

State of New Mexico
ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT
Santa Fe, New Mexico 87505



February 7, 1994



BRUCE KING
GOVERNOR

ANITA LOCKWOOD
CABINET SECRETARY

Charles C. High Jr.
Kemp, Smith, Duncan & Hammond P.C.
P.O. Drawer 2800
El Paso, TX 79999-2800

Clinton Marrs
Kemp, Smith, Duncan & Hammond P.C.
P.O. Box 1276
Albuquerque, NM 87103-1276

**Re: Application of Yates Petroleum
Case Nos. 10448, 10449
Order Nos. R-9654-C, R-9655-C**

Dear Messrs. High and Marrs:

We have received your document entitled "Appeal From Decision and Orders of Oil Conservation Commission." Following a careful review, we understand you have requested I assume jurisdiction of this matter pursuant to Section 70-2-26 NMSA 1978.

After reviewing your request, I decline to intervene in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anita Lockwood".

Anita Lockwood
Cabinet Secretary

AL:dz

cc: William LeMay, Director, Oil Conservation Division
Carol Leach, General Counsel, EMNRD
Scott Spencer, Deputy General Counsel, EMNRD

VILLAGRA BUILDING - 408 Galisteo

Forestry and Resources Conservation Division
P.O. Box 1948 87504-1948
827-5830

Park and Recreation Division
P.O. Box 1147 87504-1147
827-7465

2040 South Pacheco

Office of the Secretary
827-5950

Administrative Services
827-5925

Energy Conservation & Management
827-5900

Mining and Minerals
827-5970

LAND OFFICE BUILDING - 310 Old Santa Fe Trail

Oil Conservation Division
P.O. Box 2088 87504-2088
827-5800



STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION



BRUCE KING
GOVERNOR

ANITA LOCKWOOD
CABINET SECRETARY

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87504
(505) 827-5800

May 26, 1992

LOSEE, CARSON, HAAS & CARROLL
Attorneys at Law
P. O. Drawer 239
Artesia, New Mexico 88211-0239

RE: CASE NO. 10448
ORDER NO. R-9654-A

Dear Sir:

Enclosed herewith are two copies of the above-referenced Division order recently entered in the subject case.

Sincerely,

A handwritten signature in cursive script that reads "Florene Davidson".

Florene Davidson
OC Staff Specialist

FD/sl

cc: T. Kellahin
J. Bruce
C. Marrs
C. High
BLM - Carlsbad

BEFORE THE OIL CONSERVATION DIVISION
STATE OF NEW MEXICO

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MAY 21 1992

OIL CONSERVATION DIVISION

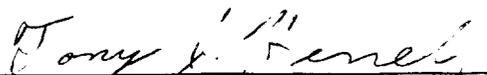
IN THE MATTER OF

APPLICATION OF YATES PETROLEUM
CORPORATION FOR AUTHORIZATION TO
DRILL, EDDY COUNTY, NEW MEXICO

CASES NO. 10446, 10447,
10448, 10449
ORDERS NO. R-9650, 9651,
9654, and 9655

ACCEPTANCE OF SERVICE

COMES NOW Tony Herrell, Bureau of Land Management,
Carlsbad Area Office, Carlsbad, NM and accepts service of New
Mexico Potash Corporation's Subpoena Duces Tecum, issued May 7,
1992, this 11 day of May, 1992.



TONY HERRELL

LAW OFFICES OIL CONSERVATION DIVISION
LOSEE, CARSON, HAAS & CARROLL, P. A.
300 YATES PETROLEUM BUILDING
P. O. DRAWER 239
ARTESIA, NEW MEXICO 88211-0239

RECEIVED
92 MAY 12 AM 8 43

TELEPHONE
(505) 746-3505
TELECOPY
(505) 746-6316

ERNEST L. CARROLL
JOEL M. CARSON
JAMES E. HAAS
A. J. LOSEE
DEAN B. CRCSS
MARY LYNN BOGLE

May 15, 1992

VIA FACSIMILE AND FIRST CLASS MAIL

Mr. William J. LeMay, Director
New Mexico Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

Re: Applications of Yates Petroleum Corporation
for Permit to Drill, Eddy County, New
Mexico/OCD Case No. 10448/Order R-9654

Dear Mr. LeMay:

Enclosed please find an original plus three copies of Yates' Response of Yates Petroleum Corporation to Application for Order Staying Order of Director Pending De Novo Hearing by Oil Conservation Commission for filing in the above-referenced case. Please return a stamped copy to me for my files.

Very truly yours,

LOSEE, CARSON, HAAS & CARROLL, P.A.


Ernest L. Carroll

ELC:kth
Enclosures

xc w/encl: Charles High
Clinton Marrs
Randy Patterson

BEFORE THE OIL CONSERVATION DIVISION
STATE OF NEW MEXICO

RECEIVED

IN THE MATTER OF

APPLICATION OF YATES PETROLEUM
CORPORATION FOR AUTHORIZATION TO
DRILL, EDDY COUNTY, NEW MEXICO

CASE NO. 10448 OIL CONSERVATION DIVISION
ORDER NO. R-9654

MAY 1 1992

RESPONSE OF YATES PETROLEUM CORPORATION TO
APPLICATION FOR ORDER STAYING ORDER OF DIRECTOR PENDING
DE NOVO HEARING BY OIL CONSERVATION COMMISSION

YATES PETROLEUM CORPORATION ("Yates"), through its attorneys of record, makes this response to New Mexico Potash Corporation's ("New Mexico Potash") Application, and in support thereof, states:

1. A number of the factual recitations contained in New Mexico Potash's application are incorrect, and Yates would state that its failure to address each factual statement made in the very lengthy New Mexico Potash application should not be construed as an admission of the correctness of each unaddressed statement.

2. The issue presented by New Mexico Potash Corporation's application is a very narrow and limited one, which Yates will solely address. The issue is whether the Oil Conservation Commission (the "Commission") has jurisdiction to do what New Mexico Potash requests. The answer to that question is, no.

3. New Mexico Potash correctly states that all action in this particular case is stayed by Order of the District Court of Eddy County, and further it is correct in stating that said Order stated that the hearing to be conducted by the Commission "shall commence on or before May 22, 1992." (see paragraph 4 of the Court's Order).

4. The statements in paragraph 13 of New Mexico Potash's application are baseless and unfounded in fact and law. It is stated therein that, because of the procedural order entered by this Commission that the hearing will not commence on or before May 22, 1992. Nothing in the Commission's order contradicts that directive, in fact, the order says that the Commission "hereby sets this matter for hearing on procedural and legal questions for its regularly docketed hearing on May 21, 1992." The District Court only required that the hearing commence; the Commission is commencing its hearing by first dealing with legal and procedural issues. Furthermore, the statement that New Mexico Potash makes that, because no hearing is commencing it would be possible for the temporary restraining order to be dissolved or modified and that indeed, drilling could begin without New Mexico Potash's knowledge is tantamount to a lie. No action with respect to the Court's restraining order can be taken without notice and hearing. The Commission's attention is directed to paragraph 6 of the District Court's Order, wherein it is stated: "At any time after May 22, 1992, upon showing of good cause and reasonable notice, the Court shall make further orders with respect to the temporary restraining order as it deems appropriate." There is no way drilling could occur without New Mexico Potash's knowledge.

5. Again, as this Commission has pointed out, once the temporary restraining order was issued by the District Court, the Commission lost all jurisdiction to act except with respect to those areas and those matters the District Court specifically instructed this Commission to address. Should New Mexico Potash

feel that the Commission is not following the District Court's dictates, the forum for such issues is in the District Court of Eddy County.

WHEREFORE, Yates respectfully requests that the Application of New Mexico Potash be denied.

LOSEE, CARSON, HAAS & CARROLL, P.A.

By: 

A. J. Losee
Ernest L. Carroll
P. O. Drawer 239
Artesia, New Mexico 88211-0239
(505)746-3505

Attorneys for Yates Petroleum Corporation

I hereby certify that I caused to be faxed and mailed a true and correct copy of the foregoing to all counsel of record this May 15, 1992.


Ernest L. Carroll

RECEIVED

BEFORE THE OIL CONSERVATION DIVISION
STATE OF NEW MEXICO

MAY 07 1992

OIL CONSERVATION DIV.
SANTA FE

IN THE MATTER OF

APPLICATION OF YATES PETROLEUM
CORPORATION FOR AUTHORIZATION TO
DRILL, EDDY COUNTY, NEW MEXICO

CASES NO. 10446, 10447,
10448, 10449
ORDERS NO. R-9650, 9651,
9654, AND 9655

SUBPOENA DUCES TECUM

TO: John Yates
President
Yates Petroleum Corporation
105 South Fourth Street
Artesia, New Mexico 88210

Pursuant to Section 70-2-8, NMSA (1978) and Rule 1211 of the New Mexico Oil Conservation Commission's Rules of Procedure, you are hereby ORDERED to appear at the offices of Kemp, Smith, Duncan & Hammond, P.C., 500 Marquette, N. W., Suite 1200, Albuquerque, New Mexico 87102-2121, on the 19th day of May, 1992, at 10 a.m. and produce the documents and items specified in the attached Exhibit A.

This subpoena is issued on application of New Mexico Potash Corporation through its attorneys, Kemp, Smith, Duncan & Hammond, 500 Marquette, Suite 1200, Albuquerque, New Mexico 87102-2121.

Dated this 7th day of May, 1992.

NEW MEXICO OIL CONSERVATION COMMISSION

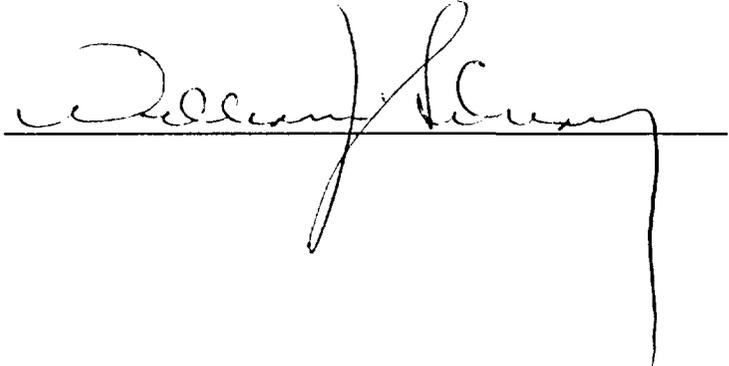
BY: 

EXHIBIT A

The term "document" as used herein means every writing and record of every type and description in the possession, custody or control of Yates Petroleum Corporation, whether prepared by you or otherwise, which is in your possession or control or known by you to exist, including but not limited to all drafts, papers, books, writings, records, letters, photographs, tangible things, correspondence, communications, telegrams, cables, telex messages, memoranda, notes, notations, work papers, transcripts, minutes, reports and recordings of telephone or other conversations or of interviews, conferences, or meetings. It also includes diary entries, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, jottings, agendas, bulletins, notices, announcements, plans, specifications, sketches, instructions, charts, manuals, brochures, publications, schedules, price lists, client lists, journals, statistical records, desk calendars, appointment books, lists, tabulations, sound recordings, computer printouts, books of accounts, checks, accounting records, vouchers, and invoices reflecting business operations, financial statements, and any notes or drafts relating to the foregoing, without regard to whether marked confidential or proprietary. It also includes duplicate copies if the original is unavailable or if the duplicate is different in any way, including marginal notations, from the original.

1. Produce all documents served upon New Mexico Potash Corporation concerning the wells involved in Cases Nos. 10446, 10447, 10448, and 10449.

2. Produce all documents showing the dates the documents produced in response to Request No. 1 were received by New Mexico Potash Corporation.

3. Produce all documents discussing or evaluating the feasibility of directionally drilling the wells involved in Cases Nos. 10446, 10447, 10448, and 10449.

4. Produce all documents concerning the economics of each of the wells involved in Cases Nos. 10446, 10447, 10448, and 10449, including:

- a. drilling costs (straight hole) and completion costs of well with depth
- b. production/time projection (STB)
- c. amounts and value of oil and/or gas to be recovered
- d. geologic, mechanical, and monetary risks placed on drilling

5. Produce all drilling contracts entered into by Yates Petroleum Corporation for each well involved in Cases Nos. 10446, 10447, 10448, and 10449.

6. Produce all documents concerning any blowouts, casing failure, or unplanned releases of gas or oil that occurred during drilling or production of any well during the years 1977 to date.

7. Produce all documents concerning the presence of or encounters with hydrogen sulfide gas in Eddy and Lea Counties, New Mexico during the period from 1977 to date.

8. Produce all documents showing, evidencing, noting, or otherwise discussing the position of New Mexico Potash Corporation concerning approval or objection to the drilling of any of the wells involved in Cases Nos. 10446, 10447, 10448, and 10449.

9. Produce all documents showing, evidencing, noting, or otherwise discussing the position of New Mexico Potash Corporation concerning approval or objection to the drilling of any of well in Section 2, Township 22 South, Range 31 East.

10. Produce all documents concerning violations of applicable occupational safety and health standards by Yates Petroleum Corporation or by persons drilling wells under contract with Yates for the years 1982 to present.

RECEIVED

BEFORE THE OIL CONSERVATION DIVISION
STATE OF NEW MEXICO

MAY 07 1992

IN THE MATTER OF

OIL CONSERVATION DIV.
SANTA FE

APPLICATION OF YATES PETROLEUM
CORPORATION FOR AUTHORIZATION TO
DRILL, EDDY COUNTY, NEW MEXICO

CASES NO. 10446, 10447,
10448, 10449
ORDERS NO. R-9650, 9651,
9654, AND 9655

SUBPOENA DUCES TECUM

TO: Mr. Tony Herrell
Bureau of Land Management
Carlsbad Area Office
Carlsbad, New Mexico

Pursuant to Section 70-2-8, NMSA (1978) and Rule 1211 of the New Mexico Oil Conservation Commission's Rules of Procedure, you are hereby **ORDERED** to appear at the offices of the New Mexico Oil Conservation Commission, State Land Office Building, 310 Old Santa Fe Trail, Santa Fe, New Mexico, 87504, on the 21st day of May, 1992, at 9 a.m. and produce the documents and items specified in the attached Exhibit A.

This subpoena is issued on application of New Mexico Potash Corporation through its attorneys, Kemp, Smith, Duncan & Hammond, 500 Marquette, Suite 1200, Albuquerque, New Mexico 87102-2121.

Dated this 7th day of May, 1992.

NEW MEXICO OIL CONSERVATION COMMISSION

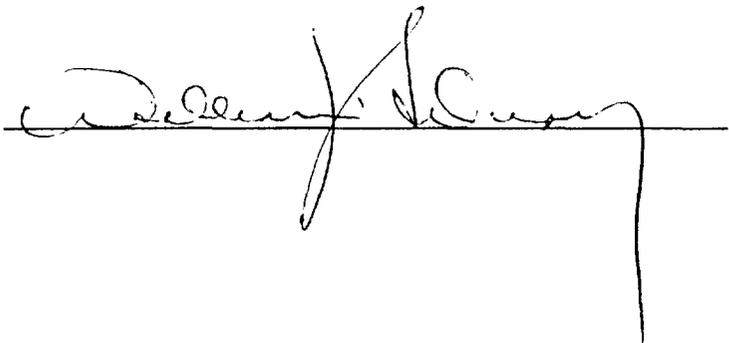
BY: 

EXHIBIT A

1. Produce documents showing the procedure followed by the Bureau of Land Management in determining the presence of commercial grade potash ore based upon core hole data.

2. Produce documents showing the average grade of potash ore mined by operators in the Potash Area.

3. Produce documents showing the criteria used by the Bureau of Land Management for determining if ore deposits are "commercial grade" ore.

4. Produce documents showing whether Section 2, Township 22 South, Range 31 East contains "commercial grade potash ore" under the standards followed by the Bureau of Land Management in making such determinations.

COPY

RECEIVED

BEFORE THE OIL CONSERVATION COMMISSION

APR 21 1992

STATE OF NEW MEXICO

OIL CONSERVATION DIVISION

IN THE MATTER OF THE APPLICATION OF) APPLICATIONS FOR DE NOVO
YATES PETROLEUM CORPORATION FOR) HEARING : CASES NOS. 10446,
PERMITS TO DRILL, EDDY COUNTY,) 10447, 10448, 10449
NEW MEXICO)

OBJECTIONS TO SUBPOENA DUCES TECUM AND MOTION TO QUASH

NEW MEXICO POTASH CORPORATION objects to the subpoena issued by the New Mexico Oil Conservation Division to Bob Lane, New Mexico Potash Corporation, on April 16, 1992, and moves to quash the subpoena for the following reasons:

1. The subpoena seeks documents and information protected from disclosure by Order R-111-P, Section G, which states:

Information used by the potash lessee in identifying its LMR shall be filed with the BLM and SLO but will be considered privileged and confidential "trade secrets and commercial....information" within the meaning of 43 C.F.R. § 2.13(c)(4) (1986), Section 19-1-2, 1 NMSA 1978, and not subject to public disclosure.

2. The documents and information sought by the subpoena, with the exception of information concerning Section 2 of Township 22 South, Range 31 East, are irrelevant to the issues raised by the applications for permit to drill at issue in these cases.

3. The documents and information sought by the subpoena are unnecessary to the resolution of any issue in these cases because the information sought is on file with the State Land Office and Bureau of Land Management even though protected from public disclosure. Therefore, the fact that the proposed well locations are within New Mexico Potash Corporation's LMR and should not be allowed (see Order R-111-P, Section G(e)(3)), can be verified by the SLO or BLM as provided in Order R-111-P, Section G(b), without

disclosure of the confidential, trade secret information sought by the subpoena.

4. Information concerning Core Hole No. 162, located in Section 2 of Township 22 South, Range 31 East, and within approximately 2600' of all of the proposed well locations, has been provided to counsel for Yates Petroleum Corporation.

5. A subpoena for the same information has already been quashed once by the hearing officer for the Oil Conservation Division.

Respectfully submitted,

Clinton Marrs *Clinton W. Marrs*
KEMP, SMITH, DUNCAN & HAMMOND, P.C.
P.O. Box 1276
Albuquerque, New Mexico 87103-1276
(505) 247-2315

KEMP, SMITH, DUNCAN & HAMMOND, P.C.
P.O. Drawer 2800
El Paso, Texas 79999-2800
(915) 533-4424
(915) 546-5380 (FAX)

By: *Charles C. High, Jr.*
Charles C. High, Jr.
State Bar No. 090605000

Attorneys for New Mexico Potash Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objections to Subpoena Duces Tecum and Motion to Quash was sent by facsimile and mailed this 27th day of April, 1992 to Losee, Carson, Haas & Carroll, P.A., 300 Yates Petroleum Building, P. O. Drawer 239, Artesia, New Mexico 88211-0239.

Charles C. High, Jr.
CHARLES C. HIGH, JR.

copy

LAW OFFICES

LOSEE, CARSON, HAAS & CARROLL, P. A.

ERNEST L. CARROLL
JOEL M. CARSON
JAMES E. HAAS
A. J. LOSEE
DEAN B. CROSS
MARY LYNN BOGLE

300 YATES PETROLEUM BUILDING
P. O. DRAWER 239
ARTESIA, NEW MEXICO 88211-0239

TELEPHONE
(505) 746-3508
TELECOPY
(505) 746-6316

FAX TRANSMITTAL DATE: 4/22/92

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Bob Stoval

FIRM: OLD

FAX NO. () 827-5741 FIRM NO. _____

SENDER: Ernest Carroll

TOTAL NUMBER OF PAGES (INCLUDING THIS SHEET): 5

IF YOU DO NOT RECEIVE ALL THE PAGES INDICATED ABOVE,
PLEASE CALL US BACK AS SOON AS POSSIBLE AT:

(505) 746-3505 ASK FOR: Kandy

MESSAGE: _____

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FIFTH JUDICIAL DISTRICT COURT
COUNTY OF EDDY
STATE OF NEW MEXICO

92 APR 22 P3:00
COPY
CLERK OF THE DISTRICT COURT

NEW MEXICO POTASH CORPORATION

Plaintiff,

vs.

No. CV-92-101-S

YATES PETROLEUM CORPORATION,
JOHN DOE NO. 1, JOHN DOE NO. 2,
JOHN DOE NO. 3, JOHN DOE NO. 4,
JOHN DOE NO. 5, JOHN DOE NO. 6,
JOHN DOES NOS. 7-15, AS
FICTITIOUS NAMES OF PERSONS
PRESENTLY UNKNOWN,

Defendants.

ORDER EXTENDING TEMPORARY RESTRAINING ORDER
AND APPOINTMENT OF SPECIAL MASTER

THIS MATTER came before the Court upon the Plaintiff's Original Verified Complaint for Injunction, the parties appearing by counsel of record and the Court, having received and examined the file, having heard the argument and stipulations of counsel, finds:

1. The Plaintiff has exhausted its administrative remedies before the Oil Conservation Division for the State of New Mexico and this Court has jurisdiction of the parties and the subject matter.

2. The parties stipulated in Open Court to the extension of the Temporary Restraining Order pending the de novo hearing on Plaintiff's application in Case No. 10448 by the Oil Conservation Commission for the State of New Mexico, (OCC). The OCC should be

appointed to act at said hearing as Special Master, pursuant to Rule 53 of the New Mexico Rules of Civil Procedure, to make findings as to whether Plaintiff is entitled to preliminary injunction under New Mexico Law.

3. The Special Master (New Mexico Oil Conservation Commission) may consolidate such hearing with the de novo hearing on application of Plaintiff in OCC Case No. 10448 with respect to the Flora #1 Well, and shall in this hearing procedurally follow State of New Mexico Energy, Minerals and Natural Resources Department, Oil Conservation Division Rules and Regulations dated March 1, 1991, as published by that administrative agency and made available to the general public.

4. Such hearing shall commence on or before May 22, 1992, in the Commission's offices at Santa Fe, New Mexico.

5. Upon completion of the hearing the Special Master shall file its findings with this Court. The Court retains jurisdiction to determine, after consideration of the findings pursuant to Rule 1-053, whether Plaintiff is entitled to a preliminary injunction and if not, to hear evidence on the issue of damages, if any, Defendant has incurred. The Court determines that a bond is not required at this time, because Plaintiff has sufficient means to answer.

6. At any time after May 22, 1992, upon showing of good cause and reasonable notice, the Court shall make such further

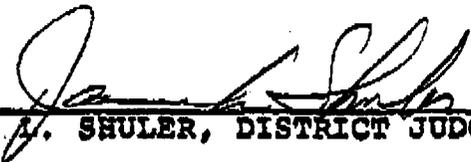
orders with respect to the temporary restraining order as it deems appropriate.

IT IS THEREFORE ORDERED THAT:

A. The temporary restraining order is hereby extended in accordance with the above findings;

B. The OCC is hereby appointed Special Master to conduct the hearing, pursuant to the foregoing findings, and promptly render a Decision and furnish it to this Court;

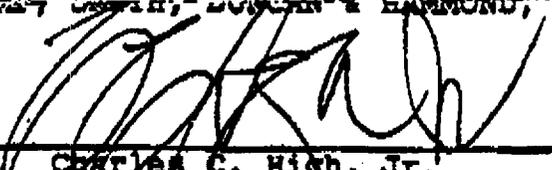
C. The Court retains jurisdiction for the purposes provided for in the above findings.



JAMES A. SHULER, DISTRICT JUDGE

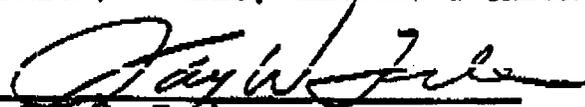
APPROVED:

~~KEMP, SMITH, DUNCAN & HAMMOND, P.C.~~

By 

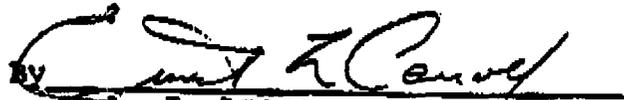
Charles C. High, Jr.
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El Paso, TX 79999-2800
Telephone 915-533-4424
FAX 915-546-5360
Attorneys for Plaintiff

MCCORMICK, FORBES, CARAWAY & TABOR

By 

Jay W. Forbes
P. O. Box 1718
Carlsbad, NM 88221-1718
Telephone 505-885-4171
FAX 505-885-1963
Attorneys for Plaintiff

LOSEE, CARSON, HAAS & CARROLL

BY 

A. J. Losee
P. O. Drawer 239
Artesia, NM 88210
Telephone 505-746-3505
FAX 505-746-6316
Attorneys for Defendant

Kemp, Smith, Duncan & Hammond, P.C.

ATTORNEYS AT LAW

EL PASO*

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JAMES F. GARNER
LEIGHTON GREEN, JR.
RAYMOND H. MARSHALL
ROBERT B. ZABOROSKI†
W. ROYAL FURGESON, JR.
CHRIS A. PAUL
CHARLES C. HIGH, JR.
JIM CURTIS
DANE GEORGE
LARRY C. WOOD
MICHAEL D. MCQUEEN
JOHN J. SCANLON, JR.
TAFFY D. BAGLEY
LUIS CHAVEZ
DAVID S. JEANS
DARRELL R. WINDHAM
ROGER D. AKSAMIT
CHARLES A. BECKHAM, JR.
MARGARET A. CHRISTIAN
MARK E. MENDEL
TABER CHAMBERLAIN
NANCY C. SANTANA

MITZI G. TURNER
CHRISTOPHER J. POWERS†
ALLAN GOLDFARB
RAYMOND E. WHITE
SUSAN F. AUSTIN
RUBEN S. ROBLES
PAUL M. BRACKEN**
KEN COFFMAN†
DONNA CHRISTOPHERSON
ELIZABETH J. VANN
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SUSAN K. PINE†
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ANGELA D. MORROW†
JEFFERY V. STRAHAN
KEVIN E. SHANNON
ERNESTO RODRIGUEZ
LAUREN K. S. MURDOCH
GARY SANDERS
JOHN R. JONES
CLARA B. BURNS
JOHN L. WILLIAMS
KEVIN P. O'SHEA

MIDLAND*

J. RANDY TURNER†
JOHN A. DAVIS, JR.
FRANK N. CREMER†
JAMES R. FULLERT††
ROD J. MACDONALD†
PATRICK S. GERALD

ALBUQUERQUE†

JOHN P. EASTHAM
THOMAS SMIDT III†
ROBERT A. JOHNSON
DONALD B. MONNHEIMER
CHARLES L. SAUNDERS, JR.†††
ROBERT D. TAICHERT**
STEVEN P. BAILEY***
BRUCE E. CASTLE*
JAMES L. RASMUSSEN
STEPHEN R. NELSON
A. DREW HOFFMAN*
CELIA F. RANKIN
CHARLOTTE LAMONT
CLINTON W. MARRS
VICKIE L. AUDETTE
ALAN HALL

SANTA FE†

JOE L. MCCLAUGHERTY***
CAMERON PETERS****
BILL PANAGAKOS

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MIDLAND, TEXAS 79701-4310

400 WEST ILLINOIS, SUITE 1400
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(915) 687-0011 FAX: (915) 687-1735

SANTA FE, NEW MEXICO 87501-1861

300 PASEO DE PERALTA, SUITE 200
P. O. BOX 6660, 87504-6660
(505) 982-1913 FAX: (505) 988-7563

OF COUNSEL: WILLIAM B. DUNCAN

*MEMBERS TEXAS BAR
†MEMBERS NEW MEXICO BAR
**MEMBERS ARIZONA BAR
***MEMBERS TEXAS AND COLORADO BARS
****MEMBERS COLORADO BAR
††MEMBERS DISTRICT OF COLUMBIA BAR
†††MEMBERS NEW MEXICO AND OKLAHOMA BARS
††††MEMBERS DISTRICT OF COLUMBIA AND COLORADO BARS

April 20, 1992

BY HAND-DELIVERY

William J. LeMay, Director
New Mexico Oil Conservation Division
State Land Office Building
310 Old Santa Fe Trail
Santa Fe, NM 87504

Re: Application for Emergency Order Staying Order of Director
Pending De Novo Hearing by OCC
Case No 10448
Order No. R-9654

Dear Mr. LeMay:

I am enclosing the original and two copies of New Mexico Potash Corporation's Application for Emergency Order Staying Order of Director Pending De Novo Hearing by OCC in the above-captioned matter.

Charles High, lead counsel for New Mexico Potash, is away from his office on Monday, April 20, 1992. Accordingly, please direct any instructions or questions on Monday to me at my office in Albuquerque; my telephone number is 247-2315 and my fax number is 843-6099. Mr. High will return to his office on Tuesday morning.

A copy of the enclosed emergency application has been sent this morning to Ernest Carroll, attorney of record for Yates

RECEIVED

APR 20 1992

OIL CONSERVATION DIVISION

William J. LeMay, Director
April 18, 1992
Page 2

Petroleum, by fax and by mail.

Very truly yours,

KEMP, SMITH, DUNCAN & HAMMOND, P.C.

By Clinton W. Marris
Clinton W. Marris

Enclosures

cc: Charles High (w/encl.)
Ernest L. Carroll (w/encl.)

BEFORE THE OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE
APPLICATION OF YATES PETROLEUM
CORPORATION FOR AUTHORIZATION TO
DRILL, EDDY COUNTY, NEW MEXICO

CASE NO. 10448

RESPONSE TO APPLICATION FOR EMERGENCY STAYING ORDER

YATES PETROLEUM CORPORATION ("Yates"), in response to the application of New Mexico Potash Corporation ("New Mexico Potash") for an emergency order staying decision and Order No. R-9654 issued by William J. LeMay, Director in this case, states:

1. On April 19, 1992 at 3:10 P.M., New Mexico Potash filed in the Fifth Judicial District Court of Eddy County, New Mexico, Case No. 92-_____, a verified complaint for injunction (a copy of which verified complaint is hereto attached) against Yates and John Does Nos. 1-15 (the "Defendants"), praying for a temporary order, without notice, restraining the Defendants from drilling or taking any further action in connection with the drilling of the well known as the Flora "AKF" State Well No. 1 located in the SE/4 SW/4 of Section 2, Township 22 South, Range 31 East, N.M.P.M.

2. At 3:11 P.M. on said April 19, 1992, the Honorable James L. Shuler, District Judge, issued an Ex Parte Temporary Restraining Order, a copy of which is hereto attached, restraining the Defendants from drilling or taking any further action in connection with the drilling of the Flora "AKF" State No. 1 well; and ordered

Yates to show cause on April 22, 1992 at 9:00 A.M. why a temporary injunction should not be issued.

3. The Ex Parte Temporary Restraining Order was served upon Randy G. Patterson, Treasurer of Yates at approximately 6:00 P.M. on April 19, 1992, at which time the Flora "AKF" State No. 1 well had been drilled to a depth of 861 feet below the surface, 13-3/8" casing set and cemented. Yates immediately notified the drilling crew and all operations on the well have ceased pending the show cause hearing on April 22, 1992.

4. Without waiving its right to claim that the District Court of Eddy County is without jurisdiction because New Mexico Potash has failed to exhaust its administrative remedies, Yates asserts that until that issue is resolved the pending application for an emergency order of this Division is moot.

WHEREFORE, Yates respectfully requests the Oil Conservation Division either a) dismiss the application of New Mexico Potash for an emergency staying order on the grounds that it no longer has jurisdiction, or b) withhold any action on the application until such time as the show cause hearing has been held before the District Court of Eddy County on April 22, 1992; and for such other relief as may be just in the premises.

Respectfully submitted,

LOSEE, CARSON, HAAS & CARROLL, P.A.

By: 

A. J. Losee

CERTIFICATE OF SERVICE

I hereby certify a correct copy of the foregoing Response was sent on April 20, 1992 by facsimile to Clinton Marrs, Esquire, attorney for New Mexico Potash, and by regular mail to Mr. Marrs and Charles C. High, Jr., Esquire.


A. J. Losee

FIFTH JUDICIAL DISTRICT COURT

COUNTY OF EDDY
STATE OF NEW MEXICO

927-5741

*Filed in Open Court
this 19th April, 1992
3:15 p.m.
James L Shuber
District Judge*

NEW MEXICO POTASH CORPORATION

vs.

YATES PETROLEUM CORPORATION, JOHN DOE NO. 1, JOHN DOE NO. 2, JOHN DOE NO. 3, JOHN DOE NO. 4, JOHN DOE NO. 5, JOHN DOE NO. 6,, AND JOHN DOES NOS. 7-15, AS FICTITIOUS NAMES OF PERSONS PRESENTLY UNKNOWN

No. CV 92-

SUMMONS

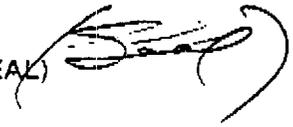
TO: YATES PETROLEUM CORPORATION, JOHN YATES, PRESIDENT, OR PEYTON YATES, EXECUTIVE VICE PRESIDENT, OR RANDY G. PATTERSON, TREASURER OR DENNIS G. KENSEY, TREASURER
Defendant(s), Greeting:

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff(s) will apply to the Court for the relief demanded in the Complaint.

Attorneys for Plaintiff: **McCormick, Forbes, Caraway & Tabor**
P. O. Box 1718 • Carlsbad, N. M. 88220
Phone (505) 885-4171

WITNESS the Honorable James L Shuber, District Judges of Said Court of the State of New Mexico and Seal of the District Court of Said County, this 19 day of April, 1992.

(SEAL) 

James L Shuber
CLERK OF THE DISTRICT COURT

By: _____
Deputy

NOTE:

This summons does not require you to see, telephone or write to the District Judge of the Court at this time.

It does require you or your attorney to file your legal defense to this case in writing with the Clerk of the District Court within 30 days after the summons is legally served on you. If you do not do this, the party suing may get a Court Judgment by default against you.

*Filed in Open Court
this 15th of April, 1992
at 3:00 PM
James L. Carrol
District Judge*

IN THE DISTRICT COURT OF NEW MEXICO
FIFTH JUDICIAL DISTRICT

NEW MEXICO POTASH CORPORATION,
Plaintiff,

v.

Civil Action No. CV-92-

YATES PETROLEUM CORPORATION,
JOHN DOE NO. 1, JOHN DOE NO. 2,
JOHN DOE NO. 3, JOHN DOE, NO. 4,
JOHN DOE NO. 5, JOHN DOE NO. 6,
AND JOHN DOES NOS. 7-15, AS
FICTITIOUS NAMES OF PERSONS
PRESENTLY UNKNOWN,

Defendants.

PLAINTIFF'S ORIGINAL VERIFIED COMPLAINT FOR INJUNCTION

New Mexice Potash Corporation, Plaintiff, complains of Yates Petroleum Corporation and John Does Nos. 1-15, being fictitious names of person presently unknown, defendants, and for cause of action would respectfully show the following:

I.

Plaintiff is a New Mexico corporation authorized to do business in the State of New Mexico and has its principal place of business in Eddy County, New Mexico. Defendant Yates Petroleum Corporation, upon information and belief, is a New Mexico corporation, and has its principal place of business at 105 South Fourth Street, Artesia, New Mexico 88210. It may be served with service of process by serving John A. Yates, President; S. P. Yates, Chairman of the Board; Peyton Yates, Executive Vice President; Randy G. Patterson, Treasure; or Dennis G. Kinsey, Treasurer, all at 105 South Fourth Street, Artesia, New Mexico 88210, or its attorneys of record in the administrative proceeding referred to in this complaint, A. J. Losee or Ernest L. Carrol,

Loose, Carson, Haas & Carroll, P. A., 300 Yates Petroleum Building,
Artasia, New Mexico 88211.

II.

New Mexico Potash operates an underground potash mine in Eddy County, New Mexico where it mines potassium and refines it into products for sale to the agricultural industry as fertilizer. It is the owner of potassium lease No. M-14957, issued by the State of New Mexico covering all of Section 2, Township 22 South, Range 31 East, NMPM, near Hobbs, New Mexico (hereinafter referred to as "Section 2").

III.

Yates is an oil and gas operator and has applied to the New Mexico Oil Conservation Division ("OCD") for a permit to drill an oil well (the "Well") through the potassium deposits in Section 2. The proposed location of the Well, known as the Flora "AKF" State Well No. 1, is 660 feet from the South line and 2310 feet from the West line of Section 2.

IV.

New Mexico Potash protested the drilling of the Well as provided under rules and regulations of the OCD and a hearing was held before an OCD hearing examiner in Santa Fe, New Mexico, on March 19, 1992. After several hours of argument, both New Mexico Potash or Yates chose not to present evidence to the hearing examiner (beyond their respective arguments) and each informed the other that due to the importance of the issues, the Oil Conservation Commission ("OCC") would be asked to hear and decide the issues regardless of what the hearing examiner decided. The

OCC is a commission created by the Oil and Gas Act, Sections 70-1-1 et seq., NMSA 1978, to resolve disputes over applications for permits to drill oil wells in potassium deposits in the State of New Mexico. Specifically, Section 70-2-13 of the Oil and Gas Act provides, in relevant part that:

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 [oil conservation] commission upon application filed with the [OCD] division within thirty days from the time any such decision is rendered.

This statutory right is repeated in Rule 1220 of the OCD's Rules of Procedure, which provides in relevant part that:

When any order has been entered by the Division pursuant to any hearing held by an Examiner, any party of record adversely affected by such order shall have the right to have such matter or proceeding heard de novo before the Commission, provided that within thirty (30) days from the date such order is rendered such party files with the Division a written application for such hearing before the Commission.***

V.

Following the examiner's hearing on March 19, 1992, the Director of the OCD, Mr. William J. Lemay, issued an order approving Yates' application to drill the Well in Section 2. Thereafter, on April 3, 1992, within the time specified in Section 70-2-13 and Rule 1220 of the OCD's Rules on Procedure, New Mexico Potash filed an Application for Hearing de novo before the New Mexico Oil Conservation Commission ("OCC"). That Application was received by the OCD on April 7, 1992. A copy of the Application for Hearing by the OCC was served on counsel for Yates.

VI.

Notwithstanding the filing and service on Yates of this Application for Hearing by the OCC, and the specific provisions of the Oil and Gas Act giving New Mexico Potash a statutory right to a de novo hearing and decision by the OCC, Yates, with the assistance of and in concert with John Does Nos. 1-15, being fictitious names of persons present at various times on the Well site in Section 2, has begun to drill the Well being challenged by New Mexico Potash in its Application for Hearing by the OCC. New Mexico Potash has learned that drilling is already at least 200 feet deep and that the first string of casing has been set. Observations of the site also indicate that drilling is proceeding on a 24-hour basis.

VII.

Plaintiff faces imminent and irreparable harm from defendant's drilling of the Well. Indeed, if such drilling continues, the Well will be drilled and completed before the matter is heard by the OCC and Plaintiff will be deprived of its statutory right to have the OCC hear and decide if the Well should be allowed or denied. Further, if the drilling continues, Plaintiff will be deprived of an effective remedy because if the OCC, after hearing, denies the application to drill the Well, as Plaintiff believes it will, the Well cannot be removed. Plaintiff, therefore, has no effective remedy at law.

VIII.

Plaintiff alleges that the denial of injunctive relief will cause more harm to it than the granting of an injunction, pending a hearing and decision by the OCC, will cause defendants.

Defendant Yates, through its counsel at the hearing before the OCD hearing examiner, is well aware of the provisions of the Oil and Gas Act that such matter are to be heard de novo by the OCC. Not only was an hearing by the OCC discussed by counsel at the examiner's hearing, but after the OCD order was issued, Yates was served through its counsel with Plaintiff's Application for Hearing by the OCC prior to the start of the drilling of the Well. Therefore, there is no basis on which Yates can now claim that it will suffer substantial harm if an injunction is granted pending a decision by the OCC.

IX.

Plaintiff has exhausted its administrative remedies in seeking an emergency stay of the OCD order approving the Well or an order directing Yates to stop drilling until the matter can be heard de novo and decided by the OCC. On Saturday, April 18, 1992, at 2:55 p.m., shortly after learning that drilling was in progress, Charles C. High, Jr., counsel for New Mexico Potash called William J. Lemay, Director of the OCD, and requested an emergency order either staying the decision approving the Well or directing Yates to stop drilling pending a hearing and decision by the OCC. Director Lemay stated that he would not act on such oral request. A written request cannot be filed until Monday morning, April 20, 1992, but by that time the drilling of the Well may penetrate the potassium deposits of Plaintiff.

WHEREFORE, Plaintiff requests and prays that:

1. A temporary restraining order be issued without notice to defendants, restraining defendants, their agents, servants,

employees, contractors, subcontractors, and those acting in concert with them, from drilling or taking any further action in connection with the drilling of the Well known as the Flora "AKF" State Well No. 1, located at 660 feet from the South line and 2310 feet from the West line of Section 2.

2. Defendants be cited to appear and show cause, that upon hearing, a temporary injunction be issued, enjoining defendants, their agents, servants, employees, contractors, subcontractors, and those acting in concert with them, from drilling or taking any further action in connection with the drilling of the Well known as the Flora "AKF" State Well No. 1, located at 660 feet from the South line and 2310 feet from the West line of Section 2, pending a hearing and decision by the OCC on the application for permit to drill the Well.

3. Plaintiff receives such other and further relief, at law or in equity, which it may by this pleading or proper amendment, show itself entitled to receive.

Respectfully submitted,

Charles C. High, Jr.
KEMP, SMITH, DUNCAN & HAMMOND, P.C.
P.O. Drawer 2800
El Paso, Texas 79999-2800
(915) 533-4424
(915) 546-5360 (FAX)

Clinton Maxxs
KEMP, SMITH, DUNCAN & HAMMOND, P.C.
P.O. Box 1276
Albuquerque, New Mexico 87103-1276
(505) 247-2315

Jay Forbes
McCormick, Forbes, Caraway & Tabor
P. O. Box 1718
Carlsbad, New Mexico 88221-1718

Attorneys for New Mexico Potash Corporation

CERTIFICATION UNDER SECTION 1-066 NMSA 1986

I hereby certify that I have attempted to notify counsel for defendants of the request for a temporary restraining order but was unable to contact him.

[Signature]

JAY FORBES

VERIFICATION

STATE OF NEW MEXICO
COUNTY OF EDDY

BEFORE ME, the undersigned Notary Public, on this day personally appeared ROBERT A. LANE who by me duly sworn on his oath deposed and said that he is Supt. & Eng. of New Mexico Potash Corporation, Plaintiff in the above-entitled action and is duly authorized to sign this verification; that he has read the above and foregoing Plaintiff's Original Verified Complaint for Injunction and that every statement contained therein is within his personal knowledge and is true and correct.

[Signature]

SUBSCRIBED AND SWORN BEFORE ME on the 19th day of April, 1992, to certify which witness my hand and official seal.

[Signature]

NOTARY PUBLIC IN AND FOR EDDY COUNTY, NEW MEXICO

BEFORE THE OIL CONSERVATION DIVISION
STATE OF NEW MEXICO

RECEIVED

APR 21 1992

IN THE MATTER OF

APPLICATION OF YATES PETROLEUM
CORPORATION FOR AUTHORIZATION TO
DRILL, EDDY COUNTY, NEW MEXICO

OIL CONSERVATION DIVISION

CASE NO. 10448
ORDER NO. R-9654

APPLICATION FOR EMERGENCY ORDER STAYING ORDER OF DIRECTOR
PENDING DE NOVO HEARING BY OIL CONSERVATION COMMISSION

NEW MEXICO POTASH CORPORATION ("New Mexico Potash") applies for an emergency order pursuant to Rule 1202 of the New Mexico Oil Conservation Division ("OCD") Rules on Procedure staying the decision and order issued by William J. LeMay, Director of the OCD ("Director"), on March 20, 1992, and in support thereof shows the following:

1. On March 20, 1992, following a hearing before a hearing examiner, the Director of the OCD entered an Order in this matter approving the application of Yates Petroleum Corporation ("Yates") to drill its Flora "AKF" State Well No. 1 at a standard oil well location 660 feet from the South line and 2310 feet from the West line (Unit N) of Section 2, Township 22 South, Range 31 East, NMPM, Undesignated Lost Tank-Delaware Pool or Undesignated Livingston Ridge-Delaware Pool, Eddy County, New Mexico.

2. On April 3, 1992, within the time specified in Rule 1220 of the Rules on Procedure, New Mexico Potash filed an Application for Hearing de novo before the New Mexico Oil Conservation Commission ("OCC"). That Application was received by the OCD on April 7, 1992.

3. A copy of the Application for Hearing by the OCC was served on counsel for Yates. A certification of service was attached to the Application and filed with the OCD.

4. Notwithstanding the filing and service of this Application, which New Mexico Potash submits renders moot the decision and order of the Director, New Mexico Potash has learned that Yates is in the process of drilling the well approved by the OCD, which is the subject of New Mexico Potash's Application for Hearing by the full OCC. We understand that the first string of casing has been set and that drilling is proceeding on a 24-hour basis. Therefore, unless an emergency order is entered granting the requested stay, the well will be drilled through potash deposits and to the bottom hole location before the OCC hears the matter and New Mexico Potash's statutory right to a de novo hearing by the OCC will be rendered moot.

5. The OCD has the authority to enter the order requested by New Mexico Potash. Under Rule 1202, an emergency order granting a stay may be entered where, as here, an emergency is found to exist. That Rules provides that:

Notwithstanding any other provision of these rules, in case an emergency is found to exist by the Division, which, in its judgment, requires the making of a rule, regulation, or order without a hearing having first been had or concluded, such emergency rule, regulation, or order when made by the Division shall have the same validity as if a hearing with respect to the same had been held before the Division after due notice. Such emergency rule, regulation, or order shall remain in force no longer than 15 days from its effective date, and in any event, it shall expire when the rule, regulation or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation, or order becomes effective.

6. The conditions specified in Rule 1202 exist in this case. Indeed, as stated earlier, the decision and order issued by the Director on March 20, 1992, which is the subject of New Mexico Potash's Application for Hearing by the OCC, is not a valid authorization for Yates to drill the subject well. On the contrary, Rule 1220 of the OCD's Rules of Procedure, as well as Section 70-2-13, NMSA 1978, specifically provide that when a matter is referred to an examiner for hearing, as was done here, and a decision is rendered, as happened here, any party of record "shall have the right" to have the matter heard de novo before the OCC provided that within 30 days of such order an application for hearing is filed with the OCD.

5. This statutory "right" to a "de novo" hearing renders invalid any decision entered by the OCD which is the subject of a timely application for hearing before the OCC. Any other interpretation would render meaningless this statutory "right" to a de novo hearing.

6. For this reason, New Mexico Potash submits that the well being drilled by Yates is without authorization. An emergency order should, therefore, be entered staying the March 20, 1992 approval of the well for a 15 day period and a hearing immediately scheduled so that this issue can be heard by the Director.

7. Alternatively, New Mexico Potash submits that an emergency order should be entered to preserve the jurisdiction of the OCC. Since it is as clear as words can express that New Mexico Potash has a statutory "right" to have Yates' application to drill this well heard and decided "de novo" by the OCC, this can only

occur if an order is entered directing Yates to stop the present drilling until a decision is made by the OCC. Without such a stay, or the issuance of an order directing Yates to stop drilling, the well in issue will be drilled and completed before the OCC has an opportunity to perform its statutory duty to decide if the well should or should not be allowed.

8. Finally, New Mexico Potash submits that an emergency order should be entered to prevent irreparable harm to New Mexico Potash. While the OCD has no procedures for the seeking or granting of a stay pending hearing by the OCC of an order issued by the OCD and, therefore, no standards for deciding such matters (which New Mexico Potash submits is because OCD decisions to be heard by the OCC are superseded by an application for hearing), New Mexico Potash submits that it is entitled to stay based upon traditional equitable standards considered by the courts when deciding whether agency action should be stayed during an appeal. See e.g., Tenneco Oil Company v. New Mexico Water Quality Control Commission et al., 105 N.M. 708 (App. 1986) (test for determining whether to enjoin agency action during appeal requires consideration of (1) likelihood that applicant will prevail on the merits of the appeal; (2) a showing of irreparable harm to the applicant unless the stay is granted; (3) evidence that no substantial harm will result to other interested persons; and (4) s showing that no harm will ensue to the public interest.)

8. With respect to the first condition, there is at least a likelihood that New Mexico Potash will prevail on its Application for Hearing before the OCC. New Mexico Potash claims that the

proposed well is located within an area designated by New Mexico Potash as its "life-of-mine reserves" within the meaning of OCC Order R-111-P. While this will be contested by Yates on various grounds, which New Mexico Potash believes are without merit, the evidence will show that New Mexico Potash has complied with all requirements imposed on it by Order R-111-P for the designation of Section 2 as "life-of-mine" reserves. If it is successful in establishing this, as it believes it will be, then the well should be disallowed in accordance with Section G(3) of Order R-111-P, which states that wells in an LMR area may only be approved with the consent of New Mexico Potash. This condition, therefore, is clearly met.

9. Second, if a stay is not granted, New Mexico Potash will suffer irreparable harm in that its statutory right to have this matter heard and decided by the OCC will be rendered moot because the well will be completed before it is even heard by the OCC. Such deprivation of a statutory right, under any standard, is irreparable injury. Further, the proposed well is located in an area of commercial grade potash under lease to New Mexico Potash. Indeed, a core hole to the East of the proposed well location shows 5 feet one inch of 16.04% K₂O sylvite on the 10th ore zone and 4 feet 11 inches of 5.86% K₂O langbeinite on the 4th ore zone. If a stay is not entered, an enormous amount of potash will be wasted before the OCC has an opportunity to determine if the well will result in an undue waste of potash. Still further, if the well is completed before the OCC hears the matter, it will present a safety hazard to underground miners which cannot be removed even if New

Mexico Potash prevails before the OCC. The obvious and indisputable fact that this safety hazard and waste of potash cannot be reversed or eliminated if New Mexico Potash prevails before the OCC constitutes irreparable injury and satisfies the second factor.

10. With respect to the third factor, there can be no substantial harm to Yates not of its own doing if a stay is granted. Both the OCD Rules of Procedure and the Oil and Gas Act provide for a determination of this matter by the OCC regardless of the decision by the OCD. Yates was clearly aware of this before it started drilling and also knew that applications for hearing would be filed with the OCC if the decision was adverse to New Mexico Potash. At the hearing before the hearing examiner, counsel for each party informed the other that the issues involved were of such importance that they should be heard by the OCC. It was for this reason that both chose not to present evidence after nearly four hours of argument. Thereafter, and before drilling began, counsel for New Mexico Potash prepared, filed, and served on Yates' counsel its application for hearing on the Director's approval of this well. Given these facts and Yates' knowledge that the issue would be heard by the OCC, there is no basis on which Yates can now claim that it will suffer substantial harm if a stay is granted pending a decision by the OCC.

11. Finally, there can be no claim that the granting of a stay will result in harm to the public interest. On the contrary, the public interest mandates that New Mexico Potash receive that to which it is entitled by statute - a decision by the OCC on whether

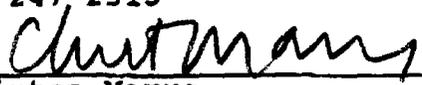
this well should be allowed. This is only possible if it occurs at a time before the well is drilled.

WHEREFORE, New Mexico Potash respectfully requests that the OCD find this to be an emergency matter and enter an order either staying the OCD Order approving the well or directing Yates to stop drilling until the matter can be heard and decided de novo by the OCC and grant New Mexico Potash such other and further relief to which it is entitled.

Respectfully submitted,

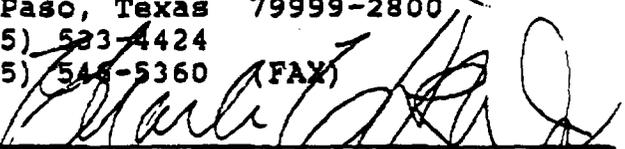
KEMP, SMITH, DUNCAN & HAMMOND, P.C.
P.O. Box 1276
Albuquerque, New Mexico 87103-1276
(505) 247-2315

By:


Clinton Marrs

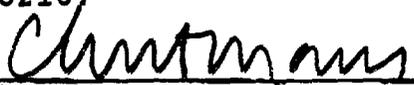
KEMP, SMITH, DUNCAN & HAMMOND, P.C.
P.O. Drawer 2800
El Paso, Texas 79999-2800
(915) 523-4424
(915) 548-5360 (FAX)

By:


Charles C. High, Jr.
Attorneys for New Mexico Potash
Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Application for Emergency Order Staying Order of Director Pending De Novo Hearing by Oil Conservation Commission was sent by facsimile and mailed by certified mail, return receipt requested on this 20th day of April, 1992, to Ernest L. Carroll, Attorney for Yates Petroleum Corporation, Losee, Carson, Haas, & Carroll, P. A., P. O. Drawer 239, Artesia, New Mexico 88210.


Clinton Marrs

*Filed in Open Court
This AM of April, 1992
at 3:11 PM
James H. [Signature]
District Judge*

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF EDDY
STATE OF NEW MEXICO

NEW MEXICO POTASH CORPORATION)

Plaintiff,)

vs.)

No. CV-92-

YATES PETROLEUM CORPORATION,)
JOHN DOE NO. 1, JOHN DOE NO. 2,)
JOHN DOE NO. 3, JOHN DOE NO. 4,)
JOHN DOE NO. 5, JOHN DOE NO. 6,)
JOHN DOES NOS. 7-15, AS)
FICTITIOUS NAMES OF PERSONS)
PRESENTLY UNKNOWN,)

Defendants.)

RECEIVED

APR 20 1992

OIL CONSERVATION DIVISION

EX PARTE TEMPORARY RESTRAINING ORDER

THIS MATTER came to the Court Ex Parte, Sunday, April 19, 1992, at 3:11 p.m. The Court received and read the Plaintiff's Original Verified Complaint For Injunction, filed with the Court and finds the Temporary Restraining Order requested should issue without notice to the Defendants.

IT IS ORDERED EX PARTE that Defendant, YATES PETROLEUM CORPORATION, their officers, agents, servants, employees, contractors, sub-contractors and those acting in concert with them be and they hereby are restrained from drilling or taking any further action in connection with the drilling of the oil well known as the Flora "AKF" State Well No. 1 located at 660 feet from the South line and 2310 feet from the West line of Section 2, Township 22 South, Range 31 East, N.M.P.M., Eddy County, New Mexico.

IT IS FURTHER ORDERED Defendant, YATES PETROLEUM CORPORATION appear before this Court on 22 April 1992, at 9:00 o'clock a.m., and show cause, if any it has, why a temporary injunction should not issue enjoining YATES PETROLEUM CORPORATION from drilling or taking any further action in connection with the drilling of the oil well known as the Flora "AKF" State Well No. 1 located at 660 feet from the South line and 2310 feet from the West line of Section 2, Township 22 South, Range 31 East, N.M.P.M., Eddy County, New Mexico, pending a hearing and decision by the New Mexico Oil Conservation Division. A copy of this Order and the verified Complaint upon which it is based shall be served on an officer of YATES PETROLEUM CORPORATION.

15/ James I. Shuler
DISTRICT JUDGE

*Filed in Open Court
then 15th of April, 1992
at 3:11 PM
James H. [Signature]
District Judge*

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF EDDY
STATE OF NEW MEXICO

NEW MEXICO POTASH CORPORATION)

Plaintiff,)

vs.)

No. CV-92-

YATES PETROLEUM CORPORATION,)
JOHN DOE NO. 1, JOHN DOE NO. 2,)
JOHN DOE NO. 3, JOHN DOE NO. 4,)
JOHN DOE NO. 5, JOHN DOE NO. 6,)
JOHN DOES NOS. 7-15, AS)
FICTITIOUS NAMES OF PERSONS)
PRESENTLY UNKNOWN,)

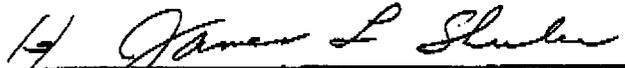
Defendants.)

EX PARTE TEMPORARY RESTRAINING ORDER

THIS MATTER came to the Court Ex Parte, Sunday, April 19, 1992, at 3:11 p.m. The Court received and read the Plaintiff's Original Verified Complaint For Injunction, filed with the Court and finds the Temporary Restraining Order requested should issue without notice to the Defendants.

IT IS ORDERED EX PARTE that Defendant, YATES PETROLEUM CORPORATION, their officers, agents, servants, employees, contractors, sub-contractors and those acting in concert with them be and they hereby are restrained from drilling or taking any further action in connection with the drilling of the oil well known as the Flora "AKF" State Well No. 1 located at 660 feet from the South line and 2310 feet from the West line of Section 2, Township 22 South, Range 31 East, N.M.P.M., Eddy County, New Mexico.

IT IS FURTHER ORDERED Defendant, **YATES PETROLEUM CORPORATION** appear before this Court on 22 April 1992, at 9:00 o'clock a.m., and show cause, if any it has, why a temporary injunction should not issue enjoining **YATES PETROLEUM CORPORATION** from drilling or taking any further action in connection with the drilling of the oil well known as the Flora "AKF" State Well No. 1 located at 660 feet from the South line and 2310 feet from the West line of Section 2, Township 22 South, Range 31 East, N.M.P.M., Eddy County, New Mexico, pending a hearing and decision by the New Mexico Oil Conservation Division. A copy of this Order and the verified Complaint upon which it is based shall be served on an officer of **YATES PETROLEUM CORPORATION**.



DISTRICT JUDGE

LAW OFFICES

LOSEE, CARSON, HAAS & CARROLL, P. A.

ERNEST L. CARROLL
JOEL M. CARSON
JAMES E. HAAS
A. J. LOSEE
—
DEAN B. CROSS
MARY LYNN BOGLE

300 YATES PETROLEUM BUILDING
P. O. DRAWER 239
ARTESIA, NEW MEXICO 88211-0239

TELEPHONE
(505) 746-3505
TELECOPY
(505) 746-6316

20 April 1992

VIA FACSIMILE TRANSMISSION

827-5741

Mr. William LeMay, Director
Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87504

Attention: Mr. Robert Stovall

Re: Application of New Mexico Potash Corporation
for emergency staying order, Case No. 10448

Dear Mr. LeMay:

Enclosed herewith you will please find the response of Yates Petroleum Corporation to the application of New Mexico Potash Corporation for an emergency order staying Division Order No. R-9654.

Yours very truly,


A. J. Losee

AJL:scp
Enclosure

BEFORE THE OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE
APPLICATION OF YATES PETROLEUM
CORPORATION FOR AUTHORIZATION TO
DRILL, EDDY COUNTY, NEW MEXICO

CASE NO. 10448

RESPONSE TO APPLICATION FOR EMERGENCY STAYING ORDER

YATES PETROLEUM CORPORATION ("Yates"), in response to the application of New Mexico Potash Corporation ("New Mexico Potash") for an emergency order staying decision and Order No. R-9654 issued by William J. LeMay, Director in this case, states:

1. On April 19, 1992 at 3:10 P.M., New Mexico Potash filed in the Fifth Judicial District Court of Eddy County, New Mexico, Case No. 92-____, a verified complaint for injunction (a copy of which verified complaint is hereto attached) against Yates and John Does Nos. 1-15 (the "Defendants"), praying for a temporary order, without notice, restraining the Defendants from drilling or taking any further action in connection with the drilling of the well known as the Flora "AKF" State Well No. 1 located in the SE/4 SW/4 of Section 2, Township 22 South, Range 31 East, N.M.P.M.

2. At 3:11 P.M. on said April 19, 1992, the Honorable James L. Shuler, District Judge, issued an Ex Parte Temporary Restraining Order, a copy of which is hereto attached, restraining the Defendants from drilling or taking any further action in connection with the drilling of the Flora "AKF" State No. 1 well; and ordered

Yates to show cause on April 22, 1992 at 9:00 A.M. why a temporary injunction should not be issued.

3. The Ex Parte Temporary Restraining Order was served upon Randy G. Patterson, Treasurer of Yates at approximately 6:00 P.M. on April 19, 1992, at which time the Flora "AKF" State No. 1 well had been drilled to a depth of 861 feet below the surface, 13-3/8" casing set and cemented. Yates immediately notified the drilling crew and all operations on the well have ceased pending the show cause hearing on April 22, 1992.

4. Without waiving its right to claim that the District Court of Eddy County is without jurisdiction because New Mexico Potash has failed to exhaust its administrative remedies, Yates asserts that until that issue is resolved the pending application for an emergency order of this Division is moot.

WHEREFORE, Yates respectfully requests the Oil Conservation Division either a) dismiss the application of New Mexico Potash for an emergency staying order on the grounds that it no longer has jurisdiction, or b) withhold any action on the application until such time as the show cause hearing has been held before the District Court of Eddy County on April 22, 1992; and for such other relief as may be just in the premises.

Respectfully submitted,

LOSEE, CARSON, HAAS & CARROLL, P.A.

By: _____


A. J. Losee

CERTIFICATE OF SERVICE

I hereby certify a correct copy of the foregoing Response was sent on April 20, 1992 by facsimile to Clinton Marrs, Esquire, attorney for New Mexico Potash, and by regular mail to Mr. Marrs and Charles C. High, Jr., Esquire.


A. J. Losee

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF EDDY
STATE OF NEW MEXICO

*Filed in Open Court
This PM 7 April, 1992
at 3:11 PM
James L. Smith
District Judge*

NEW MEXICO POTASH CORPORATION)

Plaintiff,)

vs.)

No. CV-92-

YATES PETROLEUM CORPORATION,)
JOHN DOE NO. 1, JOHN DOE NO. 2,)
JOHN DOE NO. 3, JOHN DOE NO. 4,)
JOHN DOE NO. 5, JOHN DOE NO. 6,)
JOHN DOES NOS. 7-15, AS)
FICTITIOUS NAMES OF PERSONS)
PRESENTLY UNKNOWN,)

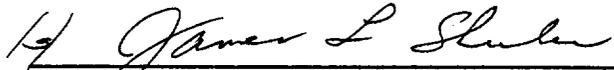
Defendants.)

EX PARTE TEMPORARY RESTRAINING ORDER

THIS MATTER came to the Court Ex Parte, Sunday, April 19, 1992, at 3:11 p.m. The Court received and read the Plaintiff's Original Verified Complaint For Injunction, filed with the Court and finds the Temporary Restraining Order requested should issue without notice to the Defendants.

IT IS ORDERED EX PARTE that Defendant, YATES PETROLEUM CORPORATION, their officers, agents, servants, employees, contractors, sub-contractors and those acting in concert with them be and they hereby are restrained from drilling or taking any further action in connection with the drilling of the oil well known as the Flora "AKF" State Well No. 1 located at 660 feet from the South line and 2310 feet from the West line of Section 2, Township 22 South, Range 31 East, N.M.P.M., Eddy County, New Mexico.

IT IS FURTHER ORDERED Defendant, **YATES PETROLEUM CORPORATION** appear before this Court on 22 April 1992, at 9:00 o'clock a.m., and show cause, if any it has, why a temporary injunction should not issue enjoining **YATES PETROLEUM CORPORATION** from drilling or taking any further action in connection with the drilling of the oil well known as the Flora "AKF" State Well No. 1 located at 660 feet from the South line and 2310 feet from the West line of Section 2, Township 22 South, Range 31 East, N.M.P.M., Eddy County, New Mexico, pending a hearing and decision by the New Mexico Oil Conservation Division. A copy of this Order and the verified Complaint upon which it is based shall be served on an officer of **YATES PETROLEUM CORPORATION**.



DISTRICT JUDGE

IN THE DISTRICT COURT OF NEW MEXICO
FIFTH JUDICIAL DISTRICT

*Filed in Open Court
this 15th of April, 1992
at 3:00 PM
James H. [unclear]
District Judge*

NEW MEXICO POTASH CORPORATION,
Plaintiff,

v.

YATES PETROLEUM CORPORATION,
JOHN DOE NO. 1, JOHN DOE NO. 2,
JOHN DOE NO. 3, JOHN DOE, NO. 4,
JOHN DOE NO. 5, JOHN DOE NO. 6,
AND JOHN DOES NOS. 7-15, AS
FICTITIOUS NAMES OF PERSONS
PRESENTLY UNKNOWN,

Defendants.

Civil Action No. CV-92-

PLAINTIFF'S ORIGINAL VERIFIED COMPLAINT FOR INJUNCTION

New Mexico Potash Corporation, Plaintiff, complains of Yates Petroleum Corporation and John Does Nos. 1-15, being fictitious names of person presently unknown, defendants, and for cause of action would respectfully show the following:

I.

Plaintiff is a New Mexico corporation authorized to do business in the State of New Mexico and has its principal place of business in Eddy County, New Mexico. Defendant Yates Petroleum Corporation, upon information and belief, is a New Mexico corporation, and has its principal place of business at 105 South Fourth Street, Artesia, New Mexico 88210. It may be served with service of process by serving John A. Yates, President; S. P. Yates, Chairman of the Board; Peyton Yates, Executive Vice President; Randy G. Patterson, Treasure; or Dennis G. Kinsey, Treasurer, all at 105 South Fourth Street, Artesia, New Mexico 88210, or its attorneys of record in the administrative proceeding referred to in this complaint, A. J. Losee or Ernest L. Carroll,

Losan, Carson, Haas & Carroll, P. A., 300 Yates Petroleum Building,
Artasia, New Mexico 88211.

II.

New Mexico Potash operates an underground potash mine in Eddy County, New Mexico where it mines potassium and refines it into products for sale to the agricultural industry as fertilizer. It is the owner of potassium lease No. M-14957, issued by the State of New Mexico covering all of Section 2, Township 22 South, Range 31 East, NMPM, near Hobbs, New Mexico (hereinafter referred to as "Section 2").

III.

Yates is an oil and gas operator and has applied to the New Mexico Oil Conservation Division ("OCD") for a permit to drill an oil well (the "Well") through the potassium deposits in Section 2. The proposed location of the Well, known as the Flora "AKF" State Well No. 1, is 660 feet from the South line and 2310 feet from the West line of Section 2.

IV.

New Mexico Potash protested the drilling of the Well as provided under rules and regulations of the OCD and a hearing was held before an OCD hearing examiner in Santa Fe, New Mexico, on March 19, 1992. After several hours of argument, both New Mexico Potash or Yates chose not to present evidence to the hearing examiner (beyond their respective arguments) and each informed the other that due to the importance of the issues, the Oil Conservation Commission ("OCC") would be asked to hear and decide the issues regardless of what the hearing examiner decided. The

OCC is a commission created by the Oil and Gas Act, Sections 70-1-1 et seq., NMSA 1978, to resolve disputes over applications for permits to drill oil wells in potassium deposits in the State of New Mexico. Specifically, Section 70-2-13 of the Oil and Gas Act provides, in relevant part that:

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 [oil conservation] commission upon application filed with the [OCD] division within thirty days from the time any such decision is rendered.

This statutory right is repeated in Rule 1220 of the OCD's Rules of Procedure, which provides in relevant part that:

When any order has been entered by the Division pursuant to any hearing held by an Examiner, any party of record adversely affected by such order shall have the right to have such matter or proceeding heard de novo before the Commission, provided that within thirty (30) days from the date such order is rendered such party files with the Division a written application for such hearing before the Commission.****

V.

Following the examiner's hearing on March 19, 1992, the Director of the OCD, Mr. William J. LeMay, issued an order approving Yates' application to drill the Well in Section 2. Thereafter, on April 3, 1992, within the time specified in Section 70-2-13 and Rule 1220 of the OCD's Rules on Procedure, New Mexico Potash filed an Application for Hearing de novo before the New Mexico Oil Conservation Commission ("OCC"). That Application was received by the OCD on April 7, 1992. A copy of the Application for Hearing by the OCC was served on counsel for Yates.

VI.

Notwithstanding the filing and service on Yates of this Application for Hearing by the OCC, and the specific provisions of the Oil and Gas Act giving New Mexico Potash a statutory right to a de novo hearing and decision by the OCC, Yates, with the assistance of and in concert with John Does Nos. 1-15, being fictitious names of persons present at various times on the Well site in Section 2, has begun to drill the Well being challenged by New Mexico Potash in its Application for Hearing by the OCC. New Mexico Potash has learned that drilling is already at least 200 feet deep and that the first string of casing has been set. Observations of the site also indicate that drilling is proceeding on a 24-hour basis.

VII.

Plaintiff faces imminent and irreparable harm from defendant's drilling of the Well. Indeed, if such drilling continues, the Well will be drilled and completed before the matter is heard by the OCC and Plaintiff will be deprived of its statutory right to have the OCC hear and decide if the Well should be allowed or denied. Further, if the drilling continues, Plaintiff will be deprived of an effective remedy because if the OCC, after hearing, denies the application to drill the Well, as Plaintiff believes it will, the Well cannot be removed. Plaintiff, therefore, has no effective remedy at law.

VIII.

Plaintiff alleges that the denial of injunctive relief will cause more harm to it than the granting of an injunction, pending a hearing and decision by the OCC, will cause defendants.

Defendant Yates, through its counsel at the hearing before the OCD hearing examiner, is well aware of the provisions of the Oil and Gas Act that such matter are to be heard de novo by the OCC. Not only was an hearing by the OCC discussed by counsel at the examiner's hearing, but after the OCD order was issued, Yates was served through its counsel with Plaintiff's Application for Hearing by the OCC prior to the start of the drilling of the Well. Therefore, there is no basis on which Yates can now claim that it will suffer substantial harm if an injunction is granted pending a decision by the OCC.

IX.

Plaintiff has exhausted its administrative remedies in seeking an emergency stay of the OCD order approving the Well or an order directing Yates to stop drilling until the matter can be heard de novo and decided by the OCC. On Saturday, April 18, 1992, at 2:55 p.m., shortly after learning that drilling was in progress, Charles C. High, Jr., counsel for New Mexico Potash called William J. Lemay, Director of the OCD, and requested an emergency order either staying the decision approving the Well or directing Yates to stop drilling pending a hearing and decision by the OCC. Director Lemay stated that he would not act on such oral request. A written request cannot be filed until Monday morning, April 20, 1992, but by that time the drilling of the Well may penetrate the potassium deposits of Plaintiff.

WHEREFORE, Plaintiff requests and prays that:

1. A temporary restraining order be issued without notice to defendants, restraining defendants, their agents, servants,

employees, contractors, subcontractors, and those acting in concert with them, from drilling or taking any further action in connection with the drilling of the Well known as the Flora "AKF" State Well No. 1, located at 660 feet from the South line and 2310 feet from the West line of Section 2.

2. Defendants be cited to appear and show cause, that upon hearing, a temporary injunction be issued, enjoining defendants, their agents, servants, employees, contractors, subcontractors, and those acting in concert with them, from drilling or taking any further action in connection with the drilling of the Well known as the Flora "AKF" State Well No. 1, located at 660 feet from the South line and 2310 feet from the West line of Section 2, pending a hearing and decision by the OCC on the application for permit to drill the Well.

3. Plaintiff receives such other and further relief, at law or in equity, which it may by this pleading or proper amendment, show itself entitled to receive.

Respectfully submitted,

Charles C. High, Jr.
KEMP, SMITH, DUNCAN & HAMMOND, P.C.
P.O. Drawer 2800
El Paso, Texas 79999-2800
(915) 533-4424
(915) 546-5360 (FAX)

Clinton HARRIS
KEMP, SMITH, DUNCAN & HAMMOND, P.C.
P.O. Box 1276
Albuquerque, New Mexico 87103-1276
(505) 247-2315

Jay Forbes
McCormick, Forbes, Caraway & Tabor
P. O. Box 1718
Carlsbad, New Mexico 88221-1718

Attorneys for New Mexico Potash Corporation

CERTIFICATION UNDER SECTION 1-066 NMSA 1986

I hereby certify that I have attempted to notify counsel for defendants of the request for a temporary restraining order but was unable to contact him.

Jay Forbes

JAY FORBES

VERIFICATION

STATE OF NEW MEXICO
COUNTY OF EDDY

BEFORE ME, the undersigned Notary Public, on this day personally appeared ROBERT H. LANE who by me duly sworn on his oath deposed and said that he is Supt. & Eng. of New Mexico Potash Corporation, Plaintiff in the above-entitled action and is duly authorized to sign this verification; that he has read the above and foregoing Plaintiff's Original Verified Complaint for Injunction and that every statement contained therein is within his personal knowledge and is true and correct.

Robert H. Lane

SUBSCRIBED AND SWORN BEFORE ME on the 19th day of April, 1992, to certify which witness my hand and official seal.

[Signature]

NOTARY PUBLIC IN AND FOR EDDY COUNTY, NEW MEXICO

To Subpoena

KEMP, SMITH, DUNCAN & HAMMOND, P.C.

OTHER OFFICES:

Attorneys at Law

2000 State National Plaza
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(915) 533-4424
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400 West Illinois, Suite 1400
(915) 687-0011 - FAX (915) 687-1735

Santa Fe, New Mexico 87501-1861
300 Paseo de Peralta, Suite 200
(505) 982-1913 - FAX (505) 988-7563

FAX COVER SHEET

PLEASE DELIVER THE FOLLOWING PAGES IMMEDIATELY

TO: Name: William J. LeMay, Director **Date:** March 12, 1992

Firm: State of New Mexico
Energy, Minerals and Natural Resources Department
Oil Conservation Division

City: Santa Fe **State:** New Mexico

FAX Telephone Number: 505-827-5741

Time: 4:24 PM

FROM: Name: Charles C. High, Jr. **File No.** 07781.00100

THERE ARE 3 PAGES INCLUDING THIS COVER SHEET. IF YOU HAVE ANY PROBLEMS REGARDING TRANSMISSION OR IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL Jackie Alvarado AT (915) 533-4424.

Signature of Operator

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

*Objection to Subpoena
P. 1*

BEFORE THE OIL CONSERVATION DIVISION

NEW MEXICO DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES

IN THE MATTER OF THE APPLICATION OF)
YATES PETROLEUM CORPORATION FOR) CASES NOS. 10446,
PERMITS TO DRILL, EDDY COUNTY,) 10447, 10448. 10449
NEW MEXICO)

OBJECTIONS TO SUBPOENA DUCES TECUM

NEW MEXICO POTASH CORPORATION objects to the subpoena issued by the New Mexico Oil Conservation Division to Bob Lane, New Mexico Potash Corporation, on March 5, 1992, for the following reasons:

1. The subpoena seeks documents and information protected from disclosure by Order R-111-P, Section G, which states:

Information used by the potash lessee in identifying its LMR shall be filed with the BLM and SLO but will be considered privileged and confidential "trade secrets and commercial...information" within the meaning of 43 C.F.R. § 2.13(c)(4) (1986), Section 19-1-2, 1 NMSA 1978, and not subject to public disclosure.

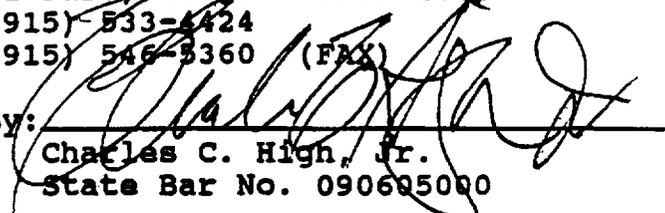
2. The documents and information sought by the subpoena, with the exception of information concerning Section 2 of Township 22 South, Range 31 East, are irrelevant to the issues raised by the applications for permit to drill at issue in these cases.

3. The documents and information sought by the subpoena are unnecessary to the resolution of any issue in these cases because the information sought is on file with the State Land Office even though protected from public disclosure. Therefore, the fact that the proposed well locations are within New Mexico Potash Corporation's LMR and should not be allowed (see Order R-111-P, Section G(e)(3)), can be verified by the SLO as provided in Order R-111-P, Section G(b), without disclosure of the confidential, trade secret information sought by the subpoena.

4. Information concerning Core Hole No. 162, located in Section 2 of Township 22 South, Range 31 East, and within approximately 2600' of all of the proposed well locations, has been provided to counsel for Yates Petroleum Corporation.

Respectfully submitted,

KEMP, SMITH, DUNCAN & HAMMOND, P.C.
P.O. Drawer 2800
El Paso, Texas 79999-2800
(915) 533-4424
(915) 546-3360 (FAX)

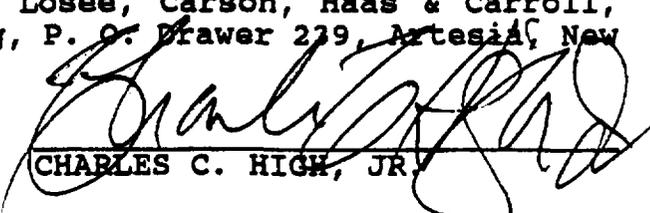
By: 
Charles C. High, Jr.
State Bar No. 090605000

Charles E. Roybal
ROYBAL AND ASSOCIATES
6020 Academy, Suite 201
Albuquerque, New Mexico 87109-3315
(505) 857-0377
(505) 857-9103 (FAX)

Attorneys for New Mexico Potash
Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objections to Subpoena Duces Tecum was sent by facsimile and mailed this 17 day of March, 1992 to Losee, Carson, Haas & Carroll, P.A., 300 Yates Petroleum Building, P. O. Drawer 229, Artesia, New Mexico 88211-0239.


CHARLES C. HIGH, JR.