MONTGOMERY & ANDREWS

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July 15, 2009

Ms. Florene Davidson
New Mexico Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

Re: NMOCD Case No. 14339: Application of OGX Resources, LLC For Approval of a Salt Water Disposal Well, Eddy County, New Mexico

Dear Ms. Davidson:

On behalf of OXY USA, Inc., enclosed for filing are originals and two copies each of the following:

1. Pre-Hearing Statement of OXY, USA;
2. Request for Hearing; and
3. Motion to Dismiss.

Thank you.

Call Monday - 20th
hear case on Thur
Then rule on
both
7-23-09

Very truly yours,

J. Scott Hall

JSH:kw
Enclosures
cc: William F. Carr, Esq.

{00108774-1}

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

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

CASE NO. 14339

APPLICATION OF OGX RESOURCES, LLC FOR APPROVAL OF A SALT WATER DISPOSAL WELL, EDDY COUNTY, NEW MEXICO

PRE-HEARING STATEMENT

This pre-hearing statement is submitted by OXY USA, Inc. as required by the Oil Conservation Division.

APPEARANCES

APPLICANT

OGX Resources, LLC
P.O. Box 953
Midland, TX 79702

APPLICANT'S ATTORNEY

William F. Carr, Esq.
Holland and Hart LLP
P.O. Box 2208
Santa Fe, NM 87504
(505) 988-4421

OPPONENT

OXY USA, Inc.
Post Office Box 50250
Midland, Texas 79710

OPPONENT'S ATTORNEY

J. Scott Hall
Montgomery & Andrews
P.O. Box 2307
Santa Fe, New Mexico 87504-2307
(505) 986-2646

STATEMENT OF THE CASE

APPLICANT

Applicant seeks approval to re-enter the Latham Federal Well No. 1 (API No. 30-015-22752) located 1980 feet from the South line and 1800 feet from the East line (Init J) of Section 15, Township 25 South, Range 29 East, NMPM, Eddy County, New Mexico, to dispose of produced water. Applicant proposes to inject into the Delaware formation at an approximate depth of 3306 feet to 4600 feet. The average and maximum injection rates will be 2000 and 4000 barrels of water per day and the average and maximum surface injection pressure is anticipated to be 661 psi and 1050 psi.

OPPONENT

Oxy USA, Inc., ("Oxy"), opposes and seeks the denial of OGX Resources LLC's Application. Oxy is the record title lessee of the federal oil and gas lease on these lands. Accordingly, Oxy has the exclusive right to utilize the Latham Federal Well No. 1 for re-entry and further exploration and development in the area. OGX has no right to enter onto the lands and its proposed project threatens the waste of otherwise recoverable hydrocarbon reserves.

PROPOSED EVIDENCE

APPLICANT

WITNESSES	EST. TIME	EXHIBITS

OPPONENT

WITNESSES	EST. TIME	EXHIBITS
Patrick Sparks, Landman	15 minutes	2
Derek Andel, Engineerd	30 minutes	4
Melissa Schaff, Drilling Engineer	30 minutes	4
Robert Doty, Geologist	30 minutes	6
Tim Lyons, Geologist	30 minutes	6

PROCEDURAL MATTERS

Oxy USA, Inc. has today filed a Motion To Dismiss the OGX Resources Application. Expedited resolution is requested.

The Applicant did not notify Oxy USA, Inc. of the Application in this matter.

MONTGOMERY & ANDREWS, P.A.

By: _____
J. Scott Hall, Esq.
Post Office Box 2307
Santa Fe, New Mexico 87504
(505) 982-3873
Attorneys for OXY USA, Inc.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was delivered to counsel of record on the 15th day of July, 2009, via electronic mail.

William F. Carr, Esq.
Holland and Hart LLP
P.O. Box 2208
Santa Fe, NM 87504
wcarr@hollandhart.com

_____
J. Scott Hall

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

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

CASE NO. 14339

APPLICATION OF OGX RESOURCES, LLC FOR APPROVAL OF A SALT WATER DISPOSAL WELL, EDDY COUNTY, NEW MEXICO

REQUEST FOR HEARING

Oxy USA, Inc. requests a hearing on its Motion To Dismiss the Application of OGX Resources in this matter. Approximately 25 minutes is requested.

Counsel for Oxy USA, Inc. is available to attend a hearing at the Division's offices until about 9:00 a.m. on July 16th, but will then be traveling the remainder of the day and on Friday. Participation by telephone may be possible. I will be available anytime on Monday of next week.

MONTGOMERY & ANDREWS, P.A.

By: _____

J. Scott Hall, Esq.
Post Office Box 2307
Santa Fe, New Mexico 87504
(505) 982-3873
Attorneys for OXY USA, Inc.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was delivered to counsel of record on the 15th day of July, 2009, via electronic mail.

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J. Scott Hall

00108751

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

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

CASE NO. 14339

APPLICATION OF OGX RESOURCES, LLC FOR APPROVAL OF A SALT WATER DISPOSAL WELL, EDDY COUNTY, NEW MEXICO

MOTION TO DISMISS

Oxy USA, Inc. ("Oxy"), through its counsel, Montgomery and Andrews, P.A. (J. Scott Hall), moves the Division enter its order dismissing OGX Resources LLC's Application in this matter. In support, Oxy states:

1. OGX seeks to re-enter and convert for salt water disposal the Latham Federal Well No. 1 located 1980' FSL and 1800' FEL in Section 15, T25S R29E in Eddy County. OGX proposes to inject significant volumes of water into the Delaware formation at depths from 3,306' to 4,600'.

2. Lease No. NM14778, the federal oil and gas lease covering Sections 15 and 22, including the subject lands, was originally issued by the Bureau of Land Management on December 1, 1971. The surface of the lands is also federal. The oil and gas lease is presently in its primary term and is "HBP"[1]. The Latham Federal Well No. 1 was also drilled during the primary term of the present lease. Oxy is the successor lessee of record and owns 50% of the operating rights under the federal oil and gas lease where the Latham Federal Well No. 1 is located. However, Oxy was not notified of OGX's application.

3. OGX does not have an interest in the subject lands or oil and gas lease and does not otherwise appear to have the right to enter onto the lands to utilize the Latham Federal

[1] "Held By Production".

Well No. 1 wellbore for its proposed project. Rather, the right to utilize the Latham Federal Well No. 1 is owned by Oxy as the lessee of record and owner of 50% of the operating rights. Accordingly, Oxy reserves the right to re-enter the well for future oil and gas evaluation and development and any other purposes authorized under its oil and gas lease. Oxy specifically denies that OGX has any right at all to utilize the Latham Federal Well No. 1.

4. Administrative law precedent from the Interior Board of Land Appeals is virtually dispositive of any claims that OGX may assert to utilize the wellbore to the exclusion of Oxy: *"BLM may not grant to a [third] party...a right-of-way to dispose of salt water by pumping it into the lessee's plugged oil well located on the leased lands, where the grant would preclude lessee's rights to further explore, drill and develop the leasehold under the Mineral Leasing Act by utilizing its own well."* *Penroc Oil Corp.* et al. 84 IBLA 36 (1984). Further, Oxy's right to use the wellbore is "exclusive." "*Under the terms of this* [oil and gas] *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.*" Id. A copy of the *Penroc Oil Corp.* decision is attached as Exhibit "A".

5. Finally, because OGX has no right to use the well, directly applicable Commission precedent requires the dismissal of OGX's Application. In Case No. 13215, the Valles Caldera Trust sought the denial of APD's for the re-entry of wellbores for a geothermal project contending: *"[The Operator] does not have a surface use permit from the United States Forest Service or from any other federal authority authorizing it to enter upon the federally-owned surface of the Baca Ranch for the purpose of conducting the activities proposed in the APDs."* The Commission agreed and denied the operator's applications for re-entry: *"[P]rudence dictates that the Commission ought not to issue a permit where*

the party applicant for the permit clearly does not have the right to conduct the contemplated activity." (Case No. 13215; *Application of Valdes* [sic] *Caldera Trust to Deny Applications of Geoproducts of New Mexico, Inc. for Permits to Re-Enter Abandoned Geothermal Wells* [*APD's*], *Sandoval County, New Mexico;* Order No. R-12093-A, Exhibit "B", attached.)

WHEREFORE, Oxy USA, Inc. requests the Division enter its order dismissing and otherwise denying the Application of OGX Resources, LLC in this matter. The hearing on the OGX Application is presently scheduled for July 23, 2009. Oxy respectfully requests the Division's quick action on this motion so that the parties may avoid any unnecessary cost and effort of preparing for and attending an examiner hearing.

Respectfully Submitted,

MONTGOMERY & ANDREWS, P.A.

By: _____

J. Scott Hall
Attorneys for Oxy USA, Inc.
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
(505) 982-3873

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 15th day of July, 2009 as follows:

William F. Carr, Esq.
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Fax: (505) 983-604

David Brooks, Esq.
New Mexico Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505
Fax: (505) 476-3462

_____

J. Scott Hall

00108621

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

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals

**1 PENROC OIL CORP.
ET AL.

IBLA 84-440

Decided November 27, 1984

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.

EXHIBIT A

*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-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.

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.

[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.

**4 [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).[FNa] 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:

> [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.]

****6** 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.

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.

****7** 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.

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.

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.]

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),[FNb] 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 is- sue.

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:

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

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

FNb) GFS(O&G) 165 (1982)

GFS(O&G) 8(1985), 84 IBLA 36, 1984 WL 51905 (I.B.L.A.)
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STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

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

CASE NO. 13215

APPLICATION OF VALDES CALDERA TRUST TO DENY APPLICATIONS OF GEOPRODUCTS OF NEW MEXICO, INC. FOR PERMITS TO RE-ENTER ABANDONED GEOTHERMAL WELLS (APDs), SANDOVAL COUNTY, NEW MEXICO.

ORDER NO. R-12093-A

ORDER OF THE OIL CONSERVATION COMMISSION

BY THE COMMISSION:

THIS MATTER came before the Oil Conservation Commission (the Commission) for hearing on preliminary questions of law on February 12, 2004 at Santa Fe, New Mexico on petition of Valles Caldera Trust (the Trust), pursuant to Pre-Hearing Order No. R-12093, and the Commission, having carefully considered the pleadings and briefs submitted by the parties hereto, now, on this 12th day of February, 2004,

FINDS,

1. Notice has been given of the application and the hearing on this matter, and the Commission has jurisdiction of the parties herein.

2. By the petition filed herein the Trust seeks an order denying two Applications for Permits to Drill for the re-entry of geothermal wells (APDs) filed by GeoProducts of New Mexico, Inc. (GeoProducts).

3. The wells at issue (the subject wells) are:

Baca Well No. 13, located 865 feet from the North line and 1565 feet from the East line (Unit B) of Section 12, Township 19 North, Range 3 East, Baca Location No. 1, Sandoval County, New Mexico; and

Baca Well No. 15, located 2035 feet from the North line and 85 feet from the East line of Section 11, Township 19 North, Range 3 East, Baca Location No. 1, Sandoval County, New Mexico.

EXHIBIT B

4. The following facts that are recited in the pleading, briefs and attachments thereto are not disputed:

a. The subject wells were drilled by Union Geothermal Company (an affiliate of Union Oil Company of California) and were abandoned in the summer of 1984.

b. The subject wells are located on a portion of the Baca Ranch, a tract of some 98,000 acres, located in the Jemez Mountains, northwest of Santa Fe, New Mexico. The Baca Ranch comprises most of the Valles Caldera, a large resurgent lava dome with geothermal potential geothermal.

c. Prior to 2000, the surface and minerals of the Baca Ranch were privately owned fee land. In 2000, the United States acquired the surface and an undivided seven-eighths (7/8ths) of the minerals of the Baca Ranch from the private owners in a negotiated sale, authorized by special act of Congress, the Valles Caldera Preservation Act, P.L. 106-248, codified as 16 U.S.C. 698v.

d. The Valles Caldera Preservation Act (the Act) established the Trust as a government corporation pursuant to Chapter 91, Title 31 of the United States Code. Responsibility for management of the Baca Ranch is divided between the Trust and the Secretary of Agriculture, through the National Forest Service.

e. There is an outstanding one-eighth (1/8th) mineral interest in the Baca Ranch that is privately owned. The Act provides that:

> The acquisition of the Baca ranch by the Secretary shall be subject to all outstanding valid mineral interests. The Secretary is authorized and directed to negotiate with the owners of any fractional interest in the subsurface estate for the acquisition of such fractional interest on a willing seller basis . . . ." 16 U.S.C. 698v-2(e).

f. The Act further provides that:

> Upon acquisition of all interests in minerals within the boundaries of the Baca ranch . . . the lands comprising the Preserve are thereby withdrawn from disposition under all laws pertaining to mineral leasing, including geothermal leasing.

g. GeoProducts holds a geothermal lease from the owners of the outstanding mineral interest.

h. On December 12, 2003, GeoProducts filed the APDs with the Santa Fe District office of the Oil Conservation Division (OCD). The OCD has neither approved, nor disapproved the APDs.

i. GeoProducts does not have a surface use permit from the United States Forest Service or from any other federal authority authorizing it to enter upon the federally-owned surface of the Baca Ranch for the purpose of conducting the activities proposed in the APDs.

5. The Trust contends that the OCD and the Commission lack jurisdiction to approve the APDs because their jurisdiction to regulate geothermal exploration under the Geothermal Resources Conservation Act [NMSA 1978 Sections 71-5-1 through 71-5-24, as amended] is preempted by federal law. This preemption is alleged to arise from the Valles Caldera Preservation Act, the Mineral Leasing Act for Acquired Lands [30 U.S.C. Sections 351-360], the regulations of the United States Bureau of Land Management (BLM) implementing the latter act, or some combination thereof.

6. No party contends that the Valles Caldera Preservation Act is intended to effect a federal acquisition under U.S. Constitution, Art. I, Section 8, Clause 17, authorizing Congress "to exercise exclusive Legislation in all Cases whatsoever," or that the State of New Mexico has consented to the acquisition of the Baca Ranch on that basis.

7. Neither the Valdes Caldera Preservation Act nor the Mineral Leasing Act for Acquired Lands expressly preempts state power or expressly occupies the field with respect to regulation of mineral development of the Baca Ranch. To the contrary, the Mineral Leasing Act for Acquired Lands makes applicable thereto a provision of the Mineral Leasing Act of 1920 that, "nothing in this Act shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have . . . ." [30 U.S.C. Section 189].

8. The regulations of the BLM relating to geothermal drilling, codified at 43 CFR Section 3260 *et seq.*, although not in exactly the same words, are generally similar to the BLM regulations applicable to oil and gas drilling, codified at 43 CFR, Section 3160 *et seq.* The latter regulations clearly and expressly apply only to the activities of a person operating under a lease from the United States. *See* 35 CFR Section 3160.0-5 (f) and (h). A reasonable interpretation of these rules is that they are not applicable to the activity of a person who operates under the authority of a lease from a mineral cotenant of the United States.

9. Even where federal law neither expressly preempts state jurisdiction nor occupies the field through extensive regulation of the activity in question, there is authority indicating that state regulation may nevertheless be preempted if it stands as an obstacle to the achievement of the goals of Congress. Thus, in *Ventura County v. Gulf Oil Corporation,* 601 F.2d 1080 (9th Cir. 1979), the United States Court of Appeals for the 9th Circuit held that a county could not impose a requirement for a land use permit upon a federal lessee drilling for oil and gas on federal lands because the implied assertion of authority by the county to disallow drilling on federal lands conflicted with the purpose of Congress, in its enactment of the Mineral Leasing Act, to authorize such drilling.

10. Assuming, however, that *Ventura County* remains a viable authority in the light of the subsequent decision of the United States Supreme Court in *California Coastal Com'n v. Granite Rock Co.*, 480 U.S. 572 (1987), it does not apply in this situation for two independent reasons.

11. In the first place, an approved APD is merely an authorization to conduct an activity presumed to be otherwise lawful. It does not require an operator to drill. If drilling in accordance with the APD violates federal law or a property right, approval of the APD does not constitute any colorable authority for such violation. *See Magnolia Petroleum Co. v. Railroad Com'n,* 170 S.W.2d 189 (Tex. 1943) where the Texas Supreme Court discussed the effect of a Texas Railroad Commission permit to drill:

> [T]he order granting the permit is a purely negative pronouncement. It grants no affirmative rights to the permittee to occupy the property, ... It merely removes the conservation laws and regulations as a bar to drilling the well . . . . [170 S.W.2d at 191]

12. In the second place, the Valles Caldera Preservation Act cannot reasonably be read as evidencing a congressional purpose to preclude geothermal development of the Baca Ranch until such time as the outstanding mineral interest is acquired. The Act does not withdraw the lands from leasing until the government acquires the outstanding mineral interest. Since Congress directed that the acquisition be sought on a "willing seller" basis only, Congress must have contemplated the possibility that the seller would not be willing, and that the proposed acquisition might never take place.

13. The Trust correctly points out that the federal mineral interest cannot be force pooled pursuant to state law without federal consent. *Kirkpatrick Oil & Gas Co. v. U.S.*, 675 F.2d 1122 (10th Cir. 1982). However, compulsory pooling is not sought in this case, and, under New Mexico law, is not a prerequisite to the granting of an APD. To the contrary, NMSA 71-5-11.C provides that compulsory pooling may be sought by a party who "proposes to drill or has drilled" a well on the unit.

14. For the foregoing reasons, the Commission concludes that the authority conferred on the Commission and the OCD by the Geothermal Resources Conservation Act to regulate geothermal drilling on the Baca Ranch is not preempted, and the Commission has jurisdiction of the subject matter.

15. The Trust also argues that the granting of the APDs at this time would be premature because GeoProducts does not have authority for the use of the surface that will be required to conduct the proposed re-entry operation.

16. The Commission does not have jurisdiction to determine title or the rights of any party to occupy property. However, prudence dictates that the Commission ought not to issue a permit where the party applicant for the permit clearly does not have the right to conduct the contemplated activity. As stated by the Texas Supreme Court, "the Railroad

Commission should not do the useless thing of granting a permit to one who does not claim the property in good faith." *Magnolia Petroleum Co., supra,* 170 S.W.2d at 191.

17. A majority of American jurisdictions hold that a mineral co-tenant has the right to produce minerals from the co-owned property without the consent of the a non-joining co-tenant, subject to the requirement that it account to the non-joining co-tenant for its share of proceeds. 2 H.Williams and C. Meyers, *Oil and Gas Law,* Section 502, at 574.

18. New Mexico has implicitly recognized that a cotenant has this right by allowing a cotenant who produced oil from co-owned premises to recover its development costs out of the share of production allocable to a non-joining cotenant, in the absence of either an agreement or a pooling order. ***Belletv. Grynberg,*** 114 NM 690, 845 P.2d 784 (Sup. Ct. 1992).

19. A mineral lessee has a right under New Mexico law to use so much of the surface as is reasonably necessary to extract the minerals. ***Amoco Production Co. v. Carter Farms Co.,*** 103 N.M. 117, 703 P.2d 894 (Sup. Ct. 1985). Jurisdictions that have addressed the question generally extend that right to the owner of a severed mineral interest, by implication without the necessity of a specific grant of that right in the instrument of severance. 1 H. Williams and C. Meyers, *supra,* Section 218, at 198.7.

20. It is therefore reasonable to conclude that any owner of a mineral interest or its lessee has the right to occupy the surface to the extent necessary to explore for or produce the minerals. Accordingly it would not be appropriate, in ordinary cases, for OCD to require an applicant for APD approval to demonstrate a specific right to use the surface.

21. In this case, however, both parties agree that exploration can only begin after approval by the United States Forest Service of reasonable use of the federally owned surface based on an operating plan submitted by GeoProducts. It is also undisputed that GeoProducts has neither obtained nor applied for a surface use authorization from the Forest Service for its proposed operation. Accordingly Commission concludes that approval of APDs for re-entry of the subject wells at this time would be improvident.

22. In its brief, GeoProducts contends that approval of APDs by the state conservation authority is a condition precedent to its obtaining surface use authority from the Forest Service. GeoProducts Brief at 5. However, the Forest Service Memorandum that it cites in support of that contention does not so state.

23. The cited memorandum states that "[t]he mineral owner or lessee must provide the Forest Supervisor with proof of right to exercise mineral rights." The right to exercise mineral rights arises, if at all, from the ownership of the mineral interest, and not from the approval of an APD which merely confirms that the specific operation proposed complies with OCD's spacing and technical requirements.

24. The Forest Service use permit might require changes in the APDs or might limit GeoProducts to accessing its minerals by a completely different operation than the

proposed re-entries. Because the Commission cannot foresee the limitations that might be imposed, it is particularly appropriate that the Forest Service authorization process should proceed first, before APDs are approved.

25. Because the above conclusions are sufficient to dispose of the matter presently before the Commission, it is not necessary at this time to address other issues raised in the briefs.

IT IS THEREFORE ORDERED THAT:

1. The District Supervisor of the Santa Fe District of the Oil Conservation Division is hereby ordered to deny the APDs filed by GeoProducts for re-entry of the subject wells for the reasons stated in this order.

2. Jurisdiction is hereby retained for the entry of such further orders as the Division may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

LORI WROTENBERY, CHAIR

JAMI BAILEY, MEMBER

ROBERT LEE, MEMBER

SEAL