

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

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

APPLICATION OF ODESSA OIL
INVESTMENTS, INC. FOR
SALT WATER DISPOSAL,
EDDY COUNTY, NEW MEXICO.

CASE 11839

MOTION TO DISMISS

YATES PETROLEUM CORPORATION, ("Yates") hereby moves the Division for an order dismissing the application of Odessa Oil Investments, Inc. ("Odessa") for the disposal of produced salt water in the wellbore of the Lakewood State Com Well No. 1 located 1980 feet from the West and North lines of Section 30, Township 19 South, Range 26 East, NMPM, Eddy County, New Mexico, and in support of this motion states:

FACTS:

1. In Case 11839, Odessa Oil Investments, Inc. seeks authority to convert the Lakewood State Com Well No. 1 to salt water injection and inject produced water into the Devonian formation in an openhole interval from 10,300 feet to 10,700 feet.
2. On July 1, 1997, Yates Petroleum Corporation acquired the State Oil and Gas Lease covering Section 30, Township 19 South, Range 26 East for the purpose of re-entering

the Lakewood State Com Well No. 1 and attempting to return it to production.

3. Yates has contacted Odessa concerning its plans for the re-entry of this well and has been advised by Odessa that it will see Yates at the Division hearing on Odessa's application.

ARGUMENT:

I.

**YATES HAS THE EXCLUSIVE RIGHT TO
UTILIZE THE LAKEWOOD WELLBORE**

Yates Petroleum Corporation, leased the oil and gas rights under the lands upon which the Lakewood State Com Well No. 1 is located from the State of New Mexico by lease dated July 1, 1997. The oil and gas mineral estate under Section 30 is the dominant estate. As the lessee thereof, Yates has the exclusive right to use as much of the leased premises as is reasonably necessary to carry out its operations in drilling for and producing oil and gas from this acreage. *Amoco Production Co. v. Carter Farms Co.*, 103 N.M. 117, 119, 703 P.2d 894, 896 (1985); 1 H. Williams & C. Meyers, Oil and Gas Law at Sec 218.6, 208 (1983). This lease carries with it the right to use the leased premises in such a manner as is reasonably necessary to comply with the terms of the lease and effectuate its purposes. *Id.*

The courts and the treatises have consistently recognized, that whether express or not, a lease carries with it a right to possession and use of the surface. The basis for this view has been explained as follows: "This rule is based upon the principle that when a thing is granted

all means to obtain it and all the fruits and efforts of it are also granted.” *Squires v. Lafferty*,
102 S.E. 90 W. Va. (1924); 4 Sommers Oil & Gas, Sec. 652.

Furthermore, Odessa, either directly or indirectly, cannot interfere with Yates’ development of the mineral estate. See, *Cozart v. Crenshaw*, 299 S.W. 499 (Tex. Civ. App. 1927), *Eternal Cemetery Corporation v. Tammen*, 324 S.W. 2d 562 (Tex. Civ. App. 1959), 11 O&GR 270.

Yates owns the minerals under the spacing unit upon which the Lakewood well is located and, thereby, has the exclusive right to select the location of the oil and gas wells on that spacing unit. Williams & Meyers states the rule as follows:

Related to the question of excessive use~~X~~ of easements ^{or not} ~~vel non~~ by the mineral owner of the lease is the right of the mineral owner or lessee to determine well locations. Generally, in the absence of a showing of bad faith, the courts appear ready to accept his judgment as to the appropriate location of the well even though the surface owner would prefer some other location.

Williams & Meyers, *supra*, at 244, § 218.8.

In this case there can be no dispute that once the Lakewood well ceased to produce and the lease terminated, the wellbore became part of the reality and title thereto vested in the State as the landowner. However, once the State again leased this acreage and did not make provisions therein concerning the use of this wellbore, the right to use the wellbore for the purpose of a re-entry passed to the lessee.

The leading and controlling case on this on this point is *Gutierrez v. Davis*, 618 F.2d 700 (10th Cir. 1980). This case was brought by Gutierrez, the fee owner and lessor, against

Davis, the oil and gas lessee, for the re-entry of an old well on the tract asserting that Davis was guilty of conversion of the casing left in the abandoned well. The lease in question contained no restrictions on exploration and drilling, except that a well could not be drilled within 200 feet of a house or barn. In ruling for Davis, the Tenth Circuit held:

The lease gives Davis the right to use the lands for the “purpose of exploring ... mining and operating for oil” and other minerals. We agree with the trial court that without express language to the contrary, a fair reading of the contract gives Davis the right to drill through any part of the real estate including the plug and casing of the abandoned well when, as here, it was reasonable use within the stated purpose.

Yates is the operator of the tract upon which the Lakewood well is located. Since this lease contains no language to the contrary, Yates may drill at any location on this tract it chooses -- including drilling through the existing wellbore of the Lakewood well. Ownership of this wellbore rests with Yates, which has the absolute and exclusive right to use it to explore for and produce oil and gas from under this tract.

II.

THE OIL CONSERVATION DIVISION LACKS JURISDICTION TO GRANT THE APPLICATION OF ODESSA

As the New Mexico Supreme Court has noted, “the Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it.” *Continental Oil Company v. Oil Conservation Commission*, 70 N.M. 310, 315, 373 P2d 809, 814 (1953). The powers of the Division are enumerated in NMSA 1978, Section 70-2-12, and include:

authority ... to identify the ownership of oil or gas producing leases, properties, wells, tanks, refineries, pipelines, plants, structures and all other transportation equipment and facilities. (emphasis added)

Should the Division grant the application of Odessa in this case, it will in effect be deciding the ownership of this wellbore. This it cannot do.

CONCLUSION:

Yates Petroleum Corporation is the owner of the oil and gas lease covering Section 30, Township 19 South, Range 26 East, NMPM, Eddy County, New Mexico. As such it has the exclusive right to re-enter the wellbore of the Lakewood State Com Well No. 1 and attempt to return it to production.

Odessa Oil Investments, Inc. asks the Division to authorize its use of this wellbore for salt water disposal. It has no right to use this well for this purpose. Furthermore, the Division lacks jurisdiction to vest Odessa with ownership of this wellbore. The Division should dismiss Odessa's application.

Respectfully submitted,

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& SHERIDAN, P.A.

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ATTORNEYS FOR YATES PETROLEUM
CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 1997, I have caused to be hand delivered a copy of this Motion to Dismiss in the above-captioned case to the following named counsel:

James Bruce, Esq.
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Attorney for Odessa Oil Investments, Inc.



William F. Carr