

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

01 SEP 18 PM 12:54

APPLICATION OF LEONARD RESOURCE  
INVESTMENT CORPORATION FOR  
COMPULSORY POOLING, LEA COUNTY,  
NEW MEXICO.

No. 12,730

RESPONSE OF APPLICANT IN OPPOSITION TO MOTION TO DISMISS,  
AND APPLICANT'S PRE-HEARING STATEMENT

Leonard Resource Investment Corporation ("Leonard Resource") has applied for an order pooling all mineral interests from the surface to the base of the Abo formation underlying the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 2, Township 20 South, Range 38 East, N.M.P.M., Lea County, New Mexico. Coates Energy Trust et al. ("Coates") seeks to dismiss the application. Coates' argument is without merit, and its motion must be denied.

I. RESPONSE TO MOTION TO DISMISS.

Leonard Resource began negotiating with Coates in June 1999 to lease Coates' mineral interest. These negotiations continued for six months. During that time, Leonard Resource repeatedly asked Coates for its lease form, which Coates refused to provide. By mid-January 2000, the parties had agreed to certain lease terms. These are reflected in Coates' letter of January 13, 2001, attached hereto as Exhibit A. Please note that Coates states:

**This is not, and is not intended to be, a binding agreement between the parties and none of the parties will have any liability to the other in the event a binding oil and gas lease is not executed for any reason.**

Exhibit A, page 2 (emphasis added).

Coates finally sent its lease form to Leonard Resource by letter dated January 14, 2000, a copy of which is attached hereto as Exhibit B. That letter states:

If Leonard finds the basic terms of the lease form acceptable, **please advise by 4:00 p.m. on January 22, 2000**, and Coates will prepare a completed lease form for final review.

Again, this letter states:

**This is not, and is not intended to be, a binding agreement between the parties and none of the parties will have any liability to the other in the event a binding oil and gas lease is not executed for any reason.**

(Emphasis added.) The lease form, which is eighteen pages long, was not acceptable to Leonard Resource. Therefore, as of 4:01 p.m. on January 22, 2000, since no lease form was agreed to by the parties, neither party had "any liability to the other," in Coates' own words.

There are several terms of Coates' lease form which are not acceptable to Leonard Resource. For example, Coates' lease form contains a 90 day continuous drilling obligation. This provision was new to Leonard Resource, and is unacceptable for reasons which will be discussed at the hearing. In addition, Coates' lease form contains an onerous royalty provision which is uneconomic for Leonard Resource to administer. These are material lease provisions to which Leonard Resource did not previously agree. When Leonard Resource contacted Coates about the lease form, it was told by Coates that these terms were non-negotiable.

In June 2000, Leonard Resource wrote to Coates and informed it in writing of what it had previously informed Coates verbally: That Coates' lease form was not acceptable. As a counter-offer, Leonard Resource provided Coates with a standard lease form for review, which Coates would not agree to. Again, the parties were unable to reach agreement.

Coates states that a lessor is entitled to a lease form which is mutually fair and reasonable. **Motion to Dismiss at 4.** Coates' argument seems to be that it need not accept a lessee's proposed lease form, but that a lessee must accept Coates' lease form. It seems the element of mutuality is missing from that proposition.

Since no agreement was reached by the parties, in July 2001 Leonard Resource sent Coates a proposal letter and an AFE, and asked it to join in the well. Leonard Resource is not trying to "cram down" a lease form on Coates. Coates need not accept Leonard Resource's lease form. By the same token, Leonard Resource need not accept Coates' lease form. However, since the parties have not reached voluntary agreement, Leonard Resource must pool Coates' interest as provided by statute. Coates will have the option to join in the proposed well. If Coates has a problem with this result, its remedy is with the Legislature, not with Leonard Resource or the Division.

**Based on Coates' own words, there is no lease between the parties.** To try to fabricate an agreement now is without basis in law or in fact. Leonard Resource sought in good faith to obtain the voluntary joinder of Coates' in its proposed well in accordance with the pooling statutes and Division procedure. Since the parties have not reached agreement, compulsory pooling is proper, and the motion to dismiss must be denied.

II. PRE-HEARING STATEMENT.

**APPEARANCES**

APPLICANT

Leonard Resource Investment  
Corporation  
Post Office Box 3422  
Midland, Texas 797012  
Attention: Dan M. Leonard  
(915) 682-3712

APPLICANT'S ATTORNEY

James Bruce  
Post Office Box 1056  
Santa Fe, New Mexico 87504  
(505) 982-2043

OPPONENT

Coates Energy Trust

OPPONENT'S ATTORNEY

J.E. Gallegos

**PROPOSED EVIDENCE**

WITNESSES

EST. TIME

EXHIBITS

Dan M. Leonard  
(landman)

25 Min.

six

J. Worrall  
(geologist)

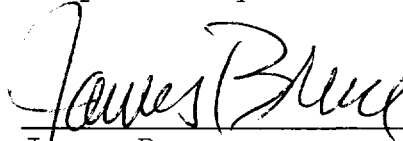
15 min.

four

**PROCEDURAL MATTERS**

The opponent has filed a motion to dismiss. That should be resolved after testimony is presented.

Respectfully submitted,



James Bruce  
Post Office Box 1056  
Santa Fe, New Mexico 87504  
(505) 982-2043

Attorney for Leonard Resource  
Investment Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was faxed and mailed to the following counsel of record this 17th day of September, 2001:

J.E. Gallegos  
Gallegos Law Firm  
Building 300  
460 St. Michael's Drive  
Santa Fe, New Mexico 87505  
Fax No. (505) 986-0741

  
\_\_\_\_\_  
James Bruce

**COATES ENERGY TRUST**

ENERGY PLAZA II, SUITE 810

8810 N. NEW BRAUNFELS

SAN ANTONIO, TEXAS 78217

(210) 680-0110  
FAX (210) 680-0160

P.O. BOX 171717

January 13, 2000

**VIA FACSIMILE (915) 687-1307 & U.S. MAIL**

Mr. Glen E. Farmer  
415 West Wall, Suite 705  
Midland, Texas 79701-4417

Re: Oil and Gas Lease Proposal  
NW/4 Section 2, T-20-S, R-38-E, N.M.P.M.  
Lea County, New Mexico

Dear Mr. Farmer

We are in receipt of your letter dated December 1, 1999, in which you set out a proposal to lease the mineral interest of Coates Energy Trust; Jenny Roberts Schimpff Trust; Catherine G. Roberts Trust; Barry Coates Roberts Trust; Lisa Stieren Hardeman Trust; George L. Stieren Trust; Wendy Stieren Wirth Trust; Kelly Stieren Daniell Trust and Amy E. Stieren Trust (collectively "Coates") under the above referenced acreage in Lea County, New Mexico. You have advised that you are leasing on behalf of Leonard Resource Investment Corp. ("Leonard") out of Midland, Texas.

Please be advised that Coates is not interested in leasing under the terms set out in your letter but would be agreeable to negotiating a lease with Leonard on the referenced acreage, subject to Leonard's acceptance of the Coates lease form, under the following basic terms:

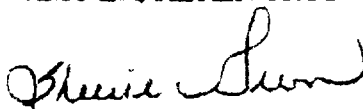
Bonus:	\$250/net acre
Term:	2 years paid-up
Royalty:	25% BPO & 27-1/2% APO, well by well basis
Depths:	Surface down to 7,900 feet
Acreage:	160 acres

Mr. Glen E. Farmer  
January 13, 2000  
Page 2

If Leonard is interested in negotiating a lease on the basic terms and conditions set forth above, please advise by 4:00 p.m. on January 21, 2000, and we will then forward to you a copy of the Coates lease form for review. This is not, and is not intended to be, a binding agreement between the parties and none of the parties will have any liability to the other in the event a binding oil and gas lease is not executed for any reason.

Yours very truly,

COATES ENERGY TRUST; JENNY ROBERTS  
SCHIMPF TRUST; CATHERINE G. ROBERTS  
TRUST; BARRY COATES ROBERTS TRUST;  
LISA STIEREN HARDEMAN TRUST; GEORGE L.  
STIEREN TRUST; WENDY STIEREN WIRTH  
TRUST; KELLY STIEREN DANIELL TRUST AND  
AMY E. STIEREN TRUST



Sherrie Green, CPL  
Land Manager

**COATES ENERGY TRUST**

ENERGY PLAZA II, SUITE 510

6610 N. NEW BRAUNFELS

SAN ANTONIO, TEXAS 78217

(512) 580-0113  
FAX (512) 580-0160

P. O. BOX 171717

January 14, 2000

Mr. Glen E. Farmer  
415 West Wall, Suite 705  
Midland, Texas 79701-4417

Re: Oil and Gas Lease Proposal  
NW/4 Section 2, T-20-S, R-38-E, N.M.P.M.  
Lea County, New Mexico

Dear Mr. Farmer

We are in receipt of your faxed message of January 14, 2000, in which you advised that Leonard Resource Investment Corp. agrees to the following basic terms set out in Coates' letter to you dated January 13, 2000.

Accordingly, for your review we have enclosed a copy of the Coates lease form. Please note that such form will need to be changed to reflect the agreed upon terms, the proper parties, and the correct references to the State of New Mexico instead of Texas, where applicable. If Leonard finds the basic terms of the attached lease form acceptable, please advise by 4:00 p.m. on January 22, 2000, and then Coates will prepare a completed lease form for final review. This is not, and is not intended to be, a binding agreement between the parties and none of the parties will have any liability to the other in the event a binding oil and gas lease is not executed for any reason.

Yours very truly,

COATES ENERGY TRUST; JENNY ROBERTS  
SCHIMPF TRUST; CATHERINE G. ROBERTS  
TRUST; BARRY COATES ROBERTS TRUST;  
LISA STIEREN HARDEMAN TRUST; GEORGE L.  
STIEREN TRUST; WENDY STIEREN WIRTH  
TRUST; KELLY STIEREN DANIELL TRUST AND  
AMY E. STIEREN TRUST

  
Sherrie Green, CPL  
Land Manager

sg  
Enclosure

