

ILLEGIBLE

NEW MEXICO OIL CONSERVATION DIVISION

EXAMINER HEARING

SANTA FE, NEW MEXICO

Hearing Date SEPTEMBER 4, 1997 Time 8:15 A.M.

NAME	REPRESENTING	LOCATION
Bruce Stubbs	Paloma Res.	Roswell, NM
Pinson McWhorter	Yata Petr	Artesia, NM
Jan France	Paloma Res.	Roswell, N.M.
William J. [unclear]	Stupbel, [unclear] [unclear]	Santa Fe
Tom Ricker	Odessa Oil Investments	Odessa, TX
Ernie Butthorn	Devon Energy Corp	OKC, OK
Brent May	Yata P	Artesia, NM
W. Kellahin	Kellahin Kellahin	Santa Fe
Roy [unclear]	Oryx Energy	Dallas, TX
Mark Peavy	" "	" "
Jerry Weant	Stevens Still, Inc.	Midland, TX
Jesse Lawson	"	"
George Ulmo	"	"
David Rabin's	Marathon	Midland TX
James Burr	—	SF
Mike Hylips	Clasapen	OKC, OK
Robert Helmer IV	"	"

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:)
)
 APPLICATION OF ODESSA OIL INVESTMENTS,)
 INC., FOR SALTWATER DISPOSAL,)
 EDDY COUNTY, NEW MEXICO)

CASE NO. 11,839

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

RECEIVED

September 4th, 1997

SEP 18 1997

Santa Fe, New Mexico

Oil Conservation Division

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, September 4th, 1997, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

I N D E X

September 4th, 1997
 Examiner Hearing
 CASE NO. 11,839

	PAGE
EXHIBITS	3
APPEARANCES	4
ARGUMENTS ON MOTION TO DISMISS:	
By Mr. Carr	5
By Mr. Bruce	8
Response by Mr. Carr	11
APPLICANT'S WITNESS:	
<u>JERRY RICKER</u> (Owner/officer, Odessa Oil Investments, Inc.)	
Direct Examination by Mr. Bruce	15
Cross-Examination by Mr. Carr	24
Examination by Mr. Carroll	26
Redirect Examination by Mr. Bruce	27
YATES WITNESS:	
<u>PINSON McWHORTER</u> (Engineer)	
Direct Examination by Mr. Carr	28
Cross-Examination by Mr. Bruce	36
Examination by Mr. Carroll	39
Examination by Examiner Catanach	40
REPORTER'S CERTIFICATE	44

* * *

E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	17	24
Exhibit 2	18	24
Exhibit 3	18	24
Exhibit 4	18	24
Exhibit 5	19	24
Exhibit 6	22	24
Exhibit 7	22	24

* * *

Yates	Identified	Admitted
Exhibit 1	29	36
Exhibit 2	30	36
Exhibit 3	31	36
Exhibit 4	33	36

* * *

A P P E A R A N C E S

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FOR YATES PETROLEUM CORPORATION and
NEARBURG EXPLORATION COMPANY, L.L.C.:

CAMPBELL, CARR, BERGE and SHERIDAN, P.A.
Suite 1 - 110 N. Guadalupe
P.O. Box 2208
Santa Fe, New Mexico 87504-2208
By: WILLIAM F. CARR

* * *

1 WHEREUPON, the following proceedings were had at
2 2:12 p.m.:

3 EXAMINER CATANACH: At this time we'll call Case
4 11,839.

5 MR. CARROLL: Application of Odessa Oil
6 Investments, Inc., for saltwater disposal, Eddy County, New
7 Mexico.

8 EXAMINER CATANACH: Call for appearances in this
9 case.

10 MR. BRUCE: Mr. Examiner, Jim Bruce from Santa
11 Fe, representing the Applicant. I do have one witness here
12 today.

13 MR. CARR: May it please the Examiner, my name is
14 William F. Carr with the Santa Fe law firm Campbell, Carr,
15 Berge and Sheridan. We represent Yates Petroleum
16 Corporation in this matter, and I have one witness.

17 I also would like to enter an appearance in this
18 matter for Nearburg Exploration Company, L.L.C.

19 MR. CARROLL: Mr. Bruce, Mr. Carr, are we going
20 to hear arguments on the Motion to Dismiss --

21 MR. CARR: I believe so.

22 MR. CARROLL: -- first? And then we'll decide at
23 that time whether to go forward.

24 MR. CARR: As the Examiner is aware, Yates
25 Petroleum Corporation has filed a motion to dismiss this

1 Application.

2 Odessa Oil Investments seeks authority to re-
3 enter the Lakewood State Com Well Number 1, located 1980
4 from the west and north lines of Section 30, Township 19
5 South, Range 26 East, Eddy County, New Mexico, and they're
6 seeking authority to convert that well to saltwater
7 disposal.

8 On July 1st of this year, Yates Petroleum
9 Corporation acquired the state oil and gas lease covering
10 Section 30. They intend to re-enter the Lakewood State Com
11 Well Number 1 and attempt to return it to production.

12 As the Division is aware, the oil and gas mineral
13 estate is the dominant estate, and the lessee, the person
14 who has a right to go out and develop these minerals, has
15 the exclusive right to use so much of the lease premises as
16 is necessary to carry out its operations for drilling and
17 producing oil and gas from the acreage, and they may,
18 absent a showing of bad faith, use any square inch of the
19 surface of that lease, including an existing wellbore. And
20 we have the right to possess that wellbore, the right to
21 re-enter it, and the right to return it to production.

22 We ask you to dismiss this Application, because
23 legally Odessa neither directly or indirectly can interfere
24 with Yates' efforts to develop the minerals. We have the
25 exclusive right to be in that wellbore. We acquired it

1 through a state oil and gas lease, Odessa may not interfere
2 with it, and even the Commissioner of Public Lands cannot
3 violate the provisions of the lease contract with us, which
4 gives us a right to go on to the acreage and to develop the
5 minerals. And anyone else, Odessa or anyone else who goes
6 out and uses that wellbore and prevents us from using it as
7 we desire to develop these minerals, in fact, is subject to
8 claims for conversion.

9 We intend to go out and drill the well, we have
10 the exclusive right to do so. And the Oil Conservation
11 Division does not have the power to go out and confer
12 ownership on Odessa or anyone else.

13 When you look at the Oil and Gas Act, you have
14 enumerated powers, and you have the authority to identify
15 ownership but you don't convey ownership.

16 And so what we have here is a question of whether
17 or not Odessa even actually has standing to be before you.
18 Standing is the legal right to seek relief. And until they
19 come in and can show you they have a right to use the
20 wellbore when we're planning to re-enter, we submit they
21 don't even have standing to be here.

22 But in this circumstance, if you go forward and
23 say, Yes, you have the right to use it for disposal, our
24 position will be you haven't given them anything except a
25 right to do it if we decide not to. We're going to re-

1 enter the well. That does not give them the right to go
2 out and do something that would impair our correlative
3 rights, deny us the opportunity to go out and develop as we
4 see fit and give us approval. It just simply doesn't work
5 that way.

6 And so what we're asking you to do is to accept
7 the fact that we legally have the right to go into that
8 wellbore and to let us do it and to dismiss the Application
9 on this.

10 EXAMINER CATANACH: Mr. Bruce?

11 MR. BRUCE: Gentlemen, I'm sorry I didn't have
12 the time to respond in writing to Mr. Carr's motion.

13 Let me go through a little time line here first.

14 Yates had an oil and gas lease on Section 30,
15 which expired March 1, 1997. And the State Land Office, by
16 the way, does own the surface and mineral estate of Section
17 30.

18 On May 5th Odessa contacted the State Land about
19 entering into a business lease, which is what the State
20 Land Office requires for a saltwater disposal well.

21 On May 13th a C-108 was filed with the Division.

22 On May 20th, Yates received written notice of the
23 Form C-108, did not object within 15 days.

24 June 4th, 1997, notice was published in the
25 Carlsbad paper. Again, even within 15 days of that Yates

1 did not object.

2 On June 23, 1997, Odessa filed the Application
3 for a business lease with the State Land Office.

4 And on July 1, 1997, the State Land Office cashed
5 Odessa's check for the business lease.

6 On that same day, a new oil and gas lease was
7 issued to Yates on Section 30. I would note that that
8 lease does not expressly grant Yates the right to that
9 wellbore, does not refer to that wellbore.

10 Now, I would agree that during the term of an oil
11 and gas lease Yates has the exclusive right to re-enter a
12 plugged and abandoned well that Yates had drilled. There
13 are several cases on that, one of which was won by our
14 friend Tom, Penroc Oil Corporation, 84 IBLA 36. That's not
15 our case here.

16 What we have is a well drilled by another company
17 years ago under a now-expired lease. Later on, Yates comes
18 and gets a new oil and gas lease. The law is clear that
19 once a lease expires, the wellbore reverts to the surface
20 owner, not the mineral owner. In this case they happen to
21 be the same.

22 They reason it reverts to the mineral owner -- I
23 mean, excuse me, to the surface owner, is because the
24 surface owner owns the subsurface strata. All the oil and
25 gas lessee has a right to do is extract those minerals.

1 The subsurface strata itself is owned by the surface owner.
2 Cases on that are *Emeny vs. United States*, 412 Fed 2nd
3 1319, and *Ellis vs. Arkansas-Louisiana Gas Company*, 450 Fed
4 Sup. 412.

5 It's our position that you need language in that
6 lease explicitly granting the use of that wellbore in order
7 to grant Yates that right. That was a holding in *Browning*
8 *vs. Mellon Exploration*, 636 Southwest 2nd 536.

9 Based on these principles, we believe the State
10 Land Office as the surface owner has the right to grant
11 Odessa the use of a wellbore for saltwater disposal
12 purposes if a zone is not productive. Evidence would show
13 that the Devonian is widely used in this general area for
14 saltwater disposal.

15 I would also point out that Odessa's Application
16 to use the wellbore was prior in time to Yates' oil and gas
17 lease.

18 Based on these facts and the law, we believe the
19 Division should hear this case, issue the injection permit,
20 and let Odessa finalize its business lease with the State
21 Land Office.

22 You would not be conferring ownership of the
23 wellbore on Odessa. It doesn't own that yet, we agree. It
24 would merely allow Odessa to comply with what it has been
25 told by the State Land Office, that it needs an injection

1 permit from the OCD. If Yates has a problem, it's with the
2 State Land Office; it's not with the Division; it's not
3 with Odessa.

4 We believe you should hear this case, issue the
5 permit and see what the State Land Office does.

6 Now Yates -- Mr. Carr says Yates plans to re-
7 enter the wellbore. Odessa, my client here, is reasonable,
8 and that might not be a bad idea. We think the State has
9 the right to grant use of that wellbore.

10 But if Yates plans to re-enter that wellbore, and
11 if that's what the Division rules, we think there ought to
12 be a time limit on the re-entry of that wellbore. If they
13 re-enter it, it's dry, no longer productive, then we're
14 right back here with Odessa Oil Investment Company filing a
15 saltwater disposal permit and a business lease application
16 with the State Land Office.

17 So we think this case should be heard.

18 MR. CARR: A couple things I'd like to respond
19 to.

20 First of all, from May the 5th through June the
21 23rd, Yates did not object because it did not own the
22 lease. It had no standing to object.

23 Mr. Bruce says, you know, there's nothing that
24 says we -- nothing that gives us the right, in any of these
25 documents, to go out and use the wellbore. There's no

1 specific grant.

2 But unfortunately, that has the matter backwards,
3 because the controlling case in this situation is *Gutierrez*
4 *vs. Davis*, a 1980 10th Circuit Court of Appeals decision,
5 and it doesn't say there needs to be a grant of the use of
6 the wellbore.

7 It says -- this is the 10th Circuit, and I quote:
8 "We agree with the trial court that without express
9 language to the contrary, a fair reading of the contract
10 gives Davis, the lessee, the right to drill through any
11 part of the real estate, including the plug and casing of
12 the abandoned well when it was here, it was reasonable use
13 within the stated purpose."

14 So what you have to do is have an express
15 prohibition, and none of that exists.

16 The interesting thing is -- and the authority is
17 set forth in our brief, but if you look at -- I mean, it's
18 as old as oil and gas law. You go back to 1924, *Squires*
19 *vs. Lafferty*, a West Virginia case, and it says the oil and
20 gas lease carries with it the right to use the surface.

21 The rule is based upon the principle. Yet when
22 the thing is granted, granted to us, the right to develop
23 minerals, when a thing is granted all means to obtain it
24 and all the fruits and efforts of it are also granted. We
25 have a right to be there, we have a right to go out and to

1 drill and to try and return the well to production.

2 And it's nice to say, Well, our problem isn't --
3 Yates doesn't have a problem with you, Mr. Catanach, let
4 them go argue in the Land Office.

5 And we'll get there and they'll say, You can
6 argue here or you can take it back to the 10th Circuit.

7 Well, we have an Application here before you,
8 asking you to grant injection authority to a well we plan
9 to use to produce oil and gas. And in that circumstance,
10 we think they don't have standing. They've admitted they
11 don't own the wellbore. They haven't gotten that far yet
12 in their negotiations with the State Land Office. They
13 don't own it. We have a right to use it, and we intend to.

14 And in that circumstance, what basis do they have
15 to come here seeking authority? If I wanted to force-pool
16 someone, I have to show I have a right to drill, that I own
17 something in the tract. I have to own something before I
18 propose an unorthodox location or commingling, or I think I
19 have to have some right that is finalized before I come and
20 ask you to let me inject water in a wellbore somebody else
21 wants to use.

22 Till they show that, I don't think they have a
23 wellbore, and I think the case is subject to dismissal.

24 MR. CARROLL: Mr. Bruce, what's the status of the
25 business lease application?

1 MR. BRUCE: It was filed, the check was cashed
2 and --

3 MR. CARROLL: It hasn't been granted?

4 MR. BRUCE: It has not been granted, because Mr.
5 Ricker has been told by the State Land Office they would
6 like the Division to enter its saltwater disposal injection
7 first.

8 MR. CARR: So the issue is here, not at the Land
9 Office.

10 EXAMINER CATANACH: Just -- We'll be back in a
11 minute.

12 (Thereupon, a recess was taken at 2:25 p.m.)

13 (The following proceedings had at 2:28 p.m.)

14 EXAMINER CATANACH: Mr. Bruce, we'd like you to
15 submit a Response to the Motion to Dismiss, including all
16 the dates and such that you've cited, court cases and all
17 that.

18 We think we need some more time to evaluate.

19 Therefore, we're not going to rule on the Motion
20 to Dismiss at this time. As long as we have the witnesses
21 here, we would like to hear the evidence in this, and we'll
22 go from there.

23 If we decide to dismiss the case, ultimately, we
24 can do that even after hearing the evidence, or we can go
25 the other way.

1 So let's proceed.

2 MR. BRUCE: Mr. Examiner, I have some exhibits.
3 They're currently unmarked, but I will mark them as we go
4 along.

5 JERRY RICKER,
6 the witness herein, after having been first duly sworn upon
7 his oath, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BRUCE:

10 Q. Would you please state your name for the record?

11 A. Jerry Ricker.

12 Q. And where do you reside?

13 A. Midland, Texas.

14 Q. What is your relationship to the Applicant,
15 Odessa Oil?

16 A. I'm one of the owners.

17 Q. You're an officer of the corporation?

18 A. Yes, and a director.

19 Q. Make sure to speak up a little bit, Mr. Ricker.

20 A. Okay.

21 Q. You've never testified before the Division, have
22 you?

23 A. No.

24 Q. What is your background?

25 A. I have a degree from Texas Tech in finance. I

1 moved to Hobbs, New Mexico, and went to work for DANS
2 Wellsearch and Company. I worked for them for ten years as
3 vice president, general manager. I took my vested interest
4 in the company and moved to Midland and went into business
5 for myself.

6 Q. And how long have you been in the oil business?

7 A. Since 1968.

8 Q. And your company, Odessa Oil Investments, what
9 type of business does it do? Is it exclusively saltwater
10 disposal, is it a producing company?

11 A. It's for investors, and we're interested -- Well,
12 we have 33 wells in Oklahoma, we have five wells in Texas,
13 and one saltwater disposal well in Elk City.

14 Q. Okay. And are you familiar with this Application
15 before us today?

16 A. Yes.

17 MR. BRUCE: Mr. Examiner, I would like to qualify
18 Mr. Ricker as a practical oil and gas operator.

19 MR. CARR: No objection.

20 EXAMINER CATANACH: Mr. Ricker is so qualified.

21 Q. (By Mr. Bruce) Mr. Ricker, let's get some of
22 these dates down. Let me find my tablet first. Let me run
23 through these and just verify these with you, rather than
24 make this long, drawn-out.

25 On May 5th, 1997, was the first time you

1 contacted the Land Office regarding a business lease; is
2 that correct?

3 A. That's correct.

4 Q. May 13th, 1997, you filed the Form C-108 which
5 we'll submit shortly with the Division?

6 A. That is correct.

7 Q. And you mailed notice to surface owner offset
8 operators?

9 A. Yes, indeed.

10 Q. And Yates received notice on May 20th?

11 A. According to the return of the certified mail.

12 Q. Mr. Ricker, I'll just hand you what's been marked
13 Odessa Exhibit 1. Is that a copy of the certified return
14 receipt of your mailing of the Form C-108 to Yates
15 Petroleum?

16 A. Yes, it is.

17 Q. And you never received a word from Yates with
18 respect to that notification?

19 A. No, I did not.

20 Q. And you were trying to get the Form C-108
21 approved administratively without a hearing?

22 A. Yes, I was.

23 Q. And as a result, you prepared an affi- -- or you
24 had notice of the Application published in the *Carlsbad*
25 *Current-Argus*?

1 A. Yes, we did.

2 Q. Is Exhibit 2 a copy of the affidavit of notice of
3 publication?

4 A. Yes, it is.

5 Q. And on June 23 you mailed a copy of your business
6 lease application to the State Land Office; is that
7 correct?

8 A. Correct.

9 Q. And is Exhibit 3 a copy of your Application and
10 your cover letter?

11 A. Yes, it is.

12 Q. Now, who was that sent to? I don't have that
13 name.

14 A. Mr. Joe Lopez.

15 Q. And have you had discussions with him regarding
16 this Application?

17 A. Yes, I was in his office about a month ago.

18 Q. And what did he say about it?

19 A. He instructed me to come back over here to visit
20 with Mr. Catanach.

21 Q. So he instructed you to come back to the Division
22 before they would act upon your business lease application?

23 A. That's correct.

24 Q. And what is Exhibit 4, Mr. Ricker?

25 A. That's a copy of our canceled check to the

1 Commissioner of Public Lands for the business lease in the
2 amount of \$500, marked "no protest".

3 Q. And it was cashed July 1, I believe?

4 A. Yes, that's right.

5 Q. Let's move on to the Application itself, Form
6 C-108, which I will mark Exhibit 5. Exhibit 5 is a copy of
7 the Form C-108 you prepared for this well, Mr. Ricker?

8 A. Yes, it is.

9 Q. Let's just go briefly through it. I don't think
10 we need to hit everything, but you're asking to re-enter
11 this well, deepen it to the Devonian --

12 A. Yes, correct.

13 Q. -- and use it as a commercial saltwater disposal
14 well?

15 A. Exactly.

16 Q. What type of injection rates do you intend to
17 have?

18 A. The information I received from our geologist,
19 who's on a contractual basis, was 5000 barrels per day at
20 800 pounds and a maximum daily of 12,000 barrels a day at
21 2000 pounds.

22 Q. And the pressures you're intending to use are
23 within the OCD guidelines of less than .2 of a p.s.i. per
24 foot of depth?

25 A. Yes.

1 Q. Where will the produced water come from?

2 A. It will come from the Glorieta, the Cisco, the
3 Canyon, the Atoka and the Strawn, which is within the area
4 of the disposal well that would be feasible to take on
5 water.

6 Q. Now, looking at page 2 of Exhibit C-108, the land
7 plat, within that half-mile circle there really aren't any
8 wells, are there?

9 A. There are no wells.

10 Q. Okay. Now, moving to page 4 of your exhibit, you
11 do list several wells drilled to the Devonian, but these
12 are within two miles or so of the proposed well?

13 A. Are these the three wells that are saltwater
14 disposal wells?

15 Q. Yes, sir.

16 A. They were drilled to the Mississippian, and then
17 deepened at a later date to the Devonian. Both Conoco,
18 Nearburg and --

19 Q. Okay. These --

20 A. -- Conoco.

21 Q. Okay. These were for informational purposes;
22 these really aren't -- these are not within the area of
23 review of your proposed injection well?

24 A. No, they're not.

25 Q. Okay. So the Devonian is commonly used out here

1 for commercial disposal of saltwater --

2 A. Yes, it is.

3 Q. -- produced saltwater?

4 A. Yes, it is.

5 Q. Looking at the final two pages of this exhibit, I
6 believe a -- wellbore schematics, it's really the same
7 thing, isn't it, as -- One is a hand-drawn wellbore
8 schematic for your proposed well, and one is a more
9 accurately drafted one, I take it?

10 A. Yes, it is.

11 Q. Will the well be -- If you have permission from
12 the Division and the State Land Office, will it be
13 completed and operated in such a manner as to prevent the
14 migration of fluids from the Devonian to any other zone?

15 A. Yes, it will.

16 Q. And have you had a geologist look at this area to
17 make sure there are no open faults or any other connections
18 between drinking water and the injection zone?

19 A. Yes, I have.

20 Q. And there are no faults?

21 A. There are no faults.

22 Q. Do Yates and other operators inject produced
23 water into the Devonian in this general area?

24 A. Yes, they do.

25 Q. Mr. Ricker, I'll hand you what's been marked

1 Odessa Exhibit 6. Could you just identify that briefly?

2 A. This is out of the Midland Log Library. The
3 discovery work was done by our geologist.

4 It's for the month of January, 1997, and it's
5 indicating Yates Petroleum wells within the area in one
6 month's time of a production -- excuse me, of the water
7 disposed into the -- into several disposal wells in the
8 area.

9 Q. This is just for informational purposes, is it
10 not --

11 A. Yes.

12 Q. -- Mr. Ricker?

13 Finally, Mr. Ricker, you gave notice of this
14 particular hearing to the surface owner and the offset
15 operators, did you not?

16 A. Yes, I did.

17 Q. And is Exhibit 7 your affidavit of notice with
18 the notice letters and the certified return receipts
19 attached?

20 A. (No response)

21 Q. Do you have anything further you'd like to say on
22 this Application, Mr. Ricker?

23 A. Mr. Examiner, may I make a comment?

24 EXAMINER CATANACH: Sure.

25 THE WITNESS: We're just a small, independent

1 operator, and we seek out selective areas that we think
2 might make us some money. And I think we were acting in
3 good faith here. We knew when Yates' lease expired in
4 March of this year, and we went through the channels that
5 was provided to us by you and your department and the land
6 department.

7 And one of the reasons we chose this well is
8 because there's not any wells near it, and the DST
9 indicates that they recovered 7200 foot of sulfur water in
10 this well. So we couldn't -- We thought there wouldn't be
11 any problem at all with anyone trying to go back in and
12 reproduce the well, having a DST that indicated it was
13 nothing there but sulfur water.

14 So by us going through the proper channels, it
15 appears to me that Yates read our mail, they knew where we
16 were going, they knew what we were trying to do, and so
17 they went back out there and re-leased the land. And it's
18 my opinion that probably if -- whichever way this thing
19 goes, that probably their intent is that they may try to
20 reproduce the well in those zones, but they'll end up
21 turning it into a disposal well. That's just my opinion.

22 Now, we're very flexible. If they want to go in
23 and try to reproduce -- try to put this well back in
24 production up the hole -- I'd like very much to continue on
25 with our -- with our direction, and try to turn it into a

1 disposal well. And I would make a very favorable business
2 arrangement of disposing of their water in the area.

3 And I agree with Mr. Bruce that they've got till
4 the year 2002, but does that mean that that well is going
5 to set on the sidelines? Either they go back in there and
6 get it produced, and/or -- no one wins.

7 Q. Mr. Ricker, in your opinion is the granting of
8 Odessa's Application in the interest of conservation and
9 the prevention of waste?

10 A. Yes.

11 Q. And were Exhibits 1 through 7 prepared by you,
12 under your direction, or compiled from your company's
13 business records?

14 A. Yes, they were.

15 MR. BRUCE: Mr. Examiner, I'd move the admission
16 of Odessa's Exhibits 1 through 7.

17 MR. CARR: No objection.

18 EXAMINER CATANACH: Exhibits 1 through 7 will be
19 admitted as evidence.

20 Mr. Carr?

21 CROSS-EXAMINATION

22 BY MR. CARR:

23 Q. Mr. Ricker, if we look at your Exhibit Number 1,
24 the return receipts --

25 A. Yes, sir.

1 Q. -- this is a return receipt where you mailed
2 notice of your plans, I understand, to Yates on May the
3 20th?

4 A. Yes, sir.

5 Q. Were you aware at that time that Yates owns no
6 interest in Section 30? You were, were you not?

7 A. Yes. As I understood, at the time the acreage
8 was wide open.

9 Q. Likewise, when the notice was published -- the
10 date on this is June the 4th -- it was still -- Section 30
11 was wide open acreage at that time, was it not?

12 A. Yes.

13 Q. If we look at Exhibit Number 4, this is the check
14 that the Land Office cashed and indicated no protest.

15 Do you -- There was no lease on the minerals at
16 the time this check was delivered to the Land Office; isn't
17 that right?

18 A. I don't know that.

19 Q. You don't know if it was open acreage again on
20 June the 25th?

21 A. Well, at the time that I was in Mr. Lopez's
22 office to make sure that he had received my check, and he
23 said that he had and had cashed it -- and this was a month
24 ago -- but I did not know that the acreage had been leased
25 until a friend of mine notified me that he saw a new map,

1 and Yates had leased the acreage.

2 Q. Do you happen to know whether or not the Land
3 Office cashes all checks on receipt or not?

4 A. I don't.

5 Q. Okay. Now, at the present time, if I understand
6 it, Odessa owns no minerals under Section 30; is that
7 right?

8 A. We do not.

9 Q. And at this time Odessa does not have a business
10 lease on Section 30; is that right?

11 A. Yes, to your question.

12 MR. CARR: That's all I have. Thank you.

13 EXAMINATION

14 BY MR. CARROLL:

15 Q. Mr. Ricker, how many acres are in that state
16 lease? Just the section, 640? The state lease just covers
17 Section 30?

18 A. Yes, Mr. Carr can probably answer that question
19 as to what their lease covers, because all we wanted was
20 the 2.5 acres surrounding the wellbore.

21 MR. CARR: 642.4.

22 THE WITNESS: We have no other interest in the
23 acreage, other than to convert this to a disposal well. We
24 were not interested in seeking out oil and gas production.

25 Q. (By Mr. Carroll) Now, how long have you had your

1 eye on this well?

2 A. The geologist that -- When I say we retain,
3 actually he's on a contract basis. He works for us and
4 several other people too, and he knows our interest is in
5 saltwater disposal wells. And so he's the one that brought
6 me the deal.

7 So I can't answer your question as to how long he
8 had been looking at it, but he brought it --

9 Q. When did he bring that to you?

10 A. He brought it to me, I think, probably April.

11 Q. So it was after the prior Yates lease expired?

12 A. Late -- It expired in March. He brought it to me
13 in April, and we decided it was something to pursue.

14 MR. CARROLL: That's all I have.

15 EXAMINER CATANACH: I have no questions.

16 REDIRECT EXAMINATION

17 BY MR. BRUCE:

18 Q. I just have one question. When you notified
19 people, you notified people back in May, in addition to
20 Yates, did you not?

21 A. We did, we --

22 Q. And I don't need that list right now.

23 A. Okay, yes, everyone.

24 Q. But you notified lessees within that half mile,
25 not just operators of wells within that half mile?

1 A. That's correct, we did.

2 MR. BRUCE: That's all I have.

3 EXAMINER CATANACH: The witness may be excused.

4 MR. CARR: At this time, Mr. Catanach, I would
5 call Pinson McWhorter.

6 PINSON MCWHORTER,

7 the witness herein, after having been first duly sworn upon
8 his oath, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. CARR:

11 Q. Would you state your name for the record, please?

12 A. Pinson McWhorter.

13 Q. Where do you reside?

14 A. Artesia, New Mexico.

15 Q. By whom are you employed?

16 A. Yates Petroleum Corporation.

17 Q. And what is your position with Yates?

18 A. Reservoir engineering supervisor.

19 Q. Mr. McWhorter, have you previously testified
20 before this Division?

21 A. Yes, I have.

22 Q. At the time of that testimony, were your
23 credentials as a petroleum engineer accepted and made a
24 matter of record?

25 A. Yes, they were.

1 Q. Are you familiar with the Application filed in
2 this case on behalf of Odessa Oil Investments, Inc.?

3 A. I am.

4 Q. And are you familiar with the acreage that's the
5 subject of this Application?

6 A. I am.

7 MR. CARR: Are the witness's qualifications
8 acceptable?

9 EXAMINER CATANACH: Yes, they are.

10 Q. (By Mr. Carr) Could you briefly summarize what
11 Yates Petroleum Corporation seeks in this case?

12 A. Yates Petroleum seeks an order denying the
13 Application of Odessa Oil Investments in this case for --

14 Q. Mr. McWhorter, let's --

15 A. -- SWD.

16 Q. -- let's go to what's been marked Yates Exhibit
17 Number 1.

18 A. Yes, sir.

19 Q. Would you identify and review that, please?

20 A. Yes. This is a plat that shows Yates' lease
21 ownership, mineral lease ownership, within the area.

22 All of the acreage that's highlighted completely
23 in yellow is 100-percent Yates entities, Yates, et al.

24 Those that are outlined in yellow is where Yates
25 entities have partial interest, partial mineral lease

1 interest. You'll note that Section 30, Yates, et al., have
2 a 100-percent of the mineral lease interest in that
3 section. And we have significant holdings in surrounding
4 leases.

5 Q. Initially, could you show us how close to North
6 Dagger Draw this tract actually would lie?

7 A. Okay, checking the nomenclature this week on the
8 North Dagger Draw-Upper Penn Pool, it is extended to date
9 to include the northwest quarter of Section 24 of 19-25.
10 So if you were to look and see the Section 24 that is the
11 northwestern section diagonal to our Section 30 there -- it
12 touches it on the northwest corner -- that section -- part
13 of that section has already put in the North Dagger Draw-
14 Upper Pennsylvanian Pool, from which there has been
15 significant oil and gas production.

16 Q. Let's go to Exhibit Number 2. Can you identify
17 that?

18 A. Exhibit Number 2 is a copy of the oil and gas
19 lease that Yates acquired from the State of New Mexico.

20 Q. Now, a lease on this acreage expired in March of
21 this year; is that correct?

22 A. That is correct.

23 Q. Who placed this tract back up for -- or nominated
24 this tract for lease?

25 A. Nearburg was the one that nominated this tract

1 for leasing.

2 Q. Can you just -- initially just state what Yates'
3 plans are for this acreage?

4 A. Currently, our plans are to re-enter the Monsanto
5 -- the well, the Lakewood State Com Number 1, and to test
6 several zones in it, in that well. One of the primary
7 zones in that well that we want to test is the Canyon, the
8 same Canyon zone that produces in the North Dagger Draw-
9 Upper Penn Pool.

10 Q. Let's go to Yates Exhibit Number 3, the cross-
11 section. Will you take that out please?

12 A. Okay.

13 Q. All right, could you review that for Mr.
14 Catanach?

15 A. Yes, sir. What this cross-section is, the
16 Nearburg Fairchild 24 Number 1, which is that well in the
17 northwest quarter of Section 24 of 19-25. If you'll look
18 on the map inset on the cross-section, the well that's
19 labeled "A" is the Nearburg Fairchild 24 Number 1 that
20 produces in the North Dagger Draw Pool.

21 Q. The cross-section extends southeast down to the
22 Lakewood State Com Number 1, and it's labeled A'. That's
23 the well in question here today.

24 I have marked on here a structural datum of minus
25 4400, which means this cross-section is a structural cross-

1 section, not a stratigraphic cross-section, and I have
2 marked the top of the Canyon limestone, which is also
3 commensurate with what we would call the top of the Canyon,
4 and then I have marked the top of the Canyon dolomite,
5 which is really where the beginning of the real reservoir-
6 quality rock is in the North Dagger Draw Pool. And I've
7 also, just for purposes of identification, marked the base
8 of the Canyon dolomite on this cross-section.

9 You'll note that Nearburg has turned this well --
10 drilled this well and made a producing well out of it in
11 February of 1995. They IP'd it for 615 stock tank barrels
12 of oil a day, 389 MCF, 2000 water. To date it's already
13 produced 73,000 barrels of oil and about 100 million cubic
14 feet of gas, which is very productive. We would like to
15 have production like that ourselves.

16 And that in itself is the basis, the impetus that
17 we have to be excited about what we see in the Lakewood
18 State Com Number 1 in the correlative Canyon zone there.
19 We have very good porosity development in the bottom of the
20 Canyon and near the top of the Canyon dolomite, excellent
21 porosity development for this area.

22 Q. All right, Mr. McWhorter, let's now go to the mud
23 log on the subject.

24 A. Okay, if we could use the mud log just in
25 conjunction --

1 Q. That's Yates Exhibit 4?

2 A. Yes, that's correct. -- in conjunction with the
3 cross-section, what I'd like to highlight on the mud log is
4 that this is a mud log of the Lakewood State Com Number 1.
5 This mud log shows the gas response and the porosity
6 development that the mudloggers saw when Monsanto drilled
7 through the Cisco Canyon.

8 The thing that I would like to note is, note only
9 do -- on the electric log, the compensated neutron forming
10 density log -- do we see great porosity development in the
11 upper part of the dolomite -- that's the part that we're
12 most interested in -- we also see that when you come into
13 the top of the Canyon dolomite that I've marked in red on
14 the limestone, you see that we do have an increase in our
15 gas show, and on the left-hand track, in that sort of black
16 bar there on the left hand, shows that the mudlogger was
17 logging porosity.

18 And so we have reason to believe that there is
19 hydrocarbons within the Cisco/Canyon, and we would like to
20 test those hydrocarbons that are in the Cisco/Canyon, based
21 upon the mud log show, based upon the logs of the open hole
22 logs, based upon the near proximity of Dagger Draw north
23 itself working its way this way. Nearburg nominated this
24 lease, and we were the top bidder for this lease because --
25 and we had other leases in the area, because we do see the

1 potential for North Dagger Draw, that northern eastern
2 boundary of that pool has still not been defined. We're
3 still exploring and developing that pool. And so this is a
4 highly competitive area, a highly prospective area as the
5 production moves that way.

6 A mud log show like this and an open-hole log
7 show like this in the Canyon, after doing over 300 wells in
8 the Dagger Draw north and south and seeing these things --
9 I used to write the completion procedures and analyze these
10 -- this is something that you would definitely go in and
11 test, and it's not -- And it is our pattern, when we have
12 the opportunity to re-enter old wellbores, to test the
13 Cisco/Canyon upon occasion.

14 Q. That's obviously the most economic way to --

15 A. That's the most economic way to develop those
16 reserves.

17 Now, there's another bit to this. We saw on the
18 open hole logs that there is porosity development and gas
19 effect in the Strawn and the Atoka and a little bit in the
20 Morrow. Now, Monsanto did test the Morrow on drill stem
21 test, and they got just a little bit of recovery back, not
22 anything to get excited about.

23 But they never tested the Atoka and they never
24 tested the Strawn. We see that uphole in the Glorieta and
25 the Yeso formations, there is good porosity and dolomite

1 development in the Glorieta and the Yeso. The Glorieta and
2 Yeso do produce, in Section 4 of this same township,
3 produce oil and gas, and we would see those as being
4 prospective zones also to perhaps produce oil and gas on
5 this state lease.

6 Q. Mr. McWhorter, what impact would there be on
7 Yates is this well was converted to disposal?

8 A. We would lose a tremendous opportunity to more
9 economically take opportunity of our right to develop the
10 oil and gas mineral lease here.

11 Q. And is it Yates' intention to use this wellbore
12 to test these zones and hopefully return the well to
13 production?

14 A. It certainly is, because, as I said, the approach
15 of Dagger Draw is already right on our front door here, and
16 this would be a much more economical way of developing
17 those reserves than drilling a straight-up hole from the
18 surface.

19 Q. Will denial of the Application of Odessa protect
20 the correlative rights of Yates?

21 A. Yes.

22 Q. Will denial of the Application of Odessa, in your
23 opinion, otherwise be in the best interest of conservation
24 and the prevention of waste?

25 A. Yes, I do, in that we would see subsequent

1 increased costs of production.

2 Q. Were Yates Exhibits 1 through 4 prepared by you
3 or compiled under your direction?

4 A. Yes, they were.

5 MR. CARR: At this time, Mr. Catanach, I would
6 move the admission into evidence of Yates Exhibits 1
7 through 4.

8 EXAMINER CATANACH: Exhibits 1 through 4 will be
9 admitted as evidence.

10 MR. CARR: And that concludes my direct
11 examination of Mr. McWhorter.

12 EXAMINER CATANACH: Mr. Bruce?

13 CROSS-EXAMINATION

14 BY MR. BRUCE:

15 Q. Just a few questions, just to orient myself --

16 A. Sure.

17 Q. -- Pinson. You mentioned the -- Is it the
18 Nearburg Fairchild well in the northwest quarter?

19 A. Yes, sir.

20 Q. Which way -- That's the easternmost extent of the
21 North Dagger Draw-Upper Penn Pool?

22 A. I guess that's a good way of thinking it, to date
23 that's the easternmost extent.

24 Q. Okay. Looking at your map, it extends pretty
25 much westward, and then it bends to the south; is that

1 correct?

2 A. No, sir, if we're going to be going north-south
3 bendy-type language here --

4 Q. I'm just trying to get oriented.

5 A. -- it really angles more -- From the Nearburg
6 well it angles more --

7 Q. -- southwesterly direction?

8 A. Southwesterly direction.

9 Q. Okay.

10 A. That's correct.

11 Q. Okay.

12 A. The current producing wells.

13 Q. Now, do you know on what date this tract was
14 renominated for a lease sale by Nearburg?

15 A. No, I do not.

16 Q. Yeah --

17 A. Go ahead.

18 Q. Mr. McWhorter, your cross-section, is the
19 Monsanto Lakewood State Number 1 -- would that be downdip
20 from the Nearburg --

21 A. Yes, sir --

22 Q. -- Fairchild --

23 A. -- it would be downdip, that's correct.

24 Q. You mentioned a DST of the Monsanto well. What
25 zone were DST'd?

1 A. The very basal part of the Canyon dolomite was
2 drill stem tested and produced -- The recovery was all
3 sulfur water with essentially virgin formation pressure, a
4 little over 3000 pounds in the Canyon. That particular
5 zone is separated at least probably 150 feet below the area
6 that we would have as a prime testing zone.

7 However, I would like to interject something here
8 if I might. In our operations in the North Dagger Draw and
9 the South Dagger Draw Canyon, an extensive drill-stem
10 testing has been done in that area.

11 We have found -- And I don't have a specific well
12 to cite. We have found that the production of only water
13 on a drill stem test was not necessarily the kiss of death
14 to make that well into an oil- and gas-producing well. It
15 depends upon the nature of the water. We have opened up
16 zones that drill stem tested all water, and once we started
17 sub-pumping and drawing them down we did start making...

18 So I'm not saying that would happen here, but I'm
19 not saying that it's the kiss of death, just to see only
20 water.

21 Q. I understand.

22 A. Yes.

23 Q. Does Yates have a timetable for re-entering this
24 well?

25 A. No, we do not have a timetable for re-entering

1 this well. However, we have prepared an AFE already to re-
2 enter this well, and to drill out the plugs and set the
3 casing and to -- primarily to test these zones. But I can
4 tell you, when Yates enters a wellbore, we test everything
5 exhaustively before we ever leave the wellbore.

6 Q. I'm aware of that.

7 One final question. If the well is not
8 productive, does Yates intend to convert it to a disposal
9 well?

10 A. I don't -- I don't know. I don't have an answer
11 to that question. As a reservoir engineer I'm primarily
12 looking at the oil and hydrocarbon production; I'm not
13 interested in particularly whether this well has the
14 ability to be a saltwater disposal well or not. I see
15 there's a tremendous potential to produce oil and gas here.

16 MR. BRUCE: I have nothing further, Mr. Examiner.

17 EXAMINATION

18 BY MR. CARROLL:

19 Q. Yeah, Mr. McWhorter --

20 A. Yes, sir.

21 Q. -- it appears Yates has a lot of interest in the
22 oil and gas potential in this section --

23 A. Yes, sir.

24 Q. -- yet Yates allowed the prior lease to expire.
25 Why is that?

1 say "near future", I don't know -- I can't tell you an
2 exact date, okay, that we would be re-entering this well,
3 because to us it's a highly prospective thing in light of
4 the more and more drilling and locations being issued in
5 this direction in the North Dagger Pool, gives us more and
6 more confidence that even if it is downdip from the
7 Fairchild 24 Number 1, it's still highly prospective, given
8 the oil and gas shows that we saw in the mud log.

9 Q. So even though you're preparing an AFE for it,
10 that still may not be an indication that it's going to be
11 done in the near future?

12 A. Well, what that indicates is -- What that
13 indicates to me is -- that our completion group completed
14 an AFE for it, is that we're very excited about this
15 possibility and have gone to the extent of preparing an AFE
16 to justify the cost of going back in and re-entering this
17 well.

18 Q. Does that now go to management?

19 A. That's correct.

20 Q. Does it have to compete with other projects in
21 this area?

22 A. No, not really. Yates Petroleum, et al., does
23 not really operate under a strict capital budget where so
24 much money is allocate for drilling or recompletions or
25 something like that and you've got to compete with these

1 other projects.

2 If the owners of the company like a prospect,
3 they'll drill it, or they'll re-enter it. And that's why I
4 feel confident that this work will be done, because this is
5 an excellent show in the Canyon. We've re-entered old
6 Canyon wells, old wells that we've re-entered in the
7 Canyon, with a lot less to go on than this.

8 EXAMINER CATANACH: I have nothing further.

9 MR. CARR: I have nothing further.

10 MR. BRUCE: (Shakes head)

11 MR. CARROLL: Jim, you're going to put in a
12 pleading, a response to --

13 MR. BRUCE: Yes, I'll -- I should have that ready
14 by Monday or Tuesday.

15 MR. CARROLL: Okay.

16 MR. BRUCE: No, not Monday, whoa, whoa. No, no.
17 Let's say Tuesday. David and Bill and I have to be at the
18 Supreme Court arguing the -- and Rand Carroll has to be at
19 the Supreme court arguing the Avalon Delaware case.

20 MR. CARROLL: And Mr. Bruce, could you also
21 address -- Mr. Carr, you might want to supplement your --

22 MR. CARR: Yeah, we can.

23 MR. CARROLL: -- pleading, any possible State
24 Land Office regulations or rules --

25 MR. CARR: Yes.

1 MR. CARROLL: -- regarding conflicts between
2 their commercial and oil and gas divisions?

3 MR. BRUCE: Yes, sir.

4 MR. CARROLL: I'm not too familiar with their
5 rules and regs, so I don't know if there's anything that
6 would cover this or not.

7 EXAMINER CATANACH: Okay. There being nothing
8 further, Case 11,839 will be taken under advisement. Thank
9 you. And I believe this hearing is adjourned.

10 (Thereupon, these proceedings were concluded at
11 3:12 p.m.)

12 * * *

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15
16 I do hereby certify that the foregoing is
17 a complete record of the proceedings in
18 the Examiner hearing of Case No. 11839,
19 heard by me on September 4 1997.
20 David K. Catanach, Examiner
21 Oil Conservation Division
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