

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. 11666
CASE NO. 11677
Order No. R-10731-A

APPLICATION OF INTERCOAST OIL
AND GAS COMPANY FOR COMPUL-
SORY POOLING AND UNORTHODOX
GAS WELL LOCATION, EDDY
COUNTY, NEW MEXICO.

APPLICATION OF YATES
PETROLEUM CORPORATION FOR
COMPULSORY POOLING AND AN
UNORTHODOX GAS WELL
LOCATION, EDDY COUNTY, NEW
MEXICO.

**ORDER DENYING MOTION FOR A STAY
OF DIVISION ORDER NO. 10731**

BY THE DIVISION:

This matter having come before the Division upon the request of Yates Petroleum Corporation for a Stay of Division Order No. R-10731 and the Division Director having considered the request and being fully advised in the premises,

NOW, on this 30th day of January, 1997, the Division Director:

FINDS THAT:

(1) Division Order No. R-10731 was entered on January 12, 1997, upon the competing applications of Yates Petroleum Corporation (Yates) and InterCoast Oil and Gas Company (InterCoast) for compulsory pooling of the E/2 of Section 20, Township 20 South, Range 28 East, NMPM, Eddy County, New Mexico.

(2) On January 21, 1997, Yates filed a request for a De Novo hearing with the Oil Conservation Commission, which case is now set for hearing on February 13, 1997.

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(3) Yates filed a Motion to Stay Division Order No. R-10731 on January 24, 1997, and InterCoast filed its Response to this Motion on January 28, 1997.

(4) Granting the "Stay" would delay the drilling of the well which would risk the loss of valuable farmout rights.

(5) Yates's Motion fails to allege circumstances that warrant a Stay of Division Order No. R-10731.

IT IS THEREFORE ORDERED THAT:

(1) Yates's Motion for a Stay of Division Order No. R-10731 is hereby denied.

(2) Jurisdiction is hereby retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


WILLIAM J. LEMAY, Director

S E A L

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

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W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
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JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285

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January 24, 1997

HAND DELIVERED

Mr. William J. LeMay, Director
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

**YATES PETROLEUM CORPORATION'S
MOTION FOR A STAY OF ORDER R-10731**

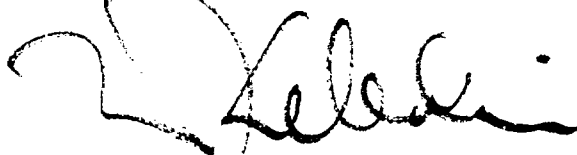
*Re: NMOCD Case 11677
Application of Yates Petroleum Corporation
for Compulsory Pooling, Eddy County, New Mexico*

*Re: NMOCD Case 11656
Application of InterCoast Oil and Gas Company,
for Compulsory Pooling, Eddy County, New Mexico*

Dear Mr. LeMay:

On behalf of Yates Petroleum Corporation, please find enclosed our Motion for a Stay of Order R-10731. Yates' urges the Division to grant this stay so that the Commission will have an opportunity to review the new precedent's established by Order R-10731 which are contrary to current Division policy. Without a stay, those issues will become moot. I have also enclosed a proposed stay order for your consideration.

Very truly yours,



W. Thomas Kellahin

Hand delivered:
James Bruce, Esq.
Attorney for InterCoast
David R. Catanach,
OCD Hearing Examiner
Rand Carroll, Esq.
Attorney for Division
cfx: Yates Petroleum Corporation
Attn: Mecca Mauritsen

**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 INTERCOAST OIL AND
GAS COMPANY FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION
EDDY COUNTY, NEW MEXICO**

CASE NO. 11666

**APPLICATION OF YATES PETROLEUM CORPORATION CASE NO. 11677
FOR COMPULSORY POOLING AND AN UNORTHODOX
GAS WELL LOCATION, EDDY COUNTY, NEW MEXICO**

ORDER NO. R-10731

**MOTION OF
YATES PETROLEUM CORPORATION
FOR STAY OF DIVISION ORDER NO. R-10731**

YATES PETROLEUM CORPORATION ("Yates"), through its attorneys, Kellahin & Kellahin, hereby moves the Oil Conservation Division and the Oil Conservation Commission for an order staying Oil Conservation Division Order No. R-10731 pending **de novo** review by the Commission:

1. On December 19, 1996, the above-referenced competing pooling applications of Yates Petroleum Corporation ("Yates") in Case 11677 and InterCoast Oil & Gas Company ("InterCoast") in Case 11666 came on for hearing before Division Examiner David R. Catanach.

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2. On January 13, 1997, the Division entered Order R-10731 granting the application of InterCoast and denying the companion application of Yates. Order R-10731 pools the E/2 of Section 20, T20S, R28E, NMPM, Eddy County, New Mexico, designates InterCoast operator of the well and provides that the well shall be commenced on or before April 15, 1997.

3. An Application for Hearing **De Novo** was filed by Yates on January 21, 1997. The next Commission hearing is scheduled for February 13, 1997.

4. Yates seeks a stay of Division Order No. R-10709 to enable it to have the Commission review these competing pooling applications in a **de novo** hearing. The Oil and Gas Act provides:

When any matter or proceeding is referred to an examiner and a decision is rendered thereon, any party of record adversely affected shall have the **right** to have the matter heard **de novo** before the commission upon application filed with the division within thirty days from the time any such decision is rendered.

Section 70-2-13 NMSA (1978). Pursuant to this Section of the Act, **Yates has a right of a de novo hearing**. If a stay is not granted, by the time of the next Commission hearing the well will be drilling, the issues which Yates and others have a right to have reviewed by the Commission will be moot and Yates' right to a hearing will effectively be lost.

**DIVISION ORDER R-10731 IS CONTRARY TO PAST
PRECEDENT ESTABLISHED BY THE DIVISION FOR
DECIDING COMPETING POOLING CASES**

5. Yates seeks an opportunity to show the Commission that Order R-10731 is contrary to the precedents established by the Division in prior cases for resolving competing compulsory pooling cases. Order R-10731 awarded operations to InterCoast because it was the first working interest owner to propose a farmout agreement for a well **despite** the fact that InterCoast filed for compulsory pooling prior to providing Yates with

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an AFE and **despite** the fact that the Yates Group controls 52.465 % of the working interest in this spacing unit while InterCoast controls only 24.101 % of the working interest.

6. Prior to Order R-10731, the Division had been awarding operations in competing pooling cases like this to the working interest owner who had consolidated the largest percentage of interest.

7. Party Controlling Majority Interest:

(i) The Division has established the precedent of awarding operations to the applicant who has control of the largest percentage of working interest ownership when there is not substantial difference in geologic issues or well costs.

See: Order R-10626 (Findings 6 and 9)

(ii) Even in cases where there are geologic disputes and differences in AFEs, the percentage controlled is a significant factor in deciding these disputes:

See: Order R-10358 (Findings 13 and 27)

See: Order R-10520 (Findings 13 and 15)

See: Order R-10434 (Findings 10, 27 and 28)

(iii) The Yates Group (Yates Petroleum Corporation, Yates Drilling Company, Abo Drilling Corp. and Myco Industries, Inc.) and Nearburg, in cases where there is no geologic dispute, are now settling the issue of operations based upon the operator who has consolidated and controlled the largest working interest in the spacing unit.

(iii) Yates should be awarded operations because it controls 55 % of the working interest and has the support of 16 different working interest owners while InterCoast controls only 24 % has been unable to obtain the approval of any working interest

8. Based upon these prior precedents, Yates, Nearburg and others have settled their competing pooling cases and have thereby avoid bring numerous cases to the Oil Conservation Commission.

9. Order R-10731, now disrupts the current settlement practices being used by the industry. This will cause other minority working interest owners to attempt to have future pooling cases decided based upon who first proposes a farmout or other "deal" so that such a minority owner will be awarded operations over the objection of a substantial majority of the working interest owners in the unit.

**INTERCOAST FILED ITS COMPULSORY
POOLING APPLICATION IN VIOLATION
OF THE OIL & GAS ACT**

10. Yates should prevail in a De Novo hearing because it will show that Division Order R-10731 violates the Oil and Gas Act. The Division's pooling authority may be exercised **only after** a good faith effort has been made to reach a voluntary agreement for the development of the spacing unit. See Section 70-2-17(C) NMSA (1978). The reason for this requirement is that the pooling of mineral interest involves the taking of property interest from one owner and giving that interest to another. Accordingly, the Oil and Gas Act requires that the affected parties be given an opportunity to voluntarily "pool their interest and develop their lands as a unit" before the Division makes that decision for them. Until now, the Division has consistently dismissed compulsory pooling cases which were filed **prior** to the date the party to be pooled has received a written proposal specify the well, its location, its spacing unit and its estimated costs ("AFE"). See **Order R-10242 (Examiner Catanach)** entered in Case 11107 which dismissed a pooling application filed by Maralo after Maralo has sent Bass a "farmout request" but prior to sending Bass a specific well proposal and AFE. See **Order R-10545 (Examiner Stogner)** entered in Case 11434 which dismissed a Meridian pooling application which was filed on November 8, 1995 eight days after Meridian has sent a specific well proposal and AFE and despite the fact the case had been continued for two months until January 11, 1996 to give the parties additional time to reach a voluntary agreement. See, also, Cases 10635, 10636, 9939 and 11461.

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11. Division in Order R-10731 has disregarded the following facts and entered an order which is contrary to past precedent established by the Division:

(a) On September 3, 1996, Yates received a letter from InterCoast dated August 30, 1996 which is referenced a "**Farmout Request**" and in which InterCoast requested Yates to farmout its interest in the NE/4 of said Section 20, **but failed** to submit an AFE, failed to designate a spacing unit and failed to request Yates to join in the well.

(b) InterCoast did not indicate to Yates that there was any urgency to this matter nor did InterCoast request a reply to the farmout request by any specific date.

(c) InterCoast failed to put Yates on notice that InterCoast would institute compulsory pooling action against Yates in the absence of Yates' acquiescence to InterCoast's request.

(d) On September 17, 1996, InterCoast advised that it would provide Yates with a proposed Authority for Expenditure ("AFE") and Joint Operating Agreement.

(e) Instead, on September 24, 1996, InterCoast filed its compulsory pooling application for the N/2 of said Section 20 some 15 days **before** Yates received InterCoast's AFE and well proposal letter on October 9, 1996.(NMOCD Case 11634)

(f) On October 9, 1996, more than 14 days after InterCoast filed its compulsory pooling application, Yates received InterCoast's first written proposal for a N/2 spacing unit which included a AFE for the well.

(g) InterCoast refuses to allow Yates to operate the well in the E/2 of Section 20 despite the fact that this spacing unit (in which Yates is the largest owner) is in the Stonewall Unit which Yates has drilled and operated 21 wells since 1973.

(h) On November 12, 1996, InterCoast filed its compulsory pooling application seeking to operate the E/2 of Section 20 (NMOCD Case 11666).InterCoast filed its compulsory pooling application some 6 days **before** Yates received InterCoast's AFE and well proposal letter on November 18, 1996. (NMOCD Case 11666).

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(i) On November 18, 1996, Yates received InterCoast's well proposal for the E/2 of Section 20.

(j) Yates has continued to attempt to obtain InterCoast's agreement that Yates should operate this well and this spacing unit but InterCoast has refused to discuss this matter further.

12. Contrary to the custom and practice before the Division and in violation of Section 70-2-17(C) NMSA (1978), the Division encourages InterCoast and others to prematurely institute compulsory pooling action without first undertaking a good faith and reasonable effort to form an appropriate spacing unit on a voluntary basis for the drilling of a specific well.

13. Division Order R-10731 allows InterCoast to use the compulsory pooling statute as a negotiation strategy against Yates rather than as a remedy of last resort when all efforts for obtaining a voluntary agreement have failed.

14. The activities initiated by **InterCoast** amount to "bad faith" contrary to the Division's policy and practice that compulsory pooling be used as a last resort only after the applicant has engaged in good faith negotiations rather than as "negotiating weapon" to be used against other working interest owners.

CONCLUSION

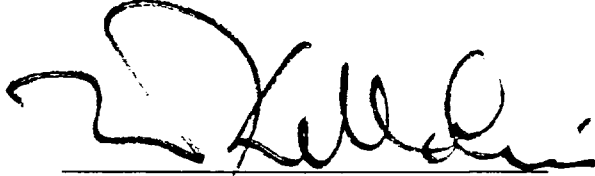
15. Yates has a right to have these issues reviewed DeNovo by the Commission. Without a stay, before the DeNovo hearing, the time for Yates to make an election to avoid a risk penalty will have run, the well will be drilling, and Yates' rights to a hearing denovo will in fact have been denied.

16. A stay of Order R-10731 until the De Novo review in February, 1997 will protect the rights of the interest owners in this spacing unit and afford them the DeNovo hearing as guaranteed by the Oil and Gas Act.

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WHEREFORE, Yates Petroleum Corporation request that Oil Conservation Division Order R-10731 be stayed in its entirety pending a DeNovo review by the Oil Conservation Commission.

Respectfully submitted,

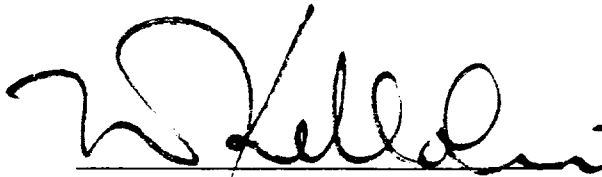
A handwritten signature in black ink, appearing to read 'W. Thomas Kellahin', written over a horizontal line.

W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504-2265

ATTORNEYS FOR YATES PETROLEUM CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Stay was hand-delivered this 24th day of January, 1997 to James Bruce, Esq. Hinkle Law Firm, Montezuma Street, Santa Fe, New Mexico 87501

A handwritten signature in black ink, appearing to read 'W. Thomas Kellahin', written over a horizontal line.

W. Thomas Kellahin

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

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
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CONSIDERING:**

CASE NO. 11666

**APPLICATION OF INTERCOAST OIL AND
GAS COMPANY FOR COMPULSORY POOLING
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CASE NO. 11677

**APPLICATION OF YATES PETROLEUM CORPORATION
FOR COMPULSORY POOLING AND AN UNORTHODOX
GAS WELL LOCATION, EDDY COUNTY, NEW MEXICO**

ORDER NO. R-10731

**ORDER OF THE DIVISION
STAYING ORDER NO. R-10731**

BY THE DIVISION:

This matter having come before the Division upon the request of Yates Petroleum Corporation for a Stay of Division Order R-10731 and the Division Director having considered the request and being fully advised in the premises,

NOW, on this ____ day of January, 1996, the Division Director:

FINDS THAT:

(1) Division Order No. R-10731 was entered on January 12, 1997, upon the competing applications of Yates Petroleum Corporation (Yates) in Case 11677 and InterCoast Oil and Gas Company (InterCoast) for compulsory pooling of the E/2 of Section 20, T20S, R28E, NMPM, Eddy County, New Mexico.

(2) On January 21, 1997, Yates filed a request for a DeNovo hearing wit the Oil Conservation Commission, which case is now set for hearing on February 13, 1997.

**Motion for Stay of Order R-10731
Case Nos. 11666 & 11677**

(3) Division Order R-10731 designates InterCoast as the operator of the well to be drilled and provides the well shall be commenced by April 15, 1997.

(4) Yates has complied with the provision of Division Memorandum 3-85 and has filed its request for a stay of Division Order R-10731 on January 24, 1997.

(5) Allowing InterCoast to drill the well pursuant to Division Order R-10731 prior to the February 13, 1997 De Novo hearing would effectively deny much of Yates' request for a hearing DeNovo because InterCoast would be the operator for purposes of drilling the subject well.

IT IS THEREFORE ORDERED THAT:

(1) Division Order No. R-10731 is hereby stayed in its entirety until the Commission rules on the evidence presented at the February 13, 1997 DeNovo hearing.

(2) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**

**WILLIAM J. LEMAY
Director**

S E A L