

13. DESCRIPTIVE CAPTION OF OPINION COVERING THE NE/4SE/4, SOUTH AND WEST OF THE ATCHISON, TOPEKA AND SANTA FE RAILROAD RIGHT OF WAY: By prior title opinion dated 1 March 1978, Linda McQuillen Kulp reported an opinion on the above acreage to Cities Service Company. Following the description as set forth above, a specific boundary description of the tract was made. This boundary description is in error. However, it is clear to us that the abstracts examined and the opinion rendered covered that part of the NE/4SE/4 of Section 28 lying South and West of the Atchison, Topeka and Santa Fe Railroad right of way.

REQUIREMENT NO. 13: None, advisory only.

14. EARL B. GUITAR MINERAL DEED: By Mineral Deed dated 10 April 1978, recorded in Book 234, Page 734, Deed Records, Earl B. Guitar, joined by his wife, Anita G. Guitar, attempted to convey certain nonparticipating mineral interests unto Phillip E. Guitar and Earl B. Guitar, Jr.. This Deed attempted to describe interest in 9 separate tracts and one of the tract descriptions is as follows:

"An undivided 10.3125 acre mineral interest in Section 28, Township 23 South, Range 28 East, Eddy County, New Mexico."

It is the opinion of this examiner that the description is so vague, uncertain and indefinite that it may be treated as no actual conveyance. Therefore, we have not credited any title based upon the terms of this Deed.

REQUIREMENT NO. 14: None, advisory only.

15. MERLAND, INC. TITLE IN SE/4NW/4SE/4: The Pecos Irrigation Company acquired title to all of the N/2SE/4 by Deed dated 15 February 1901, recorded in Book 7, Page 576, Deed Records. Under date of 21 February 1910, a Certificate of Sale for Taxes was issued by the Treasurer of Eddy County to the County of Eddy, recorded in Book 6, Page 392, Tax Sale Certificate Book. This certificate covers the SE/4NW/4SE/4 and was assigned to W. H. Merchant on 18 October 1919.

By instrument dated 26 February 1912, a second Certificate of Sale for Taxes was issued by the Treasurer of Eddy County to the County of Eddy, recorded in Book 12, Page 630, Tax Sale Certificate Book. This certificate, likewise, covered the SW/4NW/4SE/4 and on 30 July 1919, was subsequently assigned to W. H. Merchant.

By Warranty Deed executed 7 April 1919, recorded in Book 22, Page 213, Deed Records, Pecos Irrigation Company attempted conveyance of the SE/4NW/4SE/4 and other noncaptioned lands to C. P. Pardue.

By Tax Deed dated 4 August 1919, and recorded in Book 2, Page 281, Tax Deed Book, C. C. Sikes as Treasurer of Eddy County, conveyed to SE/4NW/4SE/4 to W. H. Merchant.

Subsequently, by Warranty Deed dated 31 January 1923, recorded in Book 54, Page 146, C. P. Pardue and wife Mattie Pardue conveyed the SE/4NW/4SE/4 and other noncaptioned lands unto C. P. Pardue and John Guitar, Trustee.

For approximately the next 13 years, C. P. Pardue and John Guitar, Trustee, executed several mortgages as though they owned title to the subject tract.

Finally, by Quitclaim Deed dated 3 November 1959, recorded in Book 162, Page 231, Deed Records, William H. Merchant, Jr. and Mary Frances Merchant, being successors to W. H. Merchant, quitclaimed the surface only of the SE/4NW/4SE/4 to C. P. Pardue.

It is our analysis that W. H. Merchant, his heirs, successors, and assigns have a stronger, more defensible title to the mineral estate than C. P. Pardue, his heirs, successors, or assigns. Merland, Inc. ultimately acquired title by Deed dated 5 July 1967, recorded in Book 199, Page 296, from William H. Merchant, Jr., dealing in separate property. It is clear that Merland, Inc. does not have a perfect record title and the above mentioned defects should ultimately be cleared by operation of a quiet title suit. However, because it is our conclusion that Merland, Inc. has a stronger, more defensible title than Pardue Farms and the Guitar family, and further, based upon all of the above mentioned transactions taken as a whole, together the quality of the subject well, and the fact that Merland, Inc. has advanced its proportionate share of the drilling and completion costs, we will not recommend that the runs be suspended pending institution of a quiet title suit by Merland, Inc. You may proceed to pay Merland's interest at your discretion.

REQUIREMENT NO. 15: None, advisory only.

CONCLUSION:

Subject to the requirements hereinabove made, we are approving title for division order purposes in the proportions hereinabove set forth.

Respectfully Submitted,

MCCORMICK AND FORBES

By John M. Caraway
John M. Caraway