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September 9, 1997

**Hand Delivered**

David Catanach  
Oil Conservation Division  
2040 South Pacheco Street  
Santa Fe, New Mexico 87505

Dear Mr. Catanach:

Enclosed is applicant's response to Yates' motion to dismiss in  
Case 11839 (Odessa Oil Investments).

Very truly yours,



James Bruce

cc: Counsel of record w/encl.

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

APPLICATION OF ODESSA OIL INVESTMENTS,  
INC. FOR SALT WATER DISPOSAL, EDDY  
COUNTY, NEW MEXICO.

CASE NO. 11839

RESPONSE IN OPPOSITION TO MOTION TO DISMISS

Applicant Odessa Oil Investment Company, Inc. ("Odessa") opposes the Motion to Dismiss filed by Yates Petroleum Corporation ("Yates"). In support of its response, Odessa states:

I. FACTS.

The following is a timeline of the facts applicable to this case:

3/01/97:	Yates' oil and gas lease expires. <sup>1</sup>
5/05/97:	Odessa contacts the SLO about obtaining a lease to use the Lakewood St. Com. Well No. 1 ("the well") for salt water disposal ("SWD") purposes.
5/13/97	Odessa files a Form C-108 with the OCD.
5/20/97	Yates receives the Form C-108 by certified mail. Yates does not object within 15 days.
6/4/97	Notice of the SWD application is published in the Carlsbad Current-Argus. Yates does not object within 15 days.
6/23/97	Odessa files its lease application with the SLO to use the well for SWD purposes.
7/01/97	The SLO cashes the check submitted with Odessa's lease application.
7/01/97	The SLO issues (new) Oil and Gas Lease V-5110 to Yates on Section 30.

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<sup>1</sup>The surface estate and mineral estate of all of Section 30, Township 19 South, Range 26 East, NMPM, Eddy County, New Mexico, are owned by the State Land Office ("SLO").

## II. ARGUMENT.

Yates asserts that it has the exclusive right to use the well during the term of an oil and gas lease. That is partially correct: During the term of a lease, Yates has the exclusive right to re-enter a well that Yates has drilled. Penroc Oil Corp., 84 IBLA 36. That is not the case here.

The well was drilled by Monsanto Oil Company many years ago. That lease expired, and Yates leased the property. That lease expired on March 1, 1997, and Yates re-leased the property on July 1, 1997. The law is clear that once an oil and gas lease expires, a wellbore becomes the property of the surface owner. This is because, once minerals have been removed from the soil, the space occupied by the minerals reverts to the surface owner by operation of law. Emeny v. United States, 412 F.2d 1319 (Ct. Cl. 1969); Ellis v. Arkansas Louisiana Gas Co., 450 F.Supp. 412 ((E.D. Okla. 1978) (surface owner has right to grant underground gas storage rights); Sunray Oil Co. v. Cortez Oil Co., 188 Okla. 690, 112 P.2d 792 (1941) (surface owner has right to grant salt water storage rights). Thus, the SLO had the right to grant Odessa permission to use the well for SWD purposes. Only where the oil and gas lease explicitly grants the lessee the right to use a pre-existing wellbore does the lessee have that right. See Browning v. Mellon Exploration Co., 636 S.W.2d 536 (Tex. App. 1982).

Based on these principles, the SLO, as surface owner, has the right to grant Odessa permission to use the well for SWD purposes. Moreover, because Odessa's application to the SLO was first in

time, it has priority over Yates' oil and gas lease.

In addition, Yates' objection to this application was untimely. As noted above, Yates received written and publication notice of Odessa's application. Yates stated at hearing that it had no right to object to the application until the oil and gas lease was issued. That is incorrect: Form C-108 requires notice to be given to offset lessees or operators. Yates is an offset lessee in the SE¼ of Section 19. **See Odessa Exhibit 5, page 2 (land plat)**. As a result, Yates had the right to object, but its objection was untimely, and should be dismissed.

Therefore, the Division should deny Yates' motion, and issue an order approving the well as an SWD well.<sup>2</sup>

However, as an accommodation, Odessa is willing to allow Yates to re-enter the well to test the depths already drilled. This proposal is restricted in the following manner:

1. A reasonable time limit should be imposed by the Division for Yates' re-entry and testing of the well; and
2. If Yates does not establish production in paying quantities, then Odessa shall be allowed to use the well for SWD purposes.

There is no production from the oil and gas lease. Thus, Yates cannot use the well to dispose of salt water from other leases without obtaining a salt water disposal lease from the SLO. **SLO Rules 1.063, 9, and 11. Accord, Gill v. McCollum, 19 Ill.App.3d 402, 311 N.E.2d 741 (1974).** Because Odessa first applied to the

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<sup>2</sup>The SLO will not act on Odessa's application until the OCD issues its order.

SLO for a SWD lease, its application would have priority over any similar application filed by Yates. Odessa's proposal is fair to everyone.

**WHEREFORE**, Odessa respectfully requests that the Division enter an order (a) granting it the right to use the well as an SWD well, or (b) in the alternative, allow Yates a limited time to test the well, but set a time limit on re-entry, and also providing that if re-entry is not successful, that Odessa has the right to use the wellbore.

Respectfully submitted,



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Attorney for Applicant

CERTIFICATE OF SERVICE

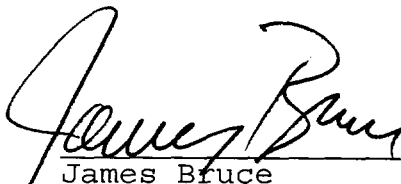
I hereby certify that a copy of the foregoing pleading was served this 9th day of September, 1997, in the following manner:

Via U.S. Mail

William F. Carr  
Campbell, Carr, Berge  
& Sheridan, P.A.  
P.O. Box 2208  
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Via Hand Delivery

Rand Carroll  
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