

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

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

**DE NOVO
CASE NO. 10448 and 10449
Order No. R-9654-C/R-9655-C**

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

See Also Order Nos.
R-9655
R-9655-A
R-9655-B (8-23-93)
R-9655-B (9-20-93)
R-9655-C

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m. on September 9, 1992, October 21, 1992 and December 1, 1992 at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission".

NOW, on this 14th day of January, 1994, the Commission, a quorum being present, and having considered the record and being fully advised in the premises,

FINDS THAT:

- (1) Due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.
- (2) Commission Case Nos. 10446, 10447, 10448, and 10449 were consolidated at the time of the hearing for the purpose of receiving testimony.
- (3) On August 23, 1993, the Commission issued Orders No. R-9654-B and R-9655-B.
- (4) Upon application by New Mexico Potash Corporation, a rehearing was held at 9 o'clock a.m. on November 10, 1993 at Santa Fe, New Mexico, before the Commission.

(5) The Applicant in this matter, Yates Petroleum Corporation ("Yates"), seeks approval to drill its Flora "AKF" State Wells No. 1 and No. 2, all within the Designated Potash Area pursuant to all applicable rules and procedures governing said area, as promulgated by Division Order No. R-111-P. The proposed wells are to be located at standard oil well locations comprising Units K and N of Section 2, Township 22 South, Range 31 East, NMPM, Eddy County, New Mexico, with each well scheduled to test the Delaware formation at an approximate depth of 8,500'. Standard 40-acre oil spacing and proration units for the Undesignated Lost Tank-Delaware Pool or Undesignated Livingston Ridge-Delaware Pool are dedicated to each well.

(6) New Mexico Potash Corporation ("NM Potash"), owner of the state potash lease underlying all of Section 2 appeared at the hearing in opposition to the applications.

LIFE OF MINE RESERVES (LMR)

(7) "Life of mine reserves" ("LMR") has been defined in New Mexico Oil Conservation Commission ("NMOCC") Order No. R-111-P as those potash deposits within the potash area reasonably believed by the potash lessee to contain potash ore in sufficient thickness and grade to be mineable using current day mining methods, equipment and technology. Mine operators file revisions to their LMR's annually with the New Mexico State Land Office ("SLO") and with the U.S. Bureau of Land Management ("BLM") as required under that order.

(8) NMOCC Order No. R-111-P requires that a well operator notify each potash operator within one mile of a proposed well before commencing drilling operations. That order also requires the Oil Conservation Division to ascertain if a proposed well is within an LMR area. The order provides that any drilling application within an LMR or its buffer zone may be approved only with the agreement of the potash operator. Any drilling application outside an LMR and its buffer zone may be approved provided there is no protest from the potash operator within twenty days of his notice. Exceptions from NMOCC Order No. R-111-P will only be granted if an oil and gas operator can show that a well within an LMR or its buffer zone will not waste potash or a potash operator can show that a well outside an LMR and its buffer zone will waste potash.

(9) NM Potash has previously designated an LMR in Section 35, Township 21 South, Range 31 East (directly North of Section 2) which designation has not been challenged in these cases. Upon receiving notification on or about November 22, 1991 that Yates intended to drill oil and gas wells within Section 2, NM Potash caused a core hole to be drilled in the SE/4 of Section 2 in order to ascertain whether or not potash reserves were present. After determining that the core hole results showed the presence of commercial potash ore, NM Potash submitted a revision of its LMR designation to the SLO on or about January 14, 1992. The revised LMR included all of Section 2.

(10) The Flora "AKF" State Wells No. 1 and No. 2 would be outside the LMR and buffer zone previously established for Section 35 but would be included in any LMR established for Section 2.

(11) Yates challenges NM Potash's designation of Section 2 as part of its LMR, argues that an LMR is not established on state land until designated by the SLO nor does it have retroactive effect once designated and contends notwithstanding an LMR designation that the Commission is obligated to grant exceptions to Order No. R-111-P unless commercial potash will be unduly wasted as a result of drilling the subject wells. NM Potash argues that the filing of an LMR designation effectively creates an area off limits to oil and gas drilling and that there should be no forum for oil and gas operators to challenge its LMR boundaries.

(12) The intent of the notification requirement in NMOCC Order No. R-111-P is to determine if a proposed drill site for an oil and gas well is within a designated LMR or its buffer zone. It is not intended to give a potash lessee information concerning where oil and gas drilling will occur so that the potash operator may immediately revise its LMR to preclude the proposed drilling. Any revision of LMRs should be in the normal course of mining business as reserves are delineated and mining plans updated; it should not be in response to planned drilling activity for oil and gas. Therefore, NM Potash should be precluded from revising its LMR to encompass Section 2 since it did so only after receiving notice that Yates intended to drill for oil and gas within Section 2.

(13) For purposes of drilling the Flora "AKF" State Wells No. 1 and No. 2, no valid LMR is established for Section 2. Therefore, the proposed wells are outside the LMR and its buffer zone.

WASTE

(14) State law charges the Commission with preventing waste and "waste" is defined to include "drilling or producing operations for oil or gas within any area containing commercial deposits of potash where such operations would have the effect to unduly reduce the total quantity of such commercial deposits of potash which may reasonably be recovered in commercial quantities". "Unduly" is defined as "excessively" or "immoderately". The Commission also is charged with preventing waste of oil and gas and protecting the correlative rights of owners of oil and gas.

(15) Even though the Flora "AKF" State No. 1 and No. 2 wells are not within the boundaries or the buffer zone of a designated LMR, the applications to drill should nevertheless be denied if the wells would result in the waste of potash, contrary to New Mexico law. However, the burden of proving that the wells would result in such waste is on NM Potash, the party opposing the applications.

(16) Core hole K-162, drilled in January, 1992 and located 2,000 feet from the South line and 1,200 feet from the East line of Section 2 did encounter commercial potash mineralization in both the 4th and 10th ore zones of the Salado Salt. While ignoring other valuable information such as radioactivity logs from other wells, and available data from barren core hole ERDA-6 in the SE/4 of Section 35, NM Potash used the information from core hole K-162 to contend that commercial quantities of potash are present throughout Section 2. In addition, based upon evidence concerning the economics of the potash mining industry and the capital costs necessary to extend NM Potash's mine to Section 2, it is merely speculation that Section 2 will be mined at all in the foreseeable future.

(17) NM Potash did not prove that the drilling of the Flora "AKF" State No. 1 and No. 2 wells will result in the waste of potash contrary to New Mexico law and therefore, the applications of Yates to drill such wells in the S/2 of Section 2 should be granted.

IT IS THEREFORE ORDERED THAT:

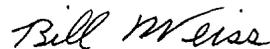
- (1) The application of Yates to drill their Flora No. 1 and Flora No. 2 Wells in the S/2 of Section 2 is hereby approved.
- (2) Jurisdiction of this cause is hereby retained for the entry of such further orders as the Commission may deem necessary.

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

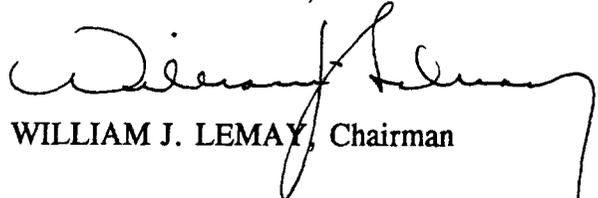
STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



GARY CARLSON, Member



WILLIAM W. WEISS, Member



WILLIAM J. LEMAY, Chairman

S E A L