

**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:**

**AMENDED APPLICATION OF YATES PETROLEUM
CORPORATION FOR COMPULSORY
POOLING AND A NON-STANDARD
OIL AND GAS SPACING AND PRORATION
UNIT, LEA COUNTY, NEW MEXICO.**

CASE NO. 12569

**APPLICATION OF YATES PETROLEUM
CORPORATION FOR COMPULSORY
POOLING AND A NON-STANDARD OIL
AND GAS SPACING AND PRORATION
UNIT, LEA COUNTY, NEW MEXICO.**

CASE NO. 12590

**RESPONSE OF YATES PETROLEUM CORPORATION
TO OCEAN ENERGY RESOURCES, INC.'S
MOTION TO DISMISS**

In response to Ocean Energy Resources Inc.'s Motion to Dismiss the applications of Yates Petroleum Corporation in the above-referenced cases, Yates Petroleum Corporation states:

BACKGROUND

On December 21, 2000, Yates Petroleum Corporation (Yates") filed an application with the Oil Conservation Division seeking an order pooling all mineral interests from the surface to the base of the Morrow formation in Lots 1 through 8 of irregular Section 3, Township 16 South, Range 35 East, N.M.P.M. These pooled units are to be dedicated to a well to be drilled by Yates at an orthodox location in Lot 1 of said Section 3.

At the January 11, 2001 examiner hearing, this case (Case 12569) was consolidated with cases 12535 and 12567 which are competing pooling applications filed by Ocean Energy Resources, Inc. ("Ocean"). All three cases were continued to the February 8, 2001 examiner hearing docket and all three applications were amended to include the Mississippian formation.

On January 16, 2001, Yates filed a second application seeking an order pooling this acreage. Notice of this application was provided in accordance with the rules of Division. Yates' second application was styled Division Case 12590 and came before a Division Examiner on February 8, 2001. Without objection from Ocean, this application was consolidated with Cases 12535, 12567 and 12569 and the record made in those cases on January 11, 2001 was incorporated into and became the record for case 12590.

Ocean now seeks to dismiss both of the Yates applications because the application in Case 12569 was filed before Yates formally proposed the well to Ocean.

Negotiations for the Development of the N/3 of Section 3.

In May 2000, Ocean proposed a well to Yates at a location in Lot 4 of Section 3. *Ocean Exhibit No. 3A; Maney at Tr. 13*¹. When Ocean proposed the well, Yates requested that the location be move to a structurally low position in the NW/4 of Section 3 but Ocean declined to do so. *Cummins at Tr. 63*. During the succeeding seven months there were numerous discussions between the parties concerning the drilling of a well in the N/3 of this section. *Bruce at Tr. 8; Maney at Tr. 13-14*. These negotiations included many telephone conversations and discussions between the geologists for the parties concerning the proper location for a Morrow well on this spacing unit. Yates also traveled to Houston in August 2000 to try to reach an agreement for the development of this acreage. *Maney at 13-14*. At all times the primary issue between the parties has been the proper location for a well to develop the Morrow formation under this acreage. *Maney at Tr. 21, Messa at Tr. 41*.

In October and in December 2000, Ocean filed a compulsory pooling applications against Yates seeking the pooling of the N/3 of Section 3 for the well it had proposed to drill in Lot 4.

In December 2000, it became apparent to Yates that Ocean would not move the well location. *Bullock at 52-53*. Yates therefore filed its pooling application on December 21,

¹All citations are to the transcript and record of the January 11, 2000 examiner hearing on the applications of Yates and Ocean in consolidated cases 12535, 12567 and 12569 unless otherwise indicated.

2000 “as a defensive move” (*Bullock at 58*) to avoid the drilling of a well at an imprudent location in the N/3 of Section 3. Yates formally proposed a well in Lot 1 of Section 3 by letter to Ocean dated December 27, 2000. *Yates Exhibit No. 3; Bullock at Tr. 53*.

The applications of Ocean and Yates were consolidated and heard by the Division on January 11, 2001. At the conclusion of the hearing, Ocean stated that the application of Yates in Case 12469 should be dismissed because Yates’ application for compulsory pooling was filed prior to Yates letter formally proposing its well.

In support of its request for dismissal, Ocean cited two Oil Conservation Division Orders. Ocean first cited Order No. R-10731-B in which the Division found that “the most important consideration in awarding operations to competing interest owners is geologic evidence as it relates to well location and recovery of oil and gas and associated risk.” (Finding 23f). Ocean also cited Order No. R-10977, entered in Case 11927, in which the application of Redstone Oil and Gas was dismissed because the application of Redstone for compulsory pooling was filed prior to the time Redstone proposed its well.

Ocean waited for more than a month following the January 11, 2001 Examiner Hearing to file its Motion to Dismiss. During that time, Yates reviewed the record in each of the cases cited by Ocean and on January 16, 2001, filed a new compulsory pooling application seeking an order pooling the N/3 of Section 30 for the well it had previously proposed.

ARGUMENT

Ocean now seeks the dismissal of both of Yates’ pooling applications. It treats both applications as if they were the same and asserts that both fail to comply with New Mexico’s pooling statutes.

Yates Complied with New Mexico Pooling Statutes

The Yates applications in Cases 12569 and 12590 meet statutory requirements for a compulsory pooling application. The Oil and Gas Act provides that compulsory pooling is available where the applicant has the right to drill, proposes to drill and where the parties “have not agreed to pool their interests,...” *NMSA 1978, Sec. 70-2-17.C* Yates meets all of these statutory requirements. Yates has the right to drill. It has proposed to drill a well in Lot 1 of irregular Section 3. As to the negotiations between the parties, the evidence in this case shows that prior to filing the application in Case 12569, the parties had (a) been in negotiations for seven months (b) that during this time they discussed this matter on

numerous occasions, and (c) that Yates traveled to Houston to meet with Ocean concerning the location of a well in the N/3 of Section 3.

The statutory test is whether there has been good faith negotiation between the parties. Here, the evidence clearly shows that a good faith effort has been made by Yates to reach agreement for the development of this acreage.

Yates' Application Is Properly Before the Division.

If Ocean succeeds with its Motion to Dismiss, it will acquire operations of this spacing unit, and the right to drill a well thereon at an imprudent location, solely because of a technicality – the fact that, after seven months of negotiation, Yates filed its first pooling application prior to formally proposing the well to Ocean.

In support of its motion, Ocean cites Oil Conservation Division Case No. 11927, Order No. R-10977. In that case, a compulsory pooling application filed by Redstone Oil and Gas ("Redstone") was dismissed because it had filed its pooling application prior to formally proposing the well. However, Ocean does not mention what is perhaps the most important part of that case. In Redstone, although the Examiner dismissed the pooling application, he also advised Redstone that it could re-file its application thereby correcting this defect. *See, transcript of the March 5, 1998 hearing in Case 11877 and 11827 (Consolidated) at Tr. 16.*

Yates reviewed the cases cited by Ocean at the January 11, 2002 hearing, and did what the Examiner in Redstone said it could do – it filed a new pooling application. Contrary to the way the Yates applications are treated in Ocean's Motion to Dismiss, these applications are not the same. Yates' second application is not an amended application – it is a new pooling application which was filed after Yates formally proposed the well to Ocean. Even if Yates application in Case 12569 is determined to be defective, Yates has corrected this defect by filing a new compulsory pooling application covering the N/3 of this Section. Notice of the second Yates application was provided to all affected interest owners in accordance with Division rules. *Yates Exhibit B.* It came for hearing as Case 12590 before a Division Examiner on February 8, 2001. The record of the January 11, 2001 hearing was incorporated into and became the record for this second application. Accordingly, the application of Yates Petroleum Corporation in Case 12590 is properly before the Division and an order in this case can now be rendered based on the most important consideration – geology and on the issues of waste prevention and the protection of correlative rights. *See, Division Order No. R-10731-B.*

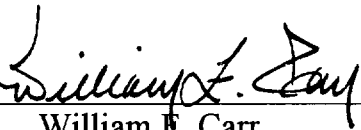
CONCLUSION

Yates filed its first pooling application prior to formally proposing a well to Ocean. Ocean now wants to put form before substance and win on a technicality. It does this because, having presented a self-contradicting geological presentation, this is the only way it can prevail. The problem with Ocean's strategy is that the defect on which it relies can be and has been corrected. Accordingly, the Division may now decide the issues in these cases based on the geological interpretations of the parties and not on an alleged procedural defect in one of the four applications before it.

Ocean's Motion to Dismiss should be denied.

Respectfully submitted,

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AND
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By: 
William F. Carr

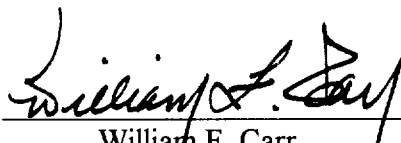
ATTORNEYS FOR YATES
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Certificate of Service

I hereby certify that a copy of the foregoing pleading was provided to the following counsel by Hand Delivery, U. S. Mail or Facsimile on this February 19th day of 2001.

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