

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

No. D-101-CV-2013-02581

LONE MOUNTAIN RANCH, LLC,
MARY LLOYD ESTRIN
and ROBERT ESTRIN,

Plaintiffs/Counterdefendants,
vs.

SANTA FE GOLD CORPORATION,

Defendant,

and ORTIZ MINES, INC., and
POTTER/ORTIZ, LLC,

Defendants/Counterclaimants.

**ORDER GRANTING PLAINTIFFS/COUNTERDEFENDANTS'
MOTION FOR SUMMARY JUDGMENT, DENYING
DEFENDANTS/COUNTERCLAIMANTS' SECOND MOTION FOR
PARTIAL SUMMARY JUDGMENT, AND
ENTRY OF FINAL JUDGMENT**

THIS MATTER came before the Court for hearing on August 9, 2016, on Plaintiffs/Counterdefendants Mary Lloyd Estrin, Robert Estrin, and Lone Mountain Ranch LLC's (collectively "Lone Mountain") Motion for Summary Judgment and Defendants/Counterclaimants Ortiz Mines, Inc. and Potter/Ortiz, LLC's (collectively "Potter/Ortiz") Second Motion for Partial Summary Judgment.

Lone Mountain's Motion for Summary Judgment sought a declaration that Lone Mountain Ranch, LLC, the fee simple owner of a surface estate subject to a reserved and severed fee simple mineral estate owned by Potter/Ortiz, LLC, has the right to participate in all publicly

available processes and permitting proceedings relating to mineral development on the property and to express concerns about, or object to, mineral development. *Potter/Ortiz sought a ruling that the Court was without jurisdiction to rule on Plaintiff's request for declaratory relief^[SMS].* Potter/Ortiz's Second Motion for Partial Summary Judgment sought a declaration that, as the result of the mineral reservation in the deed under which Lone Mountain obtained title to the surface estate, Lone Mountain has no such rights to oppose mineral development and should be enjoined from opposing or resisting mineral development by any act, word, or deed.

After reviewing the parties' respective motions and memoranda filed in support and in opposition, and after hearing arguments of counsel, the Court enters the following uncontroverted material facts as to which no genuine material issue exists:

1. The property subject to this litigation is known as the Ortiz Grant, located in the Galisteo Basin in Santa Fe County, New Mexico, comprising approximately 27,000 acres, more or less. In 1946, George W. Potter and Fay F. Potter acquired title to the Ortiz Mine Grant.
2. In 1947, George W. Potter and Fay F. Potter conveyed one-third of the surface estate of the Ortiz Grant, in fee simple absolute, to Lone Mountain Ranch LLC's predecessors-in-interest, Mr. and Mrs. Gage.
3. The 1947 deed reserved the mineral estate to George W. Potter and Fay F. Potter, the predecessors-in-interest to Potter/Ortiz, LLC. The reservation provided that the grantors reserved all "oil, gas, coal, metals and minerals, in, on or under the surface of the lands and real estate hereby conveyed" and provided the mineral estate owner with "the right and license of exploring, mining, developing or operating, for any, or all of said products, upon said lands, and of erecting thereon all necessary buildings, pipe lines, machinery and equipment necessary in

and about the business of mining, developing, or operating, for any of said products, to the same extent and with the full rights of an owner operating on his own land.”

4. In 1965, Marion M. Lloyd, a predecessor to Lone Mountain Ranch, LLC, succeeded to the interests of Mr. and Mrs. Gage by acquiring through warranty deed part of the surface estate within the Ortiz Grant, in fee simple absolute, consisting of approximately 27,545 acres (the “Deed”). This property is commonly referred to by the parties as the “Lone Mountain Ranch.” The Deed granting the surface estate to Marion M. Lloyd expressly noted the severance and reservation of the mineral estate, as set forth in paragraph 3 above (the “Deed Reservation”).

5. The parties agree that the Deed and Deed Reservation are unambiguous and should be construed as a matter of law.

6. Lone Mountain’s Motion for Summary Judgment asserts that the Deed Reservation creates a right of access to and reasonable use of the surface estate to explore for and develop minerals, but does not act as a covenant or an agreement prohibiting Lone Mountain’s participation in all available public processes to seek protections for the surface estate, or to object to mineral development within those public fora or advocate that restrictions should be imposed upon any mineral development. Potter/Ortiz’s Second Motion for Partial Summary Judgment asserts that the Deed Reservation, and in particular the final seventeen (17) words stating that the mineral estate may use the surface for mineral exploration and development “to the same extent and with the full rights of an owner operating on his own land,” prohibits Lone Mountain from objecting to or resisting mineral development, by any act, word, or deed, including in all public fora where the mineral estate owner seeks permitting and other necessary governmental approvals to conduct mineral exploration and development. [TR. 8/9/2016, 29:8-10]

The Court determines that no genuine issue of material fact exists and enters the following conclusions of law:

1. *The Court has jurisdiction to render judgment on Plaintiffs' request for declaratory relief.*^[sms]

2. Lone Mountain acquired title to the surface estate of the Lone Mountain Ranch subject to the reservation of the mineral estate and with knowledge that the mineral estate is the dominant interest in that the owner of the mineral estate held the right to explore for, develop, and extract the minerals and use so much of the surface estate as is reasonably necessary to do so. [TR. 8/9/2016, 29:8-10, 44:21 to 45:3]

2. As a result, the surface estate owner does not possess the ability to prohibit the owner of the mineral estate from entering onto the surface and from doing what is necessary for the investigation, exploration, and development of minerals. [TR. 8/9/2016, 45:10-15]

3. However, as a consequence of the reservation of the mineral estate, the surface estate owner has not relinquished its right to participate in various regulatory, administrative, or statutory proceedings and advocate against mineral development or for the imposition of restrictions on mineral development, even if such participation delays, impedes, or increases the costs of mineral development. [TR. 8/9/2016, 45:16 to 46:3, 56:9-14]

4. In order to prohibit such conduct and cause the surface estate owner to relinquish the right to participate in such governmental processes that may have the impact of regulating – or even potentially prohibiting development of the mineral estate – the reservation itself must include specific covenantal language prohibiting such conduct. No such language exists in the Deed Reservation. [TR. 8/9/2016, 46:2-7]

5. *The issue raised by Plaintiffs is not a matter of First Amendment rights, but rather it is a matter of the meaning of the agreement between private parties.*

5. There is no legal authority supporting Potter/Ortiz's position that a conveyance of the surface estate, with a corresponding reservation and severance of the mineral estate, causes the surface estate owner to relinquish its rights to participate in all governmental processes that could impact or even prohibit development of the mineral estate. [TR. 8/9/2016, 45:16 to 46:2]

6. *While Plaintiffs have not relinquished their rights to participate in various governmental processes regarding mineral extraction, their request that they be allowed to undertake any opposition to mineral development without fear of litigation or retribution is too broad a request for the Court to grant. This order sets forth specific types of activity that is appropriate, there may be conduct which would be either unlawful or violative of the agreement, and therefore, the Court will not grant the broad request for unfettered oppositional rights without fear of litigation or retribution.¹*

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that Potter/Ortiz's Second Motion for Partial Summary Judgment shall be and hereby is DENIED. [TR. 8/9/2016, 46:8-9]

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Lone Mountain's Motion for Summary Judgment shall be and hereby is GRANTED and that Lone Mountain shall receive and hereby receives the following declaration of its rights, as a surface estate owner, consistent with the prayer for relief in the Second Amended Complaint:

A. Lone Mountain has the right to participate in all ~~all~~ *public*^[sms] permitting processes to regulate or oppose mineral development by providing testimony, by gathering and presenting

¹ *The Court understands "retribution" in this context to mean "punishment."*^[sms]

evidence, and by providing advocacy and public comment in those public permitting processes related to mineral development; [TR. 8/9/2016, 47:18-21, 49:9-22, 50:23 to 51:2]

B. Lone Mountain has the right to hire environmental experts to conduct studies related to proposed mineral development; [TR. 8/9/2016, 51:3-5]

C. Lone Mountain has the right to provide information relevant to mineral permitting processes to state agencies and authorities (TR. 8/9/2016, 51:15-23);

D. Lone Mountain has the right to coordinate with affected New Mexico Pueblos in preparation for and related to public *mining*^[sms] permitting processes; [TR. 8/9/2016, 52:14 to 53:20]

E. Lone Mountain has the right to prepare presentations to Santa Fe County and State legislative and administrative bodies related to mineral permitting applications; [TR. 8/9/2016, 53:21 to 52:3]

F. *In response to a request from Santa Fe County*^[sms] Lone Mountain has the right to prepare presentations and present evidence and comment ~~in response~~^[sms] as a stakeholder in public processes related to the adoption of Santa Fe County mineral/*oil and gas* development ordinances; [TR. 8/9/2016, 55:2-14]

G. Lone Mountain has the right to participate in mineral development permit application hearings; [TR. 8/9/2016, 55:21 to 56:1]

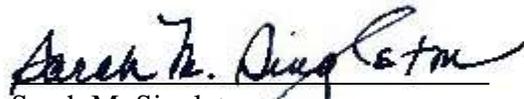
H. Lone Mountain has the right to participate in permitting hearings before the New Mexico State Engineer *that deal with permits that would relate to activities effecting Lone Mountain Ranch*^[sms]; and [TR. 8/9/2016, 57:11-14]

I. Lone Mountain has the right to provide information regarding cultural resources located on Lone Mountain Ranch to third parties in response to a nomination process for registry

of those cultural resources on the National and State Registers of Historic Places. [TR. 8/9/2016, 57:20 to 58:5]

J. Plaintiffs do not have the right to use the agencies to prevent the mineral owner from entering the property; provided, however, that nothing herein is intended to detract from any power such agencies may have to control or prohibit mineral development.^[sms]

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Final Judgment shall be and hereby is entered in favor of Lone Mountain and against Potter/Ortiz on the Second Amended Complaint, that the Counterclaim shall be and hereby is dismissed with prejudice, and that Lone Mountain may file for the Court's consideration a Bill of Costs as provided for by law.


Sarah M. Singleton
DISTRICT COURT JUDGE, DIV. 2
SUMJ

Modified from form^[sms]
Respectfully submitted:

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