

CHRONOLOGY

CASE NO. 13153 (REHEARING)

- 7-1-2000: Yates Petroleum Corporation acquired State of New Mexico Oil and Gas Lease No. V-5855 covering the N/2 and SE/4 of Section 12, Township 12 South, Range 34 East, NMPM, Lea County, New Mexico.
- 8-25-2003: Yates submitted an APD for the re-entry of the State "X" Well No. 1.
- 8-26-2003: OCD approved Yates APD.
- 9-5-2003: Yates moved a rig on location and re-entry activities commence.
- 9-10-2003: Pride filed an application for an order (i) pooling the W/2 of Section 12, (ii) canceling Yates APD, and (iii) seeking and an Emergency Order prohibiting Yates re-entry operations.
- 9-11-2003: Yates responded to Pride's application and moved the Division for an order dismissing Pride's application.
- 9-12-2003: The Division Examiner denied Pride's application for an Emergency Order halting Yates operations on the State "X" Well No. 1 and Yates continued its re-entry operations pursuant to the APD approved by the Division.
- 9-17-2003: Yates appealed the Examiner's decision to the Oil Conservation Commission because it also denied its motion to dismiss the Pride application.
- 9-22-2003: The Director of the Division and Commission Chair remanded the matter to the Division Examiner.
- 9-22-2003: Pride filed its Motion for Reconsideration of its application for an order directing Yates to cease operations on the well.
- 9-26-2003: Yates responded to Pride's Motion for Reconsideration.
- 10-3-2003: Pride replied to Yates.
- 10-7-2003: At a hearing before the Division Examiner, Yates advised the Examiner that it had removed its rig and had voluntarily suspended its operations on this well pending a final decision by the Division on Pride's application.

DISTRICT I

1625 N. French Dr., Hobbs, NM 88240

State of New Mexico
Energy, Minerals and Natural Resources Department

DISTRICT II

811 South First, Artesia, NM 88210

OIL CONSERVATION DIVISION

PO BOX 2088

Santa Fe, NM 87504-2088

DISTRICT III

1000 Rio Brazos Rd., Aztec, NM 87410

DISTRICT IV

2040 South Pacheco, Santa Fe, NM 87501

☐ AMENDED REPORT

APPLICATION FOR PERMIT TO DRILL, RE-ENTER, DEEPEN, PLUGBACK, OR ADD A ZONE

Operator Name and Address Yates Petroleum Corporation 105 South Fourth Street Artesia, New Mexico 88210		OGRID Number 025575
		API Number 30- 025-01838
Property Code 28062	Property Name Limbaugh "AYO" State	Well No. 1

7 Surface Location

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South Line	Feet from the	East/West Line	County
E	12	12S	34E		1980	North	660	West	Lea

8 Proposed Bottom Hole Location If Different From Surface

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South Line	Feet from the	East/West Line	County
FOUR LAKES Proposed Pool 1 Wildcat Mississippian					Proposed Pool 2				

Work Type Code E	Well Type Code G	Cable/Rotary R	Lease Type Code S	Ground Level Elevation 4138.4'
Multiple No	Proposed Depth 13,018'	Formation Mississippian	Contractor Not Determined	Spud Date ASAP

21 Proposed Casing and Cement Program

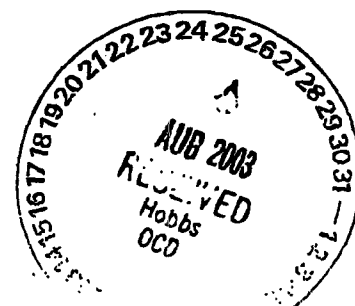
Hole Size	Casing Size	Casing weight/feet	Setting Depth	Sacks of Cement	Estimated TOC
17 1/2"	13 3/8"	48#	389'-in place	325 sx	Circulate
12 1/4"	9 5/8"	36#	4307'-in place	1700 sx	Circulate
7 7/8"	5 1/2"	17# & 20#	0-13,018'	1000 sx	TOC-6000'

22 Describe the proposed program. If this application is to DEEPEN or PLUG BACK give the data on the present productive zone and proposed new production. Describe the blowout prevention program, if any. Use additional sheets if necessary.

See Attached Sheet

Cpy: GEOLOGY
AL SPRINGER
JEREMIAH
PINSIN
JIM K
TINA H
WEE/AGAVE
RON B

DIKE



23 I hereby certify that the information given above is true and complete to the best of

my knowledge and belief
Signature:

Clifton R. May

Printed name: Clifton R. May

Title: Regulatory Agent

Date: 08/25/03

Phone: (505) 748-1471

OIL CONSERVATION DIVISION

Approved by:

ORIGINAL SIGNED BY
CHRIS WILLIAMS

Title:

OG DISTRICT SUPERVISOR/GENERAL MANAGER

Approval Date:

Expiration Date:

Conditions of Approval
Attached

AUG 26 2003

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATION OF PRIDE ENERGY COMPANY
FOR CANCELLATION OF A DRILLING PERMIT
AND RE-INSTATEMENT OF A DRILLING PERMIT,
AN EMERGENCY ORDER HALTING OPERATIONS,
AND COMPULSORY POOLING, LEA COUNTY,
NEW MEXICO.

Case No. _____

APPLICATION

Pride Energy Company, for its application, states:

PARTIES, LANDS, AND WELL

1. Applicant is Pride Energy Company ("Pride"). Pride owns the working interest in State Lease V-6256, covering the SW¼ of Section 12, Township 12 South, Range 34 East, N.M.P.M.; Lea County, New Mexico.

2. The adverse parties are Yates Petroleum Corporation ("Yates"), Yates Drilling Company, Abo Petroleum Corporation, and Myco Industries, Inc. Yates et al. collectively own the working interest in State Lease V-5855 covering the N¼ and SE¼ of Section 12, Township 12 South, Range 34 East, N.M.P.M., Lea County, New Mexico.

3. The well unit involved is the W¼ of Section 12. Pride plans to re-enter and deepen the existing State "X" Well No. 1, located 1980 feet from the north line and 660 feet from the west line of Section 12.

DRILLING PERMITS AND EMERGENCY ORDER

4. On July 16, 2003, Pride obtained an approved Application for Permit to Drill ("APD") covering the W¼ of Section 12, and the State "X" Well No. 1. A copy of the APD is attached hereto as Exhibit A. Pursuant to Division regulations, the APD is valid for

one year.

5. In furtherance of its plans, during this time frame Pride contacted Yates in writing and by phone in an effort to obtain the voluntary joinder of Yates et al. in its well proposal. Yates stated that they'd respond to the proposal, but never did.

6. On or about September 9, 2003, Pride determined that Yates was re-entering the State "X" Well No. 1. Pride immediately called the Division's Hobbs District Office, and was informed that its APD had been canceled. A letter dated August 26, 2003 from the Division, attached hereto as Exhibit B, was faxed to Pride on September 9th. **The letter was never received by Pride in the U.S. Mail.**

7. The Division, in its letter of August 26th, states as reason for cancellation of Pride's APD that the N½ is leased to another operator, and no Form C-103's have been filed with the Division by Pride.

8. The Hobbs District Office then re-instated an expired Yates APD on the N½ of Section 12.

9. The actions of the Hobbs District office are illegal and contrary to Division regulations, for the following reasons:

- (a) Pride's APD is valid for one year. There is no Division regulation authorizing the Division to unilaterally change that time period. Filing of Form C-103's is not necessary for the maintenance of the APD.
- (b) The Hobbs District Office cannot unilaterally change or ignore duly adopted Division regulations.

- (c) The revocation of the APD was done without notice to Pride, and violates its due process rights.
- (d) Yates had previously had an approved APD affecting the NW¼ of Section 12 for **two years**, but had done nothing on this acreage. Furthermore, Yates had filed no Form C-103's during this period, yet its APD was not revoked by the Hobbs District Office.
- (e) It is immaterial that the N½ is leased to another operator. An operator, whether under voluntary agreement or under a compulsory pooling order, has the right to drill on another person's lease. If that was not the case, New Mexico's pooling statutes would be meaningless.

10. The actions of the Hobbs District Office in revoking Pride's APD give new meaning to the term "arbitrary and capricious." If its action is not reversed, there is no need for the Division's rules and regulations: All that is necessary is an arbitrary decision of the District Office acting as it sees fit.

11. In the TMBR/SHARP-Arrington-Ocean cases (Order No. R-11700, etc.), decided in 2002 and 2003, the Commission held that conflicting APD's should not be issued by the Division. The Hobbs District Office avoids those orders by the simple expedient of illegally canceling one permit and granting another.

WHEREFORE, applicant requests that:

- A. The Yates APD be canceled;
- B. The Pride APD be re-instated; and

C. An emergency order be issued under Division Rule 1202 requiring Yates to cease all operations in the NW¼ of Section 12 pending resolution of this matter.

COMPULSORY POOLING

12. Applicant is a working interest owner in the W½ of Section 12, and has the right to drill a well thereon.

13. Applicant proposes to re-enter and deepen drill the State "X" Well No. 1, at an orthodox well location in the SW¼NW¼ of the section, to a depth sufficient to test the Mississippian formation, and seeks to dedicate the W½ of Section 12 to the well to form a standard 320 acre gas spacing and proration unit for any and all formations and/or pools developed on 320 acre spacing within that vertical extent, including the Undesignated Four Lakes-Morrow Gas Pool and Undesignated Four Lakes-Mississippian Gas Pool.

14. Applicant has in good faith sought to obtain the voluntary joinder of all other interest owners in the W½ of Section 12 for the purposes set forth herein.

15. Although applicant attempted to obtain voluntary agreements from all mineral interest owners to participate in the drilling of the well or to otherwise commit their interests to the well, certain interest owners have failed or refused to join in dedicating their interests. Therefore, applicant seeks an order pooling all mineral interest owners in the W½ of Section 12, pursuant to NMSA 1978 §70-2-17.

16. The pooling of all mineral interests underlying the W½ of Section 12 will prevent the drilling of unnecessary wells, prevent

waste, and protect correlative rights.

WHEREFORE, applicant requests that, after notice and hearing, the Division enter its order:

- A. Pooling all mineral interest owners in the W½ of Section 12 from the surface to the base of the Mississippian formation;
- B. Designating applicant as operator of the well;
- C. Considering the cost of re-entering, deepening, and completing the well, and allocating the cost thereof among the well's working interest owners;
- D. Approving actual operating charges and costs charged for supervision, together with a provision adjusting the rates pursuant to the COPAS accounting procedure;
- E. Setting a penalty for the risk involved in, re-entering, deepening and completing the well in the event a working interest owner elects not to participate in the well.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "James Bruce", is written over a horizontal line.

James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for Pride Energy Company

District I

1625 N. French Dr., Hobbs, NM 88240

District II

1301 W. Grand Avenue, Artesia, NM 88210

District III

1000 Rio Brazos Road, Aztec, NM 87410

District IV

1220 S. St. Francis Dr., Santa Fe, NM 87505

State of New Mexico
Energy Minerals and Natural ResourcesOil Conservation Division
1220 South St. Francis Dr.
Santa Fe, NM 87505Form C-101
Revised June 10, 2003Submit to appropriate District Office
State Lease - 6 Copies
Fee Lease - 5 Copies☐ AMENDED REPORT

APPLICATION FOR PERMIT TO DRILL, RE-ENTER, DEEPEN, PLUGBACK, OR ADD A ZONE

¹ Operator Name and Address Pride Energy Company PO Box 701602 Tulsa, OK 74170-1602		² OGRID Number 151323
		³ API Number 30 - 025-01838
⁴ Property Code 32545	⁵ Property Name State "X"	⁶ Well No. 1

⁷ Surface Location

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
E	12	12 S	34 E		1980	North	660	West	Lea

⁸ Proposed Bottom Hole Location If Different From Surface

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

⁹ Proposed Pool 1

Four Lakes Mississippian

¹⁰ Proposed Pool 2

Four Lakes-Morrow / 1500

¹¹ Work Type Code E	¹² Well Type Code G	¹³ Cable/Rotary R	¹⁴ Lease Type Code S	¹⁵ Ground Level Elevation 4138.4
¹⁶ Multiple No	¹⁷ Proposed Depth 13,019'	¹⁸ Formation Mississippian	¹⁹ Contractor Unknown	²⁰ Spud Date ASAP

²¹ Proposed Casing and Cement Program

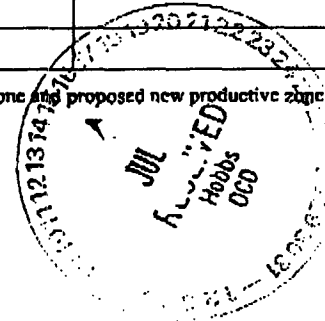
Hole Size	Casing Size	Casing weight/foot	Setting Depth	Sacks of Cement	Estimated TOC
17 1/2"	13 3/8"	48#	389' in place	325 sx	Circulated
12 1/4"	9 5/8"	36#	4307' in place	1700 sx	Circulated
8 3/4"	5 1/2"	17# & 20#	0 to 13,019'	1000 sx	T.O.C. 6000'

²² Describe the proposed program. If this application is to DEEPEN or PLUG BACK, give the data on the present productive zone and proposed new productive zone:
Describe the blowout prevention program, if any. Use additional sheets if necessary.

(See attached)

Permit Expires 1 Year From Approval
Date Unless Drilling Underway

Re-Entry



²³ I hereby certify that the information given above is true and complete to the best of my knowledge and belief.		OIL CONSERVATION DIVISION	
Signature: <i>John W. Pride</i>		Approved by: ORIGINAL SIGNED BY	
Printed name: John W. Pride		PAUL F. KAUTZ	
Title: President of Pride Oil & Gas Co., Inc., as General Partner of Pride Energy Company		Title: PETROLEUM ENGINEER	
E-mail Address: johnwp@pride-energy.com		Approval Date: JUL 16 2003	Expiration Date:
Date: July 10, 2003	Phone: 918-524-9200	Conditions of Approval:	
		Attached <input type="checkbox"/>	

Bureau file 520

EXHIBIT

A

jp3300.vv

District I

1625 N. French Dr., Hobbs, NM 88240

District II

1301 W. Grand Avenue, Artesia, NM 88210

District III

1000 Rio Brazos Rd., Aztec, NM 87410

District IV

1220 S. St. Francis Dr., Santa Fe, NM 87505

State of New Mexico
Energy, Minerals & Natural Resources Department
OIL CONSERVATION DIVISION
1220 South St. Francis Dr.
Santa Fe, NM 87505

Form C-102

Revised June 10, 2003

Submit to Appropriate District Office

State Lease - 4 Copies

Fee Lease - 3 Copies

☐ AMENDED REPORT**WELL LOCATION AND ACREAGE DEDICATION PLAT**

¹ API Number 30-025-01838	² Pool Code 97053 & 97062	³ Pool Name Four Lakes Mississippian & Four Lakes Morrow
⁴ Property Code 32545	⁵ Property Name State "X"	⁶ Well Number 1
⁷ OGRID No. 151323	⁸ Operator Name Pride Energy Company	⁹ Elevation 4138.4

¹⁰ Surface Location

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
E	12	12 S	34 E		1980	North	660	West	Lea

¹¹ Bottom Hole Location If Different From Surface

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

¹² Dedicated Acres 320	¹³ Joint or Infill	¹⁴ Consolidation Code	¹⁵ Order No.
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West Half of Section.

NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A
NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION

<div style="text-align: center;"> <p>16</p> </div>	<p>¹⁷ OPERATOR CERTIFICATION</p> <p>I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief.</p> <p>Signature: <u>John W. Pride</u></p> <p><u>John W. Pride</u> Printed Name</p> <p>President of Pride Oil & Gas Co., Inc., as General Partner of Pride Energy Company: johnp@pride-energy.com</p> <p>Title and E-mail Address:</p> <p>July 8, 2003</p> <p>Date:</p>
	<p>¹⁸ SURVEYOR CERTIFICATION</p> <p>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 belief.</p> <p style="text-align: center;">See original plat.</p> <p>Date of Survey:</p> <p>Signature and Seal of Professional Surveyor:</p> <p>Certificate Number:</p>

SEP-09-03 TUE 12:48 PM

FAX:

PAGE 2



NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

BILL RICHARDSON
Governor
Joanna Frankop
Cabinet Secretary

Lori Wootenberg
Director
Oil Conservation Division

August 26, 2003

Pride Energy Co
ATT: John W Pride
P O Box 701602
Tulsa OK 74170

RE: CANCELLATION OF INTENT TO RE-ENTER

State X #1-ESec. 12, T-12N, R-34EAPI # 30-025-01838

Gentlemen:

With further review of the area, the North half of this section is leased to another operator. The Oil Conservation Division Hobbs office at this time has to cancel Division Form C-101, Notice of Intent to Re-Enter the subject well that was approved July 19, 2003. To date no progress reports, form C-103, have not been received.

If drilling has been done, please file subsequent reports of this work immediately to bring this file into current status. If you have further questions on this matter, please contact Chris Williams (505) 393-6161 ex 102 or Donna Mull (505) 393-6161 ex 115.

Truly yours,

OIL CONSERVATION DIVISION

Chris Williams
District I, Supervisor

CW:dm

CC: OCD Santa Fe
OCD Hobbs
BLM
State Land Office

Oil Conservation Division * 1625 N. French Drive * Hobbs, New Mexico 88240
Phone: (505) 393-6161 * Fax (505) 393-0720 * <http://www.enmrd.state.nm.us>

Bureaucracy No. 5209

EXHIBIT

B

**BEFORE THE
NEW MEXICO ENERGY, MINERALS AND
NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

**APPLICATION OF PRIDE ENERGY COMPANY
FOR CANCELLATION OF A DRILLING
PERMIT AND RE-STATEMENT OF
A DRILLING PERMIT, AN EMERGENCY
ORDER HAULTING OPERATIONS, AND
COMPULSORY POOLING, LEA COUNTY,
NEW MEXICO.**

RECEIVED

SEP 11 2003

Oil Conservation Division

CASE NO. _____

**RESPONSE OF YATES PETROLEUM CORPORATION
TO MOTION OF PRIDE ENERGY COMPANY AND MOTION TO DISMISS
PRIDE'S APPLICATION FOR COMPULSORY POOLING**

Yates Petroleum Corporation, Yates Drilling Company, ABO Petroleum Corporation and MYCO Industries, Inc. (hereinafter collectively referred to as "Yates"), hereby responds to the motion of Pride Energy Company ("Pride") for cancellation of a drilling permit, re-instatement of a drilling permit and an emergency order halting operations and Yates also moves the Oil Conservation Division for an order dismissing Pride's application for compulsory pooling of the W/2 of Section 12, Township 12 South, Range 34 East, NMPM, Lea County, New Mexico.

FACTS:

1. Yates owns the working interest in State of New Mexico Oil and Gas Lease No. V-5855 that covers the N/2 and SE/4 of Section 12, Township 12 South, Range 34 East, NMPM, Lea County, New Mexico.
2. Yates also owns the State "X" Well No. 1 located 1980 feet from the North line and 660 feet from the West line in the NW/4 of Section 12.
3. Pride owns the working interest in the SW/4 of Section 12. It does not own an interest in the State "X" Well No. 1 nor in any acreage in the N/2 of Section 12 that is dedicated to the well.
4. Without notice to Yates, Pride obtained an APD from the Oil Conservation Division to re-enter the Yates State "X" Well No. 1 and dedicated thereto a W/2 spacing unit.

5. In August 2003, Yates filed its APD for the re-entering of the State "X" Well No. 1 on a N/2 spacing unit.

6. On September 5, 2003, pursuant to an approved APD from the Oil Conservation Division, Yates moved a rig onto the State "X" Well No. 1 location and commenced re-working activities.

7. The well is at a standard location and a standard 320-acre spacing unit comprised of the N/2 of Section 12 is dedicated to the well. Yates owns 100% of the working interest in the spacing unit and the well. If Yates' re-working operations are stopped by the Division, substantial harm will occur to Yates.

8. Pride asserts that on receipt of the Yates APD, the Division cancelled the Pride APD.

9. Pride contends that the cancellation of its APD somehow impairs its property rights without due process of law and seeks an order from the Division that would prevent Yates from developing its own property with its own well.

ARGUMENT

REQUEST FOR CANCELLATION OF APD AND CESSATION OF OPERATIONS

Pride is proposing to re-enter a well owned by Yates and on which Yates is now conducting re-entry operations. Because it is proposing operations on the property of another, it asserts that "It is immaterial that the N/2 is leased to another operator" and states "An operator whether under voluntary agreement or under a compulsory pooling order, has the right to drill on another person's lease." The problem with Pride's argument is that there is no voluntary agreement and there is no compulsory pooling order.

Pride contends that cancellation of its APD covering the W/2 of Section 12 and approval of the Yates APD covering the N/2 of this section violates its due process rights. For Pride's due process rights to be violated, it must first have rights in the subject acreage. It does not gain a property right in the Yates well or an interest in the NW/4 of this section just by obtaining an APD for an APD can not create an interest in the property of another. If it did, the due process rights of Yates would have been violated unless it had received notice of the APD and had an opportunity to object to it.

If Pride's understanding of an APD is correct -- if their APD either confers on Pride some interest in the Yates property in the NW/4 of the Section 12 or denies Yates the right to develop its constitutionally protected interests in this acreage -- the Division could never issue an APD unless:

1. 100% of the working interest in the proposed spacing unit is owned by the applicant,
2. there is a voluntary agreement combining the interests in the spacing unit,
3. a compulsory pooling order covering the proposed spacing unit has been entered, or
4. notice and an opportunity for hearing on the APD is provided to all affected parties before it is approved.

Pride's due process are not violated because it has no property interest in Yates well or the acreage on which that well is located. If the Pride desires to develop its acreage, it may drill a well on its acreage and form a spacing unit comprised of the S/2 of Section 12. Its motion to cancel Yates drilling permit and to order Yates to halt operations should be denied.

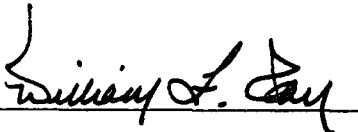
APPLICATION FOR COMPULSORY POOLING

Unless the Division decides that Yates should be denied the opportunity to develop a standard 320-acre spacing unit in which 100% of the working interest with a well at a standard location owned by Yates pursuant to a Division issued APD, there is no interest available to Pride to pool in the NW/4 of Section 12 and Pride's compulsory pooling application must be dismissed.

CONCLUSION

Yates has the right to do each and every thing it is doing on its acreage in the N/2 of Section 12 and each and every thing it is doing is in full compliance with all applicable Division Rules. In this case, Pride simply is attempting to prevent Yates from developing its interests in this section. Pride's motions for cancellation and re-instatement of drilling permits, cessation of operations and its application for compulsory pooling should be denied and dismissed.

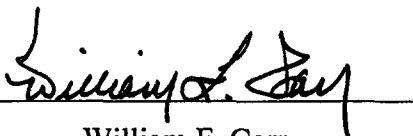
Respectfully submitted,
HOLLAND & HART, LLP

By: 
William F. Carr

ATTORNEYS FOR YATES PETROLEUM
CORPORATION

CERTIFICATE OF SERVICE

I certify that I have caused a copy of the foregoing pleading to be delivered to James Bruce, Esq., attorney for Pride Energy Company, by Facsimile [FAX NO. (505) 982-2151] on this 10th day of September, 2003.


William F. Carr

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

CASE NO. 13153

**APPLICATION OF PRIDE ENERGY COMPANY FOR CANCELLATION
OF A DRILLING PERMIT AND RE-INSTATEMENT OF A DRILLING
PERMIT, AN EMERGENCY ORDER HALTING OPERATIONS, AND
COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.**

**DECISION OF THE EXAMINER
REGARDING
PRIDE ENERGY COMPANY'S REQUEST FOR AN EMERGENCY
ORDER AND YATES PETROLEUM CORPORATION'S REQUEST TO
DISMISS CASE NO. 13153**

BY THE DIVISION

This matter, having come before the Division upon the motion of Pride Energy Company ("Pride") to require Yates Petroleum Corporation ("Yates") to cease all re-entry and drilling operations on the Limbaugh "AYO" State Well No. 1 (API No. 30-025-01838) formerly known as the State "X" Well No. 1, located 1980 feet from the North line and 660 feet from the West line (Unit E) of Section 12, Township 12 South, Range 34 East, NMPM, Lea County, New Mexico, and on the motion of Yates to dismiss Pride's application in Case No. 13153;

The Division, having been informed on the issue,

FINDS THAT:

(1) For the purpose of this decision, the subject well will hereinafter be referred to as the State "X" Well No. 1;

(2) On May 25, 2001, the Oil Conservation Division's Hobbs District Office ("Hobbs OCD") approved Yates' Application to Drill ("APD") to re-enter the plugged and abandoned State "X" Well No. 1 to test the Mississippian formation. The N/2 of Section 12 was to be dedicated to the well forming a standard 320-acre spacing and proration unit for the Undesignated Four Lakes-

Mississippian Gas Pool. The APD stated that the permit would expire on May 25, 2002 unless re-entry operations were underway by that date;

(3) On April 15, 2002, Yates applied for a one-year extension of its drilling permit for the State "X" Well No. 1. Yates' request was granted by the Hobbs OCD on April 18, 2002;

(4) On May 30, 2003, the Hobbs OCD notified Yates by letter that its APD for the State "X" Well No. 1 had expired and that any subsequent re-entry and drilling operations on this well would require an additional permit from the Hobbs OCD;

(5) On July 10, 2003, Pride filed an APD with the Hobbs OCD to re-enter the State "X" Well No. 1 to test the Mississippian formation. The W/2 of Section 12 was to be dedicated to the well forming a standard 320-acre spacing and proration unit. This APD was approved by the Hobbs OCD on July 16, 2003;

(6) On August 23, 2003, the Hobbs OCD cancelled Pride's APD for the State "X" Well No. 1 in view of the fact that the N/2 of Section 12 was leased to another operator;

(7) On August 25, 2003, Yates filed a new APD with the Hobbs OCD to re-enter the State "X" Well No. 1 to test the Mississippian formation. Yates' APD was approved by the Hobbs OCD on August 26, 2003;

(8) On September 5, 2003, Yates moved a rig onto the well and commenced re-entry operations on the State "X" Well No. 1;

(9) On September 10, 2003, Pride filed a compulsory pooling application for the State "X" Well No. 1. Pride proposes to pool the W/2 of Section 12 to form a standard 320-acre spacing and proration unit. Additionally on this date, Pride also filed its request that the Division enter an emergency order requiring Yates to cease all operations on the subject well.

(10) On September 10, 2003, Yates filed a response to Pride's motion, and also filed a motion to dismiss Pride's compulsory pooling application;

(11) The SW/4 of Section 12 is a single state lease (State Lease No. V-6256). Pride is the leaseholder of this acreage;

(12) The N/2 and SE/4 of Section 12 is a single state lease (State Lease No. V-5855). Yates is the leaseholder of this acreage. Additional working interest owners in this lease include Yates Drilling Corporation, Abo Petroleum Corporation, and MYCO Industries, Inc. (collectively "Yates");

(13) Pride has not asserted any ownership interest within the NW/4 of Section 12;

(14) Yates, by virtue of its lease ownership within the N/2 of Section 12, and in recognition that all of the working interest owners within the N/2 of Section 12 are voluntarily committed to a N/2 spacing unit, currently has the right to re-enter and conduct drilling operations on the State "X" Well No. 1;

(15) Under the authority granted by the August 26, 2003 APD, Yates is currently conducting re-entry and drilling operations on the State "X" Well No. 1;

(16) Yates should not be required, at this time, to cease all re-entry operations on the State "X" Well No. 1;

(17) Pride should be given the opportunity to present evidence to the Division with regards to its proposal to form a W/2 spacing unit and to be designated the operator of the State "X" Well No. 1, and other pertinent evidence regarding the issuance and cancellation of drilling permits for the subject well.

IT IS THEREFORE ORDERED THAT:

(1) Consideration of the request of Pride Energy Company for an emergency order requiring Yates Petroleum Corporation to cease all re-entry and drilling operations on the State "X" Well No. 1 (API No. 30-025-01838) located 1980 feet from the North line and 660 feet from the West line (Unit E) of Section 12, Township 12 South, Range 34 East, NMPM, Lea County, New Mexico, is hereby deferred until such time as an evidentiary hearing on the merits of Pride's application in Case No. 13153 is conducted.

(2) The request of Yates Petroleum Corporation to dismiss Pride's application in Case No. 13153 is hereby denied.

Examiner Decision
Motion of Pride Energy Company
Motion of Yates Petroleum Corporation
Case No. 13153
Page 4



David R. Catanach, Examiner
September 12, 2003

Xc: Case File—13153
Gail MacQuesten

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

APPLICATION OF PURE ENERGY COMPANY FOR CANCELLATION
OF DRILLING PERMIT AND RE-INSTATEMENT OF A DRILLING
PERMIT, AN EMERGENCY ORDER HAULTING OPERATIONS, AND
COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

CASE NO. 13153

RECEIVED

SEP 17 2003

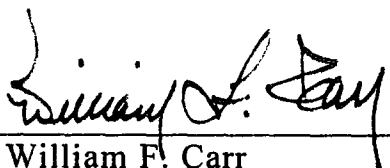
Oil Conservation Division

APPLICATION FOR HEARING DE NOVO

COMES NOW YATES PETROLEUM CORPORATION, a party adversely
affected by the Decision of the Examiner Regarding Pride Energy Company's
Request for an Emergency Order and Yates Petroleum Corporation's Request to
Dismiss Case No. 13153, and hereby applies for a hearing *De Novo* before the
full Commission, pursuant to NMSA 1978, Section 70-2-13.

Respectfully submitted,

HOLLAND & HART, LLP

By: 
William F. Carr
Post Office Box 2208
Santa Fe, New Mexico 87504
Telephone: (505) 988-4421

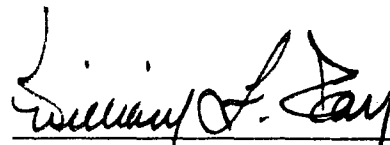
ATTORNEYS FOR YATES
PETROLEUM CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Hearing *De Novo* was hand-delivered, delivered by facsimile and/or mailed this 17th day of September 2003 to the following:

Gail MacQuesten, Esq.
Oil Conservation Division
New Mexico Department of Energy,
Minerals and Natural Resources
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

James Bruce, Esq.
Post Office Box 1056
Santa Fe, New Mexico 87505
FAX NO. (505) 982-2151



William F. Carr



NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

BILL RICHARDSON

Governor

Joanna Prukop

Cabinet Secretary

Lori Wrotenbery

Director

Oil Conservation Division

Denial of Application for Hearing De Novo

COMES NOW the Director of the Oil Conservation Division and Chair of the Oil Conservation Commission, and in response to the Application for Hearing De Novo filed by Yates Petroleum Corporation on September 17, 2003, states as follows:

(1) The DECISION OF THE EXAMINER REGARDING PRIDE ENERGY COMPANY'S (Pride) REQUEST FOR AN EMERGENCY HEARING AND YATES PETROLEUM CORPORATION'S (Yates) REQUEST TO DISMISS CASE NO. 13153 was filed September 12, 2003.

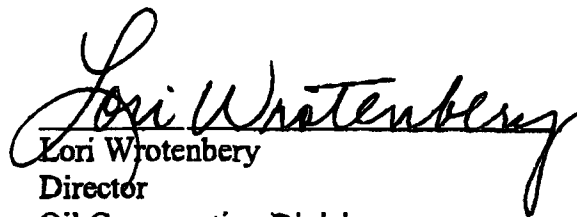
(2) Pride has requested reconsideration of the portion of the decision deferring a decision on Pride's request for an emergency order.

(3) The Decision did not dispose of any issues existing in the case.

(4) The Decision gave few reasons for denying the request of Yates to dismiss Pride's application for compulsory pooling in Case No. 13153.

IT IS THEREFORE ORDERED THAT:

Case No. 13153 is remanded to the Division Hearing Examiner for full consideration of the legal issues that may be raised by Yates' Motion to Dismiss, with a decision to be issued on that matter prior to any hearing of the factual issues related to Pride's compulsory pooling application.


Lori Wrotenbery
Director
Oil Conservation Division

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATION OF PRIDE ENERGY COMPANY
FOR CANCELLATION OF A DRILLING PERMIT
AND RE-INSTATEMENT OF A DRILLING PERMIT,
AN EMERGENCY ORDER HALTING OPERATIONS,
AND COMPULSORY POOLING, LEA COUNTY,
NEW MEXICO.

Case No. 13153

MOTION OF PRIDE ENERGY COMPANY
TO RECONSIDER DECISION OF THE EXAMINER
DENYING EMERGENCY RELIEF

Pride Energy Company ("Pride"), for its motion, states:

1. By its Decision dated September 12, 2003, the Division denied (pending an evidentiary hearing) Pride's request for an emergency order requiring Yates Petroleum Corporation ("Yates") to cease all operations on the State "X" Well No. 1, located in the SW~~1~~⁴/₄NW~~1~~^{4 of Section 12, Township 12 South, Range 34 East, N.M.P.M., Lea County, New Mexico.}

2. At the time Pride's application was filed, Yates had a workover rig on the well. That rig has been removed, and (as of September 19, 2003) Yates has built location, an improved road to the wellsite, and a pit necessary for deepening the well. Yates is obviously planning on moving a drilling rig on-site in a matter of days (if it has not already done so).

3. If an emergency order is not granted, Yates will go the hearing on this matter, state that the well has drilled, and present its operations as an accomplished fact.

4. In short, if Yates is not ordered to cease operations, Pride may well be denied all relief, and that outcome will result directly from (a) the Hobbs' District Office's illegal cancellation of Pride's APD, and (b) the failure of the Division to grant an

BEFORE THE
NEW MEXICO ENERGY, MINERALS AND
NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

RECEIVED
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Oil Conservation Division

APPLICATION OF PRIDE ENERGY COMPANY FOR CANCELLATION OF A
DRILLING PERMIT AND RE-INSTATEMENT OF A DRILLING PERMIT, AND
EMERGENCY ORDER HAULTING OPERATIONS, AND COMPUSLORY
POOLING. LEA COUNTY, NEW MEXICO.

CASE NO. 13153

**MEMORANDUM OF YATES PETROLEUM CORPORATION ET AL.
IN OPPOSITION TO THE APPLICATION OF PRIDE ENERGY COMPANY
FOR CANCELLATION OF A DRILLING PERMIT, RE-INSTATEMENT OF
DRILLING PERMIT AND AN EMERGENCY ORDER HAULTING
OPERATIONS, AND IN SUPPORT OF ITS MOTION TO DISMISS THE
COMPULSORY POOLING APPLICATION
OF PRIDE ENERGY COMPANY**

“The Oil Conservation Commission is a creature of statute,
expressly defined, limited and empowered by the laws creating it.”

Continental Oil Co. v. Oil Conservation Com.

70 N.M. 310, 373 P.2d 809 (1962).

With its application, Pride Energy Corporation (“Pride”) seeks an order of the Division that violates constitutional and statutory law and is contrary to the rules, regulations and orders of the Oil Conservation Division and Commission. Yates asks the Division to follow the law and precedent.

FACTS

1. Yates Petroleum Corporation, Yates Drilling Company, ABO Petroleum Corporation and MYCO Industries, Inc. (hereinafter collectively referred to as “Yates”) own 100% of the working interest in State of New Mexico Oil and Gas lease No. V-5855 that covers the N/2 and SE/4 of Section 12, Township 12 South, Range 34 East, NMPM, Lea County, New Mexico.

2. Yates also owns the State “X” Well No. 1 located 1980 feet from the North line and 660 feet from the West line of Section 12 (“the Yates Well”).

emergency order halting operations.

5. Yates had an APD on the subject well for two years before Pride obtained its APD, without conducting any operations. Thus, there is no harm in making Yates wait several weeks to determine the outcome of this case.

WHEREFORE, Pride requests that the Division reconsider its decision, and enter an emergency order requiring Yates to cease all operations in the NW¼ of Section 12 pending resolution of this matter.

Respectfully submitted,



James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

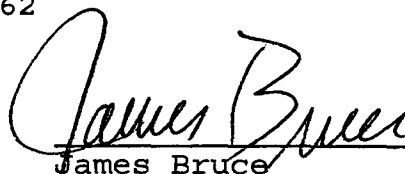
Attorney for Pride Energy Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 22nd day of September, 2003 by fax and United States Mail:

William F. Carr
Holland & Hart LLP
Post Office Box 2208
Santa Fe, New Mexico 87504
(505) 983-6043

David K. Brooks
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
(505) 476-3462



James Bruce

3. Pride owns the working interest in the SW/4 of Section 12. It does not own an interest in the Yates Well nor in any of the lease acreage on which this well is located.

4. Without notice to Yates, Pride filed an Application for Permit to Drill proposing to re-enter the Yates Well and dedicate thereto a spacing unit comprised of the W/2 of Section 12.

5. On July 16, 2003, the Division's District Office in Hobbs, New Mexico approved Pride's APD – again without notice to Yates.

6. On August 25, 2003, Yates filed its APD for the re-entry of its State "X" Well No. 1 and dedicated thereto a standard spacing unit comprised of its acreage in the N/2 of the section. This APD was approved by the District Office and on September 5, 2003, Yates moved a rig onto the location and commenced re-working activities.

7. By letter dated August 26, 2003, the Pride APD was cancelled by the Division because "With further review of the area," the Division determined that "the N/2 of this section is leased to another operator." That other operator is Yates.

8. After Yates had commenced operations on the well, Pride filed an application with the District Office seeking an order (a) canceling the Yates APD, (b) re-instating its drilling permit and (c) halting Yates operations on its well. Pride also sought an order compulsory pooling the W/2 of this Section and designating it the operator of the Yates well and the Yates acreage in the NW/4 of this section. In its application, Pride contends that the cancellation of its APD impairs its property rights without due process of law. *See*, Application of Pride Energy Company, paragraph 9(c).

9. Yates opposes Pride's application and also seeks an order dismissing Pride compulsory pooling application. Yates motion was referred to a Division Examiner for decision.

10. On September 12, 2003, a Division Examiner entered a decision in which he (a) deferred ruling on Pride's application for an order requiring Yates to cease all re-entry and drilling operations on the State "X" Well No. 1 "until such time as an evidentiary hearing on the merits of Pride's application in Case No. 13153 is conducted" and (b) denied Yates application to dismiss pride's compulsory pooling application.

11. On September 13, 2003, Yates filed an application for *de novo* review of this decision of the Examiner pursuant to NMSA § 70-2-13 (1978).

12. On September 22, 2003, the Director of the Division denied Yates application for hearing *de novo* because "The Decision did not dispose of any issues existing in the case" and because "the Decision gave few reasons for denying the request of Yates to dismiss Pride's application for compulsory pooling in Case No. 13153." The Director remanded Case 13153 "...to the Division Hearing Examiner for full consideration of the legal issues that may be raised by Yates' Motion to Dismiss, with a decision to be issued on that matter prior to any hearing of the factual issues related to Pride's compulsory pooling application."

ARGUMENT

Pride's application raises issues concerning Applications for Permit to Drill and compulsory pooling. Each of these issues has recently been addressed and decided by the Oil Conservation Commission. In this case, Yates only asks the Division to follow Commission precedent and the law.

COMPULSORY POOLING ISSUES

YATES IS THE DULY AUTHORIZED OPERATOR OF THE SPACING UNIT COMPRISED OF THE N/2 OF SECTION 12

In recent hearings the Commission considered competing compulsory pooling applications and related Applications for Permits to Drill. (Oil Conservation Division Cases 12816, 12841, 12859 and 12860). Although the facts in that dispute differ from those presented here by Pride,¹ the resulting Commission order is instructive in this case because it discusses the purpose and effect of an APD and explains how it differs from a compulsory pooling order. These findings also clarify what is required of an operator

¹ The case involved competing pooling applications of TMBR/Sharp Drilling, Inc., David H. Arrington Oil & Gas, Inc. and Ocean Energy, Inc. who proposed to drill wells at different locations and on different spacing units without common ownership. Here there is (i) an approved spacing unit comprised of acreage with common ownership dedicated to an existing well and (ii) an application for compulsory pooling of lands already dedicated to the existing well on the Division approved spacing unit.

who proposes to drill where there is common ownership of acreage to be dedicated to a well. (See order No. R-11700-B, copy attached)

In Order No. R-11700-B the Commission stated:

1. an APD simply enables the Division "to verify that requirements for the permit are satisfied" including compliance with Division requirements for well spacing and casing and cementing programs. Findings 33.
2. the practice of designating the acreage to be dedicated to the well on the application for permit to drill furthers administrative expedience. Finding 35
3. where there is common ownership of all working interest in a standard spacing unit, pooling, either voluntary or compulsory, is not needed. Finding 35
4. Where there is common ownership of the acreage to be dedicated to the well and the administrative requirements are met, the APD is approved and "no further proceedings are necessary." Finding 35

Yates' Motion to Dismiss the Pride's compulsory pooling application only asks the Examiner to apply the Commission's findings to the facts of this case. When they are, it is clear that once Yates APD was approved, no further proceedings were needed and Yates was authorized to re-enter its well. Furthermore, since the ownership is common in the acreage dedicated to the Yates well, compulsory pooling is not needed.

Here the Yates owns 100% of the working interest in the standard 320-acre spacing unit comprised of N/2 of Section 12, has obtained an approved APD to re-enter their well at a standard location, and has commenced re-entry operations in their own well. As such, Yates is the duly authorized operator in charge of the development of these lands. It has exercised rights given to it by statute. All of its actions are consistent with Division Rules.

On the other hand, Pride owns no interest in these lands nor in the Yates well. It has no right to drill or produce a well on this acreage nor to appropriate the production from this acreage either to its self or to anyone else. Because it is proposing operations on the property of another, it asserts that "It is immaterial that the N/2 is leased to another operator." Pride Application, Paragraph 9(e). Here, however, the N/2 is not just leased to another. The N/2 is being developed pursuant to an approved AFE with the well owned by the lessee of a spacing unit that has common ownership. As a result,

pooling is not needed and Yates has been duly authorized and charged by the Division with the operation of this property. Pride also states: "An operator, whether under voluntary agreement or under a compulsory pooling order, has the right to drill on another person's lease." Pride Application, Paragraph 9(e). The problem with Pride's argument is that in this case there is no voluntary agreement for pooling, there is no compulsory pooling order, and there is no need for a compulsory pooling order.

All Yates asks the Division to do is to apply the Commission's findings in Order No. R-11700-B to this case and dismiss Pride's pooling application.

**PRIDE'S APPLICATION CANNOT MEET THE STATUTORY
REQUIREMENTS FOR COMPULSORY POOLING AND
MUST BE DISMISSED**

Before the W/2 of Section 12 can be pooled, Pride must establish (1) that the acreage in the proposed unit is available for pooling, and (2) that it has a right to re-enter the Yates State "X" Well No. 1. It can do neither.

The NW/4 of the section cannot be included in a W/2 spacing unit because it is dedicated to a N/2 unit and to an offsetting well. To set aside the existing N/2 spacing unit, Pride must show some violation of statute or rule. This it cannot do. In forming this unit and re-entering this well, Yates has complied with each and every regulatory requirement of the Division. There is no waste issue in this case for Pride proposes to do exactly what Yates is doing – re-enter the Yates well to test the same formations Yates proposes to test.

Pride has no right to re-enter the Yates State "X" Well No. 1 in the NW/4 of Section 12. Pride does not own the well it seeks to re-enter or own an interest in the NW/4 of this section. Pride has no voluntary agreement for the development of these lands or to use this well. As a result, necessary preconditions for an application for compulsory pooling are not present in this case. The spacing unit Pride proposes to pool is not available for pooling and Pride does not have the right to drill as it proposes. Pride therefore has no right to bring this application and its compulsory pooling application must be dismissed.

PRIDE SEEKS AN ORDER THAT WOULD IMPAIR YATES' CORRELATIVE RIGHTS

The purpose of the Pride application is to deny Yates the opportunity to produce its reserves in the N/2 of Section 12 with its own well. The Oil and Gas Act defines correlative rights as '...the opportunity afforded, so far as it is practical to do so to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas or both in the pool, being an amount , so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool,...." NMSA 1978, § 70-2-33(H).

By re-entering its State "X" Well No. 1 Yates has availed itself of the opportunity to produce with its well its fair share of the reserves located under its tract -- it is exercising its correlative rights.

Pride seeks an order that would set aside Yates APD, pool the Yates acreage in the NW/4 of this section with acreage owned by Pride and prevent Yates from returning its well to production. Pride seeks an order that would deny Yates the opportunity to produce its share of the reserves with its well and is contrary to statute, rule and precedent and impairs Yates' correlative rights.

Pride only owns the working interest in the SW/4 of Section 12. The Yates N/2 spacing unit does not interfere with the statutory rights of Pride to produce its fair share of the reserves under its tract with a well drilled in the S/2 of the Section. The existence of the N/2 spacing unit just means that Pride will have to produce its minerals with its well instead of taking Yates minerals with a Yates well.

APPLICATION FOR PERMIT TO DRILL ISSUES

PRIDE'S DUE PROCESS ARGUMENT

Pride asks the Division to cancel Yates' APD covering the N/2 of Section 12 and re-instate its APD covering the W/2 of the section. It contends that cancellation of its APD and the approval of the Yates APD violates its due process rights. For Pride's due process rights to be violated, it must first have rights in the subject acreage that are

impaired by the Division's actions. Pride does not have a constitutionally protected property right in the NW/4 of Section 12.

Interests in oil and gas rights are rights in real property. *Duvall v. Stone*, 54 N.M. 27, 32, 213 P.2d 212, 215 (1949). As such they are protected under the due process clause of the New Mexico Constitution (Art. II, Sec. 18) and the United States Constitution (14th Amendment). *Uhden v. New Mexico Oil Conservation Commission*, 112 N.M. 528, 530, 817 P.2d 721, 723. They cannot be impaired without notice and an opportunity for hearing.

Pride seems to contend that it gained a property right in the NW/4 of Section 12 through its APD. However, Pride cites no authority for its proposition that an APD grants a property right, and the Commission has completely disavowed any such notion. In Order No. R-11700-B, the Commission discussed the purpose and effect of an APD. It reviewed the administrative objectives served by the APD and noted that "An application for a permit to drill serves different objectives than an application for permit for compulsory pooling and the two proceedings should not be confused."² It "expressly disavowed" that the acreage dedication plat attached to an application for permit to drill somehow pools acreage.³

Therefore, the approval of Pride's APD with attached acreage dedication plat did not and can not create in Pride any interest in the NW/4 of Section 12 and the cancellation of the APD covering the W/2 of the section could not impair any right owned by Pride.

² Finding 33: "... An application for a permit to drill serves different objectives than an application for compulsory pooling and the two proceedings should not be confused. The application for permit to drill is required to verify that requirements for a permit are satisfied. For example, on receipt of an application, the Division will verify whether an operator has financial assurance on file, identify which pool is the objective of the well so as to identify the proper well spacing and other applicable requirements, ensure that the casing and cementing program meets Division requirements and check the information provided to identify any other relevant issues. The acreage dedication plat that accompanies the Application (Form C-102) permits verification of the spacing requirements under applicable rules or statewide rules. Compulsory pooling is related to these objectives in that compulsory pooling would not be needed in the absence of spacing requirements. 1 Kramer & Martin, *The Law of Pooling and Unitization*, § 10.01 (2001) at 10-2. But its primary objectives are to avoid the drilling of unnecessary wells and to protect correlative rights. NMSA 1978, § 70-2-17(C)."

³Order No. R-11700-B, Finding paragraph No. 34 on page 7.

Pride has every right to develop its acreage in the SW/4 of the section by drilling a well. It just does not have the right to produce reserves from a Yates tract with a well it does not own. Furthermore, since Pride has no interest in the N/2 of this section, no violation of due process can occur by the dedication of acreage in which it owns no interest to a well in which it owns no interest.

**PRIDE'S DUE PROCESS ARGUMENT
IGNORES THE RIGHTS OF YATES
AND WOULD CREATE IMPOSSIBLE
ADMINISTRATIVE BURDENS**

Yates is the owner of the working interest in the N/2 of Section 12. These oil and gas rights are also constitutionally protected property rights and may not be impaired without notice and an opportunity for hearing. However, Pride obtained approval of an APD covering the W/2 of Section 12 without notice to Yates and now attempts to use the APD for a W/2 spacing unit to prevent Yates from developing its mineral rights. Pride's due process argument is based on violation of the due process rights of Yates.

If Pride's understanding of an APD was correct – if their APD either confers on Pride some interest in Yates property in the NW/4 of Section 12 or denies Yates the right to develop its constitutionally protected interests in this acreage, the Division could never issue an APD unless:

1. 100% of the working interest in the proposed spacing unit is owned by the applicant,
2. there is voluntary agreement combining the interests in the spacing unit,
3. A compulsory pooling order covering the proposed spacing unit has been entered, or
4. notice and an opportunity for hearing on the proposed APD is provided to all affected parties before the APD is approved.

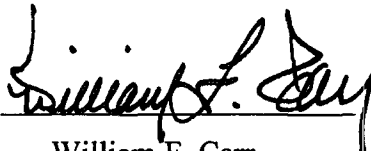
CONCLUSION

Yates has the right to do each and every thing it is doing on its acreage in the N/2 of Section 12. Each and every thing it is doing is in full compliance with the applicable rules, regulations and orders of the Oil Conservation Division. Pride is attempting to prevent Yates from developing its interests in this section and through administrative action take valuable property interests from Yates. The Division should not allow its

administrative procedures to be used this way and should immediately dismiss in total the Pride's application.

Respectfully submitted,

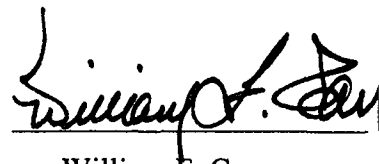
HOLLAND & HART, L.L.P.

By: 
William F. Carr

ATTORNEYS FOR YATES PETROLEUM
CORPORATION

CERTIFICATE OF SERVICE

I certify that I have caused a copy of the foregoing pleading to be delivered to James Bruce, Esq., attorney for Pride Energy Company, by facsimile [FAX NO. (505) 982-2151] on this 26th day of September, 2003.


William F. Carr

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATION OF PRIDE ENERGY COMPANY
FOR CANCELLATION OF A DRILLING PERMIT
AND RE-INSTATEMENT OF A DRILLING PERMIT,
AN EMERGENCY ORDER HALTING OPERATIONS,
AND COMPULSORY POOLING, LEA COUNTY,
NEW MEXICO.

Case No. 13153

RESPONSE OF PRIDE ENERGY COMPANY
TO MOTION TO DISMISS

Pride Energy Company ("Pride") submits this response to the memorandum filed by Yates Petroleum Corporation et al. ("Yates") on September 26, 2003 in support of its motion to dismiss the pooling application filed herein by Pride.

FACTS

The pertinent facts are set forth briefly below:

1. Pride owns the working interest in State Lease V-6256, covering the SW¼ of Section 12, Township 12 South, Range 34 East, N.M.P.M., Lea County, New Mexico.
2. Yates owns the working interest in State Lease V-5855, covering the N½ and SE¼ of Section 12.
3. Both parties propose to re-enter and deepen the existing State "X" Well No. 1, located 1980 feet from the north line and 660 feet from the west line of Section 12, to test the Morrow and Mississippian formations. Both formations are spaced on 320 acres.
4. On July 16, 2003, Pride obtained an approved Application for Permit to Drill ("APD") covering the W½ of Section 12. The APD states on its face that "Permit Expires 1 Year From Approval Date Unless Re-Entry Operations Underway."

5. In furtherance of its plans, Pride contacted Yates in writing and by phone in an effort to obtain the voluntary joinder of Yates in its W½ well proposal. Yates stated that they'd respond to the proposal, but never did.

6. On or about September 9, 2003, Pride was informed that its APD had been canceled. A letter from the Division, dated August 26, 2003, was faxed to Pride on September 9th.

ARGUMENT

Yates's arguments misconstrue the pertinent legal authority in an attempt to justify its actions. In summary, (a) Pride had a valid APD which the Hobbs District Office illegally canceled, (b) as a result, Yates' APD was improperly granted, and (c) the W½ of Section 12 may be force pooled. These issues, and certain subsidiary issues, are addressed below.

I. Ownership of Wellbore.

Yates first asserts, in its statement of facts, that it owns the wellbore of the State "X" Well No. 1. It does not. That well was drilled and abandoned in 1957. The lease under which that well was drilled has long since expired. The leases of Yates and Pride are dated in 2000 and 2001, respectively. Applicable case law provides that, at the expiration of a lease the wellbore reverts to the **surface owner** (in this case, the Commissioner of Public Lands). Thus, the wellbore is owned by the Commissioner. Although the mineral lessees have the right to use the wellbore for their mineral development operations, Yates does not "own" the wellbore. Thus, it is available for force pooling.

II. Cancellation of Pride's APD.

Division Rule 1101.A states in part:

Before commencing drilling or deepening operations ... the operator of the well must obtain a permit to do so. ... If the operator has an approved bond in accordance with Rule 101, one copy of the Drilling Permit will be returned to him on which will be noted the Division's approval, with any modifications deemed advisable. **If the proposal cannot be approved for any reason, the Forms C-101 will be returned with the cause for rejection stated thereon.**

(Emphasis added.) Pursuant to this regulation, Pride's APD was approved, because Pride met the requirements of the rule.

The cancellation of Pride's APD, and the approval of Yates' APD, were improper for the following reasons:

1. The Division's rule allows the District Office to initially refuse to approve an APD filed with it. However, they do not allow the District Office to revoke the APD **once it is properly issued**. Pride's APD was valid for one year, and only terminates if, by the end of one year, no work has been done on the well. Therefore, the Hobbs District Office's statement that the APD was revoked because no C-103s were filed within one month after issuance is foolish, and contrary to regulations. If Pride's APD was to be canceled within the one year period, an application needed to be filed with the Division in Santa Fe. That has never been done by Yates, and thus Pride's APD must be re-instated.¹

¹Pride has a property interest in its APD, not in the NW¼ of Section 12. It is that interest which is subject to due process considerations, since state action is involved. *Udden v. Oil Conservation Comm'n*, 112 N.M. 528, 817 P.2d 721 (1991) ("the essence of justice is largely procedural"). Since Division procedures were not followed herein, Pride's APD must be re-instated.

2. Yates spends considerable time arguing that it meets the requirements of Commission Order No. R-11700-B. The order does indeed state that, if there is common ownership in a well unit, once an APD is approved no further proceedings are necessary. **Order No. R-11700-B, Finding Paragraph 35.** However, that assumes an APD was properly granted to Yates in the first instance.² As noted above, Pride's APD was improperly canceled, Yates' APD was improperly granted, and thus Yates' APD must be revoked. In addition, as noted in Part III below, even a validly issued APD does not prevent compulsory pooling.

3. In the cases involved in Order No. R-11700-B, TMBR/Sharp Drilling, Inc. obtained an APD for a laydown 320 acre unit. Ocean Energy, Inc. subsequently attempted to obtain an APD for a conflicting standup unit, but was informed by the Hobbs District Office that it would not approve the standup APD **solely because** the District Office had already issued the laydown APD. See testimony of Derold Maney (landman for Ocean Energy, Inc.). Now, the Hobbs District Office, at the request of Yates, and without regulatory authority and contrary to the policy the Division established in 2002, approves an APD conflicting with Pride's previously approved APD. Such action is improper.

²Again, Pride notes that Yates had an APD covering the N½ of Section 12 (obtained without notice to Pride) for two years, which it allowed to lapse because of a complete lack of activity. Thus, the W½ was available for Pride to obtain an APD and to force pool. In addition, the Hobbs District Office did not cancel Yates' APD because it failed to file C-103s during the first month or two of the permit. The Division must treat operators in an even-handed manner.

III. Compulsory Pooling is Proper.

Yates position on pooling is confusing. It says that Pride has no right to pool the W½ of Section 12. However, since Yates owns the lease on the N½ and SW¼, and Pride owns the lease on the SW¼, a compulsory pooling proceeding is inevitable for at least one 320 acre well unit in Section 12. Therefore, pooling is proper either for a standup or laydown unit.

The pooling statute states in part:

When two or more **separately owned tracts of land** are embraced within a spacing or proration unit ... the owners thereof may validly pool their interests and develop their lands as a unit Where, however, such owner or owners have not agreed to pool their interests, ... the division, to avoid the drilling of unnecessary wells and to protect correlative rights ... **shall pool** all or any part of such lands ...

All operations for the pooled oil or gas, or both, **which are conducted on any portion of the unit shall be deemed for all purposes to have been conducted upon each tract** within the unit by the owners or owners of such tract ...

NMSA 1978 §70-2-17.C (emphasis added). The case law holds that the Division is authorized to establish a well at any location on a spacing unit, regardless of whether the owner of the land on which the well is located has consented thereto. Texas Oil & Gas Corporation v. Rein, 534 P.2d 1277 (Okla. 1974). Thus, Pride is entitled to proceed in this case even though the State "X" Well No. 1 is not on its lease. Yates' "interpretation" would gut the purpose of the statute.

Moreover, Yates' motion to dismiss ignores the terms of the very order of the Commission which it uses as the basis for its argument. The order states in part:

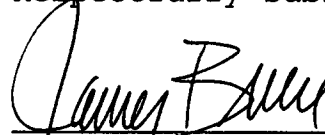
Issuance of the [APD] does not prejudice the results of a compulsory pooling proceeding. ...

Order No. R-11700-B, Finding Paragraph 34. In the TMBR/Sharp Drilling, Inc. case it had an approved APD, but Ocean Energy, Inc. was allowed to proceed with its pooling application. By the same token, Pride must be allowed to proceed with this pooling application.

CONCLUSION

For the reasons stated above, Pride requests that the Division deny Yates' motion to dismiss.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "James Bruce", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 3rd day of October, 2003

Via Fax and U.S. Mail

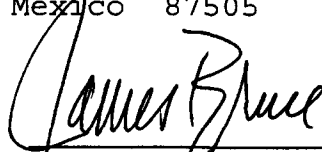
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