



April 6, 2006

HAND-DELIVERED

Mark E. Fesmire, P.E.
Director
Oil Conservation Division
New Mexico Energy, Minerals and
Natural Resources Department
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

2006 APR 6 PM 4 18

Re: Application of Pride Energy Company for compulsory pooling, Lea
County, New Mexico.

Dear Mr. Fesmire:

Enclosed is Yates Petroleum Corporation's Motion to Dismiss the application of Pride Energy Corporation in the above-referenced case and supporting memorandum. Yates Petroleum Corporation requests that this motion be set for oral argument at the April 13, 2006 examiner hearings.

Very truly yours,

William F. Carr

Enclosures

cc: Mr. Chuck Moran
Yates Petroleum Corporation
105 South Fourth Street
Artesia, New Mexico 88210-2118

Mr. James Bruce, Esq.
Post Office Box 1056
Santa Fe, New Mexico 87504

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

**APPLICATION OF PRIDE ENERGY COMPANY FOR COMPULSORY
POOLING, LEA COUNTY, NEW MEXICO.**

CASE NO. 13690

**YATES PETROLEUM CORPORATION'S
MOTION TO DISMISS**

Yates Petroleum Corporation ("Yates"), through its attorneys, Holland & Hart, LLP, hereby moves the Oil Conservation Division for an order dismissing the application of Pride Energy Company in this case and in support of its motion, states:

1. Yates is the owner of oil and gas rights in the W/2 of Section 12, Township 12 South, Range 34 East, N.M.P.M., Lea County, New Mexico.

2. Pride Energy Company ("Pride") is the owner of the oil and gas rights under the SW/4 of said Section 12.

3. Pride seeks an order pooling all interests in the W/2 of Section 12 for a re-entry attempt in the State X Well No. 1 that is located at a standard well location in the NW/4 of the section.

4. Yates moves the Division for an order dismissing this application because:

A. Pride does not have the right to drill this well; and

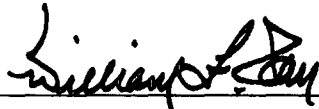
B. Pride failed to make a good faith effort to reach a voluntary agreement with Yates for the development of this acreage and is therefore not entitled to invoke the pooling power of the Division.

5. Yates also objects to the entry of a pooling order prior to the resolution by the Division of the outstanding issues currently pending before the Division related to the previous order entered by the Division on the Application of Pride pooling Yates' interests into a W/2 Unit for the re-entry of this well.

WHEREFORE, Yates Petroleum Corporation moves the Division for an order dismissing the application of Pride Energy Company for an order pooling the W/2 of Section 12, Township 12 South, Range 34 East, NMPM, Lea County, New Mexico.

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Respectfully submitted,
HOLLAND & HART, LLP

BY  -

William F. Carr

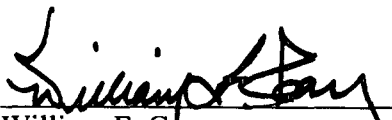
ATTORNEYS FOR YATES PETROLEUM
CORPORATION

CERTIFICATE OF SERVICE

I certify that on April 6, 2006 I served a copy of the foregoing Motion to Dismiss
by Hand Delivery or Facsimile to:

Gail MacQuesten, Esq.
Oil Conservation Division
1221 South Saint Francis Drive
Santa Fe, New Mexico 87505

Pride Energy Company
c/o James Bruce, Esq.
369 Montezuma, No. 213
Santa Fe, New Mexico 87501
Fax No. (505) 982-2151


William F. Carr

**STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
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**APPLICATION OF PRIDE ENERGY COMPANY FOR COMPULSORY
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CASE NO. 13690

**YATES PETROLEUM CORPORATION'S
MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS**

For more than two years Pride Energy Company ("Pride") has been wrongfully holding more than \$116,000 it owes to Yates Petroleum Corporation.¹ Instead of wrapping up its first botched effort to re-enter the State X Well No. 1 and refunding these funds to Yates, Pride now seeks another pooling order from the Division. It again asks the Division to require Yates to pay even more money to Pride or be subject to a 200% risk penalty to be recovered out of production from the State X Well No. 1. On January 5, 2006, Yates appeared before the Division and sought a determination that these funds should be refunded to Yates. The Division has not acted on this application. Yates now asks the Division to dismiss the current application for compulsory pooling instead of once again requiring Yates to become entangled in the development of a tract with an operator who has (1) proven its inability to re-complete this well and (2) has failed and refused to account to Yates for its operations on the well.

BACKGROUND:

On September 5, 2003, pursuant to a Division-approved APD, Yates Petroleum Corporation commenced re-working operations on the State "X" Well No. 1 located at a standard location 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. A standard spacing unit comprised of Yates acreage in the N/2 of the Section 12 was dedicated to the well. Thereafter, Pride filed an application seeking, among other things,

¹ Yates Petroleum Corporation, Yates Drilling Company, ABO Petroleum Corporation and MYCO Industries, Inc. are hereinafter collectively referred to as "Yates." Together they 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.

an order canceling the Yates drilling permit, and designating Pride operator of the State "X" Well No. 1. On March 2, 2004 the Division entered Order No. R-12108 granting Pride's application, removing Yates as operator of the well, and giving operations to Pride. This order was subsequently affirmed by the Commission. This order also required Pride to reimburse Yates the costs it had incurred while conducting re-entry operations on the well and thereafter, Yates provided Pride a schedule of the actual well costs it incurred while working on the well. Pride objected to some of these costs.

On October 13, 2004, Yates signed Pride's AFE and, pursuant to the Commission's order, paid Pride \$376,647.43 for its share of the AFE costs

On February 15, 2005, Pride commenced re-entry operations and on February 27, 2005, experienced problems with the well. Being unsuccessful in its efforts to correct these problems, on March 10, 2005, Pride released the rig and on March 26, 2005, Pride ceased working on the well. Pride did not complete the well within 120 days after resumption of re-entry operations and did not obtain an extension of this order. Therefore, the pooling order expired, is now of no effect, and the pooled unit created thereby has terminated.

Pride did not spend all of the sums covered by its AFE but has refused to refund to Yates its share of the unused sums paid by Yates pursuant to the pooling order and Pride's AFE. Yates has requested an accounting from Pride, but none was provided.

Based on what little information Yates had from its efforts to re-enter the well, and the limited information on the well provided by Pride, on March 10, 2005, Yates wrote Pride and recommended that the State "X" Well No. 1 be plugged and abandoned. Yates received no response to its March 10, 2005 letter and Pride failed or refused to advise Yates of its decision concerning future operations on the State "X" Well No. 1. Therefore, on April 22, 2005, Yates again wrote Pride and advised that Yates did not want to "spend any additional money pursuing the development of the well" and requested that the parties meet to try to resolve the cost issues. Pride did not respond to Yates' request.

Yates' State of New Mexico Oil and Gas Lease covering Yates interests in Section 12 had an expiration date of July 1, 2005. Therefore, to protect its property interests in this section, Yates drilled a well in the SE/4 of the Section.

In an attempt to resolve these issues, Yates filed an application seeking an order (1) directing Pride to reimburse Yates for the costs Yates incurred in its re-entry operations on the State "X" Well No. 1 prior to the time Pride assumed operations of the well, and (2) an order directing Pride to account to and refund to Yates all of the portion of the estimated share of well costs for the State "X" Well No. 1 now improperly held by Pride. This case was heard on January 5, 2006. No order has been entered by the Division in this case and Pride is still holding funds that belong to Yates.

On February 24, 2006, Yates contacted by Pride concerning the State X Well No. 1. Yates attempted to discuss resolution of all issues between the parties including Pride's proposal for a second re-entry of the State X Well. Thereafter on February 27, 2006 Yates received an AFE from Pride for an additional re-entry attempt in the State "X" Well No. 1. Pride asked Yates to execute the AFE and pay its share of the estimated re-entry costs of \$1,973,700. A copy of Pride's AFE is attached as Exhibit A. In response to Pride's AFE, on March 3, 2006, Yates wrote Pride and requested a well prognosis. A copy of this letter is attached hereto as Exhibit B. One day later, on February 28, 2006, Pride filed an application for compulsory pooling. No other response has been received from Pride.

Yates advised Pride through counsel that it would object to the pooling application because of the short time frame between the time the AFE was received and the date the pooling application was filed. Pride then dismissed its pooling application and re-filed on March 14, 2006.

Yates objects to this application and the entry of another order pooling its interest. Yates therefore has filed its motion with the Division seeking an order dismissing this application because Pride has failed to meet the statutory pre-conditions for a pooling order. Yates also objects to the entry of another pooling order by the Division until the Division resolves the issues pending before it related to the first pooling order covering these same lands and interests.

ARGUMENT:

Compulsory pooling involves an action where the real property interest in oil and gas rights owned by one person is taken through an exercise of the police power of the state and given to another to develop and operate. The Oil and Gas Act contains specific

statutory safeguards which must be met before the power is exercised by the Oil Conservation Division. N.M.S.A. § 70-2-17 (2006). The Division may pool interests only if these preconditions are met.

The statutory preconditions to a pooling order include the requirement that the party seeking a pooling order have the right to drill. Here, Pride will have no right to re-enter the State X Well No. 1 unless the Division again orders the pooling of Yates acreage into a spacing unit to be operated by Pride. However, as shown below, Pride has failed to meet the statutory preconditions for a pooling order and until it does, any activity on the State X Well No. 1 will constitute a trespass.

To deal with the endless delays caused by this dispute with Pride, Yates had to drill a well to protect its lease. However, Pride seems to have no interest in developing the reserves, if any, under its lease. The only way it proposes to exercise its correlative rights (avail itself of the statutorily guaranteed opportunity to produce the reserves under its acreage) is with a well on the Yates acreage where 50% of the reserves drained from the Yates lease will be paid to Pride.

These statutory preconditions to a pooling order also include a requirement that the party seeking the order show that it is unable to reach a voluntary agreement for the development of these lands with the owners of interests subject to pooling. The Division and Commission have required that before a pooling order is entered, a good faith effort be made to reach a voluntary agreement.

On the facts of this case, Pride cannot assert that it has made a good faith effort to reach a voluntary agreement with Yates for another re-entry of this well. Pride ignored Yates offer after the January 5th hearing to meet to discuss the well has failed or refused to respond to Yates recent requests for information on its current proposal. Having failed to make a good faith effort to reach a voluntary agreement for the development of these lands, Pride is not entitled to a pooling order.

Furthermore, since the mandated statutory preconditions for a compulsory pooling order have not been met, the Division cannot exercise the police power of the state to take Yates' interest and, once again, give it to Pride.


Yates also objects to the entry of another pooling order by the Division until it resolves the issues pending before it related to the Division's first pooling order covering

these same lands and interests. At this time, Pride is holding \$84,391.58 that the Division and Commission directed Pride to refund to Yates for the costs it incurred while attempting a re-completion of the well prior to the entry of the pooling orders in the original pooling case. (Order Nos. R- 12108-A and R-12108-C) In addition, Pride is withholding \$32,203.91 of unused AFE costs. Yates is in this situation because of orders entered by the Division and Commission over the objections of Yates.

Yates therefore seeks an order from the Division dismissing Pride's application for compulsory pooling on the grounds that it has not met the statutory preconditions for a pooling order and that the Division therefore may enter an order pooling these lands. Yates also objects to the entry of another pooling order by the Division until it resolves the issues pending before it related to the first pooling order covering these same lands and interests. To force pool Yates again before resolving the outstanding issues from the first case requires an arbitrary and unreasonable action by the Division.

Respectfully submitted,

HOLLAND & HART, LLP

By 

William F. Carr

ATTORNEYS FOR YATES PETROLEUM
CORPORATION

CERTIFICATE OF SERVICE

I certify that on April 6, 2006 I served a copy of the foregoing Memorandum in Support of Motion to Dismiss by Hand Delivery or Facsimile to:

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