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October 15, 2001

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Via Facsimile: 202-456-6546 & E-Mail www.whitehouse.gov/ceq

James L. Connaughton, Chairman
 Council on Environmental Quality
 Executive Office of the President
 17th & G Streets, N.W.
 Washington, DC 20503
 Attn: Energy Task Force

RE: *Yates Petroleum Corporation – Comments on Actions to Expedite Energy-Related Projects*

Dear Chairman Connaughton:

In response to the notice and request for comments dated August 20, 2001, we hereby submit the following comments on behalf of Yates Petroleum Corporation ("Yates"):

1. Name of Project.

Pinedale Anticline Oil and Gas Exploration Development Project, Sublette County, Wyoming.

2. Entity Proposing Project.

Yates.

3. Category of the Project.

Oil and gas exploration and development project.

4. Brief Description of the Project.

The Pinedale Anticline Project Area ("PAPA"), includes approximately 200,000 acres within the Pinedale Anticline, Sublette County, Wyoming. All but 7.4 square miles of the PAPA are currently under lease. Operators in the Pinedale Anticline have supported a proposal to develop 700 well pads within the PAPA. The draft Environmental Impact Statement ("EIS"), for the Pinedale Project considered exploration and development scenarios for: (1) project-wide

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development; (2) focused Anticline-Crest development; and (3) no action. The Bureau of Land Management ("BLM") also specifically considered two mitigation plan alternatives. The standard stipulation alternative incorporated measures traditionally used to regulate the impacts of oil and gas development. The resource protection alternative was proposed to limit well-pad density by pad drilling and centralized production. Under both mitigation plan alternatives, BLM proposed a framework for an Adaptive Environmental Management ("AEM") plan to verify implementation of the mitigation measures adopted in the record of decision, measure their success, make appropriate modifications based on actual performance, allow for peer review and provide feedback to the public. By record of decision ("ROD") dated July 27, 2000, the BLM approved the Pinedale Anticline Project subject to the restrictive resource protection alternatives and an AEM process.

5. Agency or Agencies that Must be Consulted and Agencies from Which Approval is Needed.

The ROD for the Pinedale Anticline Project was approved by the federal BLM to allow development of 700 producing pads over the next 10-15 years, subject to a restrictive resource protection mitigation plan and project monitoring and implementation oversight through the AEM process. The AEM process is implemented by "teams" of citizen groups, BLM, cooperating state and federal agencies, local government and operator representatives. The AEM process is applied to mitigation plans for reclamation, wildlife, water resources, cultural resources, air quality and transportation.

6. Recommendations to Accelerate Completion of Energy-Related Projects.

The AEM concept as set forth in the Pinedale Anticline Project has resulted in a legal challenge in *Yates Petroleum Corporation v. Norton*, No. 00-CV-206-J (D.Wyo. filed November 6, 2000). The AEM process has been challenged as being contrary to the National Environmental Policy Act ("NEPA"), in that the AEM process allows the agency to defer unresolved issues and environmental impacts which should be addressed in the environmental assessment ("EA") or the EIS. The AEM process allows the agency to develop a monitoring and enforcement program after the final decision to approve a project has been made. The addition of these steps after the ROD is decided leaves the AEM process open to criticism under NEPA and CEQ regulations, particularly their mitigation measures, the environmental impacts addressed by those measures and the secondary impacts if those measures are not evaluated in the supplemental EIS. In this regard, a "primary purpose" of an EIS is to provide a "full and fair discussion of [the] significant environmental impacts" of the project's alternatives and to "inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts." See 40 C.F.R. § 1502.1.

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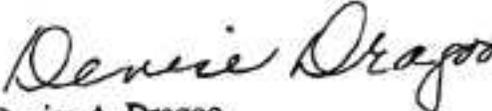
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The second concern is the potential for the AEM team impaneled for the Pinedale Anticline Project to assume the role which BLM must play as the lead agency under NEPA. Under NEPA § 102(2)(c) and CEQ rules, it is the federal agency, not the AEM team, that is responsible for making the final decision and implementing monitoring and mitigation measures. See 40 C.F.R. § 1505.3. Furthermore, citizen involvement in mitigation plan development, implementation and inspection as proposed by the Pinedale Anticline ROD in effect may create a new mechanism for civil enforcement of substantive requirements of mitigation plans under NEPA. The AEM process in effect arguably shifts NEPA from a procedural statute to a substantive statute. Finally, the AEM process moves NEPA from a one-time environmental analysis to a continuous cycle of ad hoc planning, monitoring and adaptation in apparent violation of CEQ rules, adding unnecessary delay to the permitting process. AEM undermines the current NEPA process which has been streamlined with the objective of making the EIS "concise, clear and to the point, and . . . supported by evidence that agencies have made the necessary environmental analyses." See 40 C.F.R. § 1500.2 (2000). To reduce paperwork and delay, CEQ has set page limits to reduce the length of the EIS, established a clear EIS format and used scoping to identify significant environmental issues. See 40 C.F.R. §§ 1500.4 and 1500.5. However, the AEM process is outside these rules and is subject to no such limitations. As such, these regulations are inconsistent with the mandate of this energy task force requiring that CEQ lead an interagency task force to accelerate permit review and completion of energy-related projects.

In sum, Yates suggests that the AEM process be discontinued. The NEPA process should proceed on the basis of an EA or EIS leading to an agency decision which is set forth in a finding of no significant impact or a record of decision. The AEM process improperly implements continuous monitoring after a final agency decision and "adaptation" of that decision without public review and comment through NEPA. The AEM process allows the agency to divert decisions regarding mitigation and to remove monitoring results from general public review and comment under the NEPA process.

Thank you for your consideration of these comments. Please give me a call if you have further questions.

Very truly yours,



Denise A. Drago

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cc: Randy Patterson
Gene George