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

APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC FOR APPROVAL OF A SALTWATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO **Case No. 22626**

MOTION TO DISMISS

Empire New Mexico, LLC ("Empire"), through its undesigned counsel, hereby moves the Division for an order dismissing the application of Goodnight Midstream Permian, LLC ("Goodnight") for approval of a Salt Water Disposal Well. As grounds for this motion Empire states:

1. Empire is the operator of the Eunice Monument South Unit ("Unit") and operates a waterflood secondary recovery operation in the Unit.

2. In Order R-7765 the Oil Conservation Division approved the Unit pursuant to the Statutory Unitization Act for secondary recovery operations through waterflood operations.

3. Decretory Paragraph 3 of Order R-7765 defining the vertical limits of the Unit includes the San Andres formation. A copy of Order R-7765 is attached hereto as Exhibit A.

4. Goodnight's application calls for a commercial salt water disposal well for injection of produced water in the San Andres formation.

5. Goodnight does not have a working interest or any other interest which would allow it to operate a commercial salt water disposal well within the horizontal limits of the Unit or otherwise to operate a commercial salt water well to dispose of water in the San Andres formation.

6. Goodnight's proposed well is to be located in Unit K of Section 9, Township 21 South, Range 36 East, NMPM, Lea County, New Mexico which is covered by a federal oil and gas lease committed to the Unit.

7. Upon information and belief, Goodnight has not obtained a right of way easement for a commercial salt water disposal well from the Bureau of Land Management.

8. Even if it has obtained a right of way easement for salt water disposal or other permit from the Bureau of Land Management as proposed, the Bureau of Land Management may not issue such an easement or permit which impairs the right to recover oil and gas from the Unit. In Penroc Oil Corp. et al., GFS(O&G) 8(1985) (Nov. 27, 1984), a copy of which is attached as Exhibit B, the Interior Board of Land Appeals reversed the BLM's grant of a right of way for salt water disposal well into a plugged well within a Unit. The IBLA states in part:

> *WL8 The decision to grant a right-of-way will not be affirmed if the right-of-way is inconsistent with the provisions of another applicable law. Section 504(c) of FLPMA, 43 U.S.C. § 1764(c) (1982), provides: 'Rights of way shall be granted, issued, or renewed pursuant to this subchapter under such regulations or stipulations, consistent with the provisions of this subchapter or any other applicable law * * *.' [Emphasis added.] 43 U.S.C. § 1764 (1982). This right-of-way is inconsistent with the lessee's rights under the Mineral Leasing Act. A right-of-way which entirely converts the lessee's oil and gas well to the exclusive use of a stranger to the lease, and which precludes any future exploratory or developmental work from that well by those who drilled it and continue to hold it under lease is inconsistent with lessees' rights under that Act.

Here, Goodnight is a stranger to the Unit and has no right to interfere with the rights issued under the oil and gas lease committed to the Unit. Empire has the right to further explore and develop the portion of the San Andres formation within Goodnight's proposed injection zone. Furthermore, injection rates and volumes undoubtedly affect Empire's waterflood operations and oil recovery operations.

WHEREFORE, Empire requests that Goodnight's application be dismissed

Respectfully submitted,

PADILLA LAW FIRM, P.A.

/s/ Ernest L. Padilla
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was served to counsel of record by electronic mail this 6th day of June, 2022, as follows:

Michael H. Feldewert	mfeldewert@hollandhart.com
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/s/ Ernest L. Padilla
ERNEST L. PADILLA

STATE OF NEW MEXICO
DEPARTMENT OF ENERGY AND MINERALS
OIL CONSERVATION COMMISSION

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

CASE No. 8397
Order No. R-7765

APPLICATION OF GULF OIL CORPORATION
FOR STATUTORY UNITIZATION, EUNICE
MONUMENT SOUTH UNIT, LEA COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This case came on for hearing at 9:00 A.M. on November 7, 1984, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission".

NOW, on this 27th day of December, 1984, the Commission, a quorum having been present, having considered the testimony and the record and being otherwise fully advised in the premises:

FINDS THAT:

(1) Due public notice has been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, Gulf Oil Corporation (hereinafter called Gulf), seeks the statutory unitization, pursuant to the "Statutory Unitization Act," Sections 70-7-1 through 70-7-21, NMSA-1978, of 14,189.84 acres, more or less, being a portion of the Eunice Monument Pool, Lea County, New Mexico, as more specifically defined in Commission Case 8397, said portion to be known as the Eunice Monument South Unit; that applicant further seeks approval of the Unit Agreement and the Unit Operating Agreement which were submitted in evidence as Gulf's Exhibits Nos. 3 and 4.

EXHIBIT A

(3) The proposed unit area should be designated the Eunice Monument South Unit Area, (hereinafter called unit) and the horizontal limits of said unit area should be comprised of the following described lands:

TOWNSHIP 20 SOUTH, RANGE 36 EAST, NMPM

Section 25: All
Section 36: All

TOWNSHIP 20 SOUTH, RANGE 37 EAST, NMPM

Section 30: S/2, S/2 N/2, NE/4 NW/4 and NW/4 NE/4
Section 31: All
Section 32: All

TOWNSHIP 21 SOUTH, RANGE 36 EAST, NMPM

Section 2: S/2 S/2
Section 3: Lots 3, 4, 5, 6, 11, 12, 13, and 14 and S/2
Section 4 through 11: All
Section 12: W/2 SW/4
Section 13: NW/4 NW/4
Section 14 through 18: All
Section 21: N/2 and N/2 S/2
Section 22: N/2 and N/2 S/2

(4) The subject Commission Case 8397 was consolidated for hearing with Commission Cases 8398 and 8399.

(5) Said unit has been approved by the Bureau of Land Management and the Commissioner of Public Lands of the State of New Mexico subject to the approval of statutory unitization by the Oil Conservation Commission.

(6) No interested party has opposed the horizontal limits of the said unit.

(7) The horizontal limits of said unit are reasonably defined by development and have a reasonable geologic relationship to the proposed unitized formations.

(8) The vertical limits of said unit should comprise that interval underlying the unit area, the vertical limits of which extend from an upper limit described at 100 feet below mean sea level or at the top of the Grayburg formation, whichever is higher, to a lower limit at the base of the San Andres formation; the geologic markers

having been previously found to occur at 3,666 feet and 5,283 feet, respectively, in Continental Oil Company's Meyer B-4 Well No. 23 (located at 660 feet from the South line and 1,980 feet from the East line of Section 4, Township 21 South, Range 36 East, Lea County, New Mexico) and as recorded on the Welex Acoustic Velocity Log taken on October 30, 1962, said log being measured from a kelly drive bushing elevation of 3,595 feet above sea level.

(9) The establishment of said vertical limits requires the amendment of the vertical limits of the Eumont Gas Pool and the Eunice Monument Pool under the unit area as is the subject of Commission Case 8399 and Order No. R-7767.

(10) The "unitized formation" will include the entire oil column under the unit area permitting the efficient and effective recovery of secondary oil therefrom.

(11) No interested party has objected to the vertical interval proposed to be unitized.

(12) The unit area contains 101 separate tracts owned by 41 different working interests.

(13) As of the date of the hearing, over 90 percent of working interest owners and royalty interest owners were effectively committed to the unit.

(14) Gulf proposes to institute a waterflood project for the secondary recovery of oil and associated gas, condensate, and all associated liquifiable hydrocarbons within and to be produced from the proposed unit area, all as shown in Commission Case 8398.

(15) A technical committee was formed by the owners within the proposed unit to evaluate aspects of unitization and operation of the proposed secondary recovery operation (waterflood).

(16) The technical committee concluded that the probable range of recovery from the proposed waterflood is from 25 percent to 100 percent of ultimate primary production.

(17) Said committee further concluded that based upon response to waterflooding in similar reservoirs, 48 percent of ultimate primary or 64.2 million barrels of additional (secondary) oil would be recovered by institution of the proposed waterflood.

(18) The unitized management, operation, and further development of the unit, as proposed, is reasonable and necessary to effectively and efficiently carry on secondary recovery operations and will substantially increase the ultimate recovery of oil and gas from the unitized formations.

(19) The proposed unitized method of operation as applied to the Unit Area is feasible and will result with reasonable probability in the increased recovery of substantially more oil from the unitized portion of the pool than would otherwise be recovered without unitization.

(20) The estimated additional investment costs of the proposed supplemental recovery operations are $60.6 million.

(21) The additional recovery to be derived from the proposed supplemental recovery operations will have a resultant net profitability over the aforesaid additional costs and after taxes of $1.186 billion with unitized water flooding versus $226.7 million without unitized waterflooding.

(22) The estimated additional costs of the proposed operations (as described in Finding No. (18) above) will not exceed the estimated value of the additional oil and gas (as described in Finding No. (19) above) plus a reasonable profit.

(23) The applicant, the designated unit operator, pursuant to the Unit Agreement and the Unit Operating Agreement, has made a good faith effort to secure voluntary unitization within the unit area.

(24) Bruce Wilbanks and other interest owners in Unit Tract 55, have declined to voluntarily join the unit.

(25) Exxon Company, USA, (hereinafter "Exxon") has declined to voluntarily join the unit and has opposed the application of Gulf in this case on the basis that the participation formula contained in the Unit Agreement fails to give sufficient weight to the cumulative oil production and further that the method of providing a wellbore contribution incentive is not to Exxon's economic advantage.

(26) Exxon has a working interest of 4.86% of the unit which consists of 100% working interest in Unit Tracts 12, 37, 88, 90 and a 50% working interest in Unit Tract 89.

(27) The participation formula proposed allocates unit production to the various tracts in accordance with the following:

Tract Participation = 50% A/B + 40% C/D + 10% E/F

Where:

A = the tract cumulative oil production from the unitized formation as of September 30, 1982.

B = the unit total cumulative oil production from the unitized formation as of September 30, 1982.

C = the remaining primary oil reserves from the unitized formation for the tract, beginning October 1, 1982, as determined by the Technical Committee on February 25, 1983.

D = the remaining primary oil reserves from the unitized formation for all unit tracts, beginning October 1, 1982, as determined by the Technical Committee on February 25, 1983.

E = the amount of oil produced from the unitized formation by the tract from January 1, 1982, through September 30, 1982.

F = the amount of oil produced from the unitized formation by all unit tracts from January 1, 1982, through September 30, 1982.

(28) The proposed formula does not take into account calculations of estimated secondary production from each tract in that insufficient cores, well logs, and reservoir data are not available to make such calculations.

(29) The proposed formula does give substantial weight to remaining primary reserves in that such reserves can be measured, that the owners of such reserves have agreed to the terms and conditions of the unit and will be deferring income therefrom to support the costs and risks of implementing secondary recovery operations in the unit.

(30) The proposed allocation formula does give owners without remaining primary reserves or with very low volumes of remaining primary reserves, such as Exxon, a disproportionately large share of the income from the production of remaining primary production during the early life of the project.

(31) During unit negotiations, a cutoff date must be established in order to make necessary calculations of the allocation of unit costs and benefits.

(32) The adoption of the September 30, 1982, date in the subject case was necessary for such calculations and is not unreasonable.

(33) Giving consideration to the lack of technical data for estimates of secondary recovery, the reallocation of primary production in the early life of the unit, the greater risk being accepted by the owners of remaining primary reserves and the reasonableness of the September 30, 1982, cutoff date; the proposed participation formula will allocate unit production on a fair, reasonable, and equitable basis during the period that the estimated 64.2 million barrels of secondary oil is produced.

(34) During said period, it is expected that the unit operator will develop reservoir data from cores, well logs, tests and production which might be used to better allocate production to the unit during any period of recovery of secondary and tertiary oil in excess of 64.2 million barrels.

(35) The proposed formula should not apply to the allocation of secondary or tertiary oil production in excess of a total of 64.2 million barrels.

(36) Before distributing the proceeds from production of such oil in excess of 64.2 million barrels, the unit operator should be required to appear and demonstrate that the formula approved by this order continues to allocate proceeds from unit operations in a fair and equitable manner or, in the alternative, present a new allocation formula prepared on the basis of new and/or enhanced reservoir data which new formula better allocates said proceeds.

(37) Gulf proposed a Wellbore Assessment Method in the Unit Operating Agreement as an incentive to encourage the working interest owners in the unit to contribute the maximum number of existing useable wellbores to the unit.

(38) This assessment method, though not common, is used in other unit agreements.

(39) Any proration unit within the unit which is to participate in the proposed waterflood operation must have a wellbore useable for production or injection in the unitized interval.

(40) It is not unreasonable to penalize the owners of proration units upon which there is no such wellbore and upon which the unit operator must drill a well.

(41) The proposed method of wellbore assessment is fair and reasonable.

(42) Exxon admits that each of its tracts is still reasonably profitable should the Commission approve the participation formula and the wellbore assessment method proposed by Gulf as unit operator.

(43) Unitization and the adoption of the proposed unitized method of operation will benefit the working interest owners and royalty owners of the oil and gas rights within the unit area.

(44) The Eunice Monument South Unit Agreement and Unit Operating Agreement provide for unitization and unit operation of the unit area upon terms and conditions that are fair, reasonable and equitable and which include:

(a) an allocation to the separately owned tracts in the unit area of all oil and gas that is produced from the unit area and which is saved, being the production that is not used in the conduct of unit operations or not unavoidably lost;

(b) a provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials and equipment contributed to the unit operations;

(c) a provision governing how the costs of unit operations, including capital investments, shall be determined and charged to the separately owned tracts and how said costs shall be paid, including a provision providing when, how, and by whom, the unit production allocated to an owner who does not pay his share of the costs of unit operations shall be charged to such owners, of the interest of such owners, and how his interest may be sold and the proceeds applied to the payment of his costs;

(d) a provision for carrying any working interest owner on a limited, carried or net-profits basis, payable out of production, upon such terms and conditions which are just and reasonable, and which allow an appropriate charge for interest for such service payable out of production, upon such terms and conditions

determined by the Commission to be just and reasonable, and allowing an appropriate charge for interest for such service payable out of such owner's share of production, providing that any nonconsenting working interest owner being so carried shall be deemed to have relinquished to the unit operator all of his operating rights and working interests in and to the unit until his share of the costs, service charge and interest are repaid to the Unit Operator;

(e) a provision designating the unit operator and providing for the supervision and conduct of the unit operations, including the selection, removal or substitution of an operator from among the working interest owners to conduct the unit operations;

(f) a provision for a voting procedure for the decision of matters to be decided by the working interest owners in respect to which each working interest owner shall have a voting interest equal to his unit participation; and

(g) the time when the unit operation shall commence and the manner in which, and the circumstances under which, the operations shall terminate and for the settlement of accounts upon such termination;

(45) The statutory unitization of the Eunice Monument South Unit Area is in conformity with the above findings, and will prevent waste and protect the correlative rights of all owners of interest within the proposed unit area, and should be approved.

IT IS THEREFORE ORDERED THAT:

(1) The Eunice Monument South Unit Area, comprising 14, 189.84 acres, more or less, in the Eunice Monument Oil Pool, as amended by Order R-7767, Lea County, New Mexico, is hereby approved effective December 1, 1984, for statutory unitization pursuant to the Statutory Unitization Act, Sections 70-7-1 through 70-7-21 NMSA 1978.

(2) The lands included within the Eunice Monument South Unit Area shall comprise:

TOWNSHIP 20 SOUTH, RANGE 26 EAST, NMPM

Section 25: All
Section 36: All

TOWNSHIP 20 SOUTH, RANGE 37 EAST, NMPM

Section 30: S/2, S/2 N/2, NE/4 NW/4, and NW/4 NE/4
Section 31: All
Section 32: All

TOWNSHIP 21 SOUTH, RANGE 36 EAST, NMPM

Section 2: S/2 S/2
Section 3: Lots 3, 4, 5, 6, 11, 12, 13, and 14 and S/2
Section 4 through 11: All
Section 12: W/2 SW/4
Section 13: NW/4 NW/4
Sections 14 through 18: All
Section 21: N/2 and N/2 S/2
Section 22: N/2 and N/2 S/2

and that the above described lands shall be designated as the Eunice Monument South Unit Area.

(3) The vertical limits of said unit shall comprise that interval underlying the unit area, the vertical limits of which extend from an upper limit described as 100 feet below mean sea level or at the top of the Grayburg formation, whichever is higher, to a lower limit at the base of the San Andres formation; the geologic markers having been previously found to occur at 3,666 feet and 5,283 feet, respectively, in Continental Oil Company's Meyer B-4 Well No. 23 (located at 660 feet from the South line and 1,980 feet from the East line of Section 4, Township 21 South, Range 36 East, Lea County, New Mexico) and as recorded on the Welex Acoustic Velocity Log taken on October 30, 1962, said log being measured from a kelly drive bushing elevation of 3,595 feet above sea level.

(4) The applicant is hereby authorized to institute a secondary recovery project for the recovery of oil and all associated and constituent liquid or liquified hydrocarbons within the unit area, pursuant to the provisions set forth in Commission Order No. R-7766.

(5) The Eunice Monument South Unit Agreement and the Eunice Monument South Unit Operating Agreement presented by the applicant as Exhibits 3 and 4, respectively, in this case are hereby incorporated by reference into this order.

(6) The Eunice Monument South Unit Agreement and the Eunice Monument Unit Operating Agreement provide for

unitization and unit operation of the subject portion of the Eunice Monument Pool upon terms and conditions that are fair, reasonable and equitable and include:

an allocation to the separately owned tracts in in the unit area of all the oil and gas that is produced from the unit area and is saved, being the production that is not used in the conduct of operations on the unit area or not unavoidably lost;

a provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials and equipment contributed to the unit operations;

a provision for governing how the costs of unit operations including capital investments shall be determined and charged to the separately owned tracts and how said costs shall be paid including a provision providing when, how, and by whom the unit production allocated to an owner who does not pay the share of the costs of unit operations charged to such owner, or in the interest of such owner, may be sold and the proceeds applied to the payment of such costs;

a provision for carrying any working interest owner on a limited, carried or net-profits basis, payable out of production, upon such terms and conditions determined by the Commission to be just and reasonable, and allowing an appropriate charge for interest for such service payable out of such owner's share of production, provided that any non-consenting working interest owner being so carried shall be deemed to have relinquished to the unit operator all of its operating rights and working interest in and to the unit until his share of the costs, service charge and interest are repaid to the unit operator;

a provision designating the unit operator and providing for the supervision and conduct of the unit operations, including the selection, removal or substitution of an operator from among the working interest owners to conduct the unit operations;

a provision for voting procedure for the decision of matters to be decided by the working interest owners in respect to which each working interest owner shall have a voting interest equal to its unit participation; and

the time when the unit operation shall commence and the manner in which, and the circumstances under which, the operations shall terminate and for the settlement of accounts upon such termination;

and are therefore hereby adopted.

(7) This order shall not become effective unless and until the appropriate ratification provisions of Section 70-7-8 NMSA, 1978 Compilation, are complied with.

(8) If the persons owning the required percentage of interest in the unit area as set out in Section 70-7-8 NMSA, 1978 Compilation, do not approve the plan for unit operations within a period of six months from the date of entry of this order, this order shall cease to be of further force and effect and shall be revoked by the Commission, unless the Commission shall extend the time for ratification for good cause shown.

(9) When the persons owning the required percentage of interest in the unit area have approved the plan for unit operations, the interests of all persons in the unit are unitized whether or not such persons have approved the plan of unitization in writing.

(10) Prior to distribution of the proceeds from secondary and tertiary production in excess of 64.2 million barrels, the operator shall appear at a hearing and demonstrate that the formula approved by this order continues to allocate the proceeds from unit production in a fair and equitable manner or, in the alternative, present for approval a new formula prepared on the basis of new or enhanced reservoir data which new formula better allocates said proceeds.

(11) Jurisdiction of cause is 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

Jim Baca, Member

Ed Kelley, Member

R. L. Stamets, Chairman
and Secretary

S E A L

STATE OF NEW MEXICO
DEPARTMENT OF ENERGY AND MINERALS
OIL CONSERVATION COMMISSION

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

CASE NO. 8397
Order No. R-7765-A

APPLICATION OF GULF OIL CORPORATION FOR STATUTORY UNITIZATION, EUNICE MONUMENT SOUTH UNIT, LEA COUNTY, NEW MEXICO.

NUNC PRO TUNC

BY THE COMMISSION:

It appearing to the Commission that Order No. R-7765, dated December 27, 1984, does not correctly state the intended order of the Commission due to error,

IT IS THEREFORE ORDERED THAT:

(1) Ordering Paragraph (2) on Pages 8 and 9 of Commission Order No. R-7765, Case No. 8397, be and the same is hereby corrected to read in its entirety as follows:

"(2) The lands included within the Eunice Monument South Unit Area shall comprise:

TOWNSHIP 20 SOUTH, RANGE 36 EAST, NMPM
Section 25: All
Section 36: All

TOWNSHIP 20 SOUTH, RANGE 37 EAST, NMPM
Section 30: S/2, S/2 N/2, NE/4 NW/4, and NW/4 NE/4
Section 31: All
Section 32: All

TOWNSHIP 21 SOUTH, RANGE 36 EAST, NMPM
Section 2: S/2 S/2
Section 3: Lots 3, 4, 5, 6, 11, 12, 13, and 14 and S/2
Section 4 through 11: All
Section 12: W/2 SW/4
Section 13: NW/4 NW/4
Sections 14 through 18: All
Section 21: N/2 and N/2 S/2
Section 22: N/2 and N/2 S/2

and that the above described lands shall be designated as the Eunice Monument South Unit Area."

(2) The corrections set forth in this order be entered nunc pro tunc as of December 27, 1984.

DONE at Santa Fe, New Mexico, on this 28th day of December, 1984.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

JIM BACA, Member

ED KELLEY, Member

R. L. STAMETS, Chairman
and Secretary

S E A L

dr/

GFS(O&G) 8(1985) (I.B.L.A.), 84 IBLA 36, 1984 WL 51905

United States Department of the Interior

Office of Hearings and Appeals

Interior Board of Land Appeals

PENROC OIL CORP. ET AL.

IBLA 84-440
Decided November 27, 1984

****1 INDEX CODE:**

43 CFR 4.410(a)

***36** Appeal from decision of the Roswell District Office, New Mexico, Bureau of Land Management, granting a right-of-way to **dispose** of **saltwater** by entering a plugged oil and gas well on **leased Federal** land.

Reversed.

1. Rules of Practice: Generally—Rules of Practice: Appeals: Standing to Appeal

The unit operator of a producing unit has standing to appeal the granting of a right-of-way to a **third party** for the purpose of entering the lease and utilizing a plugged well, drilled by the unit operator, for **disposing** of **salt water** produced miles away by strangers to the unit.

2. Oil and Gas Leases: Generally—Secretary of the Interior

Although Federal oil and gas leasing is subject to extensive supervision by the Secretary of the Interior, and although the Secretary has broad discretion over whether or not to lease particular lands within the public domain, once he has granted the lease he may not derogate the rights of the Federal lessee acquired under the Mineral Leasing Act and the lease granted pursuant thereto.

3. Oil and Gas Leases: Generally—Rights-of-Way: Federal Land Policy and Management Act of 1976

BLM may not grant to a party, other than the oil and gas lessee, a right-of-way to **dispose** of **salt water** by pumping it into the lessee's plugged oil and gas well located on producing leased lands, where the grant effectively precludes lessee's rights to further explore, drill, and develop the leasehold under the lease and the Mineral Leasing Act by utilizing its own well.

APPEARANCES: W. Thomas Kellahin, Esq., Santa Fe, New Mexico, for appellants; A. D. Jones and S. B. Christy IV, Esq., Roswell, New Mexico, for respondent.

***37** OPINION BY ADMINISTRATIVE JUDGE STUEBING

Penroc Oil Corporation (Penroc), operator of Federal oil and gas lease NM-17098, and the lessees, appeal the March 19, 1984, decision of the Roswell District Office, New Mexico, Bureau of Land Management (BLM), granting BBC, Inc. (BBC), a right-

EXHIBIT B

of-way to **dispose** of **salt water** by pumping it into Penroc's Foxie 'A' Federal No. 1, a well drilled and plugged by Penroc in 1977.

Penroc and Edward R. Hudson, Jr., William A. Hudson II, and Mary Hudson (Hudsons) filed a notice of appeal of this decision on April 13, 1984. BBC, as respondent, has filed a reply to appellants' statement of reasons, in support of the BLM decision.

On July 13, 1963, BLM issued oil and gas lease, NM-17098, covering lands in sec. 18, T. 20 S., R. 28 E., New Mexico Principal Meridian, Eddy County, New Mexico, to the Hudsons. They assigned their lease operating rights to Penroc. In 1974, Penroc incorporated the lands in NM-17098 into a Federal unit, the Forest Unit. The unit has been held by production since 1974 when Penroc drilled the Foxie Federal No. 1. In 1977, Penroc drilled a second well, the Foxie 'A' Federal No. 1 on the leased land. It was drilled to a depth of 11,360 feet and was tested in the Morrow and Lower Delaware formations, but was plugged back to 4,750 feet. The fact that NM-17098 has not expired, but is in its extended term, held by oil and gas production within the Forest Unit, is of paramount importance to our analysis of this case.

2 On February 1, 1984, BBC applied to BLM for a right-of-way to enter appellants' lease and utilize the plugged well, Foxie 'A' Federal No. 1, to **dispose of BBC's **salt water**. The **salt water** is a by-product of oil and gas operations outside the Forest Unit. BBC has no interest in NM-17098 and has no interest in the Forest Unit. BLM granted a renewable 30-year right-of-way to BBC on March 19, 1984, effective that date.

It appears that BBC is a well service company which contracts with producers to **dispose** of **salt water** extracted in association with oil and gas production. BBC performs this service for a number of wells located some 3 miles from appellants' lease. There is no established relationship between the wells producing the **salt water** and appellants' lease or the Forest Unit.

The right-of-way issued by BLM authorizes BBC to construct an access road across appellants' lease to the Foxie 'A' Federal No. 1 well, to occupy a surface area 285 feet by 350 feet for the installation of such facilities as storage tanks, meters, pumps and pits, and to use the well bore for the **disposal** of **salt water** delivered to the site. The right-of-way grant seems to contemplate that BBC shall have the right to mechanically alter the well bore by drilling out cement plugs, performing cementing operations, perforating, fracturing by explosive or hydraulic methods, pulling casing, etc., subject only to prior approval of BLM's district engineer. The **salt water** is to be injected into the Upper Delaware formation via the open-hole interval from 2800 feet to 3750 feet.

WL2 Appellants assert that while the lease remains in effect, they are the owners of the well which they drilled, and they have a right to re-enter the *38 well to use it for secondary recovery operations, to drill to deeper horizons, or even, perhaps, to utilize it for **disposal of their own **salt water** produced within the unit. They argue that they, not BBC or BLM, are the owners of the well bore, the well casing and other equipment appurtenant to the well, and may remove such equipment from the well at any time during the lease term and for a reasonable time after the lease expires or otherwise terminates. Further, appellants state that 'there was substantial testimony before the New Mexico Oil Commission Division [sic] that there is a probability that oil is present in the Upper Delaware formation which might be harmed by the **disposal** of **salt water**.' They contend that the right-of-way granted to BBC is void 'because it interferes with the existing and prior rights of the federal oil and gas lessee and operator.'

BLM issued the right-of-way to BBC on March 19, 1984. On April 11, 1984, there was a hearing before an Examiner of the New Mexico Energy and Minerals Department, Oil Conservation Division. At that hearing Penroc, the Hudsons, and several holders of working interests in the Forest Unit, filed objections to BBC's proposal to inject **salt water** into the Foxie 'A' Federal No. 1. However, the State agency apparently limited its concern to the question of whether the proposed injection would adversely affect production or damage the structure. Following the hearing, on April 11, 1984, the Director of the Oil Conservation Commission issued an order giving qualified and contingent approval to BBC's plan, and noting that BLM had already granted the right-of-way.

3 At issue are the rights of an oil and gas lessee during the lease term with respect to the oil and gas well it has drilled and plugged. Within this context, we must determine whether BLM has the power to grant a right-of-way to a **third party to enter and use a Federal lessee's plugged oil and gas well to **dispose** of the **third party's saltwater**.

We reverse the BLM decision to grant BBC the **saltwater disposal** right-of-way because the right-of-way contravenes appellants' rights as created by the Mineral Leasing Act of 1920 and the oil and gas lease issued pursuant thereto.

**WL3 [1] Before addressing the merits of this appeal we shall address BBC's challenge to Penroc's standing to bring this appeal. BBC states: '[T]he only interest in the unitized lands that Penroc holds is an interest in production. Therefore, there being no production, this action should be dismissed as Penroc has failed to establish that they are adversely affected as is required by 43 CFR 4.410(a)' (Brief at 12 (emphasis in original)).

43 CFR 4.410(a) provides that 'any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management * * * shall have a right to appeal to the Board * * *.' In the instant case, Penroc asserts that the right-of-way granted to BBC by BLM is adverse to Penroc's property rights in the lease. First, we disagree with BBC's statement that the only interest Penroc holds is an interest in production. Second, even if this were Penroc's only interest, a BLM decision that effectively precludes any use of or potential production from its plugged well on leased land is a decision adverse to Penroc. Therefore, Penroc has standing to appeal the BLM decision.

*39 In support of its position that BLM properly issued the **saltwater disposal** right-of-way, BBC states:
The United States of America as owner of the lands which are the subject matter of this suit has the right and power to issue oil and gas leases to a lessee for the purposes of exploring and developing oil and gas reserves lying within those public lands subject to the terms, provisions and conditions contained within such oil and gas leases. The United States of America, as lessor, has sought not only to allow the exploration and development of oil and gas reserves upon public lands, but, also, to obtain maximum utilization of the public lands involved herein. Accordingly, the United States of America, as lessor, has reserved the right to issue easements and rights-of-way or otherwise **dispose** of the surface of the lands involved herein so that maximum utilization of the lands might be obtained.

The Bureau of Land Management has been vested with the authority to make a determination of when it is appropriate to grant an easement or right-of-way. The Bureau of Land Management, in its sound discretion, has made the determination that it is appropriate to issue a right-of-way to BBC. The determination is valid and in full compliance with statutory mandates and authorities.

**WL4 [2] We are in accord with many of the propositions asserted by BBC. It is undisputed that the Secretary of the Interior has general managerial powers over the public lands. Boesche v. Udall, 373 U.S. 472, 476 (1963); United States v. Wilbur, 283 U.S. 414, 419 (1931). He shall 'perform all executive duties * * * in any wise respecting such public lands [of the United States].' 43 U.S.C. § 2 (1982). Section 1201 of Title 43 of the United States Code provides: '[T]he Secretary of the Interior, or such officer as he may designate, is authorized to enforce and carry into execution, by appropriate regulations, every part of the provisions of this title [Title 43, Public Lands] not otherwise specifically provided for.'

One part of the aggregate power the Secretary or his designee, BLM, has over the public lands is his power under the Mineral Leasing Act to lease '[a]ll lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits.' 30 U.S.C. § 226(a) (1982). He has plenary authority over oil and gas leasing; he is 'authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this chapter [Chapter 3A and Prospecting Permits],' 30 U.S.C. § 189 (1982). The United States Supreme Court noted that oil and gas leases are subject to 'exacting regulations and continuing supervision by the Secretary.' Boesche v. Udall, 373 U.S. at 477, 478. The Secretary must approve assignments and subleases, 30 U.S.C. § 187 (1982; he may suspend operations, 30 U.S.C. § 209 (1982); he may require unitization, 30 U.S.C. § 226(j) (1982); he may cancel leases based on postlease events, 30 U.S.C. § 188 (1982),

or prelease events. See Boesche v. Udall, supra; McKenna v. Wallis, 344 F.2d 432 (5th Cir. 1965). Furthermore, the Secretary has broad discretion over whether or not to lease particular lands within the public domain. United States v. Wilbur, supra.

***40** In contrast to the broad powers of the Secretary over oil and gas leasing, the oil and gas lessee's rights are quite narrow. It has been held that an oil and gas lessee's rights are not absolute. See generally Sun Oil Co. v. United States, 572 F.2d 786 (Ct. Cl. 1978). (Lease rights are subject to reasonable restraints based on sound environmental or conservation grounds.) The **Federal lease** 'does not give the lessee anything approaching the full ownership of a fee patentee, nor does it convey an unencumbered estate in the minerals.' Boesche v. Udall, supra at 478. Title to the lands is not vested in the oil and gas lessee, but rather, remains in the Federal Government. Udall v. Tallman, 380 U.S. 1, 19 (1964).[a] See also Transwestern Pipeline Co. v. Kerr-McGee Corp., 492 F.2d 878, 883 (10th Cir. 1974), cert. dismissed, 419 U.S. 1097 (1975). The lease does convey a property interest enforceable against the Government, but it is an interest lacking many of the attributes of private property. Union Oil Company of California v. Morton, 512 F.2d 743, 747 (9th Cir. 1975).

****5** Notwithstanding the restricted nature of the Federal leasehold and the plenary power of the Secretary over **leasing Federal** lands, we conclude that a Federal oil and gas lessee must derive certain rights from the Mineral Leasing Act of 1920, any valid regulations promulgated thereunder, and the terms of the lease itself. See generally Union Oil Company of California v. Morton, supra; Sun Oil Co. v. United States, supra. Moreover, once the Secretary has leased the land he may not deny or extinguish the rights of the Federal oil and gas lessee under the valid oil and gas lease. Clearly, the Secretary's power and authority to obliterate, diminish, and/or interfere with vested rights is not absolute. See Sun Oil Co. v. United States, supra at 802.

[3] Prior to examining the specific rights of the Federal lessee, we note the lessees' rights vary with the terms of the lease, and the provisions of the applicable statutes and Departmental regulations. Therefore, the lessees' rights can only be determined on a case-by-case basis. Expressly granted in most **Federal leases**, including the Hudsons', is the lessees' exclusive right to drill for, mine, extract, remove, and **dispose** of all oil and gas except helium gas, in the leased lands, for a term certain and so long thereafter as oil and gas is produced in paying quantities. Implicit in oil and gas leases, unless otherwise provided for, is the right and duty of the oil and gas lessee to explore, produce, develop, and market the oil and gas. See Pan American Petroleum Corp. v. Pierson, 284 F.2d 649, 654 (10th Cir. 1960). See also Malone, Problems Created by Express Lease Clauses Affecting Implied Covenants, 2 Rocky Mountain Mineral Law Institute 133 (1956).

From these express and implied rights in the lease it necessarily follows that the lessee derives the right to re-enter its plugged wells to further drill, explore, or develop the leasehold at any time during the lease term. In addition, the lessee has the right to preclude others from using its plugged well during the lease term. This right follows from the lessees' implicit right under the Mineral Leasing Act to use as much of the surface estate as is necessary to develop the mineral estate. Kinney-Coastal Oil Co. v. Kieffer, 277 U.S. 488 (1927); Transwestern Pipeline Co. v. Kerr-McGee Corp., supra. In Kinney-Coastal Oil Co. v. Kieffer, supra, the United States Supreme Court resolved the conflicting rights of a patented homestead entrant and a Federal oil and gas lessee. The oil and gas lessee brought an injunction against the surface owner to prevent him from continuing to plat and ***41** sell the property for residential and business purposes. The lessee argued that the sale and use of the surface for a townsite would seriously interfere with his right to use the property to continue with oil and gas operations. The Supreme Court stated:
****WL5** [W]e think it plain that the plaintiffs were entitled to the interposition and aid of a court of equity to prevent the threatened occupancy and use of the surface for purposes incompatible with their right to continue the mining operations under the lease and to make any necessary use of the surface. [Emphasis added.]

****WL6** 277 U.S. at 506. In addition, the Court stated: 'Under the lease the plaintiffs have the right to extract and remove the oil and gas and also the appurtenant right to use the surface as far as may be necessary.' 277 U.S. at 504, 505.

****6** Furthermore, section 2(p) of the lease provides that if the leased land is reserved or segregated the lessee agrees:
[T]o conduct operations in conformity with requirements as may be made by the Director, Bureau of Land Management, for the protection and use of the land for the purpose for which it was reserved or segregated, so far as may be consistent with

the use of the land for the purpose of this lease, which latter shall be regarded as the dominant use unless otherwise provided herein or separately stipulated. [Emphasis added.]

There being no contrary provision or evidence of such a separate stipulation in the record, we find the dominant use of these leased lands is exploration for, development, and production of oil and gas deposits. Therefore, the lessee has the right under the lease to prevent threatened occupancy and use of the surface or sub-surface that is inconsistent with the dominant use of the land. This point is further reinforced by section 3(b) of the lease which provides that the Secretary may:
lease, sell or otherwise **dispose** of the surface of the leased lands under existing law or laws hereafter enacted insofar as said surface is not necessary for the use of the lessee in the extraction and removal of the oil and gas herein, or to **dispose** of any resource in such lands which will not unreasonably interfere with operations under this lease. [Emphasis added.]

The lessee's right to the exclusive use of each well during the term of the lease finds further basis in public policy considerations. Each well represents a considerable financial and resource commitment by the lessee. The Tenth Circuit Court of Appeals in Pan American Corp. v. Pierson, supra at 655 stated, 'It is common knowledge that exploration for oil and gas is costly. The drilling of wells requires substantial financial risks and the expense of putting those wells on production and marketing the product is burdensome.' An oil and gas well which is plugged represents no less a ***42** financial commitment than a well that is a producer. The plugged well remains an asset of the lessee, so long as the lease is in force. It is not just another hole in ground. Therefore, during the lease term the lessee is entitled to the exclusive use of each well, the fruit of its labor.

Furthermore, the lessee has a property right in the casing. This right is recognized in section 3(f) of the lease, governing the right of the Federal Government '[t]o purchase casing, and lease or operate valuable water wells.' (Emphasis added.) Section 40 of the Mineral Leasing Act, 30 U.S.C. § 229(a) (1982), provides that where an oil and gas lessee drills and strikes water, the Secretary has the right under certain conditions to purchase the casing in the well. Thus, even where a valuable well water is at stake, the United States has recognized the lessee's property rights in the well and the casing. In the present instance, the record indicates that while 3,750 feet of 4-1/2-inch casing was pulled, a 9-5/8-inch casing remains in the well bore. We conclude that whether or not the plugged well is a water well, during the lease term the United States Government must respect the lessee's property rights to the casing.

****WL7** The **saltwater disposal** right-of-way conflicts with Penroc's right to explore, drill, and develop the leasehold and to preclude others from violating its property rights in the casing. However, its rights are not absolute, they are subject to the qualified right of the United States to grant rights-of-way across such leased lands. Section 3(a) of the lease reserves to the United States the right to: '[P]ermit for joint or several use easements or rights-of-way including easements in tunnels, upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same or of other lands containing the deposits described in the act.' (Emphasis added.) By this language, a right-of-way may be granted where it is necessary or appropriate to Penroc's lands, or necessary or appropriate to other Federal lands. In that this right-of-way was granted to **dispose** of **saltwater** from oil and gas operations outside the leased land, it is clear that it is neither necessary nor appropriate to Penroc's land. The remaining question is whether the right-of-way is necessary or appropriate to the 'other lands,' namely, the lands from which the **salt water** is produced. We find the right-of-way is neither necessary nor appropriate to those lands. First, there is no evidence in the record supporting such a finding. Secondly, even if the right-of-way were 'appropriate' to those lands and were therefore consistent with section 3(a) of the lease, we find that no section 3(a) right-of-way is valid under this lease where the disposition 'unreasonably interferes with operations' under the lease or where the **disposed** surface is 'necessary for the use of the lessee in the extraction and removal of the oil and gas therein,' pursuant to section 3(b) of the lease. This **saltwater disposal** right-of-way is not permissible under section 3(a) of the lease because it violates section 3(b) of the lease. Finally, for public policy reasons we conclude that where a right-of-way unreasonably burdens a Federal lessee and merely accommodates a **third-party** stranger, the right-of-way cannot be granted.

7 In its March 19, 1984, decision granting BBC the right-of-way to **dispose of its **saltwater**, BLM stated it derived its authority to grant the right-of-way from section 501(a) the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761(a) (1982), which provides in relevant part:

*43 The Secretary, with respect to the public lands [is] * * * authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for—

(1) reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) pipelines and other systems for the transportation, or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith.

**8 Appellants argue that the right-of-way grant is outside the scope of congressional intent, and, is therefore, invalid. We conclude that determining whether this right-of-way exceeds the scope of FLPMA as determined by congressional intent is unnecessary to the resolution of this case. We hold this right-of-way is not authorized pursuant to section 501 of FLPMA. There is no evidence the decision was reasoned and made with due regard for the public interest; the right-of-way is not consistent with the provisions of the Mineral Leasing Act and the lease drafted pursuant thereto; and the action was in derogation of the lessee's existing rights.

**WL8 The decision to grant a right-of-way will not be affirmed if the right-of-way is inconsistent with the provisions of another applicable law. Section 504(c) of FLPMA, 43 U.S.C. § 1764(c) (1982), provides: 'Rights of way shall be granted, issued, or renewed pursuant to this subchapter under such regulations or stipulations, consistent with the provisions of this subchapter or any other applicable law * * *.' [Emphasis added.] 43 U.S.C. § 1764 (1982). This right-of-way is inconsistent with the lessee's rights under the Mineral Leasing Act. A right-of-way which entirely converts the lessee's oil and gas well to the exclusive use of a stranger to the lease, and which precludes any future exploratory or developmental work from that well by those who drilled it and continue to hold it under lease is inconsistent with lessees' rights under that Act.

A right-of-way will not be permitted where it impairs existing rights. Section 701 of FLPMA provides, 'All actions by the Secretary concerned under this Act shall be subject to valid existing rights.' 43 U.S.C. § 1701 n. (h) (1982). The Solicitor of the Department of the Interior has defined 'valid existing rights' as those rights short of vested rights that are immune from denial or extinguishment by the exercise of secretarial discretion. Once the lease is issued, 'the applicant has valid existing rights in the lease.' 88 I.D. 909, 912 (1981). As stated earlier, the lessee's rights must be determined on a case-by-case basis. Under the terms of this lease, the lessee has the right to the exclusive use of his well, and the right to re-enter his plugged well at any time during the lease term to further the purpose of his lease. This right-of-way contravenes those rights. For these reasons BLM may not properly grant a **saltwater disposal** right-of-way to a **third party** under FLPMA or under section 3(a) of the lease.

*44 BBC argues that the well and the 'rights associated therewith had been abandoned and relinquished to the Lessor, the United States of America,' which became the owner of the well bore (Brief at 8 (emphasis added)). BBC argues that abandonment requires a finding of intention to abandon and an actual relinquishment of the enterprise undertaken. BBC states that Penroc's intent to abandon is evidenced by a Report on Wells form which noted the 'abandonment' of Foxie 'A' Federal No. 1, and Penroc's failure to explore or develop the well since it was plugged in December 1977. BBC also states that the Report on Wells form was apparently 'completed in compliance with Section 5 of the Lease which provides that the Lessee may surrender the Lease or a portion thereof by filing in the appropriate office a written relinquishment' (Brief at 7, 8 (emphasis added)).

**9 BBC appears to be arguing that abandoning a well on an otherwise producing Federal unit is tantamount to surrendering, or relinquishing to the Federal Government that part of the leased land which consists of the well bore.

Under the Mineral Leasing Act, 30 U.S.C. § 187 (1982),
The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent surrender any legal subdivision of the area included within the lease. [Emphasis added.]

**WL9 Under section 5 of the lease, 'the lessee may surrender this lease or any legal subdivision thereof by filing in the proper land office a written relinquishment in triplicate.' (Emphasis added.)

Contrary to BBC's assertion, Penroc has not, by plugging and 'abandoning' the well, relinquished any leased land, or any rights pursuant its lease thereof. First, in order to relinquish leased land a written relinquishment must be filed in the appropriate land office. 30 U.S.C. § 187 (1982). It is obvious from the face of the form used by Penroc, entitled 'Sundry Notices and Report on Wells,' that this form was not intended as such a 'written relinquishment.' Second, a relinquishment must be of all the leased land or of 'any legal subdivision thereof.' A legal subdivision is a 'division of land which results from application of ordinary methods used in making a government survey.' Black's Law Dictionary, 807 (5th ed. 1979). A legal subdivision of the public lands is usually not less than a quarter of a quarter section or 40 acres, except in the case of fractional sections. See Elliott A. Riggs, 65 IBLA 22 (1982),[b] for a thorough discussion of the term 'smallest legal subdivision.' In any case, it is unmistakeably clear that even under the most liberal construction of the term 'legal subdivision,' a well bore is too small to be considered as such. Therefore, the lessee does not, by 'abandoning' a well on an otherwise producing lease, 'relinquish' the well bore to the lessor. So long as the lease is in effect the lessee may plug the wells with no effect on lessee's rights to the wells. Even though the lessees may have no present intention to re-enter the well, they have the right to form such an intention at any time while the lease remains in effect. In a number of cases BLM has granted permission to a lessor to return to an *45 existing well and drill to a deeper formation after an 'abandonment' report has been filed. In the context of this report abandonment refers to drilling operations, not to the surrender of rights to the well.

Finally, BBC has cited several court cases in support of its contention that the United States owns the well bore; however, none of the cases is directly on point. In Sunray Oil Co. v. Cortez Oil Co., 112 P.2d 792 (Okla. 1941), a mineral estate owner brought an action against the oil and gas lessee who planned to use a well on the leased premises to **dispose** of **saltwater**. The issue was whether **saltwater** injections would damage the oil and gas formations, thereby adversely affecting future oil and gas production. West Edmond **Salt Water Disposal** Association v. Rosecrans, 226 P.2d 965 (Okla. 1950), involved the right of a landowner to protect against possible subterranean property damage resulting from **saltwater** injections occurring on adjacent property.

10 **Saltwater disposal and resulting property damage are not, per se, issues before the Board. Rather, we are concerned with the rights of the lessee as opposed to the rights of the lessor to use or grant another the right to use the lessees' plugged wells during the lease term. The Oklahoma court, in these cases, did not address this issue.

A case cited by Penroc which is also not on point, but which is more relevant to the instant case, is Browning v. Mellon Exploration Co., 636 S.W.2d 536 (Tex. App. 1982). There, a landowner leased his land and explicitly granted to the oil and gas lessee the rights to a well previously abandoned by a prior lessee. Subsequently, he assigned surface rights to a second party, subject to the lease. The Court ruled against the surface owners who interfered with the new mineral lessee's use of the abandoned well. The Court approved the trial court's injunction against the landowners, stating:
**WL10 In the case at bar the trial court's order contained an express finding that appellee is the exclusive owner of the oil, gas and mineral lease on the land in question as well as Vick No. 1 Richmond Harper (API No. 42-323-30211) well situated thereon and that the freedom to use this well is of significant value to appellee. The trial court also found that appellants have substantially interfered with appellee's right of access to and use of the well and with appellee's operation under the lease generally by means of oral and written acts which have effectively denied appellee the use of its property thus destroying, to the extent of such interference, appellee's property interest.

The Court's discussion of the rights accompanying ownership of the well is instructive; however, the case is not on point in that it concerns ownership rights to a plugged well after lease expiration. The precise question before the Board is novel. We have

found no case, nor have the parties presented any case, which precisely addresses the rights of a lessee as against the Federal lessor with respect to the well bore and the casing of a plugged well during the lease term of the lessee who drilled it.

***46** The Board notes with some consternation that while the administrative record compiled by BLM in processing BBC's application devotes considerable attention to and concern for the rights of the grazing lessee on this land, there is not one word to indicate that any thought at all was given to the rights of the oil and gas lessees and the unit operator, whose well bore was the subject of the application. Moreover, there is nothing in the record to suggest that BLM gave any thought whatever to the effect that the proposed **salt water** injection might have on production of oil and gas in the unit, or its effect on the structure. BLM issued the right-of-way without concern for these important considerations even before they were addressed at the hearing before the State agency. We must characterize BLM's action in this instance as precipitous and ill-advised.

****11** For the reasons stated herein, we hold that this **saltwater disposal** right-of-way granted to BBC contravenes appellants' rights under their oil and gas lease and the Mineral Leasing Act of 1920, that BLM unlawfully granted the right-of-way, and that it is void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the right of way, NM 55790, granted to BBC, Inc., is hereby held to be null and void.

Edward W. Stuebing
Administrative Judge

We concur:

C. Randall Grant, Jr.

Administrative Judge

R. W. Mullen

Administrative Judge

Footnotes

a GFS(O&G) JD-1 (1966)

b GFS(O&G) 165 (1982)

GFS(O&G) 8(1985) (I.B.L.A.), 84 IBLA 36, 1984 WL 51905

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