

HOLLAND & HART<sup>LLP</sup>



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May 4, 2004

Joanna Prukop  
Acting Director  
Oil Conservation Division  
Energy, Minerals & Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, NM 87504

**RECEIVED**

**MAY - 4 2004**

**Oil Conservation Division  
1220 S. St. Francis Drive  
Santa Fe, NM 87505**

**Re: Oil Conservation Division Case No. 13253: Application of Yates Petroleum Corporation for an Order Authorizing the Drilling of Three Wells in the Potash Area, Eddy County, New Mexico.**

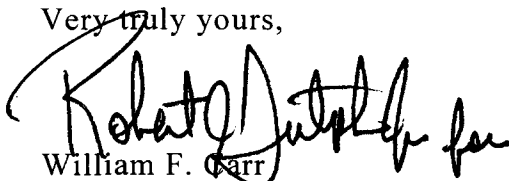
Dear Ms. Prukop:

Please find enclosed Yates Petroleum Corporation's Motion to Enforce Subpoena or Alternatively Grant Application in the above referenced matter.

A copy of the motion is being delivered today via facsimile and overnight delivery to IMC Potash Carlsbad, Inc.

I appreciate your attention to this matter.

Very truly yours,

  
William F. Carr  
of Holland & Hart<sup>LLP</sup>

WFC:keh  
Enclosures

**Holland & Hart<sup>LLP</sup>**

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

MAY 4 2004  
Oil Conservation Division  
1220 S. St. Francis Drive  
Santa Fe, NM 87505

APPLICATION OF YATES PETROLEUM CORPORATION FOR AN ORDER  
AUTHORIZING THE DRILLING OF THREE WELLS IN THE POTASH AREA, EDDY  
COUNTY, NEW MEXICO.

CASE NO. 13253

**MOTION TO ENFORCE SUBPOENA OR ALTERNATIVELY GRANT APPLICATION**

YATES PETROLEUM CORPORATION ("Yates"), through its undersigned attorneys, applies to the New Mexico Oil Conservation Division for an order enforcing the Subpoena Duces Tecum issued by the Division to IMC Potash Carlsbad, Inc. ("IMC"). Alternatively, Yates requests an Order granting its Application. Finally, Yates requests that the Division move the district court to order IMC to respond to the subpoena. As grounds for this motion, Yates states the following:

1. Pursuant to NMSA 1978, § 70-2-8, and Rule 1211 of the New Mexico Oil Conservation Division's Rules of Procedure, the Division issued a subpoena duces tecum to IMC on or about April 16, 2004. The subpoena duces tecum ordered IMC to produce on April 29th, the day of the hearing, documents, files, and exhibits necessary for Yates presentation of its case in the above-referenced matter.

2. By letter received April 26, 2004 – only three days before the hearing was to occur – Mr. Morehouse, Superintendent of Mine Engineering for IMC, authored a letter to Ms. Prukop, Acting Director of the Oil Conservation Division, informing Ms. Prukop that IMC refused to comply with the subpoena. More specifically, Mr. Morehouse indicated that IMC would not obey the lawfully issued subpoena, but would "bring a single map showing many of the items Mr. Carr has listed [in the subpoena]. . . ."

3. IMC is taking the position that IMC, and not the Division, will decide what is relevant to the Application at issue. There is no authority in law or reason for IMC's outrageous proposition. IMC's attempt to obviate the Division's statutory authority and established regulatory program cannot be tolerated.

4. IMC's refusal to obey the Division's subpoena is defective, procedurally and substantively.

5. NMRA 1-045(C) provides the procedure by which a party may move to quash a subpoena. IMC failed to follow that procedure. For this reason alone, IMC's refusal to obey the subpoena should be rejected, and immediate compliance should be ordered.

6. As defective as IMC's failure to follow proper procedure for objecting to a subpoena is the fact that IMC's so called "objection" letter was signed by a non-attorney in violation of well-established law and procedure. *See, e.g.,* Opinion No. 58-200, Office of the Attorney General of the State of New Mexico, 1958 (requiring that corporations appearing before any agency of the State of New Mexico be represented by an attorney).

7. Substantively, there is absolutely no basis for IMC's refusal to obey the lawfully issued subpoena. The information ordered to be produced by the subpoena is necessary to the presentation of Yates' case before the Division. Without the information, Yates cannot go forward and the oil and gas leases at issue expire on June 1, 2004.

8. The information ordered to be produced will prove IMC's claim that it will mine this area within three years, a claim which Yates vigorously challenges. This is the very type of information contemplated by the purpose and spirit of the discovery rules, and procedures employed at the Division.

9. The information Yates seeks will show, among other things:

- a) whether or not IMC will mine the area and in what time frame;
- b) where IMC's current operations are with regard to the proposed wells;
- c) when the acreage at issue was mined;
- d) what grade of ore is located under the acreage at issue;
- e) what quality of ore is located under the acreage at issue;
- f) whether or not the ore can be economically mined.

11. In light of the fact that the Yates' leases expire on June 1st, Yates cannot afford to play IMC's games while IMC refuses to produce relevant and fully discoverable information.

**First Request for Alternative Relief**

12. IMC's refusal to obey the lawfully issued subpoena prevents Yates from fully presenting its Application to the Division, and therefore should be construed as a waiver of its objections to Yates Application.

13. The Division in fulfilling its statutory duties cannot endorse such a blatant disregard of its Orders. The regulatory program provides for the orderly and timely presentation of cases and obviates that process cannot be permitted by IMC or any other party.

14. Therefore, Yates requests that the Division find that IMC's disregard for the well-established regulatory program be deemed a waiver of IMC's right to object, and grant Yates' application.

**Second Request for Alternative Relief**

15. Alternatively, Yates requests that the Division enforce the subpoena through its statutorily enumerated powers found at NMSA 1978, § 70-2-9. Yates requests that the Division, without further delay, move the district court to issue an order directing IMC to comply

with the subpoena. Yates also requests that the Division move the district court to find that IMC is in contempt of a lawfully issued subpoena and that IMC be sanctioned accordingly.

**Conclusion**

IMC has chosen to disregard the subpoena issued by the Division. IMC has effectively taken the position that it, as opposed to the Division, determines what is relevant to the case before the Division. The Division should not condone this type of behavior. The Division should instruct IMC to respond to the subpoena forthwith, or alternatively, deem IMC's refusal to participate in the regulatory process as a waiver of its objections, and grant Yates' application.

Respectfully submitted,

HOLLAND & HART, LLP

By: 

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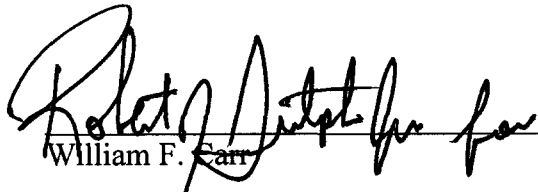
ATTORNEYS FOR YATES PETROLEUM  
CORPORATION

## CERTIFICATE OF SERVICE

by I certify that on May 4, 2004 I served a copy of the foregoing document to the following

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Fax
- ☒ Federal Express

IMC Potash Carlsbad Inc.  
c/o Dan Morehead, Superintendent  
Mine Engineering and Construction  
1361 Potash Mines Road  
Carlsbad, NM 88220-8931  
(505) 887-2871  
(505) 887-0589 (facsimile)

  
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William F. Carr