CAMPBELL & BLACK, P.A.
LAWYERS

JACK M. CAMPBELL
BRUCE D. BLACK
MICHAEL B. CAMPBELL
WILLIAM F. CARR
BRADFORD C. BERGE
J. SCOTT HALL
PETER N. IVES
RUTH S. MUSGRAVE
LOURDES A. MARTINEZ

JEFFERSON PLACE
SUITE I - 110 NORTH GUADALUPE
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87501
TELEPHONE: (505) 988-4421
TELECOPIER: (505) 983-6043

December 26, 1984

Richard L. Stamets, Director
Oil Conservation Division
New Mexico Department of
Energy and Minerals
Post Office Box 2088
Santa Fe, New Mexico 87501

Re: Case 8323: In the Matter of the Application of Blanco Engineering, Inc. for Salt Water DIsposal, Eddy County, New Mexico - Order No. R-7693

Dear Mr. Stamets:

Enclosed please find the Application of Yates Petroleum Corporation for Emergency Order Declaring Oil Conservation Division Order R-7693 Void as a Matter of Law for filing in the above-referenced case.

We assume your letter dated December 20, 1984 to Paul White of Blanco Engineering will make it unnecessary to rule on Yates' application.

Please let me know if you have any questions regarding this matter.

Very truly yours,

William F. Carr

William F. Carr

WFC/cv
enclosures

No Action on this Ltr
because of my
of 12/20/84. RLS

BEFORE THE

OIL CONSERVATION DIVISION

NEW MEXICO DEPARTMENT OF ENERGY AND MINERALS

IN THE MATTER OF THE APPLICATION
OF BLANCO ENGINEERING, INC. FOR
SALT WATER DISPOSAL, EDDY COUNTY,
NEW MEXICO.

Case 8323
Order R-7693

APPLICATION FOR EMERGENCY ORDER DECLARING OIL CONSERVATION DIVISION ORDER R-7693 VOID AS A MATTER OF LAW, OR, STAYING THE EFFECT OF DIVISION ORDER R-7693 PENDING FURTHER HEARING

Comes now, YATES PETROLEUM CORPORATION, by and through its undersigned attorneys, and hereby makes application for an emergency order declaring Oil Conservation Division Order No. R-7693 void as a matter of law pursuant to the provisions of Section 70-2-23, N.M.S.A. (1978) (Rule 1202 of the Rules and Regulations of the Oil Conservation Division), or in the alternative, for an order staying the effect of Division Order R-7693, and in support thereof states:

1. The above-referenced case came on for hearing before a duly appointed Examiner of the Division on September 5, 1984, and that on November 9, 1984, the Division entered its Order authorizing Blanco Engineering, Inc. to utilize the Pan American Flint Gas Com Well No. 1, located 1980 feet from the South and East lines of Section 22, Township 18 South, Range 26 East, N.M.P.M., Eddy County, New Mexico, to dispose of produced salt water into the Atoka formation in the perforated interval from approximately

9,094 feet to 9,116 feet.

2. Oil Conservation Division Rule 701 sets forth the requirements for obtaining an order granting authority to inject water into any reservoir for the purpose of water disposal. This rule reads in part as follows:

> "The applicant shall furnish, by certified or registered mail, a copy of the application to the owner of the surface of the land on which each injection well or disposal well is to be located and to each leasehold operator within one-half mile of the well. [emphasis added].

3. At the time of hearing, Blanco Engineering, Inc. offered into evidence OCD Form C-108 with attached Proof of Notice, a copy of which is attached hereto as Exhibit A, wherein the applicant certified that notice of the application had been sent by certified mail to each leasehold operator within one-half mile of the well location. The Proof of Notice lists all leasehold operators so notified.

4. Yates Petroleum Corporation is the leasehold operator of the North half of the Southeast quarter of Section 22, Township 18 South, Range 26 East, N.M.P.M., Eddy County, New Mexico; the tract upon which the proposed disposal well is located pursuant to oil and gas lease dated October 21, 1975 and recorded in the Miscellaneous records of Eddy County, New Mexico in Book 131, Page 1093. The lease is held by production. A copy of the lease is attached hereto as Exhibit B.

5. Yates Petroleum Corporation is the leasehold operator of all other tracts in the South half of Section 22.

6. No notice was given to Yates Petroleum Corporation as

required by Oil Conservation Division Rule 701 and OCD Form C-108 (See Affidavit of John A. Yates attached hereto as Exhibit C), and Order R-7639 is therefore void as a matter of law.

7. Yates Petroleum Corporation has plans to re-enter the Pan American Flint Gas Com Well No. 1 during 1985 to test the Morrow formation. (See Affidavit of John A. Yates attached hereto as Exhibit C).

8. On December 19, 1984, Paul G. White, President of Blanco Engineering, Inc., advised Yates Petroleum Corporation that he would commence the disposal of produced water in the Pan American Flint Gas Com Well No. 1 within two weeks. (See Affidavit of Randy G. Patterson attached hereto as Exhibit D).

9. The disposal of produced salt water into the Morrow formation in the Pan American Flint Gas Com Well No. 1 will result in the loss of natural gas that otherwise could be produced from the well, thereby causing the physical waste of natural gas and impairing the correlative rights of Yates Petroleum Corporation.

10. The disposal of produced water in the Pan American Flint Gas Com Well No. 1 will irreparably harm Yates Petroleum Corporation, for (1) it will be denied the opportunity to produce natural gas from its leases in the South half of Section 22, Township 18 South, Range 26 East, N.M.P.M., and (2) it will be foreclosed from pursuing its legal remedies before the Oil Conservation Commission at a later date.

WHEREFORE, Yates Petroleum Corporation hereby requests that the Oil Conservation Division enter an emergency order declaring

Oil Conservation Division Order R-7693 void as a matter of law, or in the alternative, staying Division Order R-7693 pending the entry of further orders following a rehearing in Case 8323, or making such other further provisions as are just in the premises.

Respectfully submitted,

CAMPBELL & BLACK, P.A.

By William F. Carr

William F. Carr
Post Office Box 2208
Santa Fe, New Mexico 87501
(505) 988-4421

ATTORNEYS FOR YATES PETROLEUM CORPORATION

Certificate of Notice

I hereby certify that notice of this Application was given to Paul G. White, President of Blanco Engineering, by telephone, on this 21st day of December, 1984.

William F. Carr

PROOF OF NOTICE

STATE OF NEW MEXICO)
: ss.
COUNTY OF EDDY)

The undersigned, being first duly sworn, upon oath, states that on the 15th day of August, 1984, the undersigned did mail in the United States Post Office at Artesia, New Mexico, true copies of the foregoing Application for Authorization to Inject, in securely sealed, certified mail, return receipt requested, postage prepaid envelopes, addressed to the following named owners of the surface of the land on which the well is to be located and to each leasehold operator within one-half mile of the well location:

Marathon Oil Company
P. O. Box 552
Midland, Texas 79702

Amoco Production Company
P. O. Box 3092
Houston, Texas 77001

DEPCO, Inc.
1000 Petroleum Building
110 Sixteenth Street
Denver, Colorado 80202

Mobil Producing Texas & New Mexico, Inc.
2815 Cimarron
Midland, Texas 79701

Hanagan Petroleum Corporation
P. O. Box 1737
Roswell, New Mexico 88201

Mr. Robert N. Enfield
P. O. Box 2431
Santa Fe, New Mexico 87501

Gulf Oil Corporation
P. O. Box 1150
Midland, Texas 79702

J. M. Huber Corporation
1900 Wilco Building
Midland, Texas 79701

Flag-Redfern Oil Company
P. O. Box 2280
Midland, Texas 79702

Maddox Energy Corporation
The Blanks Bldg., Suite 906
Midland, Texas 79701

Mr. David Fasken
608 First National Bank Bldg.
Midland, Texas 79701

Mr. William G. Ross
P. O. Box 86
Midland, Texas 79702

EXHIBIT A

Mewbourne Oil Company
1010 Wall Towers West
Midland, Texas 79701

Chevron U.S.A., Inc.
P. O. Box 1660
Midland, Texas 79702

Southland Royalty Company
1100 Wall Towers West
Midland, Texas 79701

W. E. Flint Trust Account
c/o Lucille Dailey, Trust Officer
Moncor Bank, Inc.
P. O. Box 3288
Albuquerque, New Mexico 87190

Mr. Dean E. Wolf
P. O. Box 8485
Midland, Texas 79701

Felmont Oil Corporation
P. O. Box 2266
Midland, Texas 79702

Ms. Jean Joyce
One Yon Road
Huntington, New York 11743

Patti Menefee

SUBSCRIBED AND SWORN TO before me this 14 day of August, 1984.

Notary Public

My commission expires:
1-27-85

KELLAHIN and KELLAHIN
Attorneys at Law
El Patio - 117 North Guadalupe
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

Jason Kellahin
W. Thomas Kellahin
Karen Aubrey

Telephone 982-4285
Area Code 505

RECEIVED
JAN 2[illegible]
OIL CONSERVATION DIVISION

January 21, 1985

Mr. Gilbert Quintana
Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

"Hand Delivered"

Re: Blanco Engineering, Inc.
NMOCD Case 8323

Dear Mr. Quintana:

On behalf of Blanco Engineering, Inc., and in accordance with your direction at the hearing on January 16, 1985, please find enclosed the requested order.

We believe that there is substantial evidence from which you can grant the Blanco application and deny Yates's protest. Such an order would be simple to draft and would generally follow the form already adopted by you in Order R-7693.

However, should you desire to allow Yates Petroleum Corporation an opportunity to again test a formation that is substantially depleted and no longer economic, then I have enclosed a proposed order that will accomplish that result and will also protect the correlative rights of Blanco.

Please call me if you have any questions and I will be happy to meet with you in Mr. Carr's presence to discuss how to draft an order than accomplishes the decision you desire to make in this case.

Very truly yours,

W. Thomas Kellahin

WTK:ca
Enc.

cc: William F. Carr, Esq.
Paul G. White (Blanco)

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 8323
ORDER NO. R-7693-A

APPLICATION OF BLANCO ENGINEERING,
INC., FOR SALT WATER DISPOSAL,
EDDY COUNTY, NEW MEXICO.

BLANCO ENGINEERING, INC., PROPOSED
ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8 a.m. on January 16, 1985, at Santa Fe, New Mexico, before Examiner Gilbert P. Qunitana.

NOW, on this _____ day of January, 1985, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by the law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) That this Case was first heard on September 5, 1984, and decided by Division Order R-7693.

(3) That the applicant, Blanco Engineering, Inc., contends it is the owner and operator of the Pan American Flint Gas Com Well No. 1, located 1980 feet from the South and East lines of Section 22, Township 18 South, Range 26 East, NMPM, Eddy County, New Mexico.

(4) That Applicant, Blanco Engineering, Inc., failed to notify Yates Petroleum Corporation, the oil & gas lessee of the N/2SE/4 of said Section 22, an operator within the 1/2 mile area, of review as required by Division Form C-1Ø8.

(5) That the Division has vacated Order R-7693 and required hearing on this application attended by Yates Petroleum Corporation, which was held on January 16, 1985.

(6) That Yates Petroleum Corporation has appeared in opposition to this application and contends it is the owner of the subject Flint #1, the plugged and abandoned well that Blanco seeks to convert to Salt Water disposal.

(7) That Yates Petroleum Corporation contends that the interval from 9,Ø94 to 9,116 should be again tested for commercial gas production prior to the use of said well by Blanco Engineering for salt water disposal purposes.

(8) That the subject well was produced by Amoco production Company, which recovered some 5.6 Billion MCF of gas over a period of eleven years.

(9) That Blanco Engineering, Inc., contends that the proposed disposal interval is fully depleted and that interval will no longer produce gas in commercial quantities because of water encroachment.

(1Ø) That the testimony is inconclusive, and that in order to protect correlative rights and prevent waste, the subject well should be tested in the interval from 9Ø25 to 9116 to determine if said well is economic of gas production before said well is utilized as a salt water disposal well.

(11) That prior to being notified of Yates Petroleum Corporation's objection, Blanco Engineering, in good faith, expended $55,ØØØ on direct costs involved in the re-entry and workover of the subject well.

(12) That of the costs expended by Blanco for the well, $27,93Ø.ØØ, as listed on Exhibit A, attached hereto, represent costs that benefit Yates should Yates be allowed to re-enter the subject well to test the Morrow for gas production.

(13) That Yates Petroleum Corporation should reimburse Blanco for those costs in the event the subject well proves to be economic.

(14) That the estimated costs of Yates Petroleum Corporations re-entry of the subject well range from $125,000 to $250,000.

(15) That the applicant proposes to utilize said well to dispose of produced salt water into the Atoka formation, with injection into the perforated interval from approximately 9,094 feet to 9,116 feet.

(16) That in the event the well is utilized by Blanco for disposal, said disposal should:

(a) The injection should be accomplished through 2 7/8-inch plastic lined tubing installed in a packer set at approximately 9025 feet; that the casing-tubing annulus should be filled with an inert fluid; and that a pressure gauge or approved leak detection device should be attached to the annulus in order to determine leakage in the casing, tubing, or packer.

(b) The injection well or system should be equipped with a pressure limiting switch or other acceptable device which will limit the wellhead pressure on the injection well to no more than 1820 psi.

(c) The Director of the Division should be authorized to administratively approve an increase in the injection pressure upon a proper showing by the operator that such higher pressure will not result in migration of the injected waters from the Atoka formation.

(d) The operator should notify the supervisor of the Artesia district office of the Division of the date and time of the installation of disposal equipment so that the same may be inspected.

(e) The operator should take all steps necessary to ensure that the injection water enters only the proposed injection interval and is not permitted to escape to other formations or onto the surface.

(16) That because of the reasonable probability that the said well cannot be completed as an economic well and in order to protect the said well for future use as a salt water disposal well, Yates Petroleum Corporation shall be required to complete its re-entry of said well as outlined in Order paragraphs below.

(17) That in order to protect the correlative rights of Blanco Engineering, Inc., it is essential that the Division establish criteria for determining if the subject well is non-commercial.

(18) That in order to assure that the potentially productive zone is timely tested by Yates, the Division should establish a reasonable time table for Yates re-entry and testing of said well.

(19) That Approval of the subject application will prevent the drilling of unnecessary wells and otherwise prevent waste and protect correlative rights.

IT IS THEREFORE ORDERED THAT:

(1) The Applicant, Blanco Engineering, Inc., is hereby authorized to utilize its Pan American Flint Gas Com Well No. 1, located 1980 feet from the South and East lines of Section 22, Township 18 South, Range 26 East, NMPM, Eddy County, New Mexico, to dispose of produced salt water into the Atoka formation, injection to be accomplished through 2 7/8-inch tubing installed in a packer set at approximately 9025 feet, with injection into the perforated interval from approximately 9,094 feet to 9,116 feet.

(2) PROVIDED HOWEVER, that prior to Blanco Engineering, Inc., utilization of the Flint Well, Yates Petroleum Corporation shall, within ten days of this order, place a completion unit upon the well and attempt to complete the subject well as a commercial Morrow gas producing well in the 9,094 to 9,116 interval upon the following terms and conditions:

(a) Yates Petroleum Corporation shall not recover any production casing from the subject well;

(b) In the event the subject well is non-commercial, Yates Petroleum Corporation shall return to Blanco Engineering the wellbore, including mechanical condition, and the surrounding surface location shall be returned to Blanco Engineering in the same conditions as received by Yates Petroleum Corporation;

(c) Yates shall notify Blanco of intent to abandon the wellbore, and allow 5 working days for Blanco Engineering, Inc., to assume operations.

(3) That in order to protect the correlative rights of Blanco Engineering, Inc., it is essential that the following criteria be established for determining if the subject well is non-commercial:

A non-commercial gas well shall be defined as a well which produces less than 150 MCF/day during 7 day continuous production from tests witnessed by the Division and a representative of Blanco Engineering, Inc.

(4) That in order to assure that the potential producing zones are timely tested, Yates shall:

(a) Commence the re-entry on or before February 1, 1985, as provided herein;

(b) Re-entry, testing, stimulation and completion operations shall proceed contiuously with no lapse of wellsite operations being greater than 5 days. Yates shall furnish Blanco Engineering, Inc. with a daily report of activity;

(c) From the date on which Yates sets a completion unit on the well, Yates shall have no more than 30 days to verify the commercial viability of operating the well within the terms of the economic definitions provided in order paragraph (2) above.

(d) That in the event the said well meets or exceeds the criteria herein for a commercial well, then Yates shall be entitled to keep the said well for as long as it is capable of commercial production, but in no event shall said well be shut in for more than 90 days within any year.

(5) That in the event the subject well is taken over by Blanco Engineering, Inc., for salt water disposal, then the following order paragraphs shall apply:

(a) That the tubing shall be plastic-lined; that the casing-tubing annulus shall be filled with an inert fluid; and that a pressure gauge shall be attached to the annulus or the annulus shall be equipped with an approved leak detection device in order to determine leakage in the casing, tubing, or packer.

(b) The injection well or system shall be equipped with a pressure limiting switch or other acceptable device which will limit the wellhead pressure on the injection well to no more than 1820 psi.

(c) The Director of the Division may authorize an increase in injection pressure upon a proper showing by the operator of said well that such higher pressure will not result in migration of the injected fluid from the Atoka formation.

(d) The operator shall notify the supervisor of the Artesia district office of the Division of the date and time of the installation of disposal equipment so that the same may be inspected.

(e) The operator shall immediately notify the supervisor of the Division's Artesia district office of the failure of the tubing, casing, or packer, in said well or the leakage of water from or around said well and shall take such steps as may be timely and necessary to correct such failure or leakage.

(f) The applicant shall conduct disposal operations and submit monthly reports in accordance with Rules 702, 703, 704, 705, 706, 708, and 1120 of the Division Rules and Regulations.

(6) That in the event, Yates Petroleum Corporation establishes the subject well as an economic well as required in this order, then and in that event, Yates Petroleum Corporation shall reimburse Blanco Engineering, Inc., the sum of $27,900.00, being the amount of costs incurred by Blanco for the re-entry of the subject well which incured to the benefit of Yates Petroleum Corporation.

(6) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

RICHARD L. STAMETS
Director

EXHIBIT "A"

MONEY SPENT TO DATE - FLINT NO. 1

COMPANY - DESCRIPTION	AMOUNT
MACK CHASE, INC. - PULLING UNIT	$4,589.90
SWEATT CONSTRUCTION - DIG PIT	208.54
SWEATT CONSTRUCTION - REMOVE DRY HOLE MARKER	114.13
I & W, INC. - HAUL WATER	781.18
T & C TANK RENTAL - INSTALL ANCHORS	409.08
T & C TANK RENTAL - FRAC TANK RENTAL	302,33
PATTERSON WELDING - WELDING SURFACE PIPE	189.74
BOYCE LEASE SERVICE - BACKHOE, DIG OUT CELLAR	85.11
BLANCO ENGINEERING, INC. - HEARING AND SUPPERVISION	4,691.25
COMPLETION RENTALS - REVERSE CIRCULATING EQUIPMENT	11,145.57
HUGHES SERVICES - TRUCKING	2,313.63
BILCO SUPPLY CO. - USED CASING	247.93
SWEATT CONSTRUCTION - BACKFILL PIT	132.80
SWEATT CONSTRUCTION - DIRT WORK	1,891.36
TOTAL	$27,930.21

BLANCO
engineering
inc.

116 North First Street / (505) 746-3223
Artesia, New Mexico 88210

January 14, 1985

SUB SURFACE DATA

YATES PETROLEUM DAYTON TOWNSITE #1

G.L. Elevation - 3368
Top Perf Interval - 8978

8978
- 3368

- 5610 - TOP OF PRODUCTIVE ZONE

YATES PETROLEUM BOB GUSHWA #1

G.L. Elevation - 3373
Top Perf Interval - 9052

9052
- 3373

- 5679 - TOP OF PRODUCTIVE ZONE

PAN AMERICAN W.E. FLINT #1

G.L. Elevation - 3324
Top Perf Interval - 9094

9094
- 3324

- 5770 - TOP OF PRODUCTIVE ZONE

** Flint #1 is structurally 91' low to the Bob Gushwa #1 and 160' low to the Dayton Townsite #1 well.

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FILE	/
U.S.G.S.	
LAND OFFICE	
OPERATOR	/

NEW MEXICO OIL CONSERVATION COMMISSION

RECEIVED

AUG 19 1970

O. C. C.

ARTESIA, OFFICE

Form C-103
Supersedes Old
C-102 and C-103
Effective 1-1-65

5a. Indicate Type of Lease State ☐ Fee ☒

5. State Oil & Gas Lease No.

SUNDRY NOTICES AND REPORTS ON WELLS

(DO NOT USE THIS FORM FOR PROPOSALS TO DRILL OR TO DEEPEN OR PLUG BACK TO A DIFFERENT RESERVOIR. USE "APPLICATION FOR PERMIT —" (FORM C-101) FOR SUCH PROPOSALS.)

1. OIL WELL ☐ GAS WELL ☒ OTHER- /

7. Unit Agreement Name

2. Name of Operator
PAN AMERICAN PETROLEUM CORPORATION /

8. Farm or Lease Name
FLINT GAS COM

3. Address of Operator
BOX 68, HOBBS, N. M. 88240

9. Well No.
1

4. Location of Well
UNIT LETTER J, 1980 FEET FROM THE South LINE AND 1980 FEET FROM THE East LINE, SECTION 22 TOWNSHIP 18-S RANGE 26-E NMPM.

10. Field and Pool, or Wildcat
ATOKA DEVO

15. Elevation (Show whether DF, RT, GR, etc.)
3336' R. D. B.

12. County
EDDY

16. Check Appropriate Box To Indicate Nature of Notice, Report or Other Data

NOTICE OF INTENTION TO:		SUBSEQUENT REPORT OF:	
PERFORM REMEDIAL WORK ☐	PLUG AND ABANDON ☒	REMEDIAL WORK ☐	ALTERING CASING ☐
TEMPORARILY ABANDON ☐		COMMENCE DRILLING OPNS. ☐	PLUG AND ABANDONMENT ☐
PULL OR ALTER CASING ☐	CHANGE PLANS ☐	CASING TEST AND CEMENT JOB ☐	
OTHER ☐		OTHER ☐	

17. Describe Proposed or Completed Operations (*Clearly state all pertinent details, and give pertinent dates, including estimated date of starting any proposed work*) SEE RULE 1103.

Well has watered out. Unable to return to producing status. No workover possibilities. Propose to P&A as follows:

Leave all casing in hole. Spot 25sx cement plug across perfs 9094-9116. Intervals filled w/ mud. Spot 10sx @ surface and erect P&A marker. Make final cleanup and restore ground to contour.

9 5/8" 32.3# CSA 1225'. Circ. Cmt
5 1/2" 14-17# CSA 9263'. Circ. Cmt.

18. I hereby certify that the information above is true and complete to the best of my knowledge and belief.

SIGNED _____ TITLE AREA SUPERINTENDENT DATE AUG 17 1970

APPROVED BY _____ TITLE OIL AND GAS INSPECTOR DATE AUG 20 1970

CONDITIONS OF APPROVAL, IF ANY:

Cl 2- NMOCC-Aztec
1- SUSP
1- File
1- PKR

Insert

Color Page/Photo

Here

EXCHANGE SANA NM.INFO.EX.TLX#888219

EWSVI INK 14222220001 21FEB85 17:27/17:45 ESI
VIA: 888219
WU INFOMASTER 1-819753A852 02/21/85
TO: 62A1637A
EXCHANGE SF
WU INFOMASTER 1-819753A852 02/21/85
ICS IPMMVIU MVN
7C2C 04441 02-21 0419P CST MVTR
TLX 888219 EXCHANGE SF
BT
4-841955S852 02/21/85
ICS IPMANCZ CSP
5057481331 TDRN ARTESIA NM 25 02-21 0517P EST

[redacted]

OLD SANTA FE TRAIL
SANTA FE NM 87504
PURSUANT TO OIL CONSERVATION DIVISION ORDER #R-7693-A, YATES PETROLEUM CORPORATION WILL RE-ENTER THE PAN AMERICAN FLINT GAS COM. WELL #1 ON FEBRUARY 22, 1985.
SANDY PATTERSON
LAND MANAGER
YATES PETROLEUM CORP
207 SOUTH 4 ST
ARTESIA NM 88210
1720 EST
NNNN
1723 EST
EXCHANGE SF
NNNN

ILLEGIBLE

CAMPBELL & BLACK, P.A.
LAWYERS

JACK M. CAMPBELL
BRUCE D. BLACK
MICHAEL B. CAMPBELL
WILLIAM F. CARR
BRADFORD C. BERGE
J. SCOTT HALL
PETER N. IVES
RUTH S. MUSGRAVE
LOURDES A. MARTINEZ

JEFFERSON PLACE
SUITE I - 110 NORTH GUADALUPE
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87501
TELEPHONE: (505) 988-4421
TELECOPIER: (505) 983-6043

January 24, 1985

HAND DELIVERED

Mr. Gilbert Quintana
Hearing Examiner
Oil Conservation Division
Post Office Box 2088
Santa Fe, New Mexico 87501

Re: Application of Blanco Engineering, Inc. for Salt Water Disposal, Eddy County, New Mexico.

Dear Mr. Quintana:

Pursuant to your request of January 16, 1985, I am enclosing a letter from Yates Petroleum Corporation with the data you requested at the time of hearing attached thereto. Also enclosed is a proposed Order for your consideration in reaching your decision in this matter.

Should you desire, I am available to meet with you and Mr. Kellahin to discuss the Order further.

Very truly yours,

William F. Carr

WFC/cv
enclosures

cc: W. Thomas Kellahin, Esq.
Randy G. Patterson

YATES PETROLEUM CORPORATION

207 SOUTH FOURTH STREET
ARTESIA, NEW MEXICO 88210
TELEPHONE (505) 748-1331

January 18, 1985

New Mexico Oil Conservation Division
P. O. Box 871
Santa Fe, New Mexico 87501

Attention: Mr. Gilbert Quintana

Re: Case 8323
Salt Water Disposal in
Pan American Flint #1
Township 18 South, Range 26 East
Section 22: NW/4SE/4
Eddy County, New Mexico

Dear Mr. Quintana:

Pursuant to your request during hearing on January 16, 1985 we are enclosing the following:

1. Copy of application for permit to drill, dated January 16, 1985, which has been filed with the New Mexico Oil Conservation Division office in Artesia,

2. Yates' Authority for Expenditure for the reentry and completion of the Flint "GU" #4,

3. Detailed estimates of time which we believe necessary to test and complete the captioned well as a producer.

Let us point out that the times specified on this estimate are only that, an estimate. Prudent completion techniques could require the use of more or less time to adequately test each formation. Also any problems that are encountered are not anticipated in this estimate, therefore no contingency time has been allowed. We believe that there should be no less than 90 days and possibly a greater amount of time allowed for the proper testing of this well.

Should you require anything further, please do not hesitate to contact us.

Very truly yours,

YATES PETROLEUM CORPORATION

Randy G. Patterson
Land Manager

RGP/mw

Enclosures

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT

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LAND OFFICE		
OPERATOR		

OIL CONSERVATION DIVISION

P. O. BOX 2088
SANTA FE, NEW MEXICO 87501

Form C-101
Revised 10-1-78

5A. Indicate Type of Lease STATE ☐ FEE ☒

5. State Oil & Gas Lease No.

APPLICATION FOR PERMIT TO DRILL, DEEPEN, OR PLUG BACK

1a. Type of Work
DRILL ☐ RE-ENTRY DEEPEN ☐ PLUG BACK ☐

b. Type of Well
OIL WELL ☐ GAS WELL ☒ OTHER SINGLE ZONE ☐ MULTIPLE ZONE ☐

7. Unit Agreement Name

8. Farm or Lease Name
Flint "GU"

2. Name of Operator
Yates Petroleum Corporation

9. Well No.
4

3. Address of Operator
207 South Fourth Street, Artesia, New Mexico 88210

10. Field and Pool, or Wildcat
Atoka Penn

4. Location of Well UNIT LETTER J LOCATED 1980' FEET FROM THE South LINE
AND 1980' FEET FROM THE East LINE OF SEC. 22 TWP. 18S RGE. 26E NMPM

12. County
Eddy

19. Proposed Depth	19A. Formation	20. Rotary or C.T.
9263'	Morrow	Pulling Unit

21. Elevations (Show whether DF, RT, etc.)	21A. Kind & Status Plug. Bond	21B. Drilling Contractor	22. Approx. Date Work will start
3336' DF	Blaket	Undesignated	ASAP

23.

PROPOSED CASING AND CEMENT PROGRAM

SIZE OF HOLE	SIZE OF CASING	WEIGHT PER FOOT	SETTING DEPTH	SACKS OF CEMENT	EST. TOP
12 1/4"	9 5/8"	40.0#	1225'	675 sx	in place
7 7/8"	5 1/2"	17-15.5#	9263'	1414 sx	in place

This well was originally drilled by Pan American Petroleum Corporation. Spudded 11/8/58 as the Flint Gas Com #1, to a depth of 9263'. This well was P&A'ed by them 9/15/70.

We propose to re-enter this well and stimulate the Morrow formation as needed for production.

Depending upon results of Morrow formation may perforate and test the Strawn, Canyon, Wolfcamp, Yeso and San Andres formations.

IN ABOVE SPACE DESCRIBE PROPOSED PROGRAM: IF PROPOSAL IS TO DEEPEN OR PLUG BACK, GIVE DATA ON PRESENT PRODUCTIVE ZONE AND PROPOSED NEW PRODUCTIVE ZONE. GIVE BLOWOUT PREVENTER PROGRAM, IF ANY.

I hereby certify that the information above is true and complete to the best of my knowledge and belief.

Signed Cy Cowan Title Regulatory Agent Date January 16, 1985

(This space for State Use)

APPROVED BY _____ TITLE _____ DATE _____

CONDITIONS OF APPROVAL, IF ANY:

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT

OIL CONSERVATION DIVISION

P. O. BOX 2088
SANTA FE, NEW MEXICO 87501

Form C-102
Revised 10-1-7

All distances must be from the outer boundaries of the Section.

Operator	Lease	Well No.
Yates Petroleum Corporation	Flint "GU"	4

Unit Letter	Section	Township	Range	County
J	22	18S	26E	Eddy, NM

Actual Footage Location of Well:
1980' feet from the South line and 1980' feet from the East line

Ground Level Elev.	Producing Formation	Pool	Dedicated Acreage:
3326 DF	Morrow	Atoka Penn	320 Acres

1. Outline the acreage dedicated to the subject well by colored pencil or hachure marks on the plat below.

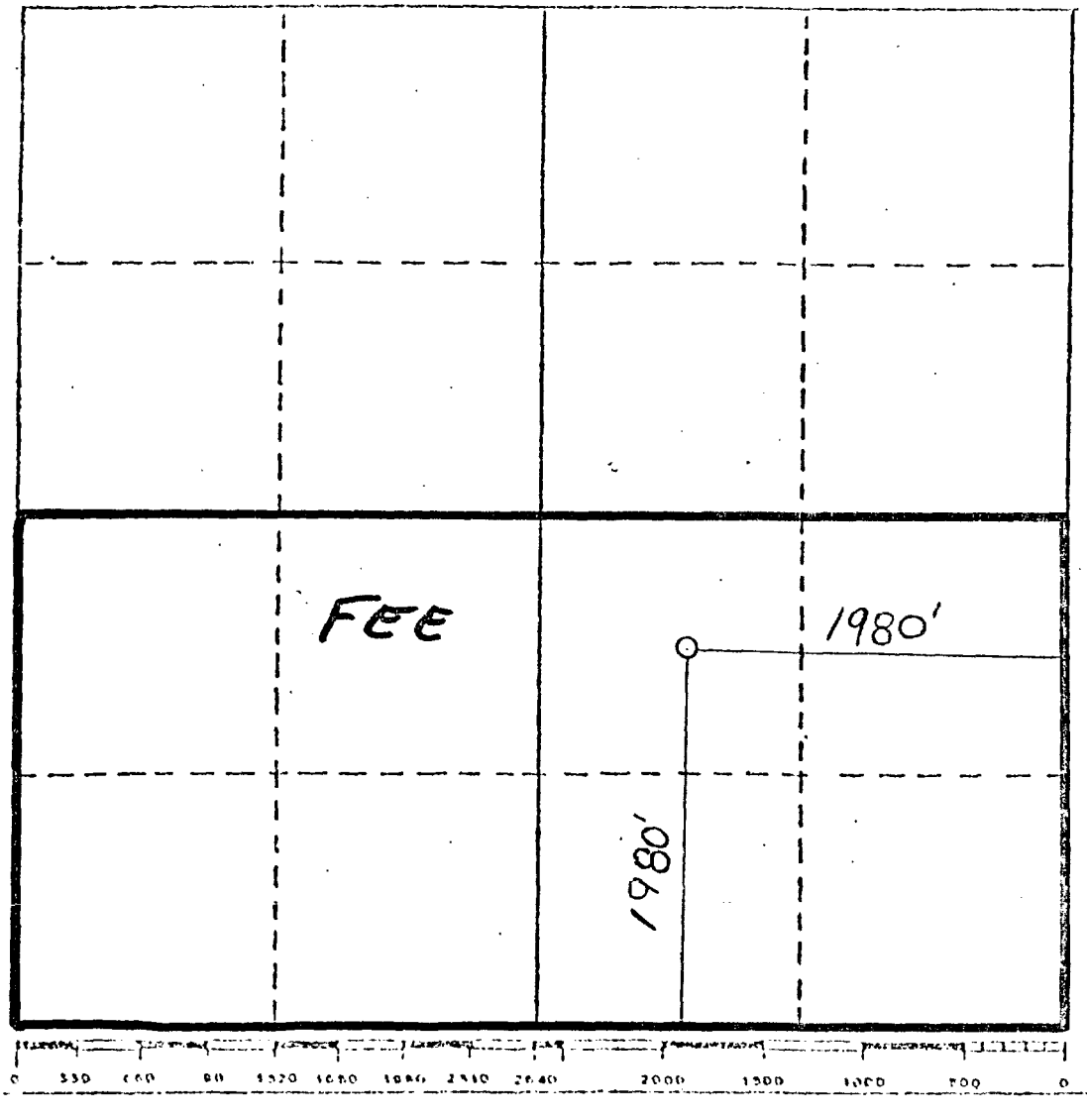
2. If more than one lease is dedicated to the well, outline each and identify the ownership thereof (both as to working interest and royalty).

3. If more than one lease of different ownership is dedicated to the well, have the interests of all owners been consolidated by communitization, unitization, force-pooling. etc?

☐ Yes ☐ No If answer is "yes," type of consolidation _____

If answer is "no," list the owners and tract descriptions which have actually been consolidated. (Use reverse side of this form if necessary.) _____

No allowable will be assigned to the well until all interests have been consolidated (by communitization, unitization, forced-pooling, or otherwise) or until a non-standard unit, eliminating such interests, has been approved by the Division.



CERTIFICATION

I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief.

Cy Cowan

Name: Cy Cowan

Position: Regulatory Agent

Company: Yates Petroleum Corp.

Date: January 16, 1985

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my knowledge and belief.

refer to original plat

Date Surveyed

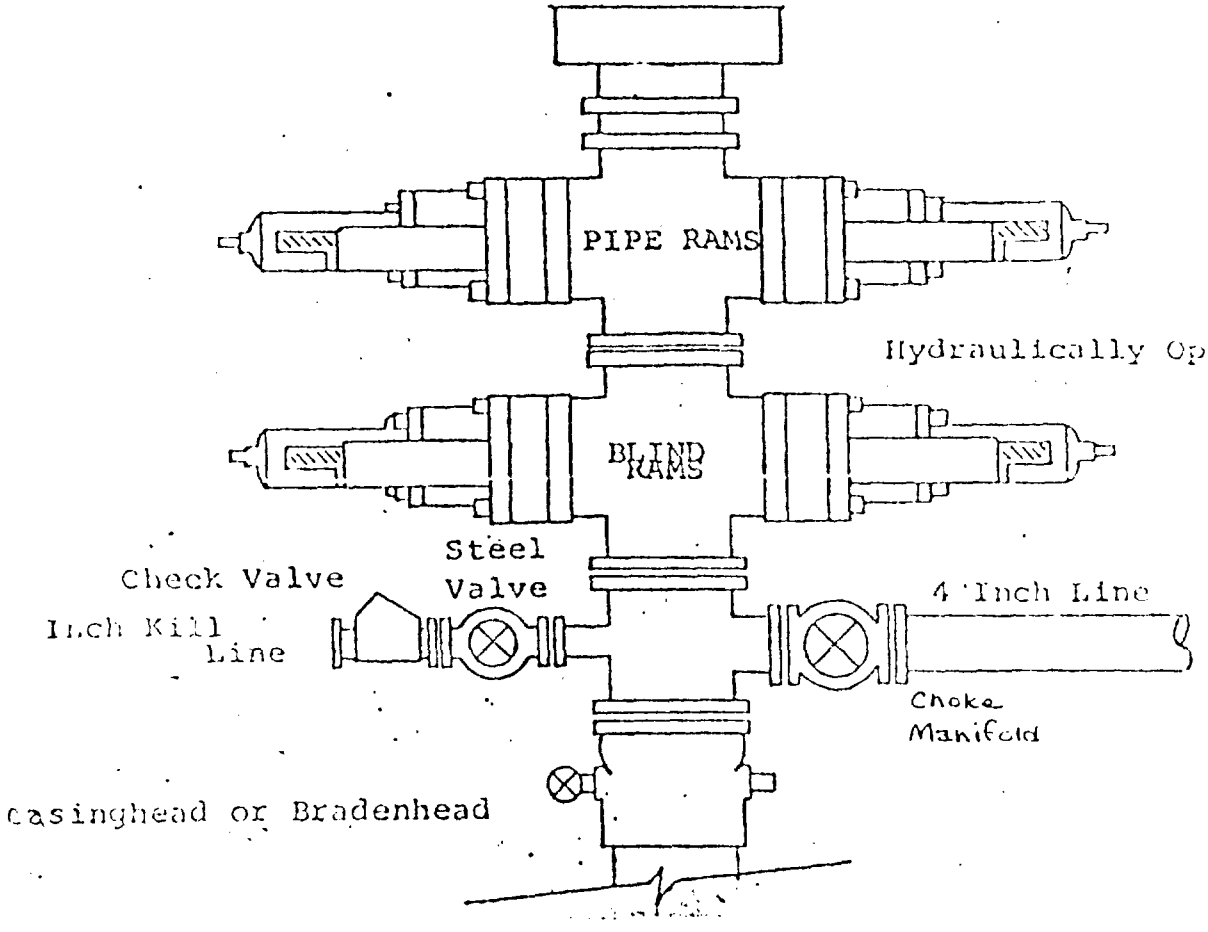
Registered Professional Engineer and/or Land Surveyor

Certificate No.

EXHIBIT B

BOP DIAGRAM

RATED 3000#



Hydraulically Operated B.O.P.'s

YATES PETROLEUM CORPORATION

207 SOUTH FOURTH STREET
ARTESIA, NEW MEXICO 88210

AUTHORITY FOR EXPENDITURE

Morrow Completion

RE-ENTRY

AFE # 85-011-0
REVISION #
DATE 1-16-85

LEASE NAME Flint GU #4 — LOCATION 1980 S&E, Sec. 22-18S-26E
COUNTY Eddy — STATE New Mexico — FIELD
HORIZON Morrow — EST. T. D. 9250' — EST. SPUD DATE
EST. COMPLETION DATE — DRILLING CONTRACTOR

PRIMARY OBJECTIVE: [ ] OIL [X] GAS [ ] OIL AND/OR GAS
PURPOSE : [ ] DRILLING-NEW [ ] RECOMPLETION [X] OTHER (SUPPLEMENTAL AFE, ETC.)
TYPE WELL : [ ] DEVELOPMENT [ ] EXPLORATION X RE-ENTRY

	INTANGIBLE COSTS:	DRY HOLE	COMPLETION
9210	STAKING PERMIT & LEGAL FEES	$ 1000	$ 1000
9211	LOCATION, RIGHT-OF-WAY	-	-
9212	DRILLING, FOOTAGE - @ -	-	-
9213	DRILLING, DAYWORK 2 days @ $5000/day	10000	10000
9214	DRILLING WATER	500	1000
9215	DRILLING MUD & ADDITIVES	-	-
9216	MUD LOGGING UNIT	-	-
9217	SURFACE & INT. CEMENT, CSG., TOOLS & SERVICES	-	-
9218	DRILL STEM TESTING	-	-
9219	ELECTRIC LOGS - OPEN HOLE	-	-
9220	TOOL & EQUIP. RENTAL, TRUCKING, WELDING	2500	5000
9221	SUPERVISION & OVERHEAD	-	-
9223	CORING, TOOLS & SERVICES	-	-
9224	BITS, TOOLS & SUPPLIES	500	1000
9235	PRODUCTION CEMENT, CASING, TOOLS & SERVICES	-	-
9222	CONTINGENCY	500	500
9241	COMPLETION UNIT	-	18000
9242	WATER FOR COMPLETION	-	500
9243	MUD ADDITIVES FOR COMPLETION	-	-
9244	CEMENT, TOOLS, SERVICES & TEMP. SURV. FOR COMP.	-	-
9245	ELECTRIC LOGS, PERFORATION TEST FOR COMPLETION	-	2000
9246	TOOLS, TRUCK, WELD. & EQUIP. RENTAL FOR COMP.	-	-
9247	STIMULATION - COMPLETION	-	35000
9248	SUPERVISION & OVERHEAD - COMPLETION	-	2000
9249	ADDT'L LOCATION, ROAD WORK & SURFACE DAMAGES	-	-
9251	BITS, TOOLS, ETC. PURCHASED FOR COMPLETION	-	-
9250	CONTINGENCY - COMPLETION	-	-
	TOTAL INTANGIBLES	15000	76000
	EQUIPMENT COSTS:		
9301	CHRISTMAS TREE AND WELL HEAD	1000	2000
9302	CASING	-	-
9302		-	-
9302		-	-
9303	TUBING 2-7/8" 6.5# J-55 @9100'	-	28000
9304	PACKER & SPECIAL EQUIPMENT	-	4000
9350	CONTINGENCY	-	-
	WELL EQUIPMENT	1000	34000
	LEASE & BATTERY EQUIPMENT COSTS:		
9401	PUMPING EQUIPMENT	-	-
9402	STORAGE 1-210b. welded tank/walkway+stair/fbrgls tnk	-	5200
9403	SEPARATION EQUIP., FLOWLINES, VALVES, FITTINGS	-	7400
9404	TRUCKING & CONSTRUCTION COSTS	-	2400
	TOTAL LEASE & BATTERY EQUIP.	-	15000
	TOTALS	$16000	$125000

APPROVAL OF THIS AFE CONSTITUTES APPROVAL OF THE OPERATOR'S OPTION TO CHARGE THE JOINT ACCOUNT WITH TUBULAR GOODS FROM OPERATOR'S WAREHOUSE STOCK AT THE RATES STATED ABOVE.

YATES PETROLEUM CORPORATION	DATE	SHARE
BY		
BY		
BY		
BY		
BY		

YATES PETROLEUM CORPORATION

207 SOUTH FOURTH STREET
ARTESIA, NEW MEXICO 88210

AUTHORITY FOR EXPENDITURE

UPPER ZONES

RE-ENTRY

AFE # 85-011-1
REVISION #
DATE 1-16-85

LEASE NAME Flint GU #4 — LOCATION 1980 S&E, Sec. 22-18S-26E
COUNTY Eddy — STATE New Mexico — FIELD
HORIZON Upper Zones — EST. T. D. 9250' — EST. SPUD DATE
EST. COMPLETION DATE — DRILLING CONTRACTOR

PRIMARY OBJECTIVE: ☐ OIL ☒ GAS ☐ OIL AND/OR GAS
PURPOSE : ☐ DRILLING-NEW ☐ RECOMPLETION ☒ OTHER (SUPPLEMENTAL AFE, ETC.)
TYPE WELL : ☐ DEVELOPMENT ☐ EXPLORATION X-Re-Entry Supplement for Upper Zones

	INTANGIBLE COSTS:	DRY HOLE	COMPLETION
9210	STAKING PERMIT & LEGAL FEES	$	$
9211	LOCATION, RIGHT-OF-WAY		
9212	DRILLING, FOOTAGE _____ @ _____		
9213	DRILLING, DAYWORK _____ @ _____		
9214	DRILLING WATER		
9215	DRILLING MUD & ADDITIVES		
9216	MUD LOGGING UNIT		
9217	SURFACE & INT. CEMENT, CSG., TOOLS & SERVICES		
9218	DRILL STEM TESTING		
9219	ELECTRIC LOGS - OPEN HOLE		
9220	TOOL & EQUIP. RENTAL, TRUCKING, WELDING		
9221	SUPERVISION & OVERHEAD		
9223	CORING, TOOLS & SERVICES		
9224	BITS, TOOLS & SUPPLIES		
9235	PRODUCTION CEMENT, CASING, TOOLS & SERVICES		
9222	CONTINGENCY		
9241	COMPLETION UNIT		45000
9242	WATER FOR COMPLETION		3000
9243	MUD ADDITIVES FOR COMPLETION		
9244	CEMENT, TOOLS, SERVICES & TEMP. SURV. FOR COMP.		15000
9245	ELECTRIC LOGS, PERFORATION TEST FOR COMPLETION		19000
9246	TOOLS, TRUCK, WELD. & EQUIP. RENTAL FOR COMP.		8000
9247	STIMULATION - COMPLETION		130000
9248	SUPERVISION & OVERHEAD - COMPLETION		11000
9249	ADDT'L LOCATION, ROAD WORK & SURFACE DAMAGES		
9251	BITS, TOOLS, ETC. PURCHASED FOR COMPLETION		4000
9250	CONTINGENCY - COMPLETION		
	TOTAL INTANGIBLES		235000
	EQUIPMENT COSTS:		
9301	CHRISTMAS TREE AND WELL HEAD		2000
9302	CASING _____		
9302	_____		
9302	_____		
9303	TUBING _____		
9304	PACKER & SPECIAL EQUIPMENT		
9350	CONTINGENCY		
	WELL EQUIPMENT		2000
	LEASE & BATTERY EQUIPMENT COSTS:		
9401	PUMPING EQUIPMENT		16000
9402	STORAGE _____		
9403	SEPARATION EQUIP., FLOWLINES, VALVES, FITTINGS		5000
9404	TRUCKING & CONSTRUCTION COSTS		4000
	TOTAL LEASE & BATTERY EQUIP.		25000
	TOTALS		$262000

APPROVAL OF THIS AFE CONSTITUTES APPROVAL OF THE OPERATOR'S OPTION TO CHARGE THE JOINT ACCOUNT WITH TUBULAR GOODS FROM OPERATOR'S WAREHOUSE STOCK AT THE RATES STATED ABOVE.

YATES PETROLEUM CORPORATION	DATE	SHARE
BY _____		
BY _____		
BY _____		
BY _____		
BY _____		

Flint "GU" Com. #4 - formerly Pan Am Flint Gas Unit #1
NW¼SE¼, Sec. 22, T18S-R26E,
Eddy County, New Mexico

Prognosis for Testing and Recompletion

The following chronology is based upon work days and does not take into consideration weekends or holidays.

Day	1	Move in workover unit; remove Blanco equipment from well.
	2	Pick up YPC work string and packer, RIH and nipple up.
	3-5	Swab and test Morrow perfs 9094-9116, test deliverability.
	6	If Morrow is not commercial, spot 500 gallons Morflo acid. Let soak 2 hours, put away.
	7	Swab and test Morrow perfs 9094-9116.
	8-12	Shut in for pressure build-up. Amarada bomb in hole.
	13	If Morrow is not commercial, acidize with 2000 gallons Morflo acid + N2.
	14-16	Swab and test Morrow perfs 9094-9116.
	17	If Morrow is not commercial, sand frac with 10,000 gallons gelled KCl water and 5000 gallons CO2 and 15,000 pounds of sand.
	18-22	Flow and swab back well and evaluate deliverability.
	23	If Morrow is not commercial, will proceed with workover. Pull tubing and packer, run CBL correlation log.
	24	Perforate Strawn Sand 8504-08, run Retrievable Bridge Plug to 8600'.
	25-26	RIH with tubing and packer, test RBP, if ok spot acid across Strawn perfs, set packer, acidize perfs 8504-08 with 1000 gallons NEA + N2.
	27-29	Flow back or swab back load, get stabilized flow rate and fluid sample.
	30-33	Get 72-hour bottom hole pressure build-up, evaluate for Sand frac feasibility.
	34-39	If warranted, sand frac with 10,000 gallons gelled KCL water and 5000 gallons CO2, flow back and evaluate well completion.
	40	If Strawn not commercial, pull out of hole, set cast iron bridge plug at 9000' with cement on top of plug, cast iron bridge plug at 8600' with cement on top of plug.
	41	Perforate Canyon Lime 7944-54; run in hole with tubing and packer.
	42	Spot acid across perfs, set packer and treat Canyon with 1500 gallons NEA + N2. Flow back or swab back load.
	43-44	Swab or flow well, get stabilized flow rate and fluid sample.
	45-48	Get 72-hour bottom hole pressure build-up, evaluate for additional stimulation.
	49-52	Re-treat well with 10,000-15,000 gallons retarded acid + CO2, flow back and evaluate well completion.
	53-54	If Canyon completion not feasible, POOH. Set cast iron bridge plug at 7800' with cement on top of plug, perforate Wolfcamp carbonate at 6250-56, RIH with tubing and packer.

Day	55	Spot acid across perfs, set packer and treat Wolfcamp with 1000 gallons 15% NefeA + N2. Flow back.
	56-58	Swab or flow well, get stabilized flow and fluid sample.
	59-62	If have oil or gas show, get 72-hour bottom hole pressure build-up. Evaluate for additional stimulation.
	63-67	Re-treat well, either 10,000-15,000 gallons retarded acid + CO2 or 10,000-15,000 gallons Sand frac. Flow back or swab test and evaluate for well completion.
	68	If Wolfcamp is not commercial, POOH. Set CIBP at 6200' with cement on top of plug. If CBL indicates cement is not circulated behind 5 1/2" casing, perforate 5 1/2" casing at about 3400', circulate 5 1/2"- 9 5/8" annulus and cement 5 1/2" casing to the surface.
	69	WOC. Run calibrated Gamma Ray Neutron Log, 3400' to 1500'.
	70	Perforate Yeso dolomite at 2830-3256 selectively, acidize with 2000 gallons NefeA and scale and corrosion inhibitors. Sand frac with 60,000-80,000 gallons gelled KCl water down casing.
	71-72	RIH with tubing, anchor rods and pump. Set up pumping unit and put well to pumping back load.
	73-110	Pump back load and evaluate well for completion. Yeso normally requires 20-40 days of pumping before well begins to cut oil. Then additional pumping is required for evaluation of commercial potential.

At this point if Yeso completion is unsatisfactory, will consider re-completion in the San Andres.

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

Case 8323
Order No. R-7693-A

APPLICATION OF BLANCO ENGINEERING, INC. FOR SALT WATER DISPOSAL, EDDY COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8 a.m. on January 16, 1985, at Santa Fe, New Mexico, before Examiner Gilbert P. Quintana.

NOW, on this ____ day of January, 1985, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS:

(1) Due public notice having been given as required by law, the Division has jurisdiction of the cause and the subject matter thereof.

(2) The applicant, Blanco Engineering, Inc., proposes to re-enter the Pan American Flint #1 Well located 1,980 feet from the South and East lines of Section 22, Township 20 South, Range 28 East, N.M.P.M., Eddy County, New Mexico, to utilize the said well to dispose of produced salt water in the Morrow formation, Atoka-Pennsylvanian Gas Pool, with injection through existing perforations in the interval from 9,094 feet to 9,116 feet.

(3) On September 5, 1984, this matter came on for hearing before a Division Examiner, and on November 9, 1984, the Division entered Order R-7693 approving the application of Blanco Engineering, Inc.

(4) Notice had not been given to Yates Petroleum Corporation, the leasehold operator of the N/2 SE/4 of said Section 22, the tract upon which the well is located, and leasehold operator of certain tracts offsetting that the subject well as required by Division Rule 701.

(5) Order R-7693 was vacated by the Division on December 20, 1984.

(6) Yates Petroleum Corporation has appeared in opposition to this application.

(7) The proposed disposal well was drilled by Pan American Petroleum Corporation as a Pennsylvanian test and was plugged and abandoned in 1970.

(8) Yates Petroleum Corporation presented expert testimony which demonstrated that the proposed disposal zone contained commercial quantities of gas and that it had the right to re-enter the well and test the Pennsylvanian and other formations in this well, and that it was prepared to do so.

(9) Gas would be wasted and the correlative rights of Yates Petroleum Corporation would be violated if the subject well is utilized for disposal purposes prior to affording Yates Petroleum Corporation a reasonable opportunity to attempt to return the well to production.

(10) In order to afford Yates Petroleum Corporation the reasonable opportunity to determine the presence of hydrocarbon production in the Pennsylvanian and other formations under the S/2 of said Section 22, Yates Petroleum Corporation shall have a period of time not to exceed 180 days in which to re-enter the subject well to test for hydrocarbon production.

(11) Yates Petroleum Corporation shall notify the Director of the Division of the establishment of commercial production from the subject well in writing, giving proof of the commercial nature of such production.

(12) If Yates Petroleum Corporation fails to re-enter the well within 180 days from the date of this Order, or in the event commercial production has not been obtained from the well within that time period, then the subject application shall be granted upon the terms and conditions set forth herein.

(13) The injection should be accomplished through 2 7/8-inch plastic lines tubing installed in a packer; that the casing-tubing annulus should be filled with an inert fluid; and that a pressure gauge or approved leak detection device should be attached to the annulus in order to determine leakage in the casing, tubing or packer.

(14) The injection well should be equipped with a pressure limiting switch or other acceptable device which will limit the wellhead pressure on the subject well to no more than 1,820 psi.

(15) The Director of the Division should be authorized to administratively approve an increase in the injection pressure

upon a proper showing by the operator that such higher pressure will not result in migration of the injected waters from the injection formation.

(16) The operator should notify the supervisor of the Artesia District Office of the Division on the date and time of the installation of disposal equipment so that the same may be inspected.

(17) The operator should take all steps necessary to insure that the injected water enters only the proposed injection interval and is not permitted to escape to other formations or onto the surface.

IT IS THEREFORE ORDERED:

(1) That after the effective date of this Order and within a period not to exceed 180 days thereafter, Yates Petroleum Corporation may re-enter the Pan American Flint Well #1 located 1,980 feet from the South and East lines of Section 22, Township 20 South, Range 38 East, Eddy County, New Mexico, to test said well and attempt to return it to production from the Pennsylvanian or other formation.

(2) Any efforts to return the well to production shall be completed within 180 days following the date of this Order.

(3) Upon establishing commercial production from the subject well, Yates Petroleum Corporation shall give notice and proof in writing to Blanco Engineering, Inc. and to the Director of the Division.

(4) In the event the well is not recompleted as a commercial producer within 180 days of the effective date of this Order, then and in that event, the applicant, Blanco Engineering, Inc., is authorized to utilize the Pan American Flint Well #1 located 1,990 feet from the South and East lines of Section 22, Township 20 South, Range 28 East, N.M.P.M., Eddy County, New Mexico, to dispose of produced salt water into the Morrow formation, injection to be accomplished through 2 7/8-inch tubing installed in a packer, with injection through existing perforations in the interval from 9,094 feet to 9,116 feet;

PROVIDED HOWEVER, that the tubing shall be plastic lined; that the casing tubing annulus shall be filed with an inert fluid; that a pressure gauge shall be attached to the annulus or the annulus shall be equipped with an approved leak detection device in order to determine leakage in the casing, tubing or packer.

(5) The injection well shall be equipped with a pressure limiting switch or other acceptable device which will limit the wellhead pressure on the injection well to no more than 1,820 psi.

(6) The Director of the Division may authorize an increase in injection pressure upon a proper showing by the operator of said well that such higher pressure will not result in migration of the injected fluid from the injection formation.

(7) The operator shall notify the supervisor of the Artesia District Office of the Division of the date and time of the installation of disposal equipment so that the same may be inspected.

(8) The operator shall immediately notify the supervisor of the Division's Artesia District Office of the failure of the tubing, casing or packer in said well, or the leakage of water from or around said well, and shall take such steps as may be timely and necessary to correct such failure or leakage.

(9) The applicant shall conduct disposal operations and submit monthly reports in accordance with Rules 702, 703, 704, 705, 706, 708 and 1120 of the Division Rules and Regulations.

(10) 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

R. L. STAMETS, Director

S E A L

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

TONEY ANAYA
GOVERNOR

January 31, 1985

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-5800

Mr. Thomas Kellahin
Kellahin & Kellahin
Attorneys at Law
Post Office Box 2265
Santa Fe, New Mexico

Re: CASE NO. 8323
ORDER NO. R-7693-A

Applicant:

Blanco Engineering, Inc.

Dear Sir:

Enclosed herewith are two copies of the above-referenced Division order recently entered in the subject case.

Sincerely,

R. L. STAMETS
Director

RLS/fd

Copy of order also sent to:

Hobbs OCD x
Artesia OCD x
Aztec OCD

Other William F. Carr

CAMPBELL & BLACK, P.A.
LAWYERS

JACK M. CAMPBELL
BRUCE D. BLACK
MICHAEL B. CAMPBELL
WILLIAM F. CARR
BRADFORD C. BERGE
J. SCOTT HALL
PETER N. IVES
RUTH S. MUSGRAVE
LOURDES A. MARTINEZ

JEFFERSON PLACE
SUITE I - 110 NORTH GUADALUPE
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87501
TELEPHONE: (505) 988-4421
TELECOPIER: (505) 983-6043

February 20, 1985

RECEIVED
FEB 1985
OIL CONSERVATION DIVISION

HAND DELIVERED

Case File

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504

Re: Oil Conservation Division Case 8323: Application of Blanco Engineering, Inc. for Salt Water Disposal, Eddy County, New Mexico.

Dear Tom:

This letter is to confirm our discussion of this date whereby I advised that Yates Petroleum Corporation will commence its efforts to re-enter the Pan American Flint Gas Com Well No. 1 in an attempt to return it to commercial production. Pursuant to the provisions of Order No. R-7693-A, Paul White and the Artesia District Office of the Division will be advised prior to Yates conducting any production tests on the well so that Mr. White may witness these tests if he desires. It is further our understanding that Blanco Engineering, Inc. will not seek a de novo hearing in this case during the time required for Yates to proceed with its re-entry.

If the well is returned to commercial production, we would like to meet with you and Mr. White to discuss which costs, if any, incurred by Blanco Engineering benefited Yates Petroleum Corporation. If we cannot reach agreement we will, of course, go to the Oil Conservation Division on March 27 and ask them to determine what benefits or damage accrued to Yates Petroleum Corporation has a result of Blanco Engineering, Inc.'s efforts to convert this well to water disposal.

I remain available to discuss this matter with you at any convenient time, and am hopeful that we will be able to resolve

this matter without having to further involve the Oil Conservation Division.

Best regards.

Very truly yours,

William F. Carr

William F. Carr

WFC/cv

cc: Mr. Randy Patterson
Mr. Richard L. Stamets (via hand delivery)

BLANCO
engineering
inc.

116 North First Street / (505) 746-3223
Artesia, New Mexico 88210

March 1, 1985

Quintana

New Mexico Oil Conservation Commission
P.O. Box 2088
Santa Fe, New Mexico 87501

ATTN: Mr. Dick Stamets

Re: Case No. 8323 - Order No. R-7693-A

Dear Mr. Stamets:

Yates Petroleum Corporation has been testing the Atoka (Morrow) Zone in the Pan American Flint Gas Com Well No. 1 since February 21, 1985. They have tested only water and gas which is too small an amount to measure.

Blanco Engineering, Inc. is the bona-fide owner of this plugged and abandoned well by virtue of the contractual agreement between the surface and mineral owner and Blanco.

As you will recall the NMOCC gave Yates the right to test the Atoka Zone for commercial production. No other zones were mentioned nor discussed in the hearing. The language under (10) of the order clearly directs Yates to turn the well over to Blanco if the well in non-commercial.

Any attempt by Yates Petroleum Corporation to perforate and test other zones would wreck the well for Salt Water Disposal. Further, I do not think it was the intention of the Commission to allow Yates Petroleum Corporation to test any zone except the one applied for as to Salt Water Disposal purpose.

I respectfully request that the Commission keep in close contact with the well test and return the well to Blanco as soon as possible. Otherwise, a long and expensive court battle will be the result.

Best regards,

Paul G. White

PGW/sf

cc: Mr. Tom Kellahin

BLANCO
engineering
inc.

116 North First Street / (505) 746-3223
Artesia, New Mexico 88210

March 19, 1985

New Mexico Oil Conservation Commission
P.O. Box 2088
Santa Fe, New Mexico 87501

ATTN: Mr. Dick Stamets - Director

Yates shut down Saturday the 16th RPW

Re: Flint SWD Case - Yates Petroleum Corporation
Show Case Hearing set for March 27, 1985

Dear Dick:

It would seem imperative that Yates Petroleum Corporation be instructed to run a sustained production test on the subject well. I believe they are in the Canyon Zone at the present time.

According to the order handed down by the Commission, Blanco will be allowed to witness this test. It seems reasonable for us to demand that a three day flow period be established for stabilized rates and then a (24) hour test be conducted.

The only test I have heard about, which was conducted without Blanco being informed so that we could witness, was a test run on March 16, 1985, right after a CO_2 frac treatment.

To be realistic a BTU must be run on the gas to make sure we are not measuring residual CO_2 after the treatment. Rates give to me were 73 MCF, 36 BW and 1.7 BO per day. This could hardly be called commercial from the expenditure which they have made to get to this point.

Blanco Engineering, Inc., has complied with the requests and orders issued by the Commission. We even extended the test period for Yates Petroleum Corporation's benefit.

We respectfully request that an adequate, witnessed and thorough test be conducted at this time so that all parties on March 27, 1985, will be in possession of the same criteria and data.

Best regards,

Paul G. White
President

PGW/sf

cc: Mr. Les Clemmons
Mr. Tom Kellahin

KELLAHIN and KELLAHIN
Attorneys at Law
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Post Office Box 2265
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Jason Kellahin
W. Thomas Kellahin
Karen Aubrey

Telephone 982-4285
Area Code 505

March 29, 1985

Mr. Gilbert Quintana
Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

"Hand Delivered"

Re: Case 8323 (Reopened)
Order R-7693-A
Show Cause Hearing

Dear Mr. Quintana:

On behalf of Blanco Engineering, Inc., please find enclosed our proposed order and our Memorandum of Law and Arguments on notice and ownership.

Very truly yours,

W. Thomas Kellahin

WTK:ca
Enc.

cc: Paul White
Blanco Engineering
116 North First Street
Artesia, New Mexico 88210

William F. Carr, Esq.
Attorney at Law
P. O. Box 2208
Santa Fe, New Mexico 87501

Mr. Les A. Clements
Oil Conservation Division
P. O. Drawer DD
Artesia, New Mexico 88210

Jeff Taylor, Esq.
Oil Conservation Division
Post Office Box 2088
Santa Fe, New Mexico 87501

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

APPLICATION OF BLANCO ENGINEERING, INC., FOR SALT WATER DISPOSAL, EDDY COUNTY, NEW MEXICO.

CASE 8323
ORDER R-7693-A

MEMORANDUM OF BLANCO ENGINEERING, INC.

Blanco Engineering, Inc., by and through its attorneys, Kellahin & Kellahin, files this Memorandum of Law in support of its application to use the Pan American Flint Gas Com Well No. 1 for salt water disposal.

This Memorandum provides an analysis of the essential issues that the Division Examiner must decide in this case. In addition, we have also discussed the two issues requested by Division Counsel at the hearing on March 27, 1985.

SUMMARY OF RELEVANT FACTS:

Pan American completed the Flint Gas Com Well No. 1 on January 10, 1959, and thereafter produced some 5.6 Billion cubic feet of gas over the next eleven years. In 1970, Pan American plugged and abandoned the well and filed a Division form C-103 stating the the Morrow perforations

from 9094 to 9116 feet had been watered out by formation water.

The lease under which Pan American drilled the Flint well expired. On October 21, 1975, the owner of the surface and minerals executed a new oil and gas lease which on March 23, 1976, was assigned to Yates Petroleum Corporation and others. That lease did not include specific language to show that the Lessor had leased to Yates Petroleum Corporation the right to use the plugged and abandoned Flint Well.

On August 31, 1984, Blanco Engineering, Inc. obtained an agreement to use the Flint well for salt water disposal from the Flint Trust Account, which is the owner of the surface of the Flint Well and is also the successor to the lessor under the Yates Oil and gas lease.

By Division Order R-7693, Blanco Engineering was authorized to use the Flint well for Disposal into the Morrow performations from 9094 to 9116 feet.

Division Order R-7693-A vacated Order R-7693 and authorized Yates Petroleum Company to re-enter the Flint Well and to attempt to establish production from the Flint well in commercial quantities. Yates Petroleum Company has failed to establish production.

Blanco Engineering, Inc. now desires to use the wellbore for saltwater disposal into the same zone from which Pan American formerly had produced gas and from which

Yates was unable to produce anything except water.

FIRST ISSUE:

DO YATES PETROLEUM COMPANY AND BLANCO ENGINEERING, INC. EACH HAVE THE NECESSARY STANDING TO APPLY TO THE NEW MEXICO OIL CONSERVATION DIVISION FOR AN ORDER IN THIS CASE?

The Oil Conservation Division does not resolve questions of ownership. However, in a dispute between parties over the ownership of a wellbore that has been plugged and abandoned, before any party has standing to present a case to the Oil Conservation Division, Division Rule 1203 must be satisfied.

(a) Rule 1203 establishes the method of initiating a hearing and states in part:

> "The Division upon its own motion, the Attorney General on behalf of the State, and any operator or producer, or any other person having a property interest may institute proceedings for a hearing."

(b) Rule 01. Definitions:

> Owner means the person who has the right to drill into and produce from any pool, and to appropriate the production either for himself or for himself and others.
>
> Operator shall mean any person or persons who, dully authorized, is in charge of the development of a lease or the operation of a producing property.

In this case, Blanco Engineering, Inc. has a sufficient property interest in the wellbore as a result of an agreement with the surface owner to give it standing to

appear before the Division. Yates Petroleum Company also has sufficient standing to appear in this case because it is the current oil and gas lessee of the acreage upon which the plugged and abandoned well is located.

SECOND ISSUE:

THE OIL CONSERVATION DIVISION HAS ACTED THUS FAR CONSISTANT WITH THE LAW CONCERNING OWNERSHIP OF THE FLINT WELLBORE.

The Division has requested we provide the Division with a statement of the law as it applies to plugged and abandoned wells.

While the Division does not decide issues of ownership of wellbores, its decisions on applications for the use of plugged and abandoned wells for salt water disposal purposes must be made consistent with that law in order to assure that waste does not occur and that correlative rights are protected. It is therefore necessary for the Division to have an understanding of the law concerning ownership of such wells.

There are several Oklahoma cases which discuss the ownership of a wellbore drilled by the former lessee for a lease that has now expired. Those cases are Sunray Oil Co., v. Cortez Oil Company, 112 P. 2d 792 (Okla. 1941), West Edmond Salt Water Disposal Ass'n. v. Rosecrans, 226 P. 2d 965 (Okla. 1950) and McDaniel v. Moyer, 662 P. 2d 309 (Okla. 1983).

In each of those cases, the court was dealing with the right to a plugged wellbore that was drilled by a prior lessee pursuant to a lease that had expired. In each of those cases, the new lessee and the surface owner were in disputes involving the rights to the wellbore plugged by the former lessee.

Of these cases, the Cortez case, supra, sets forth basic guidelines by which to resolve the Flint case:

Cortez sought injunction against Sunray using an oil and gas well to dispose of salt water from other oil and gas wells.

The lower court granted an injunction. Sunray appealed and judgment was reversed with directions to dismiss.

FACT SITUATION:

Cortez owned an undivided 1/4 mineral interest in the land on which the well in question was located. The well had been abandoned but not plugged when Sunray obtained an assignment of the oil and gas lease on the land and a license from Greer, owner of the surface rights and 53/80 of the mineral interest, to use the well for salt water disposal. Sunray partially plugged the well and ommenced using it for disposal purposes.

Cortez felt there was a possibility of oil and gas in other places on the 10-acre tract on which the well is located and feared that salt water from the wells might

escape into formations containing oil and gas and force it from the land, thus prohibiting Cortez from ever finding or producing oil or gas under the mineral grant.

COURT FINDINGS:

1. Cortez' grant does not give it ownership of oil and gas in place but right to explore for and produce. Cortez' rights are not exclusive and are shared by the landowner. Cortez' rights had not terminated and Sunray agreed that Cortez had the same right to use the land for the same purpose and even the same well, subject to payment of its share of expenses.

2. After expert witness testimony from both sides, the Court concluded that there was "no probability that any possible oil producing formation exists" which might be harmed by the disposal of salt water.

3. That Greer, owner of the land, subject only to the oil and gas lease, and subject to the one-fourth interest in the oil and gas and other mineral rights, owned by plaintiff, has the right to use the surface and substrata of her land as she sees fit, or permit others to do so, so long as such use does not injure or damage other persons.

4. In order to obtain an injunction there must be

reasonable probability of injury without same.

In a special concuring opinion, Justice Arnold held that: a mineral deed creates a separate limited estate in the land and thus Cortez has co-equal rights with the fee owner to the extent of the limited purposes set forth in the mineral deed. Both fee owners and Cortez can protect their rights from invasion and damages by the other or his assigns or any third person. The ownership of oil and gas is not involved here but rather whether the evidence is sufficient to show that Cortez's estate will be damaged by such special use.

Applying the Cortez case, supra, standard to the Flint Well, we can reach the following conclusions:

(1) The Flint well was drilled by Pan American pursuant to an oil and gas lease. The Flint well is the property of Pan American so long as the oil & gas lease, pursuant to which the well was drilled, remains in full force and effect even if the well has been plugged and abandoned.

(2) When the oil and gas lease by which the Flint well was drilled expires, the ownership of the wellbore reverts to the owner of the surface. In this case the owner of the surface is the same as the owner of the minerals and the Flint well reverted to the Flint Family.

(3) Then the Flint Family executed a new lease that failed to specifically include the right to use the plugged and abandoned Flint wellbore. Under the factual situation, the Flint family, as lessor and surface owners, still owned the Flint wellbore subject to the rights of Yates to re-enter the Flint well and utilize it for commercial production.

(4) The Division granted to Yates Order R-7693-A which is consistent with established case law. Then Yates exercised its rights and failed to establish a reasonable probability that the wellbore can be utilized for the commercial production or that a formation capable of commercial oil/gas production might be harmed by the use of the wellbore for salt water disposal.

Yates was entitled to the first opportunity to utilize the wellbore for commercial oil/gas production. Having been unsuccessful in that attempt after a reasonable effort, then the wellbore belongs to the surface owner to do with as the surface owner desires. In this case, the surface owner granted the rights to that wellbore to Blanco Engineering, Inc., to use it for salt water disposal into a formation underlying the lease that had been proven incapable of further oil or gas production.

THIRD ISSUE:

YATES PETROLEUM COMPANY RECEIVED ADEQUATE NOTICE OF CASE 8323.

Early in this case, Yates Petroleum Corporation moved to have Division Order R-7693 set aside because Blanco Engineering failed to provide Yates with notice as required by Form C-108. The legal question about the adequacy of notice in this case was avoided by granting Yates a hearing on its claim.

While the constructive and actual notice issues in this case are no longer deciding issues, the Division attorney has requested this point to be briefed.

It is Blanco's contention that Yates Petroleum Corporation received both actual and constructive notice of hearing on Case 8323 held on September 5, 1984, and that failure to give notice pursuant to Form C108 was not sufficient reason to have set aside Order R-7693 for lack of an alleged adequate notice.

The Oil Conservation Division gives notice of its hearings in three ways: constructive notice by newspaper publication, actual notice by mailing its docket to those parties on its mailing list, and in certain types of cases actual notice to offset operators and owners of the surface.

Oil Conservation Division Rule 1204 provides: Rule 1204. METHOD OF GIVING LEGAL NOTICE FOR HEARING.

> Notice of each hearing before the Commission and notice of each hearing before a Division Examiner shall be given by personal service on the person affected or by publication once in a newspaper of

> general circulation published at Santa Fe, New Mexico, and once in a newspaper of general circulation published in the county or each of the counties, if there be more than one, in which any land, oil, or gas, or other property which may be affected is situated.

It is doubtful that portion of Rule 1204 which prescribes notice only by publication can withstand a legal challenge. See Cravens v. Corporation Commission, 613 P.2d 442 (Okla. 1980) and Walker v. Cleary Petroleum Corp. _____, Ala.1982) (both cases enclosed).

However, in this case, Yates Petroleum received much more than constructive notice in the newspaper.

It is apparent from the evidence presented at the hearing on January 16, 1985, that Yates had actual notice of the hearing:

(1) Yates routinely received the Division's docket and that they received notice of the docket of September 5, 1984;

(2) Yates had Division cases of its own (Case 8249 and 8304) set immediately before, and Case 8324 set immediately after the Blanco case on the same September 5, 1984, Division docket;

(3) That Yates and Blanco had the same attorney for their respective cases on the September 5, 1984, docket;

(4) That Blanco and Yates' witnesses for the September 5, 1984, hearing rode to Santa Fe from

Artesia on the same private plane along with their attorney.

(5) That Paul White of Blanco discussed the case with Eddie Mafood of Yates subsequent to receiving Order R-7639 and before Blanco re-entered the Flint Well.

The question in this case is whether the notice required by Form C-108 is necessary when Yates has received actual notice from other means. It is Blanco's contention that notice pursuant to form C-108 is not required.

As in judicial proceedings, due process of law is afforded in state administrative proceedings by constructive service of notice or process of parties residing within the state. Notice by publication pursuant to provisions of a statute prescribing such notice will sustain jurisdiction. See North Laramie Land Co. v. Hoffman, 268 US 276, 69 L ed 953, 45 S. Ct. 491; Londoner v. Denver, 210 US 373, 52 L ed 1103, 28 S Ct. 708; Bellingham Bay & B. C. R. Company v. New Whatcom, 172 US 314, 43 L ed 460, 19 S. Ct. 205; State ex rel. Public Service Company v. Boone Circuit Court, 236 Ind 202, 128 NE2d 4, 129 NE2d 552.

Of particular importance is the case of Parsons v. Venzke, 4 ND 452, 61 NE 1036 in which the North Dakota Supreme Court held: Failure to comply with a rule of the agency requiring an affidavit that the party to be served

with notice by publication could not be personally served has been held not to preclude the acquisition of jurisdiction by publication of notice, where the party had knowledge of the hearing and an opportunity to be heard. Finally, it has always been held that notice to an attorney for a party constitutes notice to the party, See, New Mexico Rules of Civil Procedure, Rule 5, Germany v. Murdock, 99 NM 679 (1983).

FOURTH ISSUE:

DIVISION ORDER R-7693-A IS A FINAL ORDER AND YATES IS ESTOPPED FROM REQUESTING THAT THE DIVISION MODIFY THAT ORDER.

Division order R-7693-A became final when Yates failed to request a de novo hearing within thirty days of the effective date of the order. Order R-7693-A provided a 45-day testing period to which Yates is absolutely bound. See Pubco Petroleum Corp. v. Oil Conservation Commission, 75 N.M. 36 (1965).

The doctrine of collateral estoppel applies to bar Yates from another hearing on the issue of the length of time to be allowed for the testing unless Yates presented new evidence at the March 27, 1985 hearing that was not avilable at the time of the January 16, 1985 hearing. Under State v. Luttrell, 28 N.M. 393 (1923), the requirements necessary to obtain a new trial upon the ground of newly discovered evidence are that the evidence (1) must be such as will probably change the result if a

new trial is granted; (2) must have been discovered since the trial; (3) must be such as could not have been discovered before the trail by the exercise of due diligence; (4) must be material to the issue; and (5) must not be merely contradictory to the former evidence." Id. at 397.

In the context of administrative hearings of oil and gas cases, the "new trial" test is based on the requirement of changed conditions. In Union Texas petroleum, et al., v. Corporation Commission of Oklahoma, 651 P.2d 652 (Okla. 1982), the court, in referring to a statutority created prohibition against a collaterial attack on a Commission order absent substantial evidence of changed conditions, said:

> "[T]he change of conditions or change in knowledge of conditions necessary to support an order of modification speaks to knowledge or conditions which did not obtain at the time the prior order was considered, and not to evidence of conditions or knowledge of conditions which could have been brought forward at the time of hearing on the prior order but were not considered at that time."

As established by the testimony of its own witness at the March 27, 1985 hearing, Yates Petroleum Corporation's reasons for asking for additional testing time on the Flint well were all based upon evidence available prior to the January 16, 1985 hearing by which Yates was granted a 45 day test period.

CONCLUSION

Yates Petroleum Corporation's attitude and position is typified by the closing statements of its attorney at the March 27, 1985 hearing. Yates attorney said, in effect, that Yates had not sought to have the ownership issue adjudicated in District Court in order to resolve this case but preferred to have the Oil Conservation Division decide this matter PROVIDED that the Oil Conservation Division continued to decide this case in favor of Yates and thereby let it have more time to test this well.

The real reason Yates has not sought District Court adjudication of ownership of the wellbore is because Yates cannot win this issue in Court. The wellbore belongs to Blanco Engineering. Yates has had a reasonable opportunity to prove that the Morrow zone is productive of gas and they have failed to meet that burden. That is the only opportunity to which they are entitled. Their correlative rights will not be violated if the Oil Conservation Division reinstates Order R7639. At this point, Yates is simply using Oil Conservation Division's administrative procedures to delay surrendering the wellbore to Blanco. Any further delay adversely affects the correlative rights of Blanco. The Oil Conservation Division is required to reinstate the Order R7639 and authorize Blanco Engineering, Inc., to proceed with salt water disposal.

Kellahin & Kellahin

By _____
W. Thomas Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87501

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE; 8328
ORDER NO. R-7693-B

APPLICATION OF BLANCO ENGINEERING,
INC., FOR SALT WATER DISPOSAL,
EDDY COUNTY, NEW MEXICO.

BLANCO ENGINEERING INC., PROPOSED ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8 a.m. on March 27, 1985, at Santa Fe, New Mexico, before Examiner Gilbert P. Quintana.

NOW, on this _____ day of April, 1985, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) This Case was first herd on September 5, 1984, and Division Order No. R-7693 authorized Blanco Engineering, Inc. to utilize the Pan American Flint Gas Com Well No. 1 located 1,980 feet from the South and East lines of Section 22, Township 18 South, Range 26 East, NMPM, Eddy County, New Mexico, for salt water disposal into the Atoka-Morrow formations.

(3) This Case was reopened and heard on January 16, 1985, at the request of Yates Petroleum Corporation which alleged that the said well was capable of commercial production and waste would occur if it was converted to disposal.

(4) As a result of the rehearing on January 16, 1985, the Division entered Order R-7693-A which vacated Order R-7693 and authorized Yates Corporation an Opportunity to test any formations in the subject well up to a maximum period of 45 days from January 30, 1985, and to appear at a Division hearing to be held on March 27, 1985, and show that the subject well is capable of commercial oil and gas production.

(5) No party requested a DeNovo Hearing within the time required for Division Order R-7693-A and said order became final on March 4, 1985.

(6) Yates Petroleum Company appeared at the hearing held on March 27, 1985, and provided evidence that it had re-entered the subject well on February 22, 1985, had tested the Morrow and Atoka formation in the subject well, and had failed to establish commercial production in those formations within the period required by Division Order R-7693-A.

(7) Yates Petroleum Company also tested the Canyon zone on a 2-day production test and determined that the subject well was capable of production of 2 barrels of oil and 70-75 mcf of gas a day.

(8) That a commerical well is a well capable of production in paying quantities; i.e., a well that will make a profit over the costs of drilling, equipping, testing, completing and operating it.

(9) Yates Petroleum Company submitted evidence that it would take about a year for the canyon production to repay the costs of the testing which did not include the recovery of any other costs.

(10) That Yates Petroleum Company has failed to provide evidence that the subject well is capable of commerical production.

(11) Yates Petroleum Company alleged that it was unable to produce the Morrow because Blanco Engineering, Inc. had damaged that formation when it converted the well for disposal purposes pursuant to Order R-7639.

(12) That there is no substantial evidence that Blanco Engineering, Inc. damaged the Morrow formation or took any action that would have resulted in damage to the wellbore.

(13) That Yates Petroleum Company has requested an additional 122 days in which to continue to attempt to establish that the subject well is capable of commercial production.

(14) That Yates Petroleum Company has failed to establish any further testing.

(15) That Yates Petroleum Company's reasons for an additional extension of testing period are all based upon facts and data available to Yates prior to the hearing held in this case on January 16, 1985, which resulted in Order R-7639-A.

(16) That no further testing period is justified.

(17) Yates Petroleum Company having had a reasonalble opportunity to establish commercial production in the subject well and having failed to do so, has had its correlative rights protected.

(18) That in order to protect the correlative rights of Blanco Engineering, Division Order R-7639 should be re-instated and the order vacating R-7639 should be withdrawn.

(19) That Yates Petroleum Company has failed to return the wellbore and the wells surface location to a condition as near as possible to that originally received by Yates Petroleum Corporation from Blanco Engineering.

(2Ø) That Yates Petroleum Corporation shall reimburse Blanco Engineering for the additional costs Blanco Engineering incurrs for restoring the well as required by Order R-7693-A in an amount to be determined by the Division after Blanco Engineering has completed conversion of the subject well to salt water disposal.

IT IS THEREFORE ORDER THAT:

(1) Division Order R-7693 is reinstated which authorizes Blanco Engineering, Inc. to utilize its Pan American Flint Gas Com Well No. 1, located 1,98Ø feet from the South and East lines of Section 22, Township 18 South, Range 26 East, NMPM, Eddy County, New Mexico, to dispose of produced salt water into the Atoka formation, injection to be accimplished through 2 7/8-inch tubing installed in a

packer set at approximately 9,025 feet, with injection into the perforated iterval from approximately 9,094 feet to 9,116 feet.

(2) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

RICHARD L. STAMETS
Director

No. .....

In the
Supreme Court of the United States
OCTOBER TERM, 1980

JAY McCOWN; L.R.C. CORPORATION; CORPORATION COMMISSION OF STATE OF OKLAHOMA; and CLEARY PETROLEUM CORPORATION,
Petitioners,

VERSUS

DON CRAVENS, Receiver for Buffalo Valley Gas Authority, a public trust; and COMMERCIAL AND INDUSTRIAL BANK OF MEMPHIS,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

The petitioners, Jay McCown and L.R.C. Corp. respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Oklahoma Supreme Court entered in this proceeding on April 29, 1980; rehearing denied July 21, 1980.

OPINION BELOW

The opinion of the Oklahoma Supreme Court, reported as *Cravens* v. *Corporation Commission*, 613 P.2d 442 (Okla. 1980), appears in Appendix "A" herein.

APPENDIX A

(Filed April 29, 1980)

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

DON CRAVENS, RECEIVER FOR BUFFALO VALLEY GAS AUTHORITY, a public trust, and COMMERCIAL AND INDUSTRIAL BANK OF MEMPHIS, Appellants,	)	
v.	)	No. 52,488
CORPORATION COMMISSION OF THE STATE OF OKLAHOMA; JAY McCOWN, L.R.C. CORP., and CLEARY PETROLEUM CORPORATION, Appellees.	)	

APPEAL FROM THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

Receiver for Buffalo Gas Authority appeals from a refusal by the Corporation Commission to vacate a drilling and spacing order on grounds receiver had no actual notice of the hearing wherein order was issued.

REVERSED

Don Ed Payne
Payne and Welch
Hugo, Oklahoma 74743

Val R. Miller
Crowe, Dunlevy, Thweatt,
Swinford, Johnson & Burdick
Oklahoma City, Oklahoma 73102
For Appellants.

Richard K. Goodwin
Oklahoma City, Oklahoma 73118
For Appellees,
Jay McCown and L.R.C. Corp.

[APPENDIX]

DOOLIN, J.:

Don Cravens, duly appointed receiver of the Buffalo Valley Gas Authority (Authority) made application to the Oklahoma Corporation Commission (Commission) to vacate an order establishing a 160 acre drilling and spacing unit for the Big Fork, Authority, a public trust established for the purpose of furnishing natural gas to certain towns had been in receivership for a year when Commission created the unit. At that time Authority, through the receiver, was operating the Reneau Well #1, a producing gas well located on an 80 acre lease included in the unit.

Jay McCown et al (applicants) obtained the drilling and spacing order for the Big Fork (Reneau Chert) alleged common source of supply underlying a quarter section in Latimer County Oklahoma. The order designated Authority's well as the unit well. Despite actual knowledge of Authority's lease, its operation of the producing well and the existence of the receivership in Pushmataha County, applicants did not notify receiver of the proceedings before the Commission wherein they sought to include Authority's 80 acre lease in a single 160 acre unit. Notice was by publication only. Applicants did not seek to space any other acreage in the area and the order was entered by default.

Receiver was unaware of the application or proceeding before Commission until after the order was issued. It was on this principle Receiver[1] sought to vacate the order, claiming had he received notice he would have appeared and resisted the application by presenting evidence there was no basis for creating the 160 acre unit, rather than an 80 acre unit.

After hearing the trial authority recommended Receiver's application be granted and the original order va-

[1] Appellant Commercial and Industrial Bank of Memphis is the bond indenture trustee for Authority.

cated. Applicants filed exceptions. Commission heard the exceptions and considered the trial examiner's report but declined to accept it or to vacate the order enlarging the unit. Receiver appeals.

Oklahoma statutes and the rules of the Corporation Commission provide the minimal type of notice required for each type hearing, depending on the relief sought.

52 O.S. 1979 Supp. § 87.1 sets forth the publication notice required when a drilling and spacing order is sought. This same requirement is contained in Commsission rule 12(b) which provides:

> "Applications Relating to Units: Notice of an application to establish, change or rearrange drilling and spacing units, and an application to create a unit pursuant to 52 O.S. 1961 Sec. 287.1 et seq. shall be published one time at least fifteen days prior to the hearing in a newspaper published in Oklahoma City, Oklahoma and in a newspaper published in each county in which lands embraced in the application are located. (52 O.S. 1961 Sec. 87.1)."

It is stipulated the notice requirements of the statutes and this rule were met. Notice was published in Oklahoma County and Latimer County where the well was located. However, there was no publication in Pushmataha County where the receivership was pending. Under these facts and circumstances we do not believe the publication notice provided by the statute and rules was adequate to meet constitutional scrutiny.

It is generally held that administrative agencies may not deprive, nor may a statute empower them to deprive, a person of his constitutionally protected rights without notice and hearing.[2] A statute or administrative rule may

[2] Southern Ry. Co. v. Commonwealth of Virginia, 290 U.S. 190, 54 S.Ct. 148, 78 L.Ed. 260 (1933); Tulsa Classroom Teachers Association, Inc. v. State Board of Equalization, 601 P.2d 99, 102 (Okla. 1979).

not take away or infringe on rights guaranteed by the constitution. We are unaware of any other proceeding so profoundly affecting personal or property rights where notice commences with publication instead of after other avenues have been exhausted, such as service of summons or notice.

Since the case of *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865, 873 (1950) promulgated standards which must be met before notice or service by publication is effective, this court has consistently required due diligence in giving notice of a proceeding to persons whose rights could be adversely affected. In *Bomford* v. *Socony Mobil Oil Co.*, 440 P.2d 713 (Okla. 1968), we stated due process requires this notice to be given by means reasonably calculated to inform all affected parties.

If the proceeds from the sale of the gas are ordered to be shared because of the creation of an enlarged unit comprising an additional 80 acres leased by another entity, there is no doubt Authority's legal rights will be directly and adversely affected thereby. When the names and addresses of the parties are known, or are easily ascertainable by the exercise of diligence, notice of pending proceedings by publication service alone, is not sufficient to satisfy the requirements of due process under federal or Oklahoma constitutions.[3]

When the original applicants sought the 160 acre drilling and spacing unit there were at least two wells in the area, the producing Reneau #1 operated by Authority, and an offset, found by Commission to be a dry hole. Applicants admit to knowledge of the producing well operated by Authority on the 80 acre lease included in the new unit and of the existence of the receivership in Pushmataha County and the identity of the receiver. No notice was

[3] Also see Johnson v. McDaniel, 569 P.2d 977 (Okla. 1977); Tammie v. Rodriquez, 570 P.2d 332 (Okla. 1977).

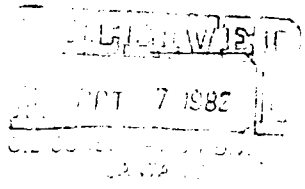
given to Authority or Receiver under appointment in Pushmataha District Court. The order was entered without opposition as no other leasehold was involved.

Regardless of the statutory provisions for publication alone applicants were required to use due diligence in notifying receiver of their application under the principles of *Bomford* and *Mullane*.

Accordingly we hold when an applicant seeks to establish a drilling and spacing unit which includes a producing leasehold and the applicant knows of the identity of parties owning an interest therein or can with due diligence ascertain same, such applicant must not only give the notice required by statute and rule but must comply with the standards of *Bomford* and *Mullane*.

REVERSED.

ALL THE JUSTICES CONCUR.



THE STATE OF ALABAMA - - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1981-82

Charles M. Walker and Mary R. Walker

80-592 v.

Cleary Petroleum Corporation, et al.

Appeal from Fayette Circuit Court

PER CURIAM.

This is an appeal from a judgment based on a directed verdict entered in favor of Defendants (several corporations) at the close of Plaintiffs' evidence.

Appellants (Plaintiffs) Charles and Mary Walker own a three-acre tract of land in Fayette County.[1] This land is part of a 320-acre area upon which Appellees (Defendants) with the permission of and by order of the State Oil and Gas Board, conducted "forced pooling," or "forced integration," of the individual tracts and drilled for the gas thereunder.

Charles Walker, a merchant marine and the ship's "electronic's man" was aboard a ship in the Indian Ocean at the time of the Board's hearing on whether to allow the forced pooling of the large tract which included Plaintiffs' property. Notice of the hearing was by publication as allowed by Code 1975, § 9-17-7, and prescribed by the Board's internal rules. Charles Walker, however, who had refused on two occasions to enter an "agreement" with Appellees, was the only landowner with whom Appellees did not have an "agreement" with respect to the various tracts of land contained within the 320-acre tract.

Even though the publication and alleged attempts to personally reach Charles Walker failed to notify him of the hearing, the Board found that proper notice had been given, proceeded with the hearing, and issued the order to proceed with the unitization.

Appellants filed suit in the circuit court, claiming wrongful removal of gas from their property and wrongful failure to pay them for the gas removed.

The trial court entered a directed verdict for Defendants. The Walkers' motion for a new trial claimed that the notice provided by the Board with respect to the hearing had failed

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[1] At the time of the forced pooling, Charles Walker was not married and was the sole owner of the property. Charles Walker married Mary R. Walker on December 11, 1978.

to afford Charles Walker due process of law. The motion was denied, and the Walkers appeal.

We reverse and remand.

The Walkers submit one issue on appeal: "Whether the taking of their gas was wrongful because the notice provided prior thereto failed to meet the due process requirements of the United States Constitution."

Section 9-17-7(b) states that the notice required to be given prior to the hearings of the State Oil and Gas Board may be "given in the manner and form as may be prescribed by the board." The Walkers maintain that the "state action" of the Board in force pooling several tracts of land requires the protection of the due process guarantees of the U. S. Constitution, and that the notice rules adopted by the Board fall short of that standard.

Rule L-10 provides for notice to be given:

> "Notice. Notice of each public hearing before the Board shall be given by publication once in a newspaper of general circulation published in Birmingham, Montgomery, and Mobile, Alabama, at least ten (10) days prior to such hearing. In addition, when such hearings shall pertain to specific land and have less than statewide application, or shall pertain to one (1) field or pool, such notice shall also be published in a newspaper of general circulation in the county or counties wherein the affected land lies, provided such county or counties have a daily or weekly newspaper of general circulation. Such publication may also be made in other newspapers, as deemed advisable by the Board. Publication fees and expenses incurred by the Board for such notices shall be prorated among petitioners in a manner that will account for each petitioner's portion of such notices and shall be promptly paid by each petitioner of the Board. Proof of notice shall be by affidavit of the publisher or editor, or their duly authorized agent, of the newspaper in which publication is made."

Rule L-11 prescribes the contents of the notice:

> "Such notice shall be in the name of the State Oil and Gas Board of Alabama. Such notice shall state the docket number, the time and place of hearing, and shall briefly

> state the general nature of the petition or motion to be considered. Such notice shall also state the name of the petitioner or movant or at least one of them if more than one, and, unless such petition or motion is intended to apply to or affect the entire State, it shall accurately describe by appropriate section, township, range and county the lands that may be affected by such petition or motion."

Appellants' primary contention rests upon the reasoning in several landmark decisions of the United States Supreme Court. Quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), Appellants first point out that "[the Due Process Clause] require[s] that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." Mullane, 339 U.S. at 313. Quoting Bank of Marin v. England, 385 U.S. 99 (1966), Appellants also contend that the "notice required is one 'reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of action.'" Bank of Marin v. England, 385 U.S. at 102. Appellants submit that the notice rules promulgated by the Board were not calculated to bring this matter to their attention. See Boddie v. Connecticut, 401 U.S. 371 (1971).

Conceding the viability of notice by publication in Alabama (ARCP 4.3), Appellants contend that "publication is permitted only in those instances where more desirable methods have been ineffectual," and that those "more desirable methods" were not exhausted in attempts to give Charles Walker adequate notice.

Initially, we note that the published "notice" rules of the Board are pursuant to the statutory language of § 9-17-7(a):

> "The board shall prescribe its rules of order or procedure in hearings or other proceedings before it under this article."

The Board, however, has made no attempt to require personal service; rather, it elected to limit its notice requirements to notice by publication.

While the statute itself fails to require the Board to prescribe notice rules that meet requisite constitutional due process standards, the issue now before us is whether the Board's notice rule falls short of the constitutional test as applied to the facts of the instant case. When that application is made, we find that notice by publication did not meet the constitutional test.

Appellees concede they knew that Charles Walker was aboard ship at the time the notice by publication of the Board's hearing was made. In his capacity as "electronics man," Walker was solely responsible for the radar, radio telephones, radio telegraph, and direction finder. These facts constrain us to conclude that any reasonable attempt to contact Walker while he was aboard ship would have been successful.

Furthermore, notwithstanding the legal efficacy of publication as a viable form of notice, this Court has, when necessary in order to comport with constitutional standards, found notice by publication to be unacceptable. In Whitfield v. Sanders, 366 So. 2d 258 (Ala. 1978), we quoted controlling language from Mullane:

> "'[W]hen notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.' [Mullane, 339 U. S. at 314-315]." Whitfield, 366 So. 2d at 259.

Charles Walker was the only landowner with whom Appellees had not executed an agreement containing the terms for the unitization. We cannot say that the notice by publication was the proper means that "one desirous of actually informing Walker might reasonably [have adopted] to accomplish it," when Charles Walker's identity was known, his general whereabouts were known, and his specific location could have been ascertained. The unreasonableness of the attempted notice by publication is further heightened by the incongruity of the use of four Alabama newspapers which Appellees knew, or should have known, would never reach Walker. Therefore, the notice was a "mere gesture."

While § 9-17-7 gives discretion to the Board in promulgating its rules and regulations, the statute also says:

> "(d) Should the board elect to give notice by personal service, such service may be made by any officer authorized to serve process or by any agent of the board in the same manner as is provided by law for the service of summons in civil actions in the circuit courts of this state. Proof of the service by such agent shall be by the affidavit of the person making personal service."

Facially, then, the statute falls short of constitutional requirements.

The ultimate test here, however, is the propriety of the notice in the instant case. We do not attempt to decide under what extreme circumstances notice by publication would be constitutionally adequate for due process. We decide under the facts of this case, however, that publication was an inadequate method of notice.

The record shows that Walker is entitled to receive, and was offered, the entire value of the oil and gas taken from his land, reduced only by actual, reasonable expenses in

producing the oil and gas. Appellees state that this money will be given to Walker anytime he wants it. Since Walker has not suffered any economic damages, the most he could receive under the facts of this case would be nominal damages. See, Welch v. Evans Brothers Const. Co., 189 Ala. 548, 66 So. 517 (1914); Williams v. Clark, 50 Ala. App. 352, 279 So. 2d 523, cert. denied, 291 Ala. 803, 279 So. 2d 526 (1973).

In addition, the rule in this state is that a valid award of nominal damages will, in the proper case, support an additional award of punitive damages. See, Mid-State Homes, Inc., v. Johnson, 294 Ala. 59, 311 So. 2d 312 (1975); Rushing v. Hooper-McDonald, Inc., 293 Ala. 56, 300 So. 2d 94 (1974); Maring-Crawford Motor Co. v. Smith, 285 Ala. 477, 233 So. 2d 484 (1970); Ramos v. Fell, 272 Ala. 53, 128 So. 2d 481 (1961). Therefore, if the failure to give notice was the result of malice, fraud, willfulness, or a reckless disregard of Walker's rights, then Appellant would be entitled to punitive damages, upon a showing of nominal damages, even though they have suffered no real economic loss.

In conclusion, the judgment based on the directed verdict is reversed and the cause is remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Torbert, C.J., and Maddox, Almon, Shores, Embry and Beatty, JJ., concur.

Faulkner, Jones and Adams, JJ., dissent.

JONES, JUSTICE (Concurring in part and dissenting in part).

I agree with the order of reversal and remand; but I disagree with the holding of the majority relating to the issue of damages. I write separately to express a different view. I begin with some additional observations concerning the nature of the constitutional violation--the lack of due process notice.

It matters not that actual notice to Walker would not necessarily have produced a different result at the hearing, nor that the Board had the authority to override his objections had he known of the hearing, appeared at the hearing, and strenuously objected. "Nonconsenting" and "lack of due process notice" do not somehow equate so that the nonconsenting result neutralizes the constitutional deficiency of lack of due process.

It is the Walkers' right to be notified, their right to appear at the hearing, and their right to be heard which are fundamentally guaranteed by the due process clause of the Constitution. When taken to its logical conclusion, Defendants' contention would not only avoid the necessity of notice, but the necessity for the hearing as well. If notice to an affected interest holder is inconsequential, because he ultimately has no power to prevent the taking as a matter of right, then the hearing itself partakes of the same lack of legal significance.

If "majority rule" is the basis of the Board's determination of the unitization issue, once a majority of the interest holders consent, no further proceeding, including notice to the nonconsenting interest holders (or the hearing itself, for that matter), need be required. The constitutional due process mandate cannot be reduced to such meaningless proportions

It is the fundamental nature of the right to be present, and to be heard at the hearing, that mandates the notice requirements, and that subjects those who proceed with the taking of property, absent those notice requisites, to the imposition of damages. Likewise, the law does not impose upon Plaintiffs the burden of proving special damages in this situation. To do so would be tantamount to leaving the Walkers remediless where they have suffered the clear violation of a fundamental right.

The payment for the Walkers' proportionate share of the gas removed from the well (the unitization project) reimburses their economic loss, but does not necessarily represent the damages suffered as a result of the unlawful interference with their property interest through the deprivation of their due process rights. See § 6-5-210.[1] While the law affords no specific standard of measurement for such damages, I would hold that, upon a retrial of this case, Plaintiffs are entitled to a directed verdict on the issue of liability, and that the jury should be instructed to award Plaintiffs damages

1. Although Plaintiffs' claim is grounded upon § 6-5-210 (rights above and below surface), I would invite the reader's attention to a viable and growing field of law commonly denominated as "constitutional torts." Such claims ordinarily find their source in the factual context of a civil action against a government employee, alleging, for example, a fourth amendment violation. See Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U. S. 388 (1971). For a comprehensive treatment of Bivens, see Dolan, Constitutional Torts and the Federal Tort Claims Act, 14 U. Rich. L. Rev. 281 (1980). For a general discussion of the broader subject of civil damages arising directly from constitutional violations, see Comment, Bivens and the Creation of a Cause of Action for Money Damages Arising Directly from the Due Process Clauses, 29 Emory L.J. 231 (1980). Because of our own constitutional due process requirements, coupled with the civil remedy afforded by § 6-5-210, I do not deem it necessary to predicate the instant holding on the federal case precedents. See Whitman, Constitutional Torts, 79 Mich.L.Rev. 5 (1980).

which, in its discretion, would fairly and reasonably compensate them for the unlawful interference with their property rights under the circumstances.

To allow nominal damages only is tantamount to leaving the Plaintiffs remediless in the face of a clear violation of their constitutional rights.

Faulkner and Adams, JJ., concur.

I, J. O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.
Witness my hand this 18 day of June 19 82

J. O. Sentell
Clerk, Supreme Court of Alabama

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 8323
Order No. R-7693-A

APPLICATION OF BLANCO ENGINEERING
INC. FOR SALT WATER DISPOSAL,
EDDY COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8 a.m. on January 16, 1985, at Santa Fe, New Mexico, before Examiner Gilbert P. Quintana.

NOW, on this 30th day of January, 1985, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) This Case was first heard on September 5, 1984, and Division Order No. R-7693 authorized Blanco Engineering, Inc. to utilize the Pan American Flint Gas Com Well No. 1 located 1980 feet from the South and East lines of Section 22, Township 18 South, Range 26 East, NMPM, Eddy County, New Mexico, for salt water disposal into the Atoka formation.

(3) Yates Petroleum Corporation is the owner of an oil and gas lease in the N/2 SE/4 of said Section 22.

(4) The applicant, Blanco Engineering, Inc., did not notify Yates Petroleum Corporation of its application for salt water disposal as required by Division Rule 701 B. 2.

(5) Case No. 8323 was reopened in order to permit Yates Petroleum to appear and present testimony.

(6) Yates Petroleum Corporation appeared and presented testimony in opposition to Blanco's proposed salt water disposal operations based upon allegations that said well was

capable of commercial production and waste would occur if it was converted to disposal.

(7) While the evidence presented by Yates Petroleum was insufficient to determine if said well is capable of commercial production of oil and gas, in order to protect correlative rights and prevent waste, an opportunity should be provided for the subject well to be tested for up to a maximum of 45 days from the date of this order to determine if said well is capable of such commercial oil and gas production.

(8) Case 8323 should be reopened March 27, 1985, at which time Yates Petroleum Corporation should reappear and show why the Pan American Flint Gas Com Well No. 1 should not be utilized as a salt water disposal well.

(9) Yates Petroleum Corporation should notify the Supervisor of the Division's Artesia district office and Paul White of Blanco Engineering, Inc. at a reasonable length of time prior to conducting any production tests on said well so they may at their discretion witness the tests.

(10) If upon conclusion of the production testing of said well it is determined to be non-commercial, Yates Petroleum Corporation should, prior to the March 27, 1985 Hearing, return the wellbore and the well's surface location to a condition as near as possible to that originally received by Yates Petroleum Corporation from Blanco Engineering.

(11) In the event said well is determined to be capable of commercial production of oil or gas, Yates Petroleum Corporation should reimburse Blanco Engineering, Inc. any costs, expended by Blanco, that benefitted Yates Petroleum Corporation in the re-entry of said well, said reimbursement costs to be determined at the March 27, 1985 reopening of this case.

(12) Division Order No. R-7693 should be vacated pending the March 27, 1985, hearing.

IT IS THEREFORE ORDERED THAT:

(1) Division Order No. R-7693 is hereby vacated pending the outcome of a further hearing in this matter.

(2) Yates Petroleum Corporation is hereby granted 45 days from the date of this order to determine if the Pan American Flint Gas Com Well No. 1 located 1980 feet from the South and East lines of Section 22, Township 18 South, Range 26 East,

NMPM, Eddy County, New Mexico, is capable of commercial oil and gas production.

(3) Case 8323 shall be reopened at the March 27, 1985 regularly scheduled Division Examiner Hearing at which time Yates Petroleum Corporation may reappear and show why the Pan American Flint Gas Com Well No. 1 should not be utilized as a salt water disposal well.

(4) The Supervisor of the Division's Artesia district office and Paul White of Blanco Engineering, Inc. shall be notified at a reasonable length of time prior to the conducting of any production tests on said well so they may at their discretion witness the tests.

(5) In the event Yates Petroleum Corporation, upon conclusion of the production tests, determines said well to be non-commercial, the mechanical condition of the wellbore and the well's surface location shall be returned to the condition in which it was received by Yates Petroleum Corporation and said condition shall be accomplished prior to the March 27, 1985 reopening of this case.

(6) 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

R. L. STAMETS,
Director

S E A L

STATE OF NEW MEX[illegible]O
ENERGY AND MINERALS DE[illegible]RTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 8323
Order No. R-7693

APPLICATION OF BLANCO ENGINEERING,
INC. FOR SALT WATER DISPOSAL,
EDDY COUNTY, NEW MEXICO

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8 a.m. on September 5, 1984, at Santa Fe, New Mexico, before Examiner Gilbert P. Quintana.

NOW, on this 9th day of November, 1984, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, Blanco Engineering, Inc., is the owner and operator of the Pan American Flint Gas Com Well No. 1, located 1980 feet from the South and East lines of Section 22, Township 18 South, Range 26 East, NMPM, Eddy County, New Mexico.

(3) The applicant proposes to utilize said well to dispose of produced salt water into the Atoka formation, with injection into the perforated interval from approximately 9,094 feet to 9,116 feet.

(4) The injection should be accomplished through 2 7/8-inch plastic lined tubing installed in a packer set at approximately feet; that the casing-tubing annulus should be filled with an inert fluid; and that a pressure gauge or approved leak detection device should be attached to the annulus in order to determine leakage in the casing, tubing, or packer.

(3) The Director of the Division may authorize an increase in injection pressure upon a proper showing by the operator of said well that such higher pressure will not result in migration of the injected fluid from the Atoka formation.

(4) The operator shall notify the supervisor of the Artesia district office of the Division of the date and time of the installation of disposal equipment so that the same may be inspected.

(5) The operator shall immediately notify the supervisor of the Division's Artesia district office of the failure of the tubing, casing, or packer, in said well or the leakage of water from or around said well and shall take such steps as may be timely and necessary to correct such failure or leakage.

(6) The applicant shall conduct disposal operations and submit monthly reports in accordance with Rules 702, 703, 704, 705, 706, 708, and 1120 of the Division Rules and Regulations.

(7) 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

R. L. STAMETS,
Director

S E A L

Jason Kellahin
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El Patio - 117 North Guadalupe
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

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April 19, 1985

RECEIVED
APR 2 1 1985
OIL CONSERVATION DIVISION

Mr. Richard L. Stamets
Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87504

Re: Blanco Engineering
Flint SWD Case
NMOCD Case 8323 (Re-opened)

Dear Mr. Stamets:

This letter will confirm our meeting in your office on Wednesday, May 17, 1985, attended by Mr. William F. Carr, attorney for Yates Petroleum Corporation, that Mr. Carr and I were unable to reach a settlement of the case and that Mr. White of Blanco was unwilling to dismiss his application in the absence of such a settlement.

Mr. Carr and I will continue our efforts to reach an acceptable settlement, but at this time are unable to do so and would therefore request a Division Order be entered for the March 27, 1985, hearing.

Very truly yours,

W. Thomas Kellahin

WTK:ca

cc: Paul White
Blanco Engineering, Inc.
116 North First
Artesia, New Mexico 88210

William F. Carr, Esq.
P. O. Box 2208
Santa Fe, New Mexico 87501

Gil
Was this yours?
RLS

CAMPBELL & BLACK, P.A.
LAWYERS

JACK M. CAMPBELL
BRUCE D. BLACK
MICHAEL B. CAMPBELL
WILLIAM F. CARR
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April 23, 1985

HAND DELIVERED

Gilbert P. Quintana
Hearing Examiner
Oil Conservation Division
State Land Office Building
Santa Fe, New Mexico 87501

Re: Case 8323 (Reopened): In the Matter of Blanco Engineering, Inc. for Salt Water Disposal, Eddy County, New Mexico.

Dear Mr. Quintana:

Pursuant to your request of March 27, 1985, I am enclosing for your consideration the Memorandum of Authority of Yates Petroleum Corporation and a proposed Order in the above-referenced case.

Very truly yours,

William F. Carr

WFC/cv
enclosures

cc: (w/enclosures)
W. Thomas Kellahin, Esq.
Jeff Taylor, Esq.
Mr. Randy Patterson
Mr. Les A. Clements

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

Case 8323
Order R-7693-B

APPLICATION OF BLANCO ENGINEERING,
INC. FOR SALT WATER DISPOSAL, EDDY
COUNTY, NEW MEXICO.

YATES PETROLEUM CORPORATION
PROPOSED ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8 a.m. on March 27, 1985 at Santa Fe, New Mexico, before Examiner Gilbert B. Quintana.

NOW, on this ____ day of April, 1985, the Division Director having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, Blanco Engineering, Inc., proposes to re-enter the Pan American Flint #1 Well located 1,980 feet from the South and East lines of Section 22, Township 20 South, Range 28 East, N.M.P.M., Eddy County, New Mexico, to utilize the said well to dispose of produced salt water in the Morrow formation, Atoka-Pennsylvanian Gas Pool, with injection through existing perforations in the interval from 9,094 feet to 9,116 feet.

(3) On September 5, 1984, this matter came on for hearing before a Division Examiner, and on November 9, 1984, the Division entered Order R-7693 approving the application of Blanco Engineering, Inc.

(4) Notice had not been given to Yates Petroleum Corporation, the leasehold operator of the N/2 SE/4 of said Section 22, the tract upon which the well is located, and leasehold operator of certain tracts offsetting the subject well as required by Division Rule 701.

(5) Order R-7693 was vacated by the Division on December 20, 1984.

(6) The case was reopened and heard on January 16, 1985, and on January 30, 1985, the Division entered Order R-7693-A which vacated Order R-7693 and authorized Yates Petroleum Corporation to re-enter the well for 45 days and on March 27, 1985 to appear at a Division hearing and show that the subject well was capable of commercial oil and gas production.

(7) Yates Petroleum Corporation appeared in opposition to this application.

(8) The proposed disposal well was drilled by Pan American Petroleum Corporation as a Pennsylvanian test and was plugged and abandoned in 1970.

(9) On January 16, 1985 and again on March 27, 1985, Yates Petroleum Corporation presented expert testimony which demonstrates that the proposed disposal zone contained commercial quantities of gas and that it had the right to re-enter the well and test the Pennsylvanian and other formations in this well, and that it was prepared to do so.

(10) At the March 27, 1985 hearing Yates presented evidence which shows that upon re-entry, Yates discovered that Blanco had introduced substantial volumes of fresh water and other fluids into the Morrow zone, thereby damaging it and making any efforts to return it to production more time consuming and costly.

(11) The evidence also shows that Blanco entered the well prior to receiving Division Order R-7693 which originally authorized disposal in the Morrow zone.

(12) Gas would be wasted and the correlative rights of Yates Petroleum Corporation would be violated if the subject well is utilized for disposal purposes prior to affording Yates Petroleum Corporation a reasonable opportunity to attempt to return the well to production.

(13) In order to afford Yates Petroleum Corporation the reasonable opportunity to determine the presence of hydrocarbon production in the Pennsylvanian and other formations under the S/2 of said Section 22, Yates Petroleum Corporation shall have a period of time not to exceed 180 days from the date of this order in which to re-enter the subject well to test for hydrocarbon production.

(14) Yates Petroleum Corporation shall notify the Director of the Division of the establishment of commercial production from the subject well in writing, giving proof of the commercial nature of such production.

(15) If Yates Petroleum Corporation fails to re-enter the well within 180 days from the date of this order, or in the event commercial production has not been obtained from the well within that time period, then the subject application shall be granted upon the terms and conditions set forth herein.

(16) The injection should be accomplished through 2 7/8-inch plastic lined tubing installed in a packer; that the casing-tubing annulus should be filled with an inert fluid; and that a pressure gauge or approved leak detection device should be attached to the annulus in order to determine leakage in the casing, tubing or packer.

(17) The injection well should be equipped with a pressure limiting switch or other acceptable device which will limit the wellhead pressure on the subject well to no more than 1,820 psi.

(18) The Director of the Division should be authorized to administratively approve an increase in the injection pressure upon a proper showing by the operator that such higher pressure will not result in migration of the injected waters from the injection formation.

(19) The operator should notify the supervisor of the Artesia District Office of the Division on the date and time of the installation of disposal equipment so that the same may be inspected.

(20) The operator should take all steps necessary to insure that the injected water enters only the proposed injection interval and is not permitted to escape to other formations or onto the surface.

IT IS THEREFORE ORDERED:

(1) That after the effective date of this Order and within a period not to exceed 180 days thereafter, Yates Petroleum Corporation may re-enter the Pan American Flint Well #1 located 1,980 feet from the South and East lines of Section 22, Township 20 South, Range 38 East, Eddy County, New Mexico, to test said well and attempt to return it to production from the Pennsylvanian or other formations.

(2) Any efforts to return the well to production shall be completed within 180 days following the date of this order.

(3) Upon establishing commercial production from the subject well, Yates Petroleum Corporation shall give notice and proof in writing to Blanco Engineering, Inc. and to the Director of the Division.

(4) In the event the well is not recompleted as a commercial producer within 180 days of the effective date of this Order, then and in that event, the applicant, Blanco Engineering,

Inc., is authorized to utilize the Pan American Flint Well #1 located 1,980 feet from the South and East lines of Section 22, Township 20 South, Range 28 East, N.M.P.M., Eddy County, New Mexico, to dispose of produced salt water into the Morrow formation, injection to be accomplished through 2 7/8-inch tubing installed in a packer, with injection through existing perforations in the interval from 9,094 feet to 9,116 feet.

PROVIDED HOWEVER, that the tubing shall be plastic lined; that the casing tubing annulus shall be filled with an inert fluid; that a pressure gauge shall be attached to the annulus or the annulus shall be equipped with an approved leak detection device in order to determine leakage in the casing, tubing or packer.

(5) The injection well shall be equipped with a pressure limiting switch or other acceptable device which will limit the wellhead pressure on the injection well to no more than 1,820 psi.

(6) The Director of the Division may authorize an increase in injection pressure upon a proper showing by the operator of said well that such higher pressure will not result in migration of the injected fluid from the injection formation.

(7) The operator shall notify the supervisor of the Artesia District Office of the Division of the date and time of the installation of disposal equipment so that the same may be inspected.

(8) The operator shall immediately notify the supervisor of the Division's Artesia District Office of the failure of the tubing, casing or packer in said well, or the leakage of water from or around said well, and shall take such steps as may be timely and necessary to correct such failure or leakage.

(9) The applicant shall conduct disposal operations and submit monthly reports in accordance with Rules 702, 703, 704, 705, 706, 708 and 1120 of the Division Rules and Regulations.

(10) 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 designed.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

R. L. STAMETS, Director

S E A L

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

Case 8323
Order R-7693-A

APPLICATION OF BLANCO ENGINEERING, INC., FOR SALT WATER DISPOSAL, EDDY COUNTY, NEW MEXICO.

MEMORANDUM OF YATES PETROLEUM CORPORATION

Yates Petroleum Corporation files this Memorandum of Law pursuant to the request of Examiner Gilbert P. Quintana and in response to certain arguments raised by Blanco Engineering in its Memorandum of March 29, 1985.

FACTS

The relevant facts in this case are as follows:

1. Pan American Petroleum Corporation plugged and abandoned its Flint Gas Com Well No. 1 (Flint well) in 1970 and the lease to the acreage upon which this well is located expired.

2. In 1975, the surface owner executed a new oil and gas lease governing the subject lands which was subsequently assigned to Yates Petroleum Corporation (Yates) on March 23, 1976. Yates has been since that time and is the operator of the leased acreage.

3. On August 31, 1984, Blanco Engineering, Inc. (Blanco) entered an agreement with the surface owner and successor to the lessor under the Yates oil and gas lease to use the Flint well

for salt water disposal.

4. Blanco filed an application with the New Mexico Oil Conservation Division seeking authority to dispose of produced water in the Flint well in the Morrow formation, and on November 9, 1984 the Division entered Order R-7693 granting Blanco's application.

5. The Division vacated Order R-7693 at the request of Yates because Blanco had failed to notify Yates of this application as required by Division rules and regulations.

6. On January 30, 1985, following notice and hearing, the Division entered Order R-7693-A which, among other things, authorized Yates to re-enter the Flint well for 45 days and attempt to return it to production.

7. On re-entry, it was discovered by Yates that Blanco had dumped substantial volumes of water and other fluids on the Morrow zone in this well which would cause the testing of this zone to take more time than originally anticipated and increase the cost of returning the well to production. It was also discovered that Blanco had re-entered the Flint well prior to receiving Divison Order R-7693.

8. The 45-day period in which Yates was authorized to test the well ran before Yates had completed its effort to return this well to production.

9. On March 27, 1985, the matter came back on for hearing before the Division at which time Yates requested additional time to work on the well.

10. On March 29, 1985, the Division notified attorneys for

Yates that Blanco had advised the Division that it was dismissing its application and that the case would be dismissed.

11. On April 2, 1985, attorneys for Blanco advised Yates that they had decided not to dismiss the case.

I

BLANCO FAILED TO GIVE ADEQUATE NOTICE OF ITS INTENTION TO RE-ENTER THE FLINT WELL AND CONVERT IT TO SALT WATER DISPOSAL.

Notice of Oil Conservation Division hearings is given either by personal service on the person affected or by publication once in a newspaper of general circulation published at Santa Fe, New Mexico, and once in a newspaper of general circulation published in the County or Counties where the affected property is situated. Section 70-2-12, N.M.S.A. (1978); Oil Conservation Division Rule 1204.

Section 70-2-12, N.M.S.A. (1978) authorizes the Division, among other things, to make rules and regulations with respect to various matters including:

> ... the drowning by water of any stratum or part thereof capable of producing oil or gas, or both oil and gas, in paying quantities and to prevent the premature irregular encroachment of water, or any other kind of water encroachment, which reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas, or both such oil and gas, from any pool; ....

Pursuant to this grant of authority, the Division promulgated Rule 701 which requires that Division Form C-108 be used in making an application to the Division for authority for salt water disposal and other types of injection of fluids into a reservoir. Form C-108 provides in pertinent part as follows:

> All applicants must furnish proof that a copy of the application has been furnished, by certified or registered mail, to the owner of the surface of the land on which the well is to be located and each leasehold operator within one-half mile of the well location. [emphasis added].

Yates Petroleum Corporation is the leasehold operator of the tract upon which the Flint well is located, and is also the leasehold operator of virtually every other tract within one-half mile of the Flint well, yet no notice was given to Yates of Blanco's plans as required by Division Form C-108.

At the March 27 hearing, the attorney for the Commission expressed concern that Yates should have known of the original Blanco application and requested that the notice question in this case be briefed.

In response to this request, Blanco, in its March 29 Memorandum, contends that adequate notice was given to Yates and recites a number of circumstances surrounding the September 5 hearing in support of its contention. Blanco asserts that there had been a conversation between Paul White, President of Blanco, and an employee of Yates. They adopted the absurd position that a conversation with an employee of a corporation constitutes adequate notice and is sufficient substitute for notice required by the rules of the Division. They further note that Mr. White rode on the same plane with Yates representatives in coming to Santa Fe for the September 5 hearing, and ask the Division to conclude from this that proper notice was given. An equally logical inference would be that once again Blanco had an opportunity to explain its plans to Yates, but willfully failed to do so.

Such speculation will shed no light on the question of whether or not adequate notice was given. Certain things, however, are not subject to speculation: 1) Blanco had a duty to give notice to all leasehold operators within one-half mile of the Flint well of its intentions to convert the well to salt water disposal; 2) the purpose of this notice is to afford affected parties an opportunity to present objections to the application; 3) actual notice by Blanco was not given to Yates (See Proof of Notice filed by Blanco with Application for Authorization to Inject); 4) it was Blanco's duty under Division rules to provide notice to Yates and it did not; and 5) constructive notice by publication is inadequate.

The general rule concerning constructive notice is that notice by newspaper publication of the pendency of a proceeding which will effect an interest in real property is not sufficient as to a person whose name and address is known. In this case, Blanco knew the address of Yates Petroleum Corporation. Notice by publication does not satisfy the due process requirements of the Fourteenth Amendment to the U. S. Constitution where the person's name can actually be ascertained, for the problem with notice by publication is that, in most cases, it amounts, as here, to no notice at all. It can be argued, as it has been by Blanco's counsel, that the general rule is modified in a situation where there is a state statute authorizing notice by publication. It is doubtful, however, that this position would stand up in court for the United States Supreme Court, on at least two occasions, has set aside actions by state authorities

on the grounds that notice by publication was insufficient, although authorized by statute. See, Walker v. Hutchinson, 352 U.S. 112, 1 L.Ed.2d 178, 77 S.Ct. 200 (1956); Schroeder v. New York, 371 U.S. 208, 9 L.Ed.2d 255, 83 S.Ct. 279 (1962). The test announced in these cases is that if it is reasonably possible to give actual notice to a party who has a property interest which will be affected by a proceeding, notice by publication is constitutionally deficient. The notice by publication afforded Yates and inclusion of Blanco's application in the Oil Conservation Division September 5 docket does not comply with due process requirements or under the rules of the Division.

Blanco had a duty to give notice to all leasehold operators within one-half mile of the Flint well. The notice provided to Yates in this case was constitutionally deficient for it did not meet the basic standards of procedural due process. Since the notice was deficient, the order resulting from the hearing was likewise deficient and was properly vacated by the Division.

II

THE OWNERSHIP OF THE PAN AMERICAN FLINT GAS COM WELL NO. 1 RESTS EXCLUSIVELY IN YATES PETROLEUM CORPORATION.

Yates Petroleum Corporation acquired by assignment an oil and gas lease to the lands upon which the Flint well is located on March 23, 1976. The grant of the oil and gas lease from the Flints carried with it the right to use so much of the leased premises and in such a manner as is reasonably necessary to comply with the terms of the lease and effectuate its purposes. The courts and the treatise writers have consistently recognized

that, whether express or not, the lease carries with it a right to possession and use of the surface. The basis for this view has been explained as follows: "This rule is based upon the principal that when a thing is granted all means to obtain it and all the fruits and efforts of it are also granted." Squires v. Lafferty, 95 W. Va. 307, 102 S.E. 90 (1924); 4 Sommers Oil & Gas, § 652.

As the owner of the dominant estate, Yates has the exclusive right to use so much of the leased premises as is reasonably necessary to carry out its operations in drilling for and producing oil and gas from this lease. Warren Petrolem Corporation v. Martin, 153 Tex. 465, 271 S.W.2d 410 (1954); 1 H. Williams & C. Meyers, Oil and Gas Law at §218.6, 208 (1983). Furthermore, the Flint Trust Account, either directly or indirectly, through its agreement with Blanco cannot interfere with Yates' development of the mineral estate. Id. at §218.6, 208-209. See, Cozart v. Crenshaw, 299 S.W. 499 (Tex.Civ.App. 1927), Eternal Cemetary Corporation v. Tammen, 324 S.W.2d 562, (Tex.Civ.App. 1959), 11 O & G R 270.

Yates, as operator of the spacing unit upon which the Flint well is located, has the absolute and exclusive right to select the location of the oil and gas wells on that spacing unit. Williams & Meyers states the rule as follows:

> Related to the question of excessive user of easements vel non by the mineral owner of the lease is the right of the mineral owner or lessee to determine well locations. Generally, in the absence of a showing of bad faith, the courts appear ready to accept his judgment as to the appropriate location of the well even though the surface owner would prefer some other location. Williams & Meyers, supra, at §218.8, 228.

In the case before the Division, there is no dispute between the parties that once the Flint well was plugged and abandoned and the lease expired, the well became part of the realty and title vested in Flint, the landowner. However, once Flint again granted an oil and gas lease upon the property and did not make any provision therein concerning the use of the wellbore, the right to use the wellbore for purposes of a re-entry passed to their lessee.

The leading and controlling case on this point is Gutierrez v. Davis, 618 F.2d 700 (10th Cir. 1980). This case was brought by Gutierrez, the fee owner and lessor, against Davis, the oil and gas lessee, for re-entry of an old well on the tract asserting that Davis was guilty of conversion of the casing left in the abandoned well. The lease in question contained no restrictions on exploration and drilling, except that a well could not be drilled within 200 feet of a house or barn. In ruling for Davis, the lessee, the Tenth Circuit held:

> The lease gives Davis the right to use the lands for the "purpose of exploring .... mining and operating for oil" and other minerals. We agree with the trial court that without express language to the contrary, a fair reading of the contract gives Davis the right to drill through any part of the real estate including the plug and casing of the abandoned well when, as here, it was reasonable use within the stated purpose."

Yates Petroleum Corporation is the operator of the tract upon which the Flint well is located. Since this lease contains no language to the contrary, Yates may drill at any location on the unit it chooses -- including drilling through the existing

wellbore of the Flint No. 1 well. Ownership of this wellbore rests in Yates which has the absolute and exclusive right to use it to explore for and produce oil and gas from under this tract.

In support of its claim that it should be entitled to use the Flint well, Blanco cites three cases. None of these cases provide any guidance in resolving the question of the ownership of the wellbore, for in none of them is the question of ownership of the wellbore decided by the Court. In Sunray Oil Company v. Cortez Oil Company, 112 P.2d 792 (Okla. 1941), upon which Blanco heavily relies, Cortez was not disputing the ownership of the disposal well, but was attempting to prevent the disposal of produced water because this might water out zones on adjoining tracts. The court summarized the contentions of Cortez as follows:

> But Cortez Oil Co. asserts that there is a possibility that oil or gas may be found in some other sand under the 80-acre tract, and possibly in the same sand at locations other than the one in the particular 10 acres where the well in question is located, that the act of Sunray Oil Co. in placing salt water in the well might possibly result in the salt water escaping into other formations containing oil or gas and might force such oil or gas from said land, as might exist in the same sand at some other location from said land, and thus prevent Cortez from ever finding or producing oil or gas under its mineral grant ....". [emphasis added]. Cortez at 793-794.

This case is also distinguishable from the case before the Division for 1) Sunray owned mineral rights under the lands upon which the well was located, unlike Blanco in this case; and 2) the well in the Cortez case had been fully tested for oil and gas prior to being converted to water disposal. Here, the efforts to

return the Flint well to production have been cut short by actions of Blanco and the Division.

In support of its ownership claim, Blanco also cites West Edmondson Salt Water Disposal Association v. Rosecreans, 226 P.2d 965 (Okla. 1950). This case does not involve a dispute as to the ownership of a wellbore and sheds no light on the question before the Division. Finally, Blanco cites McDaniel v. Moyer, 662 P.2d 309 (Okla. 1983). This case involved the pooling of an unleased mineral interest. This case is distinguishable from the case before the Division for the operator who planned to use the wellbore did not have a lease to the minerals as Yates does here. Furthermore, in McDaniel, the court did not decide any question concerning ownership of the wellbore because of problems with the pleadings.

In summary, nothing cited by Blanco in its March 29 brief to the Division supports its claim to ownership of the Flint well.

III

THE OIL CONSERVATION DIVISION LACKS JURISDICTION TO GRANT THE APPLICATION OF BLANCO.

As noted by the New Mexico Supreme Court, "the Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it." Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809, 814 (1953). The powers of the Division are enumerated in Section 70-2-12, N.M.S.A. (1978), and include:

> authority ... to identify the ownership of oil or gas producing leases, properties, wells, tanks, refineries, pipelines, plants, structures and all other transportation equipment and facilities. [emphasis added].

Nowhere, however, is the Division given authority to decide the ownership of a well. This is admitted by Blanco in its Memorandum of Law at page 3.

Any decision by the Division which would attempt to take from Yates the Flint well, which it has exclusive right to use, would have the effect of deciding the ownership of the well. Should such an order be entered by the Division, Yates would have no alternative but to seek the intervention of the courts to protect itself from an action which would be outside the Division's jurisdiction.

IV

THE DIVISION SHOULD MODIFY ORDER R-7693-A

The testimony of David Boneau, engineering witness for Yates Petroleum Corporation, presented at the March 27, 1985 hearing showed that upon re-entry of the Flint well, Yates discovered that prior to receiving an order approving the disposal of produced waters in this well, Blanco had introduced into the well fresh water and other fluids which had damaged the Morrow zone (Tr. 12-14, Case 8323, March 27, 1985 hearing). This has made the efforts to recomplete in the Morrow more difficult (Tr. 34, Case 8323, March 27, 1985 hearing).

Blanco asserts that Yates is estopped from seeking additional time from the Division for testing the well, and in support of this position cites State v. Luttrell, 28 N.M. 393 (1923), which sets out the standards necessary to obtain a new trial upon the grounds of newly discovered evidence. Contrary to the assertions of Blanco, the facts before the Division in this

case require a new hearing if the standards announced in Luttrell are applied for 1) the new evidence acquired by Yates on re-entry should change the result of the hearing; 2) this evidence was discovered after the January 16 hearing; 3) it could not have been discovered by Yates until it re-entered the well; 4) it is material to the outcome of the hearing, and 5) it is not merely contradictory of former evidence. Therefore, under Luttrell the case must be reopened.

Even if Luttrell is not controlling, the Oil Conservation Division retained continuing jurisdiction of this case. With the new evidence now available, denial of Yates' request for sufficient time to fully test all zones in the well thereby requiring them to drill an additional well if they are to develop the reserves under their tract would impair their correlative rights for they would be denied an opportunity to produce without waste these reserves. Furthermore, waste could result for hydrocarbons could be left in the ground that could be produced in the Flint well.

CONCLUSION

Blanco Engineering has come before the Oil Conservation Division seeking authority to dispose of produced water in the Pan American Flint Gas Com Well No. 1. It asks the Division to reinstate Order R-7639 which authorized such disposal -- an order which was obtained by Blanco only because it failed to provide Yates Petroleum Corporation the notice it was required to give Yates pursuant to Oil Conservation Division rules. Blanco also asks that Yates not be allowed additional time to evaluate the

well because, according to Blanco, Yates has already had reasonable opportunity to do so.

The record in this case shows that on re-entry of the well, Yates discovered that Blanco had introduced substantial volumes of water into the wellbore. This was done prior to Blanco receiving an order from the Division approving such activity, and the introduction of these fluids has damaged the well making Yates' efforts to return this well to production more costly and more time-consuming. The reason Blanco is attempting to block any further efforts by Yates to return the well to production is simply that it knows, as does Yates and as does the Division, that there are zones in the well that can be returned to commercial production.

Yates Petroleum Corporation submits that there is only one course of action available to the Oil Conservation Division that is consistent with its jurisdiction and statutory charge, and that is to grant Yates such time as is necessary for it to test all zones in the Flint Gas Com Well No. 1 to determine whether or not this well can be returned to commercial production in any zone. Any contrary decision not only violates the Division's statutory duty to prevent waste and protect correlative rights, but would have the effect of deciding the ownership of the wellbore in question, something which the Division cannot do.

Respectfully submitted,

CAMPBELL & BLACK, P.A.

By William F. Carr

William F. Carr
Post Office Box 2208
Santa Fe, New Mexico 87501
(505) 988-4421

ATTORNEYS FOR YATES PETROLEUM CORPORATION

I hereby certify that a true and correct copy of the foregoing was hand-delivered to W. Thomas Kellahin, Esquire, Attorney for Blanco Engineering, Inc., on this 23rd day of April, 1985.

William F. Carr

BEFORE THE

OIL CONSERVATION DIVISION

NEW MEXICO DEPARTMENT OF ENERGY AND MINERALS

IN THE MATTER OF THE APPLICATION
OF BLANCO ENGINEERING, INC. FOR
SALT WATER DISPOSAL, EDDY COUNTY,
NEW MEXICO. Case 8323

AFFIDAVIT

STATE OF NEW MEXICO)
) ss.
COUNTY OF EDDY)

JOHN A. YATES, Vice-President of Yates Petroleum Corporation, being first duly sworn, states that:

1. As Vice-President of Yates Petroleum Corporation he is the person who would have received any notice provided by Blanco Engineering, Inc. of its application in Oil Conservation Division Case 8323 concerning the disposal of salt water in the Pan American Flint Gas Com Well No. 1, located in Section 22, Township 18 South, Range 26 East, N.M.P.M., Eddy County, New Mexico.

2. Yates Petroleum Corporation received no notice from Blanco Engineering, Inc. of its application in Oil Conservation Division Case 8323, or of the September 5, 1984 hearing thereon.

3. Yates Petroleum Corporation plans to re-enter the Pan American Flint Gas Com Well No. 1 located 1980 feet from the South and East lines of said Section 22 during 1985 to test the Morrow formation.

EXHIBIT C

JOHN A. YATES

SUBSCRIBED and SWORN to before me by John A. Yates on this 21st day of December, 1984.

Notary Public

My Commission Expires:

December 1, 1986

BEFORE THE

OIL CONSERVATION DIVISION

NEW MEXICO DEPARTMENT OF ENERGY AND MINERALS

IN THE MATTER OF THE APPLICATION
OF BLANCO ENGINEERING, INC. FOR
SALT WATER DISPOSAL, EDDY COUNTY,
NEW MEXICO. Case 8323

AFFIDAVIT

STATE OF NEW MEXICO)
) ss.
COUNTY OF EDDY)

RANDY G. PATTERSON, Land Manager for Yates Petroleum Corporation, being first duly sworn, states that:

1. On December 19, 1984, he contacted Paul G. White, President of Blanco Engineering, Inc. concerning Blanco's plans to dispose of produced salt water in the Pan American Flint Gas Com Well No. 1 located 1980 feet from the South and East lines of Section 22, Township 18 South, Range 26 East, N.M.P.M., Eddy County, New Mexico, and was advised by Mr. White that he was going forward with plans to convert the well to salt water disposal, and would be disposing of water in said well within two weeks of December 19, 1984.

Randy G. Patterson
RANDY G. PATTERSON

EXHIBIT D

SUBSCRIBED and SWORN to before me by Randy G. Patterson on this 21st day of December, 1984.

Notary Public

My Commission Expires:

December 1, 1986

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

TONEY ANAYA
GOVERNOR

May 3, 1985

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Mr. William F. Carr
Campbell & Black
Attorneys at Law
Post Office Box 2208
Santa Fe, New Mexico

Re: CASE NO. 8323
ORDER NO. R-7693-B

Applicant:

OCD (Yates Petroleum Corporation)

Dear Sir:

Enclosed herewith are two copies of the above-referenced Division order recently entered in the subject case.

Sincerely,

R. L. STAMETS
Director

RLS/fd

Copy of order also sent to:

Hobbs OCD x
Artesia OCD x
Aztec OCD

Other Thomas Kellahin