

# Kemp, Smith, Duncan & Hammond, P.C.

ATTORNEYS AT LAW

## EL PASO\*

TAD R. SMITH  
JOSEPH P. HAMMOND  
JAMES F. GARNER  
LEIGHTON GREEN, JR.  
RAYMOND H. MARSHALL  
ROBERT B. ZABOROSKI\*\*  
W. ROYAL FURGESON, JR.  
CHRIS A. PAUL  
CHARLES C. HIGH, JR.  
JIM CURTIS  
DANE GEORGE  
LARRY C. WOOD  
MICHAEL D. MCQUEEN  
JOHN J. SCANLON, JR.  
TAFFY D. BAGLEY  
LUIS CHAVEZ  
DAVID S. JEANS  
DARRELL R. WINDHAM  
ROGER D. AKSAMIT  
CHARLES A. BECKHAM, JR.  
MARGARET A. CHRISTIAN  
MARK E. MENDEL  
TABER CHAMBERLAIN  
NANCY C. SANTANA

MITZI G. TURNER  
CHRISTOPHER J. POWERS†  
ALLAN GOLDFARB  
RAYMOND E. WHITE  
SUSAN F. AUSTIN  
RUBEN S. ROBLES  
PAUL M. BRACKEN\*\*  
KEN COFFMAN†  
DONNA CHRISTOPHERSON  
ELIZABETH J. VANN  
TERRY BASSHAM†  
DAVID M. HUGHES  
WILLIAM J. DERRICK  
MARK N. OSBORN  
TIMOTHY AUSTIN  
JOHN R. BOOMER  
CYNTHIA S. ANDERSON†  
GREGORY G. JOHNSON  
KARL O. WYLER, III†  
RAUL STEVEN PASTRANA  
MARCELLENE J. MALOUF  
KAY C. JENKINS†  
JAMES W. BREWER†  
KATHRYN A. HALSELL†

BURTON I. COHEN  
SUSAN K. PINE†  
PAUL A. BRADEN  
ANGELA D. MORROW†  
JEFFERY V. STRAHAN  
KEVIN E. SHANNON  
ERNESTO RODRIGUEZ  
LAUREN K. S. MURDOCH  
GARY SANDERS  
JOHN R. JONES  
CLARA B. BURNS  
JOHN L. WILLIAMS  
KEVIN P. O'SHEA

## MIDLAND\*

J. RANDY TURNER†  
JOHN A. DAVIS, JR.  
FRANK N. CREMER†  
JAMES R. FULLER†††  
ROD J. MACDONALD†  
PATRICK S. GERALD

## ALBUQUERQUE†

JOHN P. EASTHAM  
THOMAS SMIDT III†  
ROBERT A. JOHNSON  
DONALD B. MONNHEIMER  
CHARLES L. SAUNDERS, JR.††††  
ROBERT D. TAICHERT\*\*  
STEVEN P. BAILEY\*\*\*  
BRUCE E. CASTLE\*  
JAMES L. RASMUSSEN  
STEPHEN R. NELSON  
A. DREW HOFFMAN\*  
CELIA F. RANKIN  
CHARLOTTE LAMONT  
CLINTON W. MARRS  
VICKIE L. AUDETTE  
ALAN HALL

## SANTA FE†

JOE L. MCCLAUGHERTY\*\*\*  
CAMERON PETERS\*\*\*\*  
BILL PANAGAKOS

## EL PASO, TEXAS 79901-1441

2000 MBANK PLAZA  
P. O. DRAWER 2800, 79999-2800  
(915) 533-4424 FAX: (915) 546-5360  
TELEX: 5106016999 KEMP UO

## ALBUQUERQUE, NEW MEXICO 87102-2121

500 MARQUETTE, N.W., SUITE 1200  
P. O. BOX 1276, 87103-1276  
(505) 247-2315 FAX: (505) 843-6099

## MIDLAND, TEXAS 79701-4310

400 WEST ILLINOIS, SUITE 1400  
P. O. BOX 2796, 79702-2796  
(915) 687-0011 FAX: (915) 667-1735

## SANTA FE, NEW MEXICO 87501-1801

300 PASEO DE PERALTA, SUITE 200  
P. O. BOX 8680, 87504-8680  
(505) 982-1913 FAX: (505) 988-7563

OF COUNSEL: WILLIAM B. DUNCAN

\*MEMBERS TEXAS BAR  
†MEMBERS NEW MEXICO BAR  
\*\*MEMBERS ARIZONA BAR  
\*\*\*MEMBERS TEXAS AND COLORADO BARS  
\*\*\*\*MEMBERS COLORADO BAR  
††MEMBERS DISTRICT OF COLUMBIA BAR  
†††MEMBERS NEW MEXICO AND OKLAHOMA BARS  
††††MEMBERS DISTRICT OF COLUMBIA AND COLORADO BARS

May 15, 1992

**RECEIVED**

MAY 15 1992

OIL CONSERVATION DIV.  
SANTA FE

## BY HAND DELIVERY

William J. LeMay, Director  
New Mexico Oil Conservation Division  
State Land Office Building  
310 Old Santa Fe Trail  
Santa Fe, NM 87504

RE: Application of Yates Petroleum Corporation for  
Authorization to Drill, Eddy County, New Mexico

Case No. 10448; Order No. R-9654

Dear Mr. LeMay

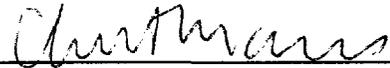
I am enclosing for filing in the above-captioned matter the original and three copies of the Application for Order Staying Order of Director Pending De Novo Hearing by Oil Conservation Commission.

Please stamp two of the copies showing date and time of receipt; the third copy is for your use. Today I have served a copy of the enclosed Application on Ernest L. Carroll, counsel of record for Yates Petroleum Corp. by certified U.S. mail, return receipt requested, and by facsimile.

William J. LeMay, Director  
May 15, 1992  
Page 2

Very truly yours,

KEMP, SMITH, DUNCAN & HAMMOND, P.C.

By   
Clinton W. Marrs

Enclosures

cc: Charles C. High, Jr. (w/o encl.)  
Ernest L. Carroll (w/ encl.)

**RECEIVED**

BEFORE THE OIL CONSERVATION DIVISION  
STATE OF NEW MEXICO

MAY 15 1992

IN THE MATTER OF

OIL CONSERVATION DIV.  
SANTA FE

APPLICATION OF YATES PETROLEUM  
CORPORATION FOR AUTHORIZATION TO  
DRILL, EDDY COUNTY, NEW MEXICO

CASE NO. 10448  
ORDER NO. R-9654

APPLICATION FOR ORDER STAYING ORDER OF DIRECTOR  
PENDING DE NOVO HEARING BY OIL CONSERVATION COMMISSION

NEW MEXICO POTASH CORPORATION ("New Mexico Potash") applies for an order staying the decision and order issued by William J. LeMay, Director of the OCD ("Director"), on March 20, 1992, and in support thereof shows the following:

1. On March 20, 1992, following a hearing before a hearing examiner, the Director of the OCD entered an Order in this matter approving the application of Yates Petroleum Corporation ("Yates") to drill its Flora "AKF" State Well No. 1 at a standard oil well location 660 feet from the South line and 2310 feet from the West line (Unit N) of Section 2, Township 22 South, Range 31 East, NMPM, Undesignated Lost Tank-Delaware Pool or Undesignated Livingston Ridge-Delaware Pool, Eddy County, New Mexico.

2. On April 3, 1992, within the time specified in Rule 1220 of the Rules on Procedure, New Mexico Potash filed an Application for Hearing de novo before the New Mexico Oil Conservation Commission ("OCC"). That Application was received by the OCD on April 7, 1992.

3. A copy of the Application for Hearing by the OCC was served on counsel for Yates. A certification of service was attached to the Application and filed with the OCD.

4. Notwithstanding the filing and service of this Application for a de novo hearing, Yates began drilling its Flora "AKF" State Well No. 1 on Good Friday, April 17, 1992, before the OCC had even scheduled a hearing on the issue. Upon learning of this on Saturday, April 18, 1992, New Mexico Potash orally requested the Director of the OCD to issue an emergency order pursuant to Rule 1202 stopping the drilling until such time as the OCC had decided whether the well should or should not be allowed. This oral request was denied and New Mexico Potash was told to submit a written request for a stay on the next business day, Monday, April 20, 1992, and that it would be taken up in the normal course of business. Due to the fact that the drilling was progressing on a 24-hour basis and the well would penetrate the potash mining horizons before the OCD would even consider a request for a stay, New Mexico Potash sought and obtained a temporary restraining order from the District Court in Carlsbad, New Mexico, on Easter Sunday, April 19, 1992. The drilling was stopped at 861 feet.

5. Three days later, on April 22, 1992, the Court entered another order extending the temporary restraining order and appointing the OCC as a special master to make findings on whether New Mexico is entitled to an injunction. That Order provides that the hearing before the OCC "...shall commence on or before May 22, 1992, in the Commission's offices at Santa Fe, New Mexico." It further provides that "At any time after May 22, 1992, upon showing of good cause and reasonable notice, the Court shall make such further orders with respect to the temporary restraining order as

it deems appropriate." A copy of the Court's Order is attached hereto.

6. On May 13, 1992, counsel for New Mexico Potash received by facsimile a Procedural Order of the Commission stating that the hearing on its application for de novo hearing on Yates' Flora "AKF" State Well No. 1 would not be held "on or before May 22, 1992" as required by the District Court's Order extending the temporary restraining order.

7. In view of this delay by the OCC in hearing this matter, New Mexico Potash respectfully requests that the OCC enter an order staying the decision and order issued by the OCD on March 20, 1992 approving the application of Yates to drill its Flora "AKF" State Well No. 1 until such time as the OCC hears and decides whether the well should or should not be allowed.

8. The entry of the requested order is consistent with the intent and purpose of the Oil and Gas Act and the OCD's own procedural rules.

9. Section 70-2-13, NMSA 1978, as well as Rule 1220, specifically provides that when a matter is referred to an examiner for hearing, as was done here, and a decision is rendered, as happened here, any party of record "shall have the right" to have the matter heard de novo before the OCC.

10. The de novo hearing provided by Section 70-2-13 only has meaning if it occurs at a time before the well being challenged is drilled.

11. While the OCD has no procedures for the seeking or granting of a stay pending hearing by the OCC of an order issued by

the OCD and, therefore, no standards for deciding such matters, New Mexico Potash submits that it is entitled to a stay based upon traditional equitable standards considered by the courts when deciding whether agency action should be stayed during an appeal. See e.g., Tenneco Oil Company v. New Mexico Water Quality Control Commission et al., 105 N.M. 708 (App. 1986) (test for determining whether to enjoin agency action during appeal requires consideration of (1) likelihood that applicant will prevail on the merits of the appeal; (2) a showing of irreparable harm to the applicant unless the stay is granted; (3) evidence that no substantial harm will result to other interested persons; and (4) s showing that no harm will ensue to the public interest.)

12. With respect to the first condition, there is at least a likelihood that New Mexico Potash will prevail on its Application for Hearing before the OCC. New Mexico Potash claims that the proposed well is located within an area designated by New Mexico Potash as its "life-of-mine reserves" within the meaning of OCC Order R-111-P. While this will be contested by Yates on various grounds, which New Mexico Potash believes are without merit, the evidence will show that New Mexico Potash has complied with all requirements imposed on it by Order R-111-P for the designation of Section 2 as "life-of-mine" reserves. If it is successful in establishing this, as it believes it will be, then the well should be disallowed in accordance with Section G(3) of Order R-111-P, which states that wells in an LMR area may only be approved with the consent of New Mexico Potash. This first condition, therefore, is clearly met.

13. Second, if a stay is not granted, New Mexico Potash will suffer irreparable harm. A condition of the temporary restraining order was that the hearing on New Mexico Potash's application for de novo hearing commence on or before May 22, 1992. Because this is not possible for reasons over which New Mexico Potash has no control, the temporary restraining order can be dissolved or modified to the detriment of New Mexico Potash. If this occurs, then Yates may begin drilling again since the drilling rig is still on the well site, even though the issue is awaiting de novo hearing and decision by the OCC. Indeed, drilling could begin without New Mexico Potash's knowledge and the well could be completed prior to the time the OCC holds its de novo hearing on whether the well should even be allowed. This would effectively render moot New Mexico Potash's right to have the matter decided de novo by the OCC because even if it prevailed before the OCC, the well could not be removed. Such deprivation of a statutory right, under any standard, is irreparable injury. Further, the proposed well is located in an area of commercial grade potash under lease to New Mexico Potash. A core hole to the East of the proposed well location shows 5 feet one inch of 16.04% K<sub>2</sub>O sylvite on the 10th ore zone and 4 feet 11 inches of 5.86% K<sub>2</sub>O langbeinite on the 4th ore zone. If a stay is not entered and the temporary restraining order is dissolved, an enormous amount of potash can be wasted before the OCC has an opportunity to determine if the well will result in an undue waste of potash. Still further, if the well is completed before the OCC hears the matter, it will present a safety hazard to underground miners which cannot be removed even if New

Mexico Potash prevails before the OCC. The obvious and indisputable fact that this safety hazard and waste of potash cannot be reversed or eliminated if New Mexico Potash prevails before the OCC constitutes irreparable injury and satisfies the second factor.

14. With respect to the third factor, there can be no substantial harm to Yates if a stay is granted. No drilling is currently taking place because of the temporary restraining order. Thus, there is no basis to claim that the granting of a stay will somehow harm Yates. Moreover, the fact that the drilling of the well will be delayed until the issue is decided by the OCC is certainly not the type harm contemplated in this situation. On the contrary, the OCD Rules of Procedure and the Oil and Gas Act specifically provide for a determination of this matter by the OCC regardless of the decision by the OCD. Yates is clearly aware of this statutory right and knew even before an application for hearing was filed with the OCC that it would be exercised in this case. At the hearing before the hearing examiner, counsel for each party informed the other that the issues involved were of such importance that they should be heard by the OCC. It was for this reason that both chose not to present evidence after nearly four hours of argument. Thereafter, counsel for New Mexico Potash prepared, filed, and served on Yates' counsel its application for hearing before the OCC on the Director's approval of this well. Given these facts and Yates' knowledge that the issue would be heard by the OCC, there simply can be no basis on which Yates can

now claim that it will suffer substantial harm if a stay is granted in this case pending a decision by the OCC.

15. Finally, there can be no claim that the granting of a stay will result in harm to the public interest. The public interest mandates that New Mexico Potash receive that to which it is entitled by statute - a decision by the OCC on whether this well should be allowed. A stay which ensures that New Mexico Potash receives this statutory right at a time when it has meaning - before the well is drilled - is in the public interest, not harm to the public.

16. The necessity that a stay be entered to avoid this irreparable harm is clearly and vividly demonstrated by the conduct of Yates in attempting to drill this well before enjoined by the District Court and before the OCC had an opportunity to exercise its statutory duty to decide whether the well should or should not be allowed. The possibility that this conduct will be repeated, therefore, mandates the entry of a stay in this matter.

17. The need for a stay in this case is no less compelling that in companion Case No. 10449 where the OCD entered a stay pending a decision by the OCC on Yates' Flora "AKF" State Well No. 2. A copy of that Order is attached hereto.

18. Finally, New Mexico Potash submits that the requested stay should be granted notwithstanding the time limits specified in Memorandum 3-85. First, the Memorandum was sent to a select subset of attorneys and from all appearances, was not made available to the general public. Second, the requirements of the Memorandum, which are seven years old, were not included in the OCD Rules of

Procedure when they were revised on March 1, 1991. Third, the Memorandum, if considered a rule affecting the rights of parties, does not appear to have been adopted in accordance with Section 70-2-7 or the New Mexico State Rules Act, N.M.Stat. Ann. § 14-4-1 et seq. In any event, New Mexico Potash submits that the failure to file this application within the time limits specified in the Memorandum should be excused under the circumstances present in this sharply contested matter.

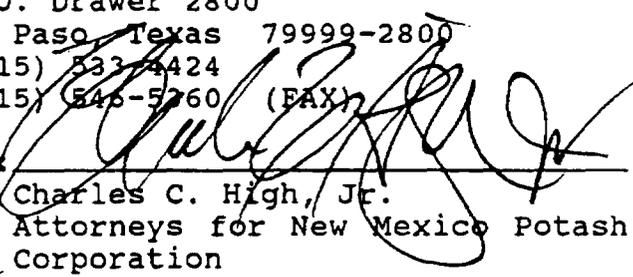
WHEREFORE, New Mexico Potash respectfully requests that the OCD enter an order staying the OCD Order approving the well until the matter can be heard and decided de novo by the OCC.

Respectfully submitted,

KEMP, SMITH, DUNCAN & HAMMOND, P.C.  
P.O. Box 1276  
Albuquerque, New Mexico 87103-1276  
(505) 247-2315

By: Clinton Marrs 

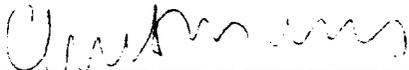
KEMP, SMITH, DUNCAN & HAMMOND, P.C.  
P.O. Drawer 2800  
El Paso, Texas 79999-2800  
(915) 533-4424  
(915) 548-5760 (FAX)

By: 

Charles C. High, Jr.  
Attorneys for New Mexico Potash  
Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Application for Order Staying Order of Director Pending De Novo Hearing by Oil Conservation Commission was sent by facsimile and mailed by certified mail, return receipt requested on this 15th day of May, 1992, to Ernest L. Carroll, Attorney for Yates Petroleum Corporation, Losee, Carson, Haas, & Carroll, P. A., P. O. Drawer 239, Artesia, New Mexico 88210.

  
\_\_\_\_\_  
Clinton Marrs

FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF EDDY  
STATE OF NEW MEXICO

92 APR 22 11:30 AM  
**COPY**

NEW MEXICO POTASH CORPORATION )

Plaintiff, )

vs. )

No. CV-92-101-S

YATES PETROLEUM CORPORATION, )  
JOHN DOE NO. 1, JOHN DOE NO. 2, )  
JOHN DOE NO. 3, JOHN DOE NO. 4, )  
JOHN DOE NO. 5, JOHN DOE NO. 6, )  
JOHN DOES NOS. 7-15, AS )  
FICTITIOUS NAMES OF PERSONS )  
PRESENTLY UNKNOWN, )

Defendants. )

ORDER EXTENDING TEMPORARY RESTRAINING ORDER  
AND APPOINTMENT OF SPECIAL MASTER

THIS MATTER came before the Court upon the Plaintiff's Original Verified Complaint for Injunction, the parties appearing by counsel of record and the Court, having received and examined the file, having heard the argument and stipulations of counsel, finds:

1. The Plaintiff has exhausted its administrative remedies before the Oil Conservation Division for the State of New Mexico and this Court has jurisdiction of the parties and the subject matter.

2. The parties stipulated in Open Court to the extension of the Temporary Restraining Order pending the de novo hearing on Plaintiff's application in Case No. 10448 by the Oil Conservation Commission for the State of New Mexico, (OCC). The OCC should be

appointed to act at said hearing as Special Master, pursuant to Rule 53 of the New Mexico Rules of Civil Procedure, to make findings as to whether Plaintiff is entitled to preliminary injunction under New Mexico Law.

3. The Special Master (New Mexico Oil Conservation Commission) may consolidate such hearing with the de novo hearing on application of Plaintiff in OCC Case No. 10448 with respect to the Flora #1 Well, and shall in this hearing procedurally follow State of New Mexico Energy, Minerals and Natural Resources Department, Oil Conservation Division Rules and Regulations dated March 1, 1991, as published by that administrative agency and made available to the general public.

4. Such hearing shall commence on or before May 22, 1992, in the Commission's offices at Santa Fe, New Mexico.

5. Upon completion of the hearing the Special Master shall file its findings with this Court. The Court retains jurisdiction to determine, after consideration of the findings pursuant to Rule 1-053, whether Plaintiff is entitled to a preliminary injunction and if not, to hear evidence on the issue of damages, if any, Defendant has incurred. The Court determines that a bond is not required at this time, because Plaintiff has sufficient means to answer.

6. At any time after May 22, 1992, upon showing of good cause and reasonable notice, the Court shall make such further

orders with respect to the temporary restraining order as it deems appropriate.

IT IS THEREFORE ORDERED THAT:

A. The temporary restraining order is hereby extended in accordance with the above findings;

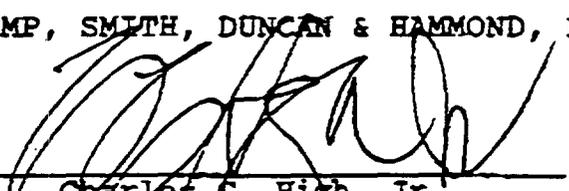
B. The OCC is hereby appointed Special Master to conduct the hearing, pursuant to the foregoing findings, and promptly render a Decision and furnish it to this Court;

C. The Court retains jurisdiction for the purposes provided for in the above findings.

  
\_\_\_\_\_  
JAMES L. SHULER, DISTRICT JUDGE

APPROVED:

KEMP, SMITH, DUNCAN & HAMMOND, P.C.

By 

Charles C. High, Jr.

P. O. Drawer 2800

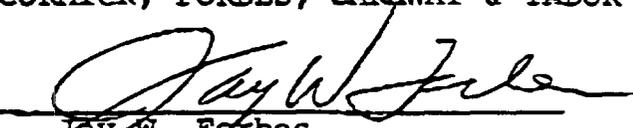
El Paso, TX 79999-2800

Telephone 915-533-4424

FAX 915-546-5360

Attorneys for Plaintiff

MCCORMICK, FORBES, CARAWAY & TABOR

By 

Jay W. Forbes

P. O. Box 1718

Carlsbad, NM 88221-1718

Telephone 505-885-4171

FAX 505-885-1963

Attorneys for Plaintiff

LOSEE, CARSON, HAAS & CARROLL

By   
A. J. Losee

P. O. Drawer 239  
Artesia, NM 88210  
Telephone 505-746-3505  
FAX 505-746-6316  
Attorneys for Defendant

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

**IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION DIVISION  
FOR THE PURPOSE OF CONSIDERING:**

**CASE NO. 10449  
Order No. R-9655-A**

**APPLICATION OF YATES PETROLEUM  
CORPORATION FOR AUTHORIZATION TO  
DRILL, EDDY COUNTY, NEW MEXICO.**

**ORDER OF THE DIVISION  
STAYING ORDER NO. R-9655**

**BY THE DIVISION:**

This matter having come before the Division upon the request of New Mexico Potash Corporation for a Stay of Division Order No. R-9655 and the Division Director having considered the request and being fully advised in the premises,

NOW, on this 30th day of April, 1992, the Division Director:

**FINDS THAT:**

(1) Division Order No. R-9655 was entered on March 20, 1992, upon the application of Yates Petroleum Corporation (Yates) for an order authorizing Yates to drill in the potash area, Eddy County, New Mexico.

(2) On April 7, 1992, New Mexico Potash Corporation filed with the Division a request for a De Novo Hearing in this case which is now set for hearing by the Commission on May 21, 1992.

(3) New Mexico Potash has complied with the provisions of Division Memorandum 3-85 and has filed its request for a stay on April 24, 1992.

(4) Division Order No. R-9655 should be stayed until further notice or until the Oil Conservation Commission has entered an order in Case No. 10449.

**IT IS THEREFORE ORDERED THAT:**

(1) Division Order No. R-9655 is hereby stayed in its entirety.

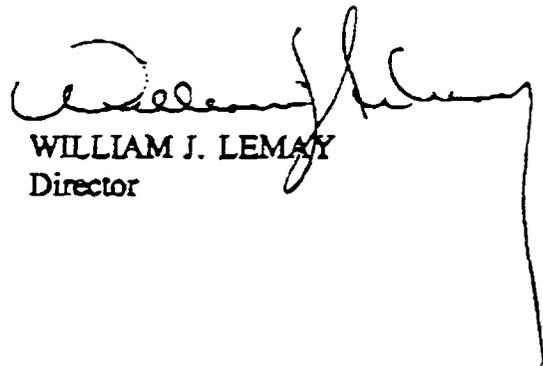
**CASE NO. 10449**  
**Order No. R-9655-A**  
**Page -2-**

---

(2) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION



WILLIAM J. LEMAY  
Director

S E A L

LAW OFFICES  
LOSEE, CARSON, HAAS & CARROLL, P. A.

ERNEST L. CARROLL  
JOEL M. CARSON  
JAMES S. HAAS  
A. J. LOSEE  
DEAN B. CROSS  
MARY LYNN BOGLE

300 YATES PETROLEUM BUILDING  
P. O. DRAWER 239  
ARTESIA, NEW MEXICO 88211-0239

TELEPHONE  
(505) 746-3505  
TELECOPY  
(505) 746-6316

FAX TRANSMITTAL DATE: 5/15/92

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Flarine

FIRM: OLD

FAX NO. ( ) 827-574 FIRM NO. \_\_\_\_\_

SENDER: Ernest Carroll

TOTAL NUMBER OF PAGES (INCLUDING THIS SHEET): 5

\*\*\*\*\*

IF YOU DO NOT RECEIVE ALL THE PAGES INDICATED ABOVE,  
PLEASE CALL US BACK AS SOON AS POSSIBLE AT:

(505) 746-3505 ASK FOR: Kandy

\*\*\*\*\*

MESSAGE: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

NOTE: The information contained in this facsimile message is attorney/client privileged and confidential information intended only for use by the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivery to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is in error. If you have received this facsimile in error, please immediately notify us by collect telephone call and return the original message to us at the above address via the U. S. Postal Service.

## LAW OFFICES

## LOSEE, CARSON, HAAS &amp; CARROLL, P. A.

ERNEST L. CARROLL  
JOEL M. CARSON  
JAMES E. HAAS  
A. J. LOSEE  
DEAN B. CROSS  
MARY LYNN BOGLE

300 YATES PETROLEUM BUILDING  
P. O. DRAWER 239  
ARTESIA, NEW MEXICO 88211-0239

TELEPHONE  
(505) 746-3505

TELECOPY  
(505) 746-6316

May 15, 1992

**VIA FACSIMILE AND FIRST CLASS MAIL**

Mr. William J. LeMay, Director  
New Mexico Oil Conservation Division  
P. O. Box 2088  
Santa Fe, New Mexico 87501

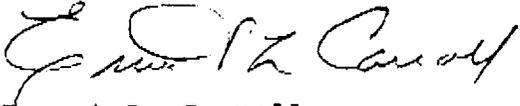
Re: Applications of Yates Petroleum Corporation  
for Permit to Drill, Eddy County, New  
Mexico/OCD Case No. 10448/Order R-9654

Dear Mr. LeMay:

Enclosed please find an original plus three copies of Yates' Response of Yates Petroleum Corporation to Application for Order Staying Order of Director Pending De Novo Hearing by Oil Conservation Commission for filing in the above-referenced case. Please return a stamped copy to me for my files.

Very truly yours,

LOSEE, CARSON, HAAS & CARROLL, P.A.

  
Ernest L. Carroll

ELC:kth  
Enclosures

xc w/encl: Charles High  
Clinton Marrs  
Randy Patterson

BEFORE THE OIL CONSERVATION DIVISION  
STATE OF NEW MEXICO

IN THE MATTER OF

APPLICATION OF YATES PETROLEUM  
CORPORATION FOR AUTHORIZATION TO  
DRILL, EDDY COUNTY, NEW MEXICO

CASE NO. 10448  
ORDER NO. R-9654

RESPONSE OF YATES PETROLEUM CORPORATION TO  
APPLICATION FOR ORDER STAYING ORDER OF DIRECTOR PENDING  
DE NOVO HEARING BY OIL CONSERVATION COMMISSION

YATES PETROLEUM CORPORATION ("Yates"), through its attorneys of record, makes this response to New Mexico Potash Corporation's ("New Mexico Potash") Application, and in support thereof, states:

1. A number of the factual recitations contained in New Mexico Potash's application are incorrect, and Yates would state that its failure to address each factual statement made in the very lengthy New Mexico Potash application should not be construed as an admission of the correctness of each unaddressed statement.

2. The issue presented by New Mexico Potash Corporation's application is a very narrow and limited one, which Yates will solely address. The issue is whether the Oil Conservation Commission (the "Commission") has jurisdiction to do what New Mexico Potash requests. The answer to that question is, no.

3. New Mexico Potash correctly states that all action in this particular case is stayed by Order of the District Court of Eddy County, and further it is correct in stating that said Order stated that the hearing to be conducted by the Commission "shall commence on or before May 22, 1992." (see paragraph 4 of the Court's Order).

4. The statements in paragraph 13 of New Mexico Potash's application are baseless and unfounded in fact and law. It is stated therein that, because of the procedural order entered by this Commission that the hearing will not commence on or before May 22, 1992. Nothing in the Commission's order contradicts that directive, in fact, the order says that the Commission "hereby sets this matter for hearing on procedural and legal questions for its regularly docketed hearing on May 21, 1992." The District Court only required that the hearing commence; the Commission is commencing its hearing by first dealing with legal and procedural issues. Furthermore, the statement that New Mexico Potash makes that, because no hearing is commencing it would be possible for the temporary restraining order to be dissolved or modified and that indeed, drilling could begin without New Mexico Potash's knowledge is tantamount to a lie. No action with respect to the Court's restraining order can be taken without notice and hearing. The Commission's attention is directed to paragraph 6 of the District Court's Order, wherein it is stated: "At any time after May 22, 1992, upon showing of good cause and reasonable notice, the Court shall make further orders with respect to the temporary restraining order as it deems appropriate." There is no way drilling could occur without New Mexico Potash's knowledge.

5. Again, as this Commission has pointed out, once the temporary restraining order was issued by the District Court, the Commission lost all jurisdiction to act except with respect to those areas and those matters the District Court specifically instructed this Commission to address. Should New Mexico Potash

feel that the Commission is not following the District Court's dictates, the forum for such issues is in the District Court of Eddy County.

WHEREFORE, Yates respectfully requests that the Application of New Mexico Potash be denied.

LOSEE, CARSON, HAAS & CARROLL, P.A.

By:   
A. J. Losee  
Ernest L. Carroll  
P. O. Drawer 239  
Artesia, New Mexico 88211-0239  
(505)746-3505

Attorneys for Yates Petroleum Corporation

I hereby certify that I caused to be faxed and mailed a true and correct copy of the foregoing to all counsel of record this May 15, 1992.

  
Ernest L. Carroll

LAW OFFICES

LOSEE, CARSON, HAAS & C

ERNEST L. CARROLL  
JOEL M. CARSON  
JAMES E. HAAS  
A. J. LOSEE  
DEAN S. CROSS  
MARY LYNN BOGLE

300 YATES PETROLEUM BUI  
P. O. DRAWER 239  
ARTESIA, NEW MEXICO 88

FAX TRANSMITTA

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: William J. LeMay

FIRM: \_\_\_\_\_

FAX NO. ( ) 827-5741 FIRM NO. \_\_\_\_\_

SENDER: Ernest Carroll

TOTAL NUMBER OF PAGES (INCLUDING THIS SHEET): 2

\*\*\*\*\*

IF YOU DO NOT RECEIVE ALL THE PAGES INDICATED ABOVE,  
PLEASE CALL US BACK AS SOON AS POSSIBLE AT:

(505) 746-3505 ASK FOR: Kandy

\*\*\*\*\*

MESSAGE: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

NOTE: The information contained in this facsimile message is attorney/client privileged and confidential information intended only for use by the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivery to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is in error. If you have received this facsimile in error, please immediately notify us by collect telephone call and return the original message to us at the above address via the U. S. Postal Service.

## LAW OFFICES

## LOSEE, CARSON, HAAS &amp; CARROLL, P. A.

ERNEST L. CARROLL  
JOEL M. CARSON  
JAMES E. HAAS  
A. J. LOSEE  
DEAN B. CROSS  
MARY LYNN BOGLE

300 YATES PETROLEUM BUILDING  
P. O. DRAWER 239  
ARTESIA, NEW MEXICO 88211-0239

TELEPHONE  
(505) 748-3505  
TELECOPY  
(505) 748-8316

May 18, 1992

**VIA FACSIMILE AND FIRST CLASS MAIL**

Mr. William J. LeMay, Director  
New Mexico Oil Conservation Division  
P. O. Box 2088  
Santa Fe, New Mexico 87501

Re: De Novo Applications/OCD Case Nos.  
10446/Order R-9650, 10447/Order R-9651,  
10448/Order R-9654, 10449/Order R-9655

Dear Mr. LeMay:

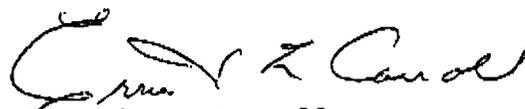
Pursuant to the Procedural Order of the Commission, Yates Petroleum Corporation hereby requests that the Oil Conservation Commission consider at the May 22, 1992, hearing a request by it to consolidate for hearing the four referenced cases with its pending Application to Revise Order R-111, as amended. Yates Petroleum Corporation also requests that these consolidated cases be set for evidentiary hearing.

Many, if not all, of the issues to be heard in the pending R-111 application are the same as those which will be heard in the de novo requests, and will require identical testimony. The questions of the Commission numbered 1 and 2 of the Procedural Order of the Commission attest to that fact.

The Commission is asked to give favorable consideration to this request, as it will not only reduce the amount of time and expense that the Commission must devote to these matters, but also to reduce the cost to all parties in presenting their respective cases to the Commission.

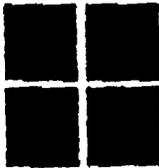
Very truly yours,

LOSEE, CARSON, HAAS & CARROLL, P.A.

  
Ernest L. Carroll

ELC:kth

xc: Charles High  
Randy Patterson



**HINKLE, COX, EATON, COFFIELD & HENSLEY**

ATTORNEYS AT LAW  
500 MARQUETTE NW, SUITE 800  
ALBUQUERQUE, NEW MEXICO

TELEPHONE: (505) 768-1500

TELECOPIER: (505) 768-1529

**TELECOPY COVER LETTER**

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME:

Oil Conservation Commission

COMPANY:

\_\_\_\_\_

FAX #:

(505) 827-5741

RE:

\_\_\_\_\_

FROM:

James Bruce

TOTAL NUMBER OF PAGES: 493 (INCLUDING THIS COVERSHEET)

DATE:

5-18-92

MESSAGE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Client/Matter No.:

Pogo Producing

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivery to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is in error. If you have received this facsimile in error, please notify us immediately by telephone and return the original message to us at the above address via U.S. Postal Service.

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

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION FOR THE PURPOSE OF  
CONSIDERING:

APPLICATIONS OF YATES PETROLEUM  
CORPORATION FOR AUTHORIZATION  
TO DRILL, EDDY COUNTY, NEW MEXICO.

Case Nos. 10,446,  
10,447, 10448, and  
10449 (De Novo  
Hearings)

PRE-HEARING STATEMENT

This pre-hearing statement is submitted by Pogo  
Producing Company as required by the Oil Conservation  
Commission.

**APPEARANCES OF PARTIES**

**APPLICANT**

**ATTORNEY**

Yates Petroleum Corporation

A. J. Losee

**OPPOSITION**

**ATTORNEY**

New Mexico Potash

Charles High

**OTHER PARTY**

**ATTORNEY**

Pogo Producing Company  
P. O. Box 10340  
Midland, Texas 79702  
Atten: Jerry Cooper

James Bruce  
Hinkle, Cox, Eaton,  
Coffield & Hensley  
P. O. Box 2068  
Santa Fe, N.M. 87504  
(505) 982-4554

**STATEMENT OF CASE**

**APPLICANT**

Pre-hearing Statement  
NMOCC Case No. 10,446, 10,447  
10448, and 10449  
Page 2

OPPOSITION

OTHER PARTY

Pogo Producing Company owns leases offsetting the proposed well locations, and supports Yates Petroleum Corporation in these cases.

**PROPOSED EVIDENCE**

APPLICANT

OPPOSITION

OTHER PARTY

Pogo Producing Company will not present any witnesses.

**PROCEDURAL MATTERS**

Pre-hearing Statement  
NMOCC Case No. 10,446, 10,447  
10448, and 10449  
Page 3

Respectfully submitted,

HINKLE, COX, EATON, COFFIELD &  
HENSLEY

By James Bruce  
James Bruce  
P. O. Box 2068  
Santa Fe, New Mexico 87504  
(505) 982-8623

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Pre-Hearing State was mailed this 18<sup>th</sup> day of May, 1992 to A. J. Losee, P. O. Drawer 239, Artesia, New Mexico 88210; Charles High, Kemp, Smith, Duncan & Hammond, P. O. Drawer 2800, El Paso, Texas 79901-1441; and Douglas Lunsford, P. O. Box 10, Roswell, New Mexico 88201.

By James Bruce  
James Bruce