that the maximum which will be offsetable from this mineral interest's share of the production will be equal to the actual expenditures required and a penalty not exceeding 200% of the non-consenting working interest owners pro-rata share of the costs of drilling and completing the well.

**Requirement C:** Before beginning drilling operations, you should force-pool the undivided 1/16th mineral interest owned by the A. D. Solsbery Estate, presently titled in the name of Roxy Burkfield, in accordance with New Mexico law and OCD Regulations.

7. **Draft Lease Assignment from Yates Petroleum Corporation:** We have reviewed a draft of an Assignment of Oil and Gas Lease from Yates Petroleum Corporation to Yates Drilling Company (10%), Abo Petroleum Corporation (10%), and Myco Industries, Inc. (10%) regarding the Tract II Leases described above. Pursuant to the Assignment, Yates Petroleum Corporation would retain ownership of 70% of the Tract II Leases. The draft Assignment does not contain any depth limitation and should contain a depth limitation below 4,698 feet. Additionally, the recording information for the Donna Sue Lampkin Lease is incorrect and should read, "Book 398, Page 90."

**Requirement D:** Before this Assignment is executed by Yates Petroleum Corporation, it should be modified in the following two respects: