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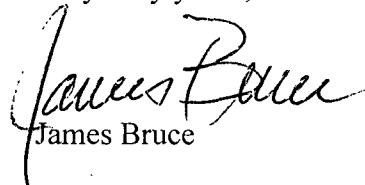
Terry G. Warnell  
Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

Re: Case No. 14472/COG Operating LLC

Dear Mr. Warnell:

Enclosed is a copy of *Penroc Oil Corp., IBLA 84-440*, which is the case I referenced this morning. As you can see, it holds that a company such as COG has no right to take over a well, on a lease in which it owns no interest, by applying to the BLM for a right-of-way.

Very truly yours,



James Bruce

Attorney for Yeso Energy, Inc.

cc (w/encl.): David K. Brooks  
Gail MacQuesten  
J. Scott Hall  
Phil Brewer

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.

## 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.

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 asserts 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

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.

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.

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.

[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 in 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 "exact[ing] 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*.

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). 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).

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

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.]

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

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 "to 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.

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:



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.

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.

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)).

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), for a thorough discussion of the term "smallest legal subdivision." In any case, it is unmistakably 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

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.

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:

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.

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.

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.

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Edward W. Stuebing  
Administrative Judge

We concur:

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C. Randall Grant, Jr.  
Administrative Judge

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R. W. Mullen  
Administrative Judge