

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. 12,955  
)  
APPLICATION OF THE NEW MEXICO OIL )  
CONSERVATION DIVISION FOR AN ORDER )  
REQUIRING YATES PETROLEUM TO BRING )  
90 WELLS INTO COMPLIANCE WITH RULE )  
201.B AND ASSESSING APPROPRIATE CIVIL )  
PENALTIES, LEA, ROOSEVELT, CHAVES AND )  
EDDY COUNTIES, NEW MEXICO )

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

October 24th, 2002

Santa Fe, New Mexico

02 NOV -8 PM 2:22

OIL CONSERVATION DIV

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, October 24th, 2002, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

I N D E X

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Examiner Hearing  
CASE NO. 12,955

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E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	5	-
Exhibit 2	6	-

\* \* \*

## A P P E A R A N C E S

## FOR THE DIVISION:

DAVID K. BROOKS  
Attorney at Law  
Energy, Minerals and Natural Resources Department  
Assistant General Counsel  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

## FOR YATES PETROLEUM CORPORATION:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR  
110 N. Guadalupe, Suite 1  
P.O. Box 2208  
Santa Fe, New Mexico 87504-2208  
By: WILLIAM F. CARR

\* \* \*

## ALSO PRESENT:

WILLIAM V. JONES, JR.  
Petroleum Engineer  
New Mexico Oil Conservation Division  
1220 South Saint Francis Drive  
Santa Fe, NM 87505

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 10:50 a.m.:

3           EXAMINER STOGNER: This hearing will come to  
4 order. I'll call next case, Number 12,955, which is the  
5 Application of the New Mexico Oil Conservation Division for  
6 an order requiring Yates Petroleum to bring 90 wells into  
7 compliance with Rule 201.B and assessing appropriate civil  
8 penalties, Lea, Roosevelt, Chaves and Eddy Counties, New  
9 Mexico.

10           Call for appearances.

11           MR. BROOKS: Mr. Examiner, I'm David Brooks,  
12 Energy, Minerals and Natural Resources Department of the  
13 State of New Mexico, appearing for the New Mexico Oil  
14 Conservation Division.

15           MR. CARR: May it please the Examiner, my name is  
16 William F. Carr with the Santa Fe office of Holland and  
17 Hart, L.L.P. We represent Yates Petroleum Corporation in  
18 this matter.

19           EXAMINER STOGNER: Any other appearances?  
20 Are there any witnesses at this time?

21           MR. BROOKS: I have none, Mr. Examiner. We  
22 intend to put on two documents, and I want to make a  
23 statement, and that will be our case.

24           EXAMINER STOGNER: Okay, Mr. Carr?

25           MR. CARR: And I believe I will support the

1 introduction of the documents, and I also have a brief  
2 statement.

3 EXAMINER STOGNER: Okay. Mr. Brooks, I'll turn  
4 it over to you at this time.

5 MR. BROOKS: Very good.

6 Mr. Examiner, the two exhibits are -- Exhibit 1  
7 is a production report on the wells that are the subject of  
8 this hearing, that is, those that are on it. It includes  
9 all of the wells that are on Exhibit A to Exhibit 2, and  
10 the Application in this case includes some additional wells  
11 which we have subsequently determined are in compliance and  
12 therefore can be dropped from this hearing.

13 The reference point for the wells that are still  
14 in this hearing is Exhibit 2 -- Exhibit A to Exhibit 2.  
15 And Exhibit A to Exhibit 2 is -- and Exhibit B to -- Well,  
16 I'm not explaining this very well. Let me start over.

17 Exhibit 1 is our production report. Normally I  
18 would have a witness to sponsor that. Fran Chavez prepared  
19 it. However, since this has eventuated to be an  
20 uncontested hearing, I will mention that it is a computer  
21 printout from the records of OCD, and I will ask that the  
22 Examiner take administrative notice of the records that are  
23 in the ONGARD system.

24 We tender Exhibit 1 and the request for  
25 administrative notice for the purpose of making our *prima*

1    *facie* case in this case.

2                   EXAMINER STOGNER: Any objections, Mr. Carr?

3                   MR. CARR: Mr. Stogner, we have no objection to  
4 your taking notice of the records of the Oil Conservation  
5 Division. We have not seen Exhibit A, but we don't object  
6 to your taking notice of the OCD records as set forth in  
7 this printout, if it should add any weight.

8                   EXAMINER STOGNER: The Division will take  
9 administrative notice of its own records in this matter on  
10 these wells and their production.

11                   MR. BROOKS: Okay. Exhibit 2 is a stipulation  
12 and agreement entered into between the Director of the Oil  
13 Conservation Division and Yates Petroleum Corporation, as  
14 reflected by the signatures of Lori Wrotenbery and Frank  
15 Yates, Jr., on page 2 of Exhibit 2.

16                   Exhibit A to Exhibit 2 is a list of 75 wells. ✓  
17 Those are the 75 wells that are currently inactive.

18                   Exhibit B is a list of 18 wells. ✓ The wells  
19 listed on Exhibit B are included on Exhibit A, but they are  
20 in a separate category because a different agreement has  
21 been made between the parties with regard to the Exhibit B  
22 wells and the Exhibit A wells.

23                   Now, the wells that are listed in the Application  
24 that are not also in Exhibit A to Exhibit 2 are in  
25 compliance. We acknowledge that they are in compliance,

1 and the application for any relief with regard to those  
2 other wells, which would be approximately 15 wells, we  
3 would request to be dismissed.

4 Now, the 75 wells that are listed on Exhibit A to  
5 Exhibit 2 are acknowledged by both parties at this point to  
6 be inactive in the sense that there is no production from  
7 those wells and has not been for a period of one year plus  
8 90 days prior to this date.

9 The wells listed on Exhibit B are in a separate  
10 category because those wells are shut-in wells under the  
11 terms of either state or private leases which have shut-in  
12 royalty provisions. And in Yates's opinion, as we  
13 understand it, those wells are required to be maintained in  
14 shut-in status under the terms of the affected leases for  
15 the purpose of maintaining those leases in force at the  
16 present time, i.e., those leases that are not otherwise  
17 maintained in force. That is our understanding. We have  
18 not verified that, but that is the basis on which this  
19 stipulation and agreement was entered.

20 With regard to those 18 wells, Yates has agreed,  
21 as we understand it, that they are willing to do all of the  
22 testing, comply with all of the testing and reporting  
23 requirements for temporary abandonment status. But it is  
24 their opinion that those wells should not be placed in  
25 temporary abandonment status, because it is their opinion

1 that the fact that those wells are shut in under the terms  
2 of the governing leases makes those wells productive wells,  
3 producing wells, and therefore they should not be regarded  
4 as inactive and should not be required to be placed in  
5 temporary abandonment status.

6 So with regard to those 18 wells, the whole  
7 issue, it seems to me, comes down to an interpretation of  
8 our Rules and the governing law as to whether or not wells  
9 that are governed by a shut-in royalty clause are inactive  
10 wells under the terms of our rules.

11 With regard to the other 57 wells of the 75  
12 listed on Exhibit A, Yates has agreed to bring those wells  
13 into compliance, according to a schedule set forth in the  
14 agreement and stipulation, and that schedule is acceptable  
15 to the Division. We request that the terms of that  
16 schedule be incorporated in the order entered in this case.

17 With regard -- Going back to the 18 shut-in  
18 wells, the position of the Division is that the shut-in  
19 royalty clauses, be they in state leases or in private  
20 leases, refer strictly to the status of the wells for  
21 proprietary purposes between the mineral owner and the  
22 lessee and that they do not control or affect the status of  
23 the wells under the OCD Rules and that wells that are not,  
24 in fact, physically in production, even though they are  
25 considered producing wells under the terms of the leases,

1 are still inactive under the terms of Rule 201 and should  
2 be either plugged and abandoned or placed in temporary  
3 abandonment status.

4 Similarly, we believe that the approval of the  
5 wells for temporary abandonment under Rule 203 should have  
6 no legal effect upon the status of those wells under the  
7 leases, which is governed by the lease instrument and not  
8 by the OCD Rules.

9 So we believe that temporary abandonment for OCD  
10 purposes and shut-in for royalty purposes under either  
11 state or private leases are two entirely separate issues,  
12 each governed by their own domain or body of law, and that  
13 like east and west, according to Mr. Kipling, neither shall  
14 ever meet.

15 So that is our legal position.

16 Now, why are we maintaining this position in view  
17 of the fact that Yates has agreed to do the necessary  
18 testing and therefore satisfy any environmental  
19 requirements that are involved in 203? Well, basically the  
20 reason for that is that under our Rules we really have no  
21 other place to put these wells. They're either considered  
22 productive wells or they're considered to be inactive.

23 And of course the way we believe the thing works,  
24 that sauce for the goose is sauce for the gander, and if we  
25 acknowledge that these wells -- if we acknowledge any legal

1 validity to the position that shut-in wells are not  
2 inactive wells under the terms of Rule 201, then we lose  
3 the ability to enforce the testing and monitoring  
4 requirements of Rule 203 as that rule is presently written.

5 I'm not contending that by conceding that point  
6 we would lose the regulatory authority to maintain that  
7 testing and monitoring status, but we would lose the  
8 ability to do it under our presently existing regulations.

9 Under our present regulations we cannot require a  
10 well to be monitored in this manner -- Well, we might be  
11 able to require one specific well for a particular reason,  
12 because we have fairly general powers, but we would not be  
13 able to enforce Rule 201 as a standard basis, and Rule 203  
14 as a standard basis, for requiring the testing and  
15 monitoring of shut-in wells if we acknowledge that as a  
16 matter of law and under our rules those are producing wells  
17 and are not inactive wells under the terms of Rule 201.

18 Thank you very much.

19 EXAMINER STOGNER: Mr. Carr?

20 MR. CARR: May it please the Examiner, Yates  
21 Petroleum Corporation joins in the request that the  
22 agreement -- the stipulation and agreement and the attached  
23 two schedules be incorporated by reference into the order  
24 that results from this hearing.

25 The agreement between Yates and the Oil

1 Conservation Division addresses each of the wells that are  
2 still remaining -- that still must have some action taken  
3 to bring them into compliance with the Oil Conservation  
4 Division Rules.

5 And you need to know that as to the numbers,  
6 we've been sort of chasing a moving target for about a year  
7 and a half. We started with in excess of, I believe, 192  
8 wells. And so I don't want you to think that we have been  
9 standing back eyeball to eyeball and not acting on these  
10 wells.

11 In the last year to 18 months we have already  
12 brought well in excess of a hundred wells into compliance  
13 with OCD Rule.

14 And I think it's also important to put it in some  
15 sort of context for you to understand that in the last  
16 couple of years there was an emphasis on addressing plugged  
17 and abandoned wells that really had not been present in the  
18 past.

19 The new focus in the enforcement effort was not,  
20 as it had been in the past, to look at wells that pose  
21 problems but to go after wells in a much broader way and  
22 really, I believe, to avoid problems that other  
23 jurisdictions have had with large numbers of orphaned and  
24 abandoned wells, and that's an effort with which we do not  
25 quarrel. But we do want you to know that the reason there

1 were 192 wells really was a result of what we believe was a  
2 different way to focus and address this problem, something  
3 that changed several years ago.

4 As Mr. Brooks pointed out, Exhibit A identifies  
5 75 wells. We believe 57 of those wells still need to have  
6 something done to them. And we have agreed to bring the  
7 wells into compliance by April the 1st, 2003. I'm talking  
8 about the wells on Exhibit A, not those where we've got  
9 this lease issue.

10 Now, what do we mean by bringing them into  
11 compliance? We will restore those wells to production,  
12 we'll plug and abandon wells, or we'll cause those wells to  
13 be temporarily abandoned pursuant to the Division Rules,  
14 the Section 201/203 section. And we've agreed with the  
15 State that we will do this at the rate of eight wells per  
16 month -- that's a minimum number -- and it will be done on  
17 a cumulative basis with the start date October the 5th,  
18 2002. That's what's in the first part of the agreement.

19  Exhibit B identifies 18 wells. These are the  
20 wells that have become the issue between the Division and  
21 Yates Petroleum Corporation. Mr. Brooks has characterized  
22 the issue and our dispute at one time as sort of dancing on  
23 the head of a pin. And while I don't really disagree with  
24 him on that, in some respects it does seem that we would be  
25 wiser to dance on the head of a pin here than be dancing

1 someplace later, with someone suggesting that one of our  
2 leases, in fact, should be terminated.

3           The provision in the lease that gives us concern  
4 is not something that we at arm's length negotiated. It is  
5 a provision that you find in the State Oil and Gas Lease  
6 Form, and it talks about the payment of a shut-in royalty  
7 payment, and it says -- and this is a quote -- The payment  
8 of said annual royalty shall be considered for all purposes  
9 the same as if gas were being produced in paying  
10 quantities.

11           And we -- you see, this is contract we entered  
12 with the State of New Mexico, and this is a term that  
13 governs that relationship. And when we looked at this  
14 contract, we became concerned about signing forms and  
15 taking an action to have any of the wells on these  
16 properties, wells that under the terms of the lease with  
17 the State are to be deemed as producing in paying  
18 quantities -- we did not want to take an action where we  
19 were publicly moving wells into an abandoned status because  
20 of our concern for what that could do for the underling  
21 lease.

22           And I want you to know that it isn't that Yates  
23 is not concerned about the objectives of the program  
24 implemented in this agency to deal with the wellbore  
25 integrity of a large number of wells that a year or two ago

1 there was real concern were not being properly maintained,  
2 not by Yates alone but by a number of operators.

3 We want you to know that Yates is doing the  
4 things that are required by the Section 201 to 203 Rules,  
5 and until these wells are returned to production or  
6 plugged, we are doing what is necessary to assure that  
7 wellbore integrity is not only confirmed but is maintained.

8 As I've noted, we moved from 193 wells slightly  
9 over a year ago to approximately 75 now, and in fact we  
10 believe some of those may come off the list. But what  
11 we're doing is, we're running Bradenhead tests after 24  
12 hours' notice to the OCD. If a test fails, we correct the  
13 problem and we re-run the test until we have a good test  
14 confirming the integrity of the wellbore, and we propose to  
15 file the data on a the C-103.

16 What we're asking is that we not formally move  
17 the well into temporarily abandoned status, and that's what  
18 we're doing.

19 In terms of enforcement of the Rules and policies  
20 of the Division, you may enforce a Rule. You also may  
21 enforce whatever activity you direct through an order, and  
22 that's what you're going to enter in this case.

23 And so we ask that you enter an order  
24 incorporating the stipulation agreement, you authorize  
25 Yates to test these 18 wells as we have indicated here

1 today. That's what we would like you to do, and request.

2 If it isn't acceptable to you, we are prepared to  
3 work with the Division to propose any kind of a change or  
4 develop a change to Rule 203 that would address this  
5 problem.

6 We appreciate the efforts that have been made by  
7 Ms. Wrottenbery and Mr. Brooks to assist us in resolving  
8 this issue. We do believe it can be resolved. We don't  
9 think a rule change is necessary, although we're willing to  
10 work on that. And we do believe that what we're requesting  
11 could be placed in an order and therefore fully enforceable  
12 against us.

13 Thank you, Mr. Stogner.

14 EXAMINER STOGNER: Anything further in this  
15 matter?

16 MR. CARR: No, sir.

17 EXAMINER STOGNER: Since Yates and the Division  
18 has concurred, I would like for you two to get together and  
19 prepare a rough draft order in this matter.

20 MR. CARR: Yes, sir.

21 MR. BROOKS: Okay.

22 EXAMINER STOGNER: And when do you think would be  
23 a good date I can expect something?

24 MR. CARR: We're very expeditious in getting  
25 things drafted. It takes us months. Could we have -- we

1 go to the 8th? I think that's two weeks from tomorrow?

2 MR. BROOKS: Yeah, I think that would be a good  
3 idea.

4 EXAMINER STOGNER: Yeah.

5 MR. CARR: Because that give us two full weeks to  
6 do that. There is also a Commission hearing in the middle,  
7 and there are about to be proposed orders filed --

8 MR. BROOKS: Right.

9 MR. CARR: -- or response.

10 EXAMINER STOGNER: Friday, November the 8th.

11 MR. BROOKS: You're not involved in the madness  
12 next week are you?

13 MR. CARR: I'm not involved in *your* madness next  
14 week.

15 EXAMINER STOGNER: If there's additional time,  
16 just contact --

17 MR. CARR: Yes, sir. Thank you.

18 MR. BROOKS: Okay, very good.

19 EXAMINER STOGNER: Anything further?

20 With that, then this matter will be taken under  
21 advisement, and then the rough draft by November 8th.

22 Thank you, gentlemen.

23 (Thereupon, these proceedings were concluded at  
24 11:08 a.m.)

25

I do hereby certify that the foregoing is  
a complete record of the proceedings in  
the Examiner hearing of Case No. 12955.  
\* \* \* heard by me on 24 October 2002.

*Michael B. Stogner*, Examiner

STEVEN T. BRENNER, CCR  
Oil Conservation Division  
(505) 989-9317

## CERTIFICATE OF REPORTER

STATE OF NEW MEXICO    )  
                                   )    ss.  
 COUNTY OF SANTA FE    )

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL November 5th, 2002.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 16th, 2006