

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

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

CASE NO. 12,955

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

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

October 24th, 2002

Santa Fe, New Mexico

02 NOV - 8 PM 2:22

OIL CONSERVATION DIV

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

* * *

I N D E X

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Examiner Hearing
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E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	5	-
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* * *

A P P E A R A N C E S

FOR THE DIVISION:

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

FOR YATES PETROLEUM CORPORATION:

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

* * *

ALSO PRESENT:

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

* * *

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

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

10 Call for appearances.

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

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

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

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

24 EXAMINER STOGNER: Okay, Mr. Carr?

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

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

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

5 MR. BROOKS: Very good.

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

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

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

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

1 *facie* case in this case.

2 EXAMINER STOGNER: Any objections, Mr. Carr?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 So that is our legal position.

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

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

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

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

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

18 Thank you very much.

19 EXAMINER STOGNER: Mr. Carr?

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

25 The agreement between Yates and the Oil

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

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

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


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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 Thank you, Mr. Stogner.

14 EXAMINER STOGNER: Anything further in this
15 matter?

16 MR. CARR: No, sir.

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

20 MR. CARR: Yes, sir.

21 MR. BROOKS: Okay.

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

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

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

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

4 EXAMINER STOGNER: Yeah.

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

8 MR. BROOKS: Right.

9 MR. CARR: -- or response.

10 EXAMINER STOGNER: Friday, November the 8th.

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

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

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

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

18 MR. BROOKS: Okay, very good.

19 EXAMINER STOGNER: Anything further?

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

22 Thank you, gentlemen.

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

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

[Signature], Examiner

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

CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL November 5th, 2002.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006