

**Attachment E – Deposition of Joseph H.M. Fields
(November 14, 2005)**

BEFORE THE NEW MEXICO STATE ENGINEER

IN THE MATTER OF THE REJECTED)
DECLARATION OF OWNERSHIP OF)
SURFACE WATERS PERFECTED PRIOR) HU No. 05-037-D
TO MARCH 19, 1907, FILED BY)
JOHN A. YATES, YATES PETROLEUM)
CORPORATION, AND TRUST Q UNDER)
THE LAST WILL AND TESTAMENT OF)
PEGGY A. YATES, DECEASED.)

DEPOSITION OF JOSEPH H.M. FIELDS

November 14, 2005

10 a.m.

100 LaSalle Circle, Suite A
Santa Fe, New Mexico

PURSUANT TO THE NEW MEXICO RULES OF CIVIL
PROCEDURE this deposition was:

TAKEN BY: PETER B. SHOENFELD, ESQ.
ATTORNEY FOR YATES, et al.

REPORTED BY: MAUREEN R. COSTELLO, RPR, CCR 220
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 14
 I N D E X
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 16 EXAMINATION OF JOSEPH H.M. FIELDS PAGE
 17 BY MR. SHOENFELD 4
 18 BY MR. JOSHI 45
 19 Objections by Mr. Joshi 20
 20 No Requests for Production of Documents
 21 No Instructions Not to Answer
 22 RECESS 35
 23 CERTIFICATE OF COMPLETION OF DEPOSITION 46
 24 DEPONENT SIGNATURE/CORRECTION PAGE 48
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1 (Deposition Exhibits Nos. 1 & 2
 2 were premarked for identification)
 3 JOSEPH H.M. FIELDS,
 4 After having been first duly sworn under oath,
 5 was questioned and testified as follows:
 6 EXAMINATION
 7 BY MR. SHOENFELD:
 8 Q. I have marked two exhibits -- actually my computer
 9 marked them, and I don't know how it did so -- but until we
 10 see what you've brought with you pursuant to the subpoena
 11 -- to the Notice of Deposition Duces Tecum, these will be
 12 the ones I marked, and you've seen them both. They're
 13 Exhibits 1 and 2.
 14 MR. KNUTSON: Looks like the application.
 15 Q. (BY MR. SHOENFELD) -- the Declaration and the --
 16 MR. KNUTSON: The Declaration. I'm sorry.
 17 Q. (BY MR. SHOENFELD) -- and your letter.
 18 State your name, please.
 19 A. Joseph Fields.
 20 Q. And by whom are you employed, sir?
 21 A. Office of the State Engineer, District 1.
 22 Q. In Albuquerque?
 23 A. Yes, sir.
 24 Q. And how long have you been so employed?
 25 A. It will be five years on November 27th of this

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1 E X H I B I T S
 2 INITIAL REFERENCE
 3 Deposition
 4 1 04/21/04 Letter to Yates Petroleum Corporation 4
 Re: Declaration of Surface Water Right
 (Atarque Lake)
 From Joseph Fields
 5
 6 2 03/31/04 New Mexico Office of the State Engineer 4
 Declaration of Ownership of Water Right
 of Surface Waters Perfected Prior to
 March 19, 1907
 Declarant: Yates Petroleum Corporation
 7
 8 3 04/09/04 Memorandum to: Nancy Cunningham 18
 From: Joseph Fields
 Subj: Atarque Lake, Declaration of
 Ownership of Surface Waters Perfected
 Prior to 1907, Gallup Basin
 9
 10 * * *
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1 year.
 2 Q. Okay. What is your position there presently?
 3 A. Water resource operational.
 4 Q. What does that mean?
 5 A. I'm right below the supervisor, and below me are
 6 the basics.
 7 Q. Who is the supervisor?
 8 A. Nancy Cunningham.
 9 Q. How long have you held that position?
 10 A. Approximately two months.
 11 Q. So in 2004, April 21, 2004, that was not your
 12 position?
 13 A. No, sir.
 14 Q. What was your position then?
 15 A. Water resource specialist.
 16 Q. Okay. Would you please describe your duties as a
 17 water resource specialist?
 18 A. Yes, sir. Let's see. We process declarations,
 19 extensions of times of water rights, applications for new
 20 water rights or permits. We perform field checks, enter
 21 meter readings. Field offices, we went out to field
 22 offices. We were like the only person going out to the
 23 field offices.
 24 Q. The field offices that were held by the United
 25 States District Court?

1 they put down a source.
 2 Q. Is there any place on the State Engineer's form
 3 for a source?
 4 A. "Point of Diversion," No. 2.
 5 Q. Well, they gave a point of diversion, did they
 6 not? Look at paragraph 2C.
 7 A. Well, the lat. and long.
 8 Q. Yes.
 9 A. That must be the dam, the diversion.
 10 Q. Okay.
 11 A. Or you could put it in the "Additional
 12 Statements."
 13 Q. They gave the names of the owners?
 14 A. Yes, sir.
 15 Q. Okay.
 16 A. Declarants.
 17 Q. Okay. So what under the statute was lacking?
 18 A. (No response.)
 19 Q. If you need to look at the statute, I can point
 20 that out to you. Do you see that?
 21 A. Let's see. 72-1-3. (Witness perused
 22 Mr. Shoenfeld's computer screen.) It appears it was filed
 23 in a manner acceptable to us -- I mean it was filled out
 24 okay. It was filled out right.
 25 Q. Okay. You just didn't -- the State Engineer's

1 Q. Did you make any inquiry respecting the intention,
 2 the express intention, of anyone to abandon the water right
 3 appurtenant to Atarque Lake?
 4 A. We spoke to the ranch manager. He said the dam
 5 had been destroyed in the early '70s because cows were
 6 getting stuck out there, there was mosquitos, and it was
 7 becoming a bog of sorts, so they destroyed the dam.
 8 Q. Do you know what the basis of his knowledge was?
 9 A. I believe he -- he'd been the ranch manager for, I
 10 believe, 15-some-odd years.
 11 Q. Okay. So he was not there in 1971.
 12 A. No, no.
 13 Q. Did you make any attempt to inquire of the
 14 corporate owner of the ranch respecting its intention?
 15 A. No, sir.
 16 Q. Did you make any intention to -- make any effort
 17 to inquire of the individual owner, Mr. Yates --
 18 A. Oh, no, sir.
 19 Q. -- about his intentions?
 20 A. No, sir.
 21 Q. And did you make any effort to contact the trustee
 22 of Trust Q under the Last Will and Testament of Peggy A.
 23 Yates, Deceased?
 24 A. No, sir.
 25 Q. So you didn't inquire of that trustee either

1 Office just didn't like what it said; isn't that correct?
 2 A. Well, we went out and verified what was on the
 3 Declaration.
 4 Q. And, in fact, you verified everything that was in
 5 the verification, didn't you?
 6 A. Yes, sir.
 7 Q. And the last sentence of the statute says: Such
 8 Declarations so filed -- the Declaration set forth in the
 9 statute -- shall be recorded at length in the Office of the
 10 State Engineer.
 11 A. Uh-huh.
 12 Q. And you didn't do that.
 13 A. No, sir.
 14 Q. You declined to do that.
 15 A. We did not accept it, yes, sir. We declined.
 16 Q. Did you make any search in your office for any
 17 prior Declarations for Atarque Lake?
 18 A. No, sir.
 19 Q. Okay. Do you know of any?
 20 A. No, sir.
 21 Q. Okay. Did you inquire who the owners of Atarque
 22 Ranch or Atarque Lake had been since, say, 1965?
 23 A. Oh, no, sir.
 24 Q. All right.
 25 A. No.

1 respecting the intentions of the owner to abandon.
 2 A. No, sir, we didn't.
 3 Q. So all you did was infer an intention from the
 4 lack of use of that water from 1971 to the present?
 5 A. Yes, sir.
 6 Q. Okay. Had anybody given you any instruction
 7 respecting what the elements of abandonment are?
 8 A. Oh, given the instruction on what abandonment
 9 constituted?
 10 Q. What constitutes abandonment?
 11 A. Well, it was discussed in the office.
 12 Q. Okay.
 13 A. And, yes, I'll say yes.
 14 Q. Okay. Whom did you discuss it with?
 15 A. Jim Sizemore, Jess Ward, Nancy Cunningham.
 16 Q. Okay.
 17 A. Right off the bat, those are the names I can think
 18 of.
 19 Q. And what did they say are the elements of
 20 abandonment?
 21 A. They said the courts have decided that -- not the
 22 State Engineer, but the courts have decided that after
 23 16 years of nonuse, there may be an intent to abandon.
 24 Q. Okay.
 25 A. And we've been holding to that number, 16 years.