



THE REGISTER

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President's Message

Happy New Year! I'm usually not much of a fan of New Year's resolutions, mostly because I have a hard time abiding by them. However, I have made an exception for 2020 and resolve not to attempt any jokes about 20/20 vision or hindsight.

The ALTAPL/SGS Christmas Social was really fun as usual. Our thanks go to the Shreveport Geological Society and ALTAPL members and guests who attended, and also to the Petroleum Club, which always throws an outstanding party. Guitarist Gabe Cate was very entertaining, and the food was delicious. The beverages were not bad, either. The Salvation Army Angel Tree program received an abundance of gifts and cash donations provided by the attendees that certainly helped brighten many young faces on Christmas morning.

The speaker for our January 6th membership meeting at the Petroleum Club is Registered Professional Land Surveyor John Fenstermaker, Vice President of Business Development at C.H. Fenstermaker & Associates, L.L.C. Mr. Fenstermaker is going to give us a presentation on the history of the Louisiana Office of State Lands, also known as the State Land Office. He will focus on topics such as the order in which the State was surveyed and why some sections are larger or smaller than others. The meeting is from 11:30 a.m. to 1 p.m. I hope you plan to attend. There will be one hour of continuing education credits available for those certified through AAPL.

If you are a member of ALTAPL and have not joined AAPL, you should look into it. The national association offers many benefits to landmen, including monetary assistance that is not needs-based that can be used toward AAPL-sponsored educational events or even the annual meeting.

Next month is the Educational Seminar, slated for the 28th and 29th. Space will be limited so please make sure to submit your registration as early as possible. More information on how to register and the list of topics and speakers will be sent to members in the next few weeks.

The monthly membership meetings will resume on March 2. We will be honoring our Past Presidents during the evening soiree at the Petroleum Club. There will be cocktails served from 5 p.m. to 5:45 p.m. with dinner beginning shortly thereafter. I hope to see everyone there.

On April 6th, AAPL President Jay W. Beavers III, CPL, will speak to the association. The meeting will be from 11:30 a.m. until 1 p.m. at Ralph & Kacoo's in Bossier City. Please mark this date on your calendars, as Mr. Beavers should have an interesting speech, and this is the final monthly membership meeting of the year.

Last year was a terrific one for the local oil and gas industry and I hope we all continue to stay busy in 2020. Here's to another great year!



Pedro M. Pizarro

Take care,

Pedro M. Pizarro, CPL

President

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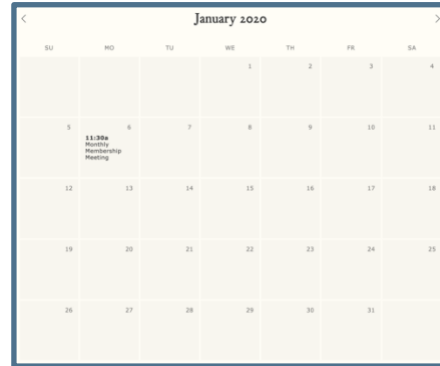
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View the interactive ALTAPL calendar online at altapl.org/events.

January 6

Monthly Membership Meeting

February 28-29

Educational Seminar

March 2

Evening Membership Meeting
Honoring Past Presidents

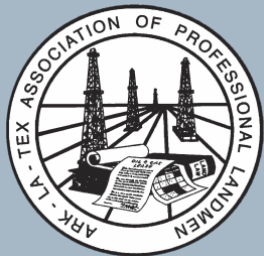
Announcements:

- RPL / CPL Exam and classes tentatively scheduled for Shreveport in 2020, please contact Paul Wood if you are interested. Paul Wood: 318-393-0523 paul@paulwoodattorney.com.

- If you have any knowledge of any ethics violations, please get in touch with the association. Ethics violations reflect poorly on all landmen and associates of the land side of oil and gas.

CONGRATULATIONS CORNER

Is there someone you know deserving of congratulations? Email Kenwomack@comcast.net to see them here!



2019-2020 ALTAPL Annual Advertising Rates

The rates cover advertising for all issues of our monthly newsletter The Register and on our website at www.altapl.org from September 2019 through August 2020 (please note there is no publication of the newsletter for the months of June, July or August). All ad orders need to be submitted by August 15th to ensure placement for September. All ad orders need to be in by August 15th to ensure placement for September.

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AAPL Upcoming Events

See more at www.landman.org.

Date	Event	Location
1/17/2020	CPL Exam, RPL Exam	Fort Worth, TX
1/21/2020 – 1/24/2020	Oil and Gas Land Review, CPL/RPL Exam	Midland, TX
1/24/2020	Held By Production and Royalty Issues (webinar available)	Oklahoma City, OK
2/3/2020	CPL Exam, RPL Exam	Houston, TX
2/4/2020	Petroleum Economics Seminar	Houston, TX
2/5/2020 – 2/7/2020	2020 NAPE	Houston, TX
2/11/2020	Due Diligence Seminar	Austin, TX
2/14/2020	Royalty Deductions	Dallas, TX
2/20/2020 – 2/21/2020	Working Interest and Net Revenue Interest Seminar (Basic and Advanced 2 Day Option)	Houston, TX

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Professional Landmen**

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The Ark-La-Tex Association of Professional Landmen is a non-profit organization operated by its membership for mutual benefit to further the knowledge and interests of Professional Landmen, and to better acquaint the public with the scope of the Landman's work.

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**Contributions from our readers
are welcome.**

All suggestions and manuscripts should be mailed or emailed to the editor. We reserve the right to edit all material according to standard practices.

Bylined and credited articles represent the view of the authors, and ads are the responsibility of the advertiser; publication neither implies approval of the opinions expressed nor accuracy of the facts stated.

Letter from the Editor

ALTAPL Members,

Congrats to your ALTAPL Social Committee for yet another great Christmas party! Your editor really enjoyed himself. Mark your calendars now, next up is John Fenstermaker who will speak on the history of the State Land Office at our membership meeting.

Aramco is now a publicly-traded company. The publicly-traded company, some might say. Although the much anticipated IPO fell short of the Saudi crown prince's hoped-for 2 trillion dollar mark on the first day of trading, the company did briefly achieve that goal in intense trading on the second day. That's \$2,000,000,000,000.00 or about 1/8 of the US National debt and significantly more than the recently passed US budget for 2020. Did you know the number one trillion means something different to us, here in the good ol' US of A, than it does to the rest of the world? But I digress...

Aramco is the most valuable business entity ever, and according to Bloomberg, the most profitable among all currently existing companies. The initial offering cost the Saudis a paltry \$64 million dollars, about 0.003 % of the value of the company. Just so you know, Aramco has proven reserves of "approximately 5 times" the combined reserves of the next 5 biggest oil companies, BP, Chevron, Exxon Mobil, Royal Dutch Shell, and Total SA, and the company showed a profit of 111.1 billion dollars in 2018, also far more than the combined profits of the aforementioned 5. Aramco produces 10% of the oil sold worldwide, 10 million barrels a day.

The Saudis announced in mid-December that they will cut global supplies even more than most analysts had expected. After 2 days of talks in Vienna, the Saudis and their newest coalition, "OPEC +" (which countries, combined, produce half of the world's oil) announced a total supply cut of 2.1 million barrels a day, a move that surprised all of the hundreds of reporters, consultants and traders in attendance. Almost all oil price forecasts for 2020 jumped after the Saudi Crown Prince made his announcement.

Mexico's state-owned oil company "Pemex" announced the "largest discovery in 30 years" a field called "Quesqui" in the



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Letter from the Editor

(continued)

Southeastern State of Tabasco. Although the reserves are not yet proven, Pemex estimates that the field contains more than 500 million barrels of recoverable oil and hopes to produce 69,000 barrels a day in 2020 and 110,000 barrels a day in 2021.

Closer to home, Devon has become the next in a long series of major US energy companies to quit the Barnett Shale. It was announced in mid- December that the company has reached an agreement to sell all its assets in the Barnett to Banpu Kalnin Ventures (BKV), a Thailand-based coalition, that agreement is said to be worth about \$770 million and is expected to close in the second quarter of 2020. BKV became the leading producer in the Marcellus about 2 years ago when it acquired the assets of Range Resources, Appalachia LLC, and 4 other mid-level producers in that basin.

The EIA reported that in September of last year, and for the first time since such figures were tracked, the US became a net exporter of crude oil and petroleum products (combined). Only ten years ago, the US imported over 10 million barrels per day more than we exported. The most current numbers indicate that we now export 89,000 barrels per day of combined petroleum products and crude oil than we import. The EIA, which published its findings in early December, seemed to indicate that refined petroleum products are most responsible for the turnaround. See the article "U.S. Petroleum Exports Exceed Imports in September" later in this issue of The Register for more detailed information.

West Texas Intermediate futures were trading at right around \$60 per barrel as of this writing in mid-December, an increase of about \$6 per barrel from our last report to you. Natural gas prices are still very flat, as of this writing the 1 month future price was \$2.36 per MCF, just 6 cents more than we reported last month, again slightly above the 52 week low of \$2.07 and a little less than two-thirds of the 52 week high of \$3.84.

As of mid-December, according to Baker-Hughes, 54 drilling rigs were running in the ArkLaTex area, down 1 from mid-November. There were 33 rigs running in North Louisiana (up 2 from our last report), and in East Texas 20 rigs were running in Railroad Commission Zone 6 (the easternmost zone, down 2 from last report), and still only 1 rig running in Zone 5 (the westernmost zone). No rigs were reported running in the state of Arkansas (down 1). The national onshore rig count dropped to 799 in the 2nd week of December, another significant drop from last month's reporting, this time by 31. This was the lowest number of reported rigs running since March of 2017.

Thanks (again!) to Chance Decker and Ryan Sears for their Texas legal update, just like last year this is the first part of a 3 part series. Also thanks to the fine folk at www.courthousedirect.com/blog, for contributing yet another great article "What Is the Mineral Interests Pooling Act of Texas". Our sincere thanks to Gina S. Warren, George Butler Research Professor of Law at the University Of Houston Law Center for her article very informative "Pooling Clauses and Statutes". Lastly be sure and check out Paul Wood's report on AAPL's Executive Committee meeting held in Grapevine last month. It looks like AAPL will offer CPL / RPL preparation courses and exams here in Shreveport towards the end of April. We'll keep you up to speed on that as the details firm up.

Thank you all for giving me this great opportunity! The ArkLaTex Association of Professional Landmen is such a great organization and I am truly blessed to be a small working part of it. I hope this New Year is the best ever for all of you and yours. Please let me know if you have any ideas about how we can make your newsletter better.

Ken Womack, CPL

Editor, *The Register*

Independent Landman, Notary Public

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Monthly Membership Meeting

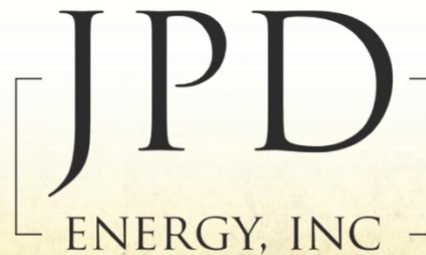
January 6, 2020; 11:30 AM - 1:00 PM
 Petroleum Club - 15th Floor
 Cost: \$20 in person, \$22.50 online
 Speaker: John Fenstermaker, PLS

Reservations for lunch need to be made by noon Thursday before the event.
 Please be prompt in your reservations.



Mr. Fenstermaker is a Registered Professional Land Surveyor with vast surveying and management experience. As Vice President of Business Development for the firm, Mr. Fenstermaker manages the development, implementation and promotion of Fenstermaker’s diverse services. He leads our Business Development Team. In his former role as Vice President of the Survey & Mapping Division, Mr. Fenstermaker has built a vast net work of contacts consisting of long-time and new clients. Mr. Fenstermaker’s experience with the company includes project planning, quality assurance/quality control, data acquisition, and data management.

Under his leadership, the Survey & Mapping Division flourished, growing into one of the most respected surveying firms in the country. Over the years, Fenstermaker and his team have developed new processes and field communications to ensure that the company maintained it’s position within the industry of staying at the forefront of technology. With a focus on the satisfaction of all clients and integrating sophisticated methodologies, Mr. Fenstermaker has led some of the most efficient, well-equipped and experienced teams in the industry.



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Top Ten Texas Oil and Gas Cases of 2019 – Part 1 of 3

By Chance Decker and Ryan Sears, Gray Reed

For the next three months, we will discuss significant oil and gas decisions from state courts in Texas during 2019. It is not intended to be a strict legal analysis, but rather a useful guide for landmen in their daily work. Therefore, a complete discussion of all legal analyses contained in the decisions are not always included.

1. ***Barrow-Shaver Resources Company v. Carrizo Oil & Gas, Inc., No. 17-0332, -- S.W.3d --, 2019 WL 2668317 (Tex. June 28, 2019).***

In this case, the Texas Supreme Court held that evidence of industry custom cannot be used to alter an unambiguous consent to assignment clause. The case involved a Carrizo Oil & Gas, Inc.'s ("**Carrizo**") interest in a 22,000 acre lease in North Texas. The lease was set to expire if a producing well was not drilled by April 23, 2011. Carrizo entered into a farmout agreement with Barrow-Shaver Resources Company ("**Barrow-Shaver**"), in which Barrow-Shaver would earn a partial assignment of Carrizo's interest in the lease in exchange for drilling a producing well. The farmout was memorialized in a letter agreement. An early draft of the letter agreement contained the following "soft" consent to assignment language:

The rights provided to [Barrow-Shaver] under this Letter Agreement may not be assigned, subleased or otherwise transferred in whole or in part, without the express written consent of Carrizo which consent shall not be unreasonably withheld.

In subsequent negotiations, Carrizo removed the "which consent shall not be unreasonably withheld" language. Thus, the consent to assignment clause read as follows:

The rights provided to [Barrow-Shaver] under this Letter Agreement may not be assigned, subleased or otherwise transferred in whole or in part, without the express written consent of Carrizo.

Barrow-Shaver objected to the deletion of this language, but according to Barrow-Shaver, Carrizo's land manager assured Barrow-Shaver that Carrizo would provide its consent to assignment. Barrow-Shaver ultimately relented and accepted the "hard" consent to assignment clause Carrizo demanded.

Before Carrizo's lease expired, Barrow-Shaver drilled an unsuccessful well on the farmed out acreage (spending \$22,000,000 in the process). Raptor Petroleum II, LLC then offered Barrow-Shaver \$27,000,000 for its farmout rights. Carrizo, however, would not consent to the assignment. Instead, it proposed selling its interest in the lease to Barrow-Shaver for \$5,000,000. Barrow-Shaver did not respond to the offer and Raptor's offer for the farmout rights fell through.

Barrow-Shaver sued Carrizo for breach of contract and fraud, alleging that even though the consent-to-assignment clause didn't expressly say it, industry custom imposed a reasonableness requirement upon Carrizo's right to withhold consent. According to Barrow-Shaver, conditioning consent to an assignment upon the payment of \$5,000,000 from the assignor was not reasonable and offended oilfield custom. The jury agreed and awarded Barrow-Shaver a \$27,000,000 verdict against Carrizo.

Barrow Shaver's victory was short-lived. The Court of Appeals reversed the trial court and entered a take-nothing judgment in favor of Carrizo. The Texas Supreme Court affirmed, holding that the absence of language in the farmout agreement requiring Carrizo's withholding of consent to be reasonable meant Carrizo could withhold consent for any reason or no reason at all. When an agreement is unambiguous, as the farmout agreement was, evidence of industry custom cannot be used to impose obligations the contract's plain language does not impose itself. Additionally, because the farmout agreement unambiguously gave Carrizo a

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(continued)

hard consent right, Barrow-Shaver could not have reasonably relied upon Carrizo's land manager's representations that consent would not be withheld. Thus, Barrow-Shaver's fraud claim was dismissed as well.

2. ***Burlington Resources Oil & Gas Company, LP v. Texas Crude Energy, LLC*, 573 S.W.3d 198 (Tex. 2019).**

In this case, the Texas Supreme Court held that a royalty delivered "into the pipeline, tanks or other receptacles with which the wells may be connected" is akin to a royalty delivered "at the wellhead." Thus, the payee was entitled to deduct its post-production costs from its royalty calculation, notwithstanding the fact the royalty would be calculated based on the "amount realized" from downstream sales.

Amber Harvest, LLC ("**Amber Harvest**") an affiliate of Texas Crude Energy, LLC ("**Texas Crude**") owns overriding royalty interests in oil and gas leases operated by Burlington Resources Oil & Gas Company ("**Burlington**") in Live Oak, Karnes and Bee Counties. The royalty is "delivered by [Burlington] into the pipelines, tanks or other receptacles" to which the wells are connected, free of production costs and calculated based on the "value of the oil, gas or other minerals" produced under the leases. The term "value" is defined as the "amount realized" from the sale of the oil or gas produced from the leases or any product thereof.

For nine years, Burlington deducted its post-production costs from the amount realized on downstream sales prior to calculating Texas Crude and Amber Harvest's royalties. Disagreements arose, and citing the ORRI's definition of "value," Texas Crude alleged it was entitled to royalties based on the sales price derived from downstream sales with no deduction for Burlington's post-production costs. Relying on the Texas Supreme Court's 2016 opinion in *Chesapeake Exploration & Production, LLC v. Hyder*, the trial court granted summary judgment for Texas Crude and the court of appeal affirmed. The Texas Supreme Court granted review to clarify its holding in *Hyder*.

In general, oil and gas royalty interests are free of production expenses, but usually subject to post-production costs. Post-production costs generally refer to processing, compression, transportation and other costs to prepare raw oil or gas for sale at downstream location.

Post-production processing enhances oil and gas's value after it leaves the well. Therefore, accounting for post-production costs becomes necessary when a royalty is valued at the wellhead, but the sale used to calculate the royalty occurs downstream. In this situation, the lessee is generally entitled to deduct its post-production costs from the downstream sale price prior to calculating the royalty.

Of course, parties are free to contract for a royalty valued downstream, without deduction of post-production costs. In *Chesapeake Exploration & Production, LLC v. Hyder*, 483 S.W.3d 870 (Tex. 2016), for example, the Texas Supreme Court held that a royalty based on the "amount realized" from a downstream sale of oil or gas grants the royalty holder a right to a percentage of the sale proceeds with no adjustment for post-production costs.

Texas Crude and Amber Harvest argued the "amount realized" language in ORRI creates the kind of cost-free royalty the Supreme Court discussed in *Hyder*. The operative clause required Burlington to pay a royalty based on the "value" of the oil and gas produced, and defined "value" as the "amount realized" from Burlington's sales.

Top Ten Texas Oil and Gas Cases of 2019 – Part 1 of 3

(continued)

In this case, however, the Texas Supreme Court clarified that even when a royalty is *calculated* based on the amount realized on downstream sales, a payee is entitled to deduct post-production costs if the royalty is “valued” at the wellhead.

Here, Texas Crude and Amber Harvest’s royalty interest was to be “delivered to [Texas Crude] into the pipelines, tanks or other receptacles with which the wells may be connected, free and clear of all development, operating, production and other costs.” Though this language is not a model of clarity, the Texas Supreme Court held this clause is akin to delivering a royalty at the wellhead. When a royalty is delivered, and thus valued, at the wellhead, the payee is entitled to deduct post-production costs, even when the sales used to calculate the royalty occur downstream.

3. *Ellison v. Three Rivers Acquisition, LLC*, No. 13-17-00046-CV, 2019 WL 613262 (Tex. App.—Corpus Christi, Feb. 14, 2019, pet filed).

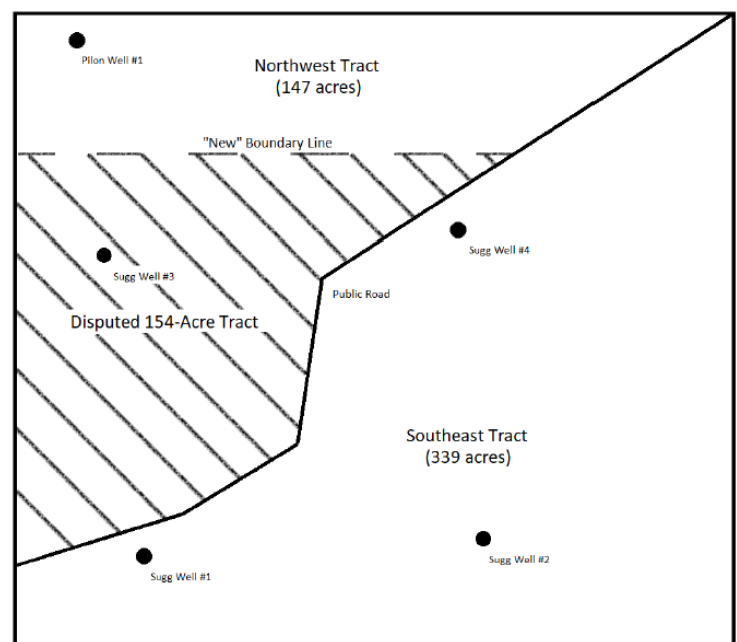
This case demonstrates two important lessons for oil and gas practitioners regarding: (1) interpreting discrepancies between metes and bounds property descriptions and general acreage statements, and (2) best practices for drafting boundary stipulations.

When J.D. Sugg died in 1925, his family inherited a section of land in Irion County. Some of Sugg’s heirs agreed to swap land with the Noelkes, nearby landowners. To effectuate the swap, the Suggs executed a deed on July 26, 1927, which conveyed several tracts to the Noelkes (the “**Sugg Deed**”). The Sugg Deed described one of these tracts as

“all of ... the lands located North and West of the public road which now runs across the corner of [the applicable survey], containing 147 acres more or less.”

There was just one problem: there were actually 301 acres in the section northwest of the only public road that ever ran through the survey. Thus, the question became, did the deed convey all 301 acres northwest of the public road, or just 147 acres?

The Suggs, Noelkes and their respective successors always treated the Suggs Deed as conveying 301 acres, not 147. Nevertheless, in 2008, Samson Oil and Gas (“**Samson**”) asked Jamie Ellison (who had acquired a mineral lease on the Northwest Tract), to sign a boundary stipulation purporting to resolve the metes and bounds v. acreage discrepancy in the Suggs Deed. The Boundary Stipulation would have moved the property line to a new location consistent with an original conveyance of just 147 acres. Thus, the Boundary Stipulation would have made the property lines look like this:



Top Ten Texas Oil and Gas Cases of 2019 – Part 1 of 3

(continued)

Jamie Ellison signed a letter to Samson stating he agreed to the new boundary, but Samson never actually sent him a Boundary Stipulation and the letter didn't contain any conveyance language.

Samson subsequently drilled a producing oil well south of the new boundary line on the 154-acre tract that Samson contended was *not* conveyed in the Suggs Deed. Concho eventually acquired Samson's lease. Throughout this time period, Sunoco purchased the oil from the well on the 154-acre tract.

In 2013, Jamie Ellison's surviving spouse, Marsha, filed a trespass-to-try title suit against Concho arguing she was the rightful owner of the disputed 154-acre tract. Concho moved for summary judgment on Marsha's claims, arguing the 2008 letter signed by Jamie Ellison: (1) relinquished any claim Marsha might possess in the land beyond the 147-acre tract depicted in the 2008 Boundary Stipulation; and (2) ratified the boundary as depicted in the 2008 Boundary Stipulation and letter. Concho also brought a counterclaim against Marsha for breach of the 2008 Boundary Stipulation letter (it argued the letter was a contract). The trial court granted Concho's motion and dismissed all of Marsha's claims. The jury awarded Concho \$1,030 in out of pocket damages and \$392,479.39 in attorneys' fees on its breach of contract claim.

The Court of Appeals reversed, holding the 2008 Boundary Stipulation was null and void. The court held that, notwithstanding the metes and bounds v. acreage statement discrepancy in the Sugg Deed, it unambiguously conveyed 301 acres—not 147—because the metes and bounds description controls.

Likewise, because there was only one public road running through the section, there was no legitimate dispute about where the property boundary was prior to the 2008 Boundary Stipulation being executed. In the absence of a legitimate boundary dispute, a boundary stipulation is only effective if it contains words of conveyance (like a deed) and complies with the Statute of Frauds. Here, the 2008 Boundary Stipulation and letter from Samson to Jamie Ellison contained neither.

Thus, the two lessons this case teaches are: (1) in case of a discrepancy between a metes and bounds description and a statement of acreage, the metes and bounds description controls, unless the language of the conveyance or the facts clearly demonstrate otherwise. (2) Always use words of conveyance in boundary stipulations to ensure their enforceability.

STAY TUNED ...

Next month, we will discuss three more cases that may have an impact on your daily work. We hope this series will help you address the legal issues presented by modern oil and gas activities. As always, if you believe one of these decisions might have a bearing on an action you are about to take or a decision you might make, consult a lawyer.

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AAPL Director's Report

ALTAPL Members:

The AAPL Board and Executive Committee (EXCOM) met in Grapevine, Texas the weekend of December 14-15, 2019. It is a privilege to be the Director from ALTAPL and I thank you for the honor.

For the most part, the meeting was uneventful and there were no unusual issues or matters discussed. The AAPL Finance committee submitted their draft budget for 2020-2021, and it did not contain any big surprises or significant changes from the operating budget in place for this fiscal year. The bulk of the meeting time was spent discussing the draft budget, and the final form will be presented for approval at the board meeting to be held in Louisville, KY in March, 2020.

You will recall that in my last update from September, the AAPL Board of Directors voted to approve the hiring of Dr. Greta P. Zeimetz as AAPL Executive Vice President following the retirement announcement of EVP Melanie Bell. Greta started November 1 with AAPL, and in her short tenure she has met with all staff, worked with the finance committee and committee chairmen to finalize a draft budget, and also reviewed AAPL practices and standards to ensure AAPL complies with recognized best practices for association membership non-profits. Over the coming months she will have some suggestions to make sure AAPL complies with these practices, and is working to become the standard bearer for similar associations. My wife, Holly, attended this weekend with me, and we both got to meet Greta and were favorably impressed. AAPL staff that I had the chance to speak with seem very excited about the days to come with Greta at the helm.

An issue that was discussed in some detail at the directors Round Table and also in the board meeting is the fact that many landmen are not doing oil and gas work, but rather can only find work in the solar and wind energy segments of the energy industry. As a result of the overall slowdown in the oil and gas industry, AAPL is making plans to have several presentations at the upcoming Annual Meeting in Huntington Beach that will show landmen how their skills can be transferred to the "alternative" or "renewable" energy markets. Also, a couple of committees have been charged with developing a job posting page for the AAPL website, and not just utilizing *Landnews* for open positions or landmen looking for work. There is some general reluctance for landmen to use the *Landnews* forum to look for work. The thought is that a broker or company looking for a very short term project may be able to utilize that type of information portal to assign out work directly to landmen looking for projects. Discussions were also had that seminars should be developed that can help landmen transition into other phases of land work or other segments of the industry. AAPL is trying to be proactive in ways to meet needs of the membership, both for the short term and long range time frames.

As we have discussed at several of our local board meetings, we are all very proud of the quality of our local newsletter, *The Register*, and appreciative of the efforts of the editor, Ken Womack. I can confirm that our nominations to the Awards committee have been received. Nominations were made for Newsletter/Bulletin of the Year, Member Communication (Reg Cassibry's excellent article on usufructs in the March, 2019 *Register*) Director Communication, and association of the year. While at the AAPL meeting, I discussed with Bobo Clarke, the Awards Committee chair, other categories of awards, and he is hopeful that we can find nominees for the following categories: Landman of the Year; Lifetime Achievement Award and Special Award. These nominations can be made by anyone, and they can be completed on-line at: <https://www.landman.org/get-involved/nominate/award-nominations>. I would make sure that any candidate you nominate has approved the submission of their name for consideration. I am attaching on the following page information from the Blankenship Family Horizon Award, presented to an outstanding female AAPL member. I know we have some worthy candidates for consideration of that award within our local group. More information is available on the AAPL website; go to: <https://www.landman.org/about/charitable-giving/educational-foundation>, and then scroll down to Blankenship Family Horizon Awards section.

AAPL Director's Report

(continued)

In a separate communication with the ALTAPL Board, I shared that the CPL/RPL Review education committee has been advised of our desire to host a seminar here, and the last two weeks of April, 2020 as the best time frame. Sara Worsham is the chairman of that committee, and she will share that information with her AAPL staff liaison. We should hear back from them in the near future, but Sara was positive that these dates were open and should be able to be scheduled. In that regard, I contacted Joanne Stoy with AAPL. She is in charge of applications for the CPL and RPL exams. Joanne advised that there are currently nine (9) candidates from the Shreveport area who are approved for either RPL or CPL testing. There are five candidates from the Lafayette area, and one from Slaughter, LA. Also, there are four candidates in east Texas within an hour or so from Shreveport that are possibilities (probabilities) to sit for their exams in Shreveport. Kevin Halbertson is the AAPL director from the ETAPL (East Texas) and he told me that there are 4-5 members from their association who hope to attend the review and testing in Shreveport. I am keeping Kevin apprised so he can let his group know the details once the seminar is set.

Please let me know of any concerns or topics of discussion I can take to the next board meeting. From Holly and me, we send our warmest holiday wishes, and Merry Christmas!

Respectfully Yours,

Paul Wood

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BLANKENSHIP FAMILY HORIZON AWARD

The AAPL Educational Foundation established the Blankenship Family Horizon Award in 2019 to recognize a trailblazing female land professional who is a leader in our industry and has distinguished herself within the industry, in her career and has supported AAPL and its mission.

Former AAPL President Wayne Blankenship, CPL (1975), provided funds to AAPL for women's auxiliaries in memory of his wife, Mary K. Blankenship. Although this committee ceased to exist beyond the early 90s, the donated funds were still with the AAPL. This grand gesture from Wayne to his late wife, Mary, will now continue with this award.

Award Criteria:

- An exceptional female land professional broadly respected throughout the industry and an established role model for land professional
- Active member of AAPL, maintaining a recognized AAPL certification
- Representing professionalism and the AAPL Code of Ethics to the highest standard
- Strategically responding to fundamental challenges or opportunities regarding or related to land professionals in the industry
- Elevated appraisal will be credited to candidates that have demonstrated commitment, effort and progress towards elevating and expanding the role of female land professionals and their development within in the industry.

Nomination Process:

Complete the Blankenship Family Horizon Award Nomination Form.

Selection Process:

- The selection of award winners will be accomplished by a vote of the Selection Committee which shall consist of the current officers and directors of the Educational Foundation and up to the past seven award winners.
- The winning nominee will be decided by a simple majority vote of a quorum of the Selection Committee present at a meeting scheduled by the Foundation President. A quorum shall be accomplished by 60% of the persons seated on the Selection Committee. The meeting to determine the award winner may be conducted in person or by telephone.

Additional Notes: The award is a non-monetary award. Each award presentation will also include an education component.

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Did you know?

January the 10th seems to be a big day in the annals of America's oil and gas business.

January 10, 1870: John D. Rockefeller incorporated Standard Oil Company.

Mr. Rockefeller and 5 others formed the Standard Oil Company in Cleveland, Ohio. Considered by some to be the wealthiest American of all time, Rockefeller was obsessive in his drive for efficiency and growth. Rockefeller really wrote the book on horizontal integration.

One example of this strategy is the famous tale of how Rockefeller and company bought timber tracts, harvested and dried the wood, hauled it to Cleveland and built their own oak barrels rather than simply buy barrels. Oil's primary by-product in those days was kerosene and before long the price of kerosene dropped from 58 cents to 26 cents per barrel.

January 10, 1901: The newspaper headlines in Beaumont read: "An Oil Geyser – Remarkable Phenomenon South of Beaumont – Gas Blows Pipe from Well and a Flow of Oil Equaled Nowhere Else on Earth."

Near Beaumont, Texas, a small crew was drilling at just below 1100 feet when a stream of oil, gas and pipe blew 100 feet into the air. Some 500,000 barrels of oil and nine days later, a shut off valve was installed on the casing to stop the flow.

The "Lucas gusher" on Spindletop hill would prove to be among the largest and most significant in the history of oil and gas exploration, by some accounts ushering in the oil age. Beaumont's population tripled to more than 30,000 in 3 months and eventually leveled out at 50,000. Just 2 years later over 500 companies had been formed and almost 300 wells were in operation in the Spindletop field.

January 10, 1921: Yet another boom began in El Dorado, Arkansas when the Busey-Armstrong No.1 blew out, also in spectacular fashion, resulting in another "gusher". News of these gushers spread very quickly.

H.L Hunt soon arrived in the once-sleepy town, with a sum of money he reportedly either borrowed or won at poker table, and just 4 years later the 68 square mile El Dorado field was the most prolific in the United States, with a total production of over 70 million barrels. Hunt had a reputation for being a good man to work for and his generosity to his employees was the stuff of legends, some accounts indicate this was the reason for an early tip on the East Texas Field, where Hunt got seriously wealthy.

January 10, 1954: A Grumman G-73 Mallard amphibious plane, owned by Shreveport's United Gas Corporation, took off from a small airfield in Lower Mud Lake, Louisiana, fully loaded with 10 passengers and a crew of 2. The pilot, W. C. (Buddy) Huddleston, and co-pilot, Louis R. Schexnaydre, were delivering their passengers back to Shreveport after a successful weekend of duck hunting at the Coastal Club in Cameron Parish. Unfortunately, the Mallard was not equipped with "deicing" equipment on its wings.

All indications are that Buddy Huddleston was a top-notch pilot, known for his attention to detail. At just 33 years old, he was a World War II veteran, having made many transatlantic flights as a part of the war effort. Mr. Huddleston's first weather report came out New Orleans, and gave no indication

Did you know?

(continued)

that there might be trouble. An off-the-cuff discussion with the pilot of another United Gas aircraft in Lake Charles indicated that the weather conditions might be deteriorating towards the North.

Huddleston was forced to attempt a landing in Wallace Lake, near Shreveport, when the amphibious plane's wings became overloaded with ice. It was well after dark when the courageous pilot tried to put into the lake, but some fifty feet before the plane would have touched the water, its right wing fully impacted a tree growing in the lake. The aircraft careened left, smashed into a fishing camp and burst into flames. All 12 occupants were lost.

The 10 passengers on the Mallard were:

- Dallas resident Tom Braniff, who had started his career in insurance in Oklahoma City, but his love of flying eventually led him to co-found Braniff Airlines. Braniff was no stranger to tragedy, having lost his first-born son Thurman to an airplane crash in 1938, and then losing his wife in childbirth in 1948. In one of the many ironic twists of this tale, Braniff Airlines had received its 21st annual safety award on January 1, 1954. The airline had flown 2,500,000,000 passenger miles without incident.
- R. H. Hargrove, president of Texas Eastern Transmission Corporation, one of the nation's largest pipeline companies. Life magazine had recently described Mr. Hargrove as "exceptionally quiet and restrained" in a business populated by "brawlers and bawlers".
- Edgar Tobin, a decorated World War I fighter pilot who had flown with Eddie Rickenbacker, and president of Tobin Aerial Surveys Company of San Antonio, Texas, then the largest aerial mapping company in the world.
- Chris Abbott, a prominent Nebraska rancher and banker, former charter pilot, and by some accounts, the wealthiest man in Nebraska. Abbott's obit speculates that if Dewey had defeated Truman, Abbot would have been named Secretary of Agriculture.
- Bernard Weiss, executive vice president of Goldring's, Inc. a Shreveport-based department store.
- Milton Weiss, a Dallas Fort Worth department store executive and Bernard's brother.
- J. P. Evans, Sr., Shreveport oilman.
- John B Atkins, Sr., 55, president of Highland Oil Company and chairman of the board of Atlas Processing Company of Shreveport.
- Justin R. Querbes, Sr., Shreveport insurance executive, bank director and financier.
- Randolph Querbes, Justin's brother, and president of Interstate Electric Corporation.

If you'd like to listen to a very interesting radio account of this story, including 20 stirring minutes of interview with the pilot's widow, visit: <https://www.shrevetalk.com/wallace-lake-plane-crash-revisited-january-9th-2015-tribute-by-tom-pace-with-ernie-roberon/>

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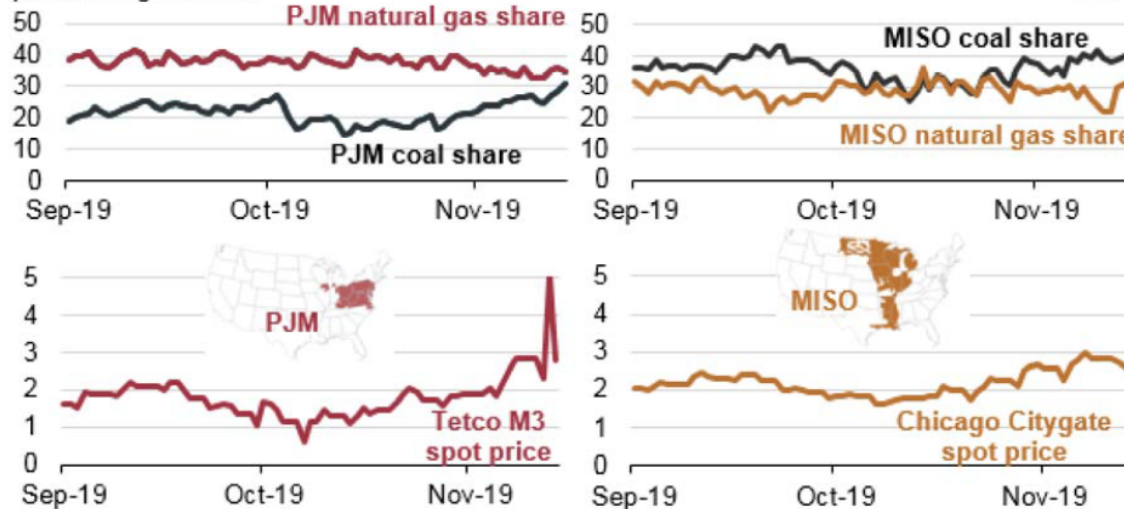


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EIA Today in Energy

Early November cold weather prompts fuel switching in PJM and MISO

Coal/natural gas generation share and natural gas spot price by region



Source: U.S. Energy Information Administration, [Form EIA-930, U.S. Electric System Operating Data](#); S&P Global Market Intelligence; Velocity Suite (map)

A historic [November cold snap](#) sent temperatures below freezing in 75% of the Lower 48 states. Because of this cold snap, the price of natural gas increased from an average of less than \$2.00 per million British thermal units (MMBtu) in October to a mid-November high of \$5.11/MMBtu at the Tetco M3 hub, located in northeast Pennsylvania in the PJM Interconnection (PJM). Prices rose about \$1.00/MMBtu and reached nearly \$3.00/MMBtu at the Chicago Citygate hub in the Midcontinent Independent System Operator (MISO). These price increases resulted in coal-fired power generation replacing natural gas-fired generation starting in late October in both of these [regional transmission organization markets](#). In both PJM and MISO, where strong competition exists between natural gas- and coal-fired generation, relative shifts in fuel prices can influence which type of power plant operates.

Throughout all of 2019, natural gas-fired generation has accounted for an increasing share of power generation in PJM and MISO, averaging 35% in PJM and 27% in MISO. This summer, the natural gas market in the Lower 48 states experienced [record-high natural gas consumption](#), [relatively low natural gas prices](#), [retirements of coal-fired generation](#), and [increasing natural gas-fired capacity](#). In October, when regional natural gas prices were particularly low because of moderate autumn temperatures, natural gas-fired generation in MISO reached its highest level for 2019 at 36%. However, as natural gas spot prices in the PJM and MISO regions approached nearly \$2.70/MMBtu in late October, the coal-fired generation share increased from its earlier lows.

PJM. The PJM Interconnection spans states in the U.S. Middle Atlantic. Cold weather in that region caused the natural gas spot price at the Tetco M3 trading hub to rise from less than \$2.00/MMBtu at the end of October to a high of \$5.11/MMBtu on November 13, the [peak of the cold temperatures](#). On November 9, the share of natural gas-fired generation in PJM decreased to 34%, its lowest level since May. Conversely, the share of coal-fired generation increased to 31% on November 14, which was the highest coal share since March.

MISO. MISO covers much of the U.S. Midwest and part of the Gulf Coast. For several days in October, the share of natural gas-fired generation was higher than the share of coal-fired generation in the region for the first time in 2019. With low natural gas spot prices, natural gas-fired generation peaked at a 36% generation share on October 14. In contrast, coal's generation share fell to 25% on October 12 because natural gas prices were lower than \$2.00/MMBtu and [wind generation was strong](#). However, by November, lower wind power and higher natural gas prices made coal-fired generation more economically attractive. The Chicago Citygate natural gas spot price rose to nearly \$3.00/MMBtu on November 7, or \$1.00/MMBtu higher than the average October price. Higher natural gas prices contributed to the natural gas generation share falling to 22% on November 10, its lowest share in eight months. Meanwhile, coal's generation share increased from its October average of about 32% to a November average of 38% through November 13.

EIA collects the data for the [Hourly Electric Grid Monitor](#) from [Form EIA-930, Hourly and Daily Balancing Authority Operations Report](#), which includes hourly electricity demand, forecast demand, net generation, and interchange data. The data are provided by the 65 [electricity balancing authorities](#) that operate the electric grid in the Lower 48 states and maintain real-time balance between electricity demand and supply on the grid.

Principal contributor: Stephen York

Natural Gas Basics

What is natural gas?

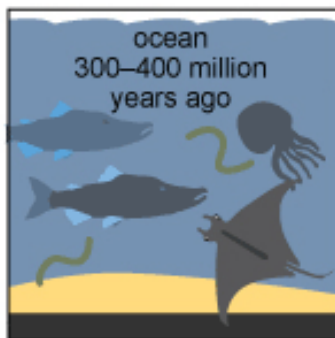
Natural gas is a fossil energy source that formed deep beneath the earth's surface. Natural gas contains many different compounds. The largest component of natural gas is methane, a compound with one carbon atom and four hydrogen atoms (CH₄). Natural gas also contains smaller amounts of natural gas liquids (NGL; which are also hydrocarbon gas liquids), and nonhydrocarbon gases, such as carbon dioxide and water vapor. We use natural gas as a fuel and to make materials and chemicals.

How did natural gas form?

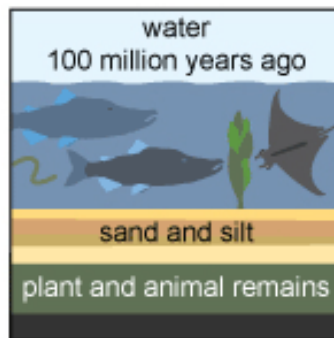
Millions to 100's of millions of years ago and over long periods of time, the remains of plants and animals (such as diatoms) built up in thick layers on the earth's surface and ocean floors, sometimes mixed with sand, silt, and calcium carbonate. Over time, these layers were buried under sand, silt, and rock. Pressure and heat changed some of this carbon and hydrogen-rich material into coal, some into oil (petroleum), and some into natural gas.

Petroleum and natural gas formation

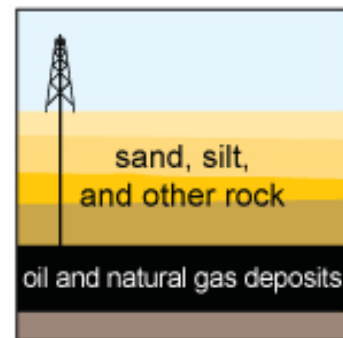
Tiny marine plants and animals died and were buried on the ocean floor. Over time, the marine plants and animals were covered by layers of silt and sand.



Over millions of years, the remains were buried deeper and deeper. The enormous heat and pressure turned the remains into oil and natural gas.



Today, we drill down through layers of sand, silt, and rock to reach the rock formations that contain oil and natural gas deposits.



Source: Adapted from National Energy Education Development Project (public domain)

In some places, natural gas leaking into the air from cracks in the earth can be ignited by lightning or a fire. When people first saw this burning natural gas, they experimented with it and learned they could use it for heat and light.

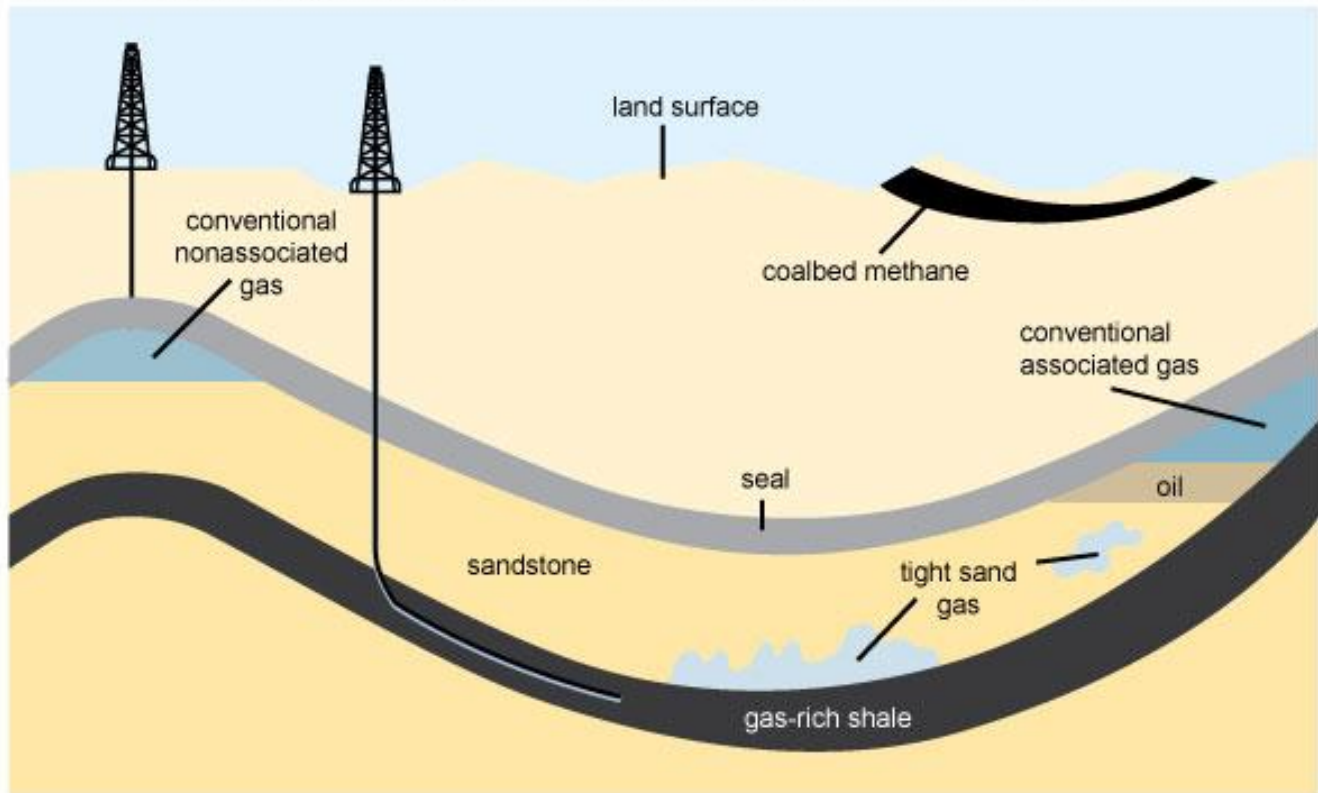
Where is natural gas found?

In some places, natural gas moved into large cracks and spaces between layers of overlying rock. The natural gas found in these types of formations is sometimes called conventional natural gas. In other places, natural gas occurs in the tiny pores (spaces) within some formations of shale, sandstone, and other types of sedimentary rock. This natural gas is referred to as shale gas or tight gas, and it is sometimes called unconventional natural gas. Natural gas also occurs with deposits of crude oil, and this natural gas is called associated natural gas. Natural gas deposits are found on land and some are offshore and deep under the ocean floor. A type of natural gas found in coal deposits is called coalbed methane.

Natural Gas Basics

(continued)

Schematic geology of natural gas resources



Source: Adapted from *United States Geological Survey factsheet 0113-01* (public domain)

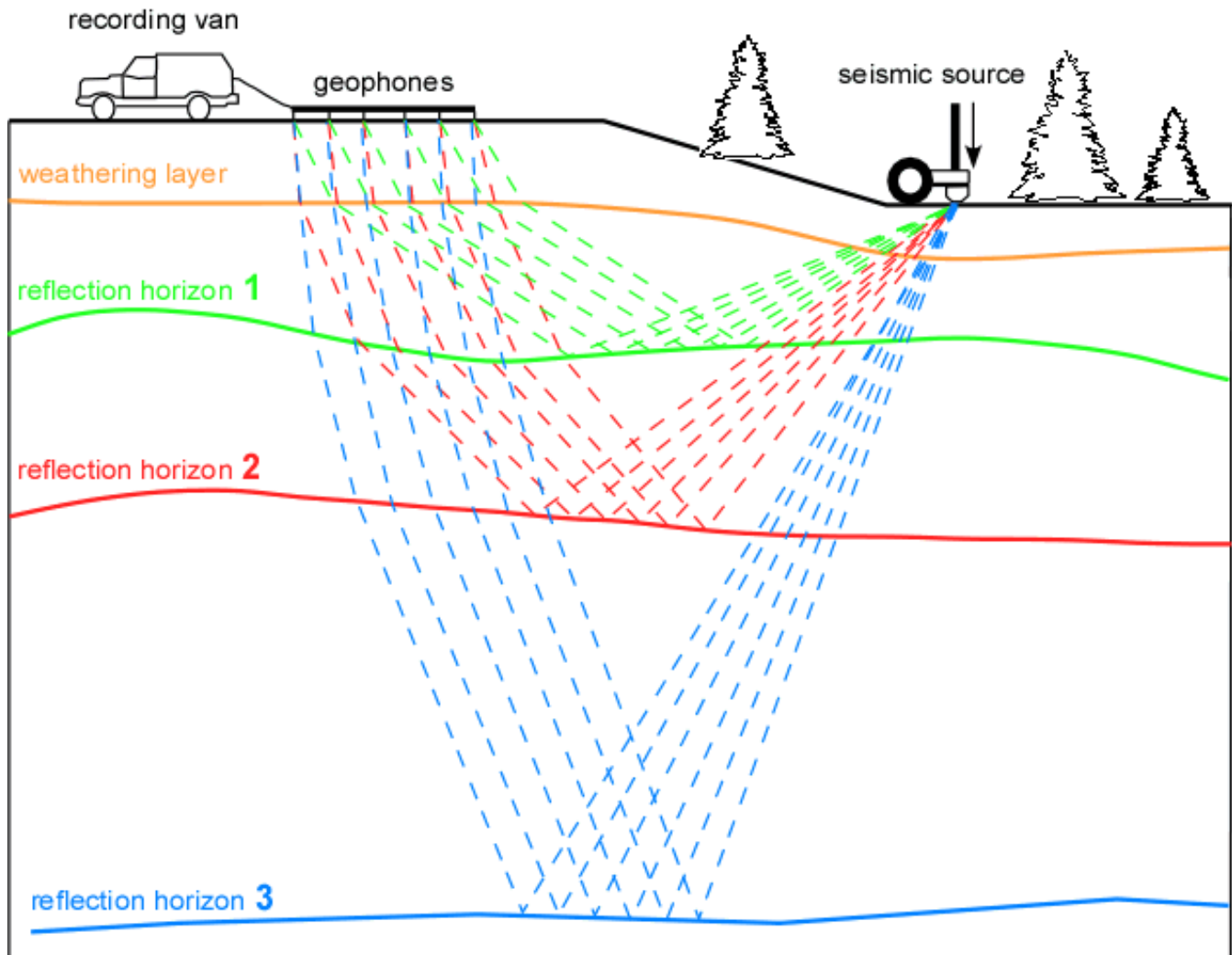
How do we find natural gas?

The search for natural gas begins with geologists who study the structure and processes of the earth. They locate the types of geologic formations that are likely to contain natural gas deposits.

Geologists often use seismic surveys on land and in the ocean to find the right places to drill natural gas and oil wells. Seismic surveys create and measure seismic waves in the earth to get information on the geology of rock formations. Seismic surveys on land may use a thumper truck, which has a vibrating pad that pounds the ground to create seismic waves in the underlying rock. Sometimes small amounts of explosives are used. Seismic surveys conducted in the ocean use blasts of sound that create sonic waves to explore the geology beneath the ocean floor.

Natural Gas Basics

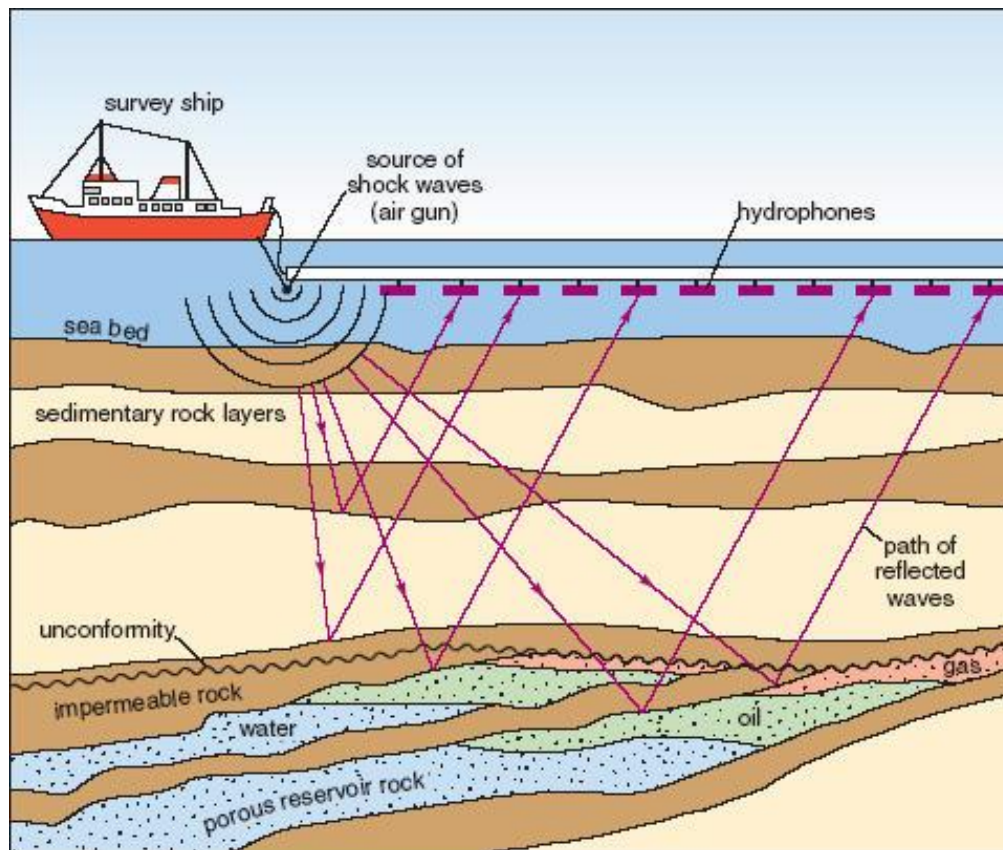
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If the results of seismic surveys indicate that a site has potential for producing natural gas, an exploratory well is drilled and tested. The results of the test provide information on the quality and quantity of natural gas available in the resource.

Natural Gas Basics

(continued)



Drilling natural gas wells and producing natural gas

If the results from a test well show that a geologic formation has enough natural gas to produce and make a profit, one or more production (or development) wells are drilled. Natural gas wells can be drilled vertically and horizontally into natural gas-bearing formations. In conventional natural gas deposits, the natural gas generally flows easily up through wells to the surface.

In the United States and in a few other countries, natural gas is produced from shale and other types of sedimentary rock formations by forcing water, chemicals, and sand down a well under high pressure. This process, called hydraulic fracturing or fracking, and sometimes referred to as unconventional production, breaks up the formation, releases the natural gas from the rock, and allows the natural gas to flow to and up wells to the surface. At the top of the well on the surface, natural gas is put into gathering pipelines and sent to natural gas processing plants.

Natural gas from natural gas or crude oil wells is treated at natural gas processing plants before it is put into natural gas pipelines.

In places where natural gas pipelines are not available to take away associated natural gas produced from oil wells, the natural gas may be reinjected into the oil-bearing formation, or it may be vented or burned (flared). Reinjecting unmarketable natural gas can help to maintain pressure in oil wells to improve oil production. Coalbed methane can be extracted from coal deposits before or during coal mining, and it can be added to natural gas pipelines without any special treatment.

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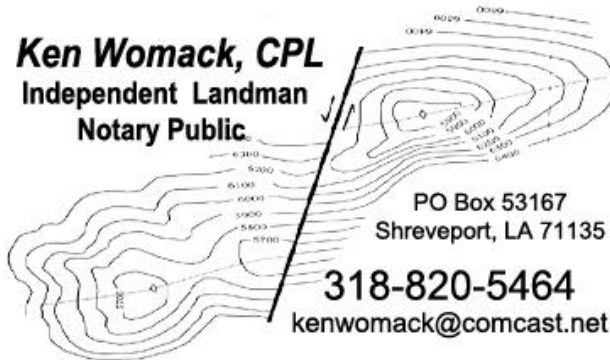
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Pooling Clauses and Statutes

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I. INTRODUCTION

Pooling is a tool used to bring together small or irregular tracts of land or mineral interests to form one drilling unit for the purposes of oil or gas production. In general, pooling can be accomplished in a variety of ways, including separate pooling agreements, community leases, voluntary pooling clauses within leases, and compulsory pooling statutes. This article will focus on voluntary pooling lease clauses and compulsory pooling statutes.

This article will discuss the requirements for valid pooling under a voluntary lease provision and look at the remedies available for invalid or improper pooling. It will analyze the effect of pooling on the Royalty Clause and the Habendum Clause, and it will discuss anti-dilution and Pugh clauses, which can place further limitations on a lessee's discretion to pool.

Finally, this article will provide a brief overview of compulsory pooling statutes and look at how Texas' Mineral Interest Pooling Act differs from compulsory pooling statutes utilized in a majority of the oil and gas producing states.

II. VOLUNTARY POOLING CLAUSES

In Texas, the most common way to pool oil and gas interests is through use of a voluntary pooling clause in a lease. "Voluntary pooling is an important tool for promoting conservation, avoiding unnecessary drilling of offset wells, sharing risks, and minimizing expenses." Mitchell E. Ayer, *Navigating the Pooling Clause Waters: New and Recurring Issues*, 53 Rocky Mtn. Min. L. Inst. 33-1 (2007). Further, with the increased use of drilling techniques like horizontal drilling and hydraulic fracturing, drilling and completing wells is an increasingly costly venture. *Id.* Consequently, pooling is more vital than ever to avoid the costs of unnecessary wells. *Id.*

A pooling clause can be used to facilitate pooling for horizontal wells as well as vertical wells. Sample pooling clause language is as follows:

Lessee is hereby granted the right, at its option, to pool or unitize any land covered by this Lease with any other lands covered by this Lease, and/or with any other land, lease, or leases, as to any or all minerals or horizons, so as to establish units containing not more than 80 surface acres, plus 10% acreage tolerance; provided, however, units may be established as to any one or more horizons, or existing units may be enlarged as to any one or more horizons, so as to contain not more than 640 surface acres plus 10% acreage tolerance, if limited to one or more of the following:

- a) gas, other than casinghead gas,
- b) liquid hydrocarbons (condensate) which are not liquids in the subsurface reservoir,
- c) minerals produced from wells classified as gas wells by the conservation agency having jurisdiction.

If larger units than any of those herein permitted, either at the time established, or after enlargement, are required under any governmental rule or order, for the drilling or operation of a well at a regular location, or for obtaining maximum allowable from any well to be drilled, drilling, or already drilled, any such unit may be established or enlarged to conform to the size required by such governmental order or rule. Any operations conducted on any part of such unitized land shall be considered, for all purposes, except the payment of royalty, operations conducted upon said land under this lease. A unit once established hereunder shall remain in force so long as any lease subject hereto shall remain in force. (Producers 88 (7- 69) Paid-Up Lease with 640 acre Pooling Provision).

A pooling clause will generally revise a lease in three ways, which will be discussed in detail below. First, it expands the granting clause by giving a lessee the authority to determine whether to pool. Second, it revises the royalty clause because the lessor agrees to accept a royalty proportionate to her acreage within the

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(continued)

pooled unit. Third, it expands the habendum clause by allowing drilling operations on any part of the pooled unit to have the same effect as if drilling operations were commenced on the leased area.

Though this article does not focus on the relationship between surface owners and mineral interest owners, it is important to note that valid pooling will result in the lessee having the right to reasonably use the surface of the entire pooled unit for the purpose of oil and gas exploration, development, and production. In *Key Operating & Equipment, Inc. v. Hegar*, No. 01-10-00350-CV, 2014 WL 2789933 (Tex. Jun. 20, 2014), two tracts of land, the Curbo tract and the Richardson tract, were pooled in order to form one single drilling unit. *Id.* Key was only operating on the Richardson tract. *Id.* However, in order to access the Richardson tract, Key used a roadway across the Curbo tract. The surface owner of the Curbo tract, Mr. Hegar, filed suit against Key for trespass and sought termination of Key's use of the roadway across his surface. *Id.* The Texas Supreme Court, reversing the appellate decision, stated that the "primary legal consequence of pooling is that unit are treated as if they have taken place on each tract within the unit." *Id.* at 3–4. When the two tracts were pooled together, they assumed a single identity, providing Key with the right to access the Richardson tract via the roadway located on the Curbo tract. For leases without pooling restrictions, the lessee has the lawful authority to use a road across a non-producing tract in a pooled unit.

A. Effect of Amending the Granting Clause - Requirements for Valid Pooling

A pooling clause expands the granting clause by giving a lessee the authority to determine whether to pool. This authority, however, is not unfettered. Many disputes have arisen through the years as to whether a lessee has properly exercised his discretion and authority under a pooling clause. In general, there are two requirements for valid pooling under a lease clause. First, the exercise of pooling must be done in strict accordance with the terms of the lease. Second, it must be done in good faith.

1. In Strict Accordance with the Lease Language.

While a lessee generally has broad discretion to determine whether to pool its lessor's interests, the lease language will be construed very strictly. For example, in *Jones v. Killingsworth*, 403 S.W.2d 325 (Tex. 1965), the lease in question contained a clause which allowed the lessee to create pooled units for oil not to substantially exceed 40 acres. However, the lease also granted the lessee the power to increase the size of the unit if it "conform[ed] substantially in size with those *prescribed* by governmental regulations." *Id.* at 327 (emphasis added). The lessee pooled the lessor's tract with other interests to create a 176.86 acre pooled unit. The Commission's rules for this particular field *prescribed* oil units of 80 acres, but *permitted* units of up to 160 acres. The court held that, under the lease terms, the pooled unit could be no greater than 80 acres as *prescribed* by the Commission. Specifically, the court reasoned that the fact that the Commission *permitted* units of up to 160 acres in the field did not give the lessee the right to pool the lessor's interests to create a 160-acre unit. Rather, the lease terms allowed the lessee to enlarge a unit above 40 acres only to the extent necessary to conform to the Commission's field rules: here 80 acres. As a result, the lessee had pooled the lessor's interests without proper authority. The lease's habendum clause did not extend the lease beyond the primary term, and the lease terminated. *Id.* at 328.

Likewise, in *Sauder v. Frye*, 613 S.W.2d 63 (Tex. App.—Fort Worth 1981, no writ), the oil and gas lease required the lessee to execute and record in the county where the pooled units were created, an instrument identifying the units. After the expiration of the primary term, the lessee executed and filed such an instrument in the proper county. The court held that the lease terminated under its own terms because the lessee failed to file the instrument prior to the expiration of the primary term, and that the lease contained no other clauses that worked to maintain the lease into the secondary term.

In a 2012 Texas appeals case, however, the court held that a lessor may, under certain circumstances, waive her right to claim a breach of a lease's pooling provision. In *Ohrt v. Union Gas Corp.*, 398 S.W.3d 315 (Tex. App.—Corpus Christi 2012, pet. denied), the lessors alleged that the lessees failed to include all of the lessees' acreage in the pooled unit in accordance with an amendment to the lease and that the lessees drilled

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(continued)

beneath the lowest permissible depth. However, the evidence showed that throughout the leasing and subsequent amendment process, the lessors had assistance of counsel who reviewed the leases and monitored the formation of the pooled units. The lessors also executed and returned the division orders. Also, the lessors collected and cashed royalty checks from the pooled unit for several months. The jury found that the lessors' conduct, regardless of any breach on the lessees' part, estopped the lessors from asserting an action for breach of the lease's terms due to the lessors' waiver and ratification. The appellate court affirmed.

2. In Good Faith.

Incumbent on all parties to a contract is the implied duty to act in good faith. Likewise, a lessee's decision to utilize the pooling clause must be done in good faith. The question of whether the lessee acted in good faith is one of fact, and the inquiry is whether a reasonably prudent operator would exercise its option to pool under the circumstances, taking into account the interests of both the lessee and the lessor. *Circle Dot Ranch, Inc. v. Sidwell Oil & Gas, Inc.*, 891 S.W.2d 342 (Tex. App.—Amarillo 1995, writ denied).

In *Amoco Production Company v. Underwood*, 558 S.W.2d 509 (Tex. Civ. App.—Eastland 1977, writ ref'd n.r.e.), various lessors executed eight oil and gas leases covering approximately 2,252 acres, portions of which were subsequently included in the pooled unit. All of the leases contained voluntary pooling clauses. Approximately six months prior to the expiration of the primary terms of the majority of the leases, the lessee began drilling operations. A gas well was ultimately completed two days before the expiration of the primary terms of the majority the leases. In forming a drilling unit of approximately 688 acres, the lessee:

- a) excluded a portion of the acreage of one of the pooled tracts from the pooled unit, although records indicated that the excluded acreages was probably productive; and
- b) included acreage from one of the tracts in the pooled unit despite the fact that the productive zone was probably below the depth where the lessee had completed its well.

The lessor contended that the lessee gerrymandered the drilling unit to save the leases by production beyond the primary term. The court agreed, holding that under these facts, the lessee did not establish the unit in good faith.

Likewise, in *Mission Resources, Inc. v. Garza Energy Trust*, 166 S.W.3d 301 (Tex. App.—Corpus Christi 2005), *rev'd on other grounds*, 268 S.W.3d 1 (Tex. 2008), the lessors' expert testified that the lessee formed a pooled unit in a manner that financially harmed the royalty interest owners while benefitting the lessee, and that there were other ways to pool the unit to avoid financial harm to the royalty interest owners. The court held that, under the facts, the lessee failed to consider the interests of the royalty owners in addition to its own. Therefore, more than a scintilla of evidence existed to sustain the trial court's conclusion that the lessee had pooled the unit in bad faith.

3. Remedies for Invalid Pooling/Improper Exercise of Pooling Power.

If the unit is not pooled in good faith or in accordance with the lease terms, "production will be considered to take place only on the actual tract upon which it occurs, and production from a unit well will not maintain off-site leases." *Southeastern Pipe Line Co. v. Tichacek*, 997 S.W.2d 166, 170 (Tex. 1999). Furthermore, the remedy for bad faith pooling in a cross-conveyance state (such as Texas) is to undo the unit and return the parties to their original positions. Jonathan D. Baughman, *Navigating the Pooling Clause Waters: New and Recurring Issues*, 53 Mtn. Min. L. Inst. 33-1 (2007).

B. Effect of Amending the Royalty Clause

Generally, absent an agreement to the contrary and regardless of the location of the well, all royalty interest owners in the pooled unit subject to a lease will share in production in proportion to their acreage within the pooled unit. *London v. Merriman*, 756 S.W.2d 736, 739 (Tex. App.—Corpus Christi 1988, writ denied) ("In other words, all royalty interest owners in the land subject to the lease share in

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(continued)

production no matter where the well is drilled on the leasehold.”). If the lease provides for a specific formula for payment of royalties for pooled units, however, that formula will control. In *Shell Oil Co. v. Ross*, 357 S.W.3d 8 (Tex. App.—Houston [1st Dist.] 2010), *rev'd on other grounds*, 356 S.W.3d 924 (Tex. 2011), the subject lease contained the following provision:

Any operations conducted on any part of such unitized land shall be considered, for all purposes, except for the payment of royalty, operations conducted under this lease. There shall be allocated to the land covered by the lease included in any such unit that proportion of the total production of unitized minerals from wells in the unit, after deducting any used for lease or unit operations, which the number of surface acres in the land covered by this lease included in the unit bears to the total number of surface acres in the unit. The production so allocated shall be considered for all purposes, including the payment or delivery of royalty, overriding royalty, and any other payments out of production, to be the entire production of unitized minerals from the portion of said land covered hereby and included in such unit in the same manner as though produced from said land under the terms of this lease.

Additionally, the lease required the lessee to pay royalties based on the amount the lessee realized from the sale of gas at the mouth of the well. Instead, however, the lessee paid royalty to the lessor based on a weighted average taking into account the amount realized by other working interest owners as well, ultimately to the benefit of the lessee. The court held that the lessee breached the express terms of the lease by using the weighted average calculation.

Of note, while a nonparticipating royalty interest (“NPRI”) owner’s interests can be pooled without express consent, Texas courts have held that an NPRI owner is entitled to her full royalty interest instead of a proportionate share of the pooled unit, absent an NPRI owner’s joining in or ratifying the lease (or expressly consenting in the instrument creating the NPRI). In *Brown v. Smith*, 174 S.W.2d 43 (Tex.

1943), the grantor conveyed her interest in a certain tract of land, reserving for herself a one-thirty-second (1/32) nonparticipating royalty interest in the minerals conveyed. Thereafter, the grantee executed an oil and gas lease on the subject lands. The lessee drilled a producing well on the subject land, pooling the tract with others to form a unit. The grantor in the original conveyance never agreed to the pooling agreement. The court held that, if a unit well is located on a lease subject to a nonparticipating royalty, absent the NPRI owner’s ratification, the NPRI owner is entitled to her full fraction of production, irrespective of the pooling provision’s production allocation among the tracts.

1. Anti-Dilution Provisions.

Anti-dilution clauses are intended to protect the lessor against the possibility that only a small portion of his property will be included in a pooled unit, thereby significantly diluting his royalty. As such, anti-dilution clauses generally require a lessee to pool a large portion of, or the entirety of, the leased premises. Sample clause language is as follows:

[I]f any pooled unit is created with respect to any well drilled on the land covered hereby, at least sixty percent (60%) of such pooled unit shall consist of the land covered hereby.

Browning Oil Co., Inc. v. Luecke, 38 S.W.3d 625, 637 (Tex. App. 2000—Austin, pet. denied).

In *Browning Oil Co., Inc. v. Luecke*, the parties executed an oil and gas lease prior to the industry’s pervasive use of horizontal wells. A lease clause provided that, should the lessees exercise their option to pool the lessor’s land, at least 60% of the resulting pooled unit must consist of the leased lands. The lessees pooled the lessor’s interests in a unit, but the lessor’s land comprised less than 60% of the unit. The lessees offered three arguments as to why the lessee should be excused from complying with the lease’s express terms. First, “the lessees argue[d] that because the horizontal drainholes penetrated existing pooled units, they were required to include the acreage from those existing units in the purported horizontal units, rendering it impossible to limit the size of the purported horizontal units to eighty acres” (the amount that would have been required to meet the 60% requirement). Second, the lessees argued that no reasonably prudent operator

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(continued)

would have drilled a horizontal well on an eighty-acre unit, therefore excusing the lessee from complying with the lease's anti-dilution provisions. Third, "the lessees argue[d] that the field rules require all points on the drainholes be included in the units, and because the drainhole displacement exceeded eighty acres, it was impossible to create an eighty acre unit." The court held that, under the lease's express terms, the lessees breached the lease by creating a pooled unit, less than 60% of which consisted of the lessor's lands. Importantly, the court held that the lessees' drilling of a horizontal well in no way excused the lessees from complying with the lease's express terms.

In *Sabre Oil & Gas Corporation v. Gibson*, 72 S.W.3d 812 (Tex. App.—Eastland 2002, pet. denied), Sabre Oil Company ("Sabre") was assigned certain portions of a 157-acre oil and gas lease. Sabre pooled its interests in the 157-acre tract (only a portion thereof) with other surrounding tracts. The lessors sued claiming that Sabre had breached the terms of the lease. The lease provided that the lessee must first attempt to pool all of the lessors' lands. Additionally, the lease contained a clause allowing the parties to assign any portion of their rights, title, and interest in the lease at any time. The court held that Sabre included in its unit all of the property owners' tracts, to which Sabre had acquired rights through the original lessee's partial assignment of interests in several, but not all, of the lessors' tracts. The court found that the lessors' interests were not diminished (in violation of the anti-dilution clause) by the pooling of their lands with other lands to form the unit.

C. Effect of Amending the Habendum Clause

Proper pooling and drilling operations on any portion of the pooled unit will have the effect of amending the Habendum clause. Generally, to maintain a lease into the secondary term, the lessee must achieve production in paying quantities from a well drilled on the leased land. With valid pooling, however, production from any portion of the pooled land (even if not on the lessor's land) will work to keep the lease in effect, as if the well were actually drilled on the lessor's land. *Friedrich v. Amoco Prod. Co.*, 698 S.W.2d 748, 752 (Tex. App.—Corpus Christi 1985, writ ref'd n.r.e.). The effect is that the pooling clause functions as a savings clause. See Laura H. Burney, *The Texas Supreme Court and Oil and Gas Jurisprudence: What Hath Wagner & Brown v. Sheppard Wrought?*, 5 Tex. J. Oil Gas & Energy L. 219, 224 (2009-2010).

1. Pugh ("Freestone Rider") Clauses.

Pugh clauses are used to prevent undeveloped leased acreage from being held by a producing well on a pooled unit. In essence, "[t]he Pugh clause was created to protect the lessor from the concern of having the entire leasehold held by production from a very small pooled area." *El Paso Prod. Oil & Gas v. Texas State Bank*, No. 04-05-00673-CV, 2007 WL 752209 (Tex. App.—San Antonio Mar. 14, 2007, pet. denied). The Pugh clause limits the area saved by pooling, if any, to that included in the pooled area and not to the entirety of the leased land. Aloysius A. Leopold, *Texas Practice Series: Land Titles and Title Examination* § 23.35 (3d ed. 2013). As such, the balance of the leased acreage will still be subject to the other provisions of a lease, and it will not be protected or extended by pooling. *Id.* Sample clause language is as follows:

Notwithstanding anything to the contrary herein contained, drilling operations on or production from a pooled unit or units established under the other provisions of this lease, embracing land covered hereby and other land, shall maintain this Lease in force only as to land included in such unit or units. The Lease may be maintained in force as to the remainder of the land covered hereby and not included in such unit or units in any manner herein provided for, including operations thereon or production therefrom.

(Addendum to Producers 88 (7-69) Paid-Up Lease with 640-acre Pooling Provision).

In addition to this standard vertical Pugh clause, which divides the leasehold strictly on the basis of the surface acreage included in a well spacing unit, a lease may also contain a Pugh clause that divides the leasehold based on the strata, reservoir or depth from which oil and gas is produced. A sample clause is as follows:

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(continued)

After expiration of the primary term, this lease will terminate automatically as to all horizons situated 100 feet below the deepest depth drilled (a) from which a well located on the land or acreage pooled therewith is producing in paying quantities, or (b) in which there is completed on the land or acreage pooled therewith a shut-in gas well which cannot be produced because of lack of market, marketing facilities, or because of governmental restrictions, whichever is the greater depth.

Sandefur Oil & Gas, Inc. v. Duhon, 961 F.2d 1207, 1208 (5th Cir. 1992).

In *Friedrich v. Amoco Production Company*, 698 S.W.2d 748 (Tex. App.—Corpus Christi 1985, writ ref'd n.r.e.), the court ruled that a Pugh clause in an oil and gas lease covering producing land allows the lessor to sever any part of the leasehold which is not a part of the producing unit or for which the lessee has failed to pay delay rentals. The operation of producing wells in one drilling unit or payment of delay rentals for one drilling unit does not serve to renew an entire lease. However, in the absence of a specific reference in an oil and gas lease to a depth limit or to a specific horizontal severance Pugh clause, the general Pugh clause applies only to vertical severance. Failure of a lessee to pay delay rentals on a non-producing depth does not allow a lessor to cancel the lease as to those depths. *Id.* at 754.

Likewise, in *El Paso Prod. Oil & Gas v. Tex. State Bank*, No. 04-05-00673-CV, 2007 WL 752209 (Tex. App.—San Antonio Mar. 14, 2007, pet. denied), the court held that, based on the intent of the parties, a Pugh clause did not effect a horizontal severance as to the lands underlying the pooled units. Therefore, absent lease language to the contrary, production in paying quantities of oil or gas after the primary term from one horizon of a pooled unit works to maintain the lease as to all depths underlying the pooled lands.

III. COMPULSORY POOLING STATUTES

Compulsory or forced pooling is a regulatory mechanism, used in accordance with state conservation laws in the majority of oil and gas producing states, to prevent waste and to protect a mineral interest owner's correlative rights, which is the right to a fair opportunity to produce a fair share of the oil and gas in a common reservoir. Texas' forced pooling statute has very limited applicability; however, other states such as Oklahoma utilize compulsory pooling statutes that allow (or require) the state commission to enter an order pooling all tracts and interests within a spacing unit (either before or after drilling).

A. Compulsory Pooling in Majority States

To give you an example of the types of pooling statutes in the various oil and gas producing states, we will provide an overview of the Model Oil and Gas Conservation Act of 2004, which sets forth two alternative styles of pooling. See 2004 Model Oil and Gas Conservation Act, available at: <http://www.iogcc.state.ok.us/Websites/iogcc/docs/ModelAct-Dec 2004.pdf>.

Under the first alternative, any operations on any portion of a pooled unit will be considered operations on all of the tracts in the pooled unit. *Id.* § 11(b). To protect correlative rights, the commission is authorized to make any pooling order retroactive to the date of the first notice of hearing and may make a pooling order retroactive to the date of production of the first discovery well for the underlying reservoir. *Id.* Any pooling order shall designate an owner to act as operator of the unit. *Id.* § 11(c).

The commission will give the forced interest owners three options:

- 1) to participate and pay his proportionate share of drilling costs;
- 2) to be carried with interest/penalty if the owner cannot or will not pay the drilling costs; or
- 3) to enter into a lease.

All reasonable costs of drilling, completing, operating, and plugging and abandonment shall be shared between the owners in proportion to each interest owner's acreage contribution to the pooled unit. *Id.*

Or, such costs shall be allocated on another basis approved by the commission. *Id.* To prevent waste or to protect correlative rights, the commission, at its discretion, may reallocate production and costs. *Id.* If the forced interest owner chooses to not participate and to be carried with penalty, the operator of a pooled unit may recover a carried interest owner's share of the costs of operation out of the resulting production. *Id.* §

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(continued)

10(d). Further, the carried interest to exceed 300% of the owner's share of such costs. *Id.* The 2004 Model Act also provides an Oklahoma-style alternative to the above-described option. *Id.* § 11 (Oklahoma has had some form of a compulsory pooling statute since 1935. Its current statute is quite comprehensive). In the absence of an agreement to pool between owners within a well spacing unit, and where at least one owner has drilled or proposes to drill a well on the well spacing unit, the commission shall compel pooling to prevent waste and to protect correlative rights. *Id.* §11(a). The pooling applicant shall provide all owners with proper notice of the application and hearing. *Id.* § 11(b). In the alternative, the pooling applicant shall provide interest owners with written notice by mail and publish a notice in a newspaper of general circulation. *Id.* The Oklahoma style option also includes a provision that allows the designated operator of the pooled unit to recover a reasonable charge for supervision. *Id.* § 11(e). Should a dispute arise, the commission shall determine proper costs after notice and hearing. *Id.* The Oklahoma-style option also expressly grants the operator a lien on the oil and gas estate or rights of the other owners in the pooled unit and on their share of production from the unit to the extent that costs incurred in the development and operation of the unit are a charge against the estates or interests by order of the commission or operation of law. *Id.* § 11(f). The liens are separable as to each owner within the unit and terminate when the operator has received payment in full for the amount due under the pooling order's terms. *Id.* The commission may also require that owner or owners paying for the drilling or operation be paid in full under the terms of the pooling order and shall be entitled to production, subject to the payment of royalty. *Id.* § 11(g).

B. Compulsory Pooling in Texas

Unlike Oklahoma's compulsory pooling statute, Texas' compulsory pooling statute has limited applicability and is seldom utilized. The Mineral Interest Pooling Act of 1965 ("MIPA") was intended to solve the dilemma caused by the application of spacing and density requirements to an oil or gas field that contains many small or irregularly shaped tracts. *Superior Oil Co. v. R.R. Comm'n of Texas*, 519 S.W.2d 479, 482 (Tex. Civ. App.—El Paso 1975, writ ref'd n.r.e.). The dilemma that provided the impetus for the MIPA is as follows:

For example, when spacing patterns were set by the Railroad Commission in a field, the owner of a tract smaller than such drilling unit either would be denied a permit altogether or would be granted such a low allowable that it was not profitable to drill. His oil, then, would be drained away and produced by others. Alternatively, if the small tract owner were granted an allowable which permitted profitable development of his tract he would drain away his neighbor's oil and gas in that he was allowed to produce more oil or gas than was in place under his tract. These problems the Act was designed to cure by providing a method by which the owners of small tracts could be forced to pool their interests into a proration unit of the size provided for the field. The owners may pool by agreement, but in the absence of their being able to agree or unwilling to have their interests pooled, one of their number can make application to the Railroad Commission under the Act and force the others to pool with him.

Superior Oil Co., 519 S.W.2d at 482. In the context of the majority of states' compulsory pooling statutes, the MIPA is comparatively weak. First, the MIPA only applies to reservoirs discovered and produced after March 8, 1961. See Tex. Nat. Res. Code Ann. § 102.003 (West). This restriction greatly limits the number of reservoirs in Texas subject to the MIPA, because the great majority of the reservoirs in Texas were discovered and produced, at least at some level, prior to 1961. If the reservoir is one discovered and produced after March 8, 1961, then the MIPA might apply if:

- 1) at least two separately owned tracts of land are included in a common reservoir for which the Commission has established the size and shape of proration units;
- 2) the oil and gas interest owners in the reservoir have not agreed to pool their interests; and
- 3) at least one of the *owners with a right to drill* makes the proper application to the Commission.

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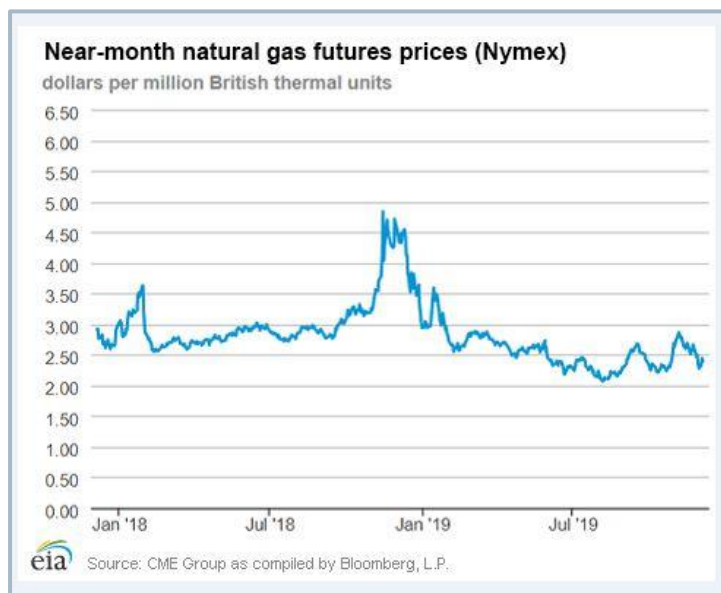
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Id. § 102.011. Before applying for compulsory pooling, an applicant must make a fair and reasonable voluntary pooling offer to the parties whose interests the applicant seeks to pool hers with. *Id.* § 102.013(b). Within an existing proration unit, an owner of a royalty or other interest in oil and gas who offers to share on the same “yardstick” basis as the other owners within a unit makes a fair and reasonable offer. *Id.* § 102.013(c). A party who does not pay her proportionate share of drilling and completion costs up front must reimburse the parties out of her share or production for her proportionate share of all actual and reasonable drilling, completion, and operating costs. *Id.* § 102.052(a).

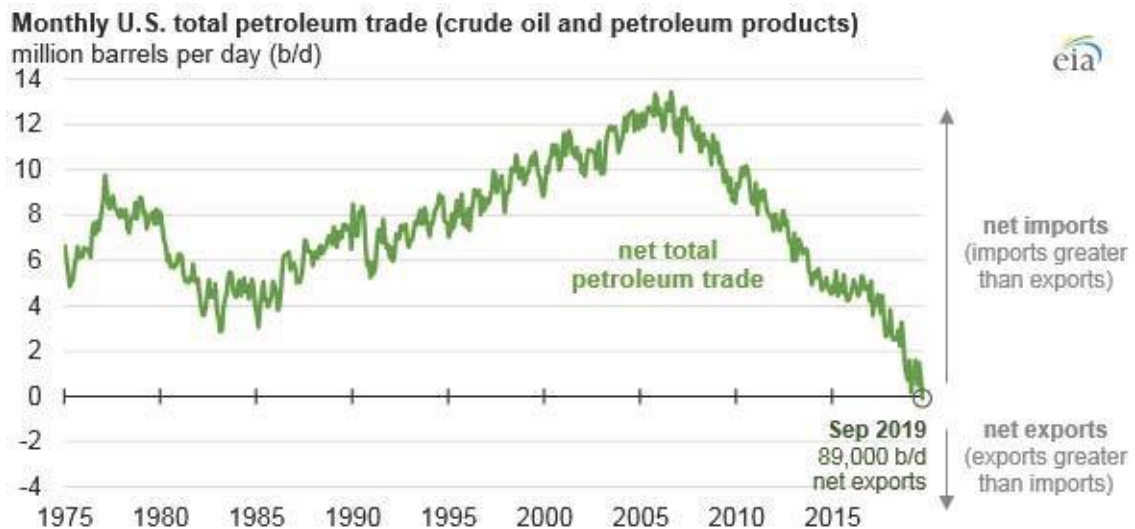
In *Carson v. R.R. Comm'n of Texas*, 669 S.W.2d 315 (Tex. 1984), the voluntary pooling offer was made after the operator had completed a producing well on the tract in which the party who owned the interest seeking to be pooled owned an interest. The voluntary pooling offer letter stated that said party was required to sign the ratification agreement to share in the proceeds of the well. In the letter, the lease covering the interests in question did not contain authorization, but it noted that it expected the Commission to grant the operator authority to pool. The party who owned the interest in question responded by suggesting that the operator compensate him for reducing his interest in the well proceeds to reflect prevailing royalties under modern leases. However, the operator refused to negotiate, stating that it did not feel obligated to do so. The court held that the operator’s proposal would have reduced the royalty owner’s interest in gross production by approximately two-thirds, while allowing owners of royalty interests who would not otherwise participate in production from the well to share in those proceeds. This, the court stated, was not a fair and reasonable offer and as such, the forced pooling order was improperly entered. *Id.* at 318. While the court did not define a “fair and reasonable offer,” it did state that the “offer must be one which takes into consideration those relevant facts, existing at the time of the offer, which would be considered important by a reasonable person in entering into a voluntary agreement concerning oil and gas properties.” *Id.*

Likewise, in *R.R. Comm'n of Texas v. Broussard*, 755 S.W.2d 951 (Tex. App. 1988—Austin, writ denied), mineral interest owners made an offer to voluntarily pool with adjoining owners. At the time of the offer, evidence showed that the producing wells on the adjoining lands were not draining the lands of the interest owners seeking to pool (although drainage could have occurred during secondary recovery efforts). The court, upholding the Commission’s dismissal of the application to pool under the MIPA, held that because the adjoining lands were not draining the lands of the interest owners at the time of the offer, the offer to pool was not fair and reasonable. *Id.* at 953–54 (noting that “[t]he Commission determined that, without current drainage occurring forced pooling would not accomplish the MIPA’s objective of preventing drainage”).

2018 – 2019 Historical Gas Futures Prices from the EIA



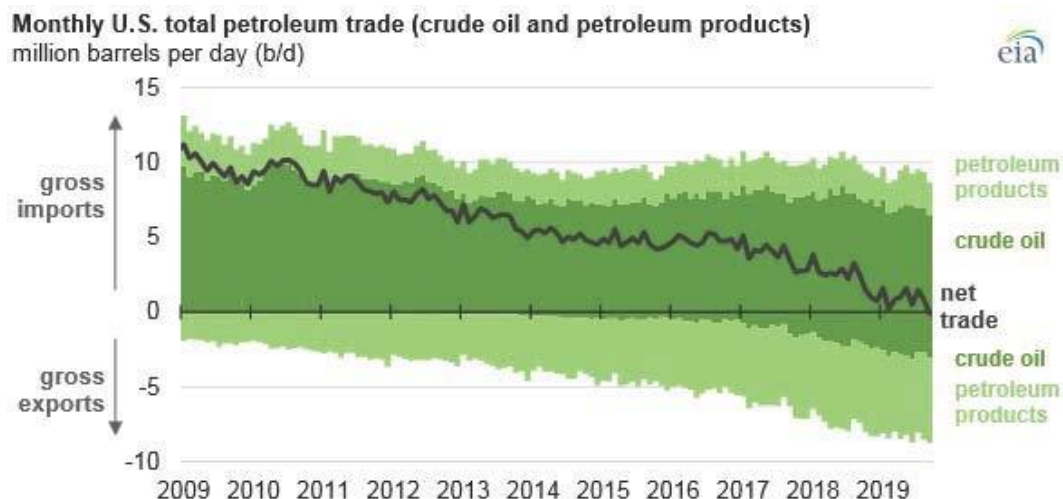
U.S. Petroleum Exports Exceed Imports in September



Source: U.S. Energy Information Administration, [Petroleum Supply Monthly](#)

In September 2019, the United States exported 89,000 barrels per day (b/d) more petroleum (crude oil and petroleum products) than it imported, the first month this has happened since monthly records began in 1973. A decade ago, the United States was importing 10 million b/d more petroleum than it was exporting. Long-running changes in U.S. trade patterns for both crude oil and petroleum products have resulted in a steady decrease in overall U.S. net petroleum imports.

Net petroleum trade is calculated as total imports of crude oil and petroleum products less total exports of crude oil and petroleum products. Although the United States currently imports more crude oil than it exports, it exports more petroleum products than it imports, resulting in net total petroleum exports.



Source: U.S. Energy Information Administration, [Petroleum Supply Monthly](#)

U.S. Petroleum Exports Exceed Imports in September

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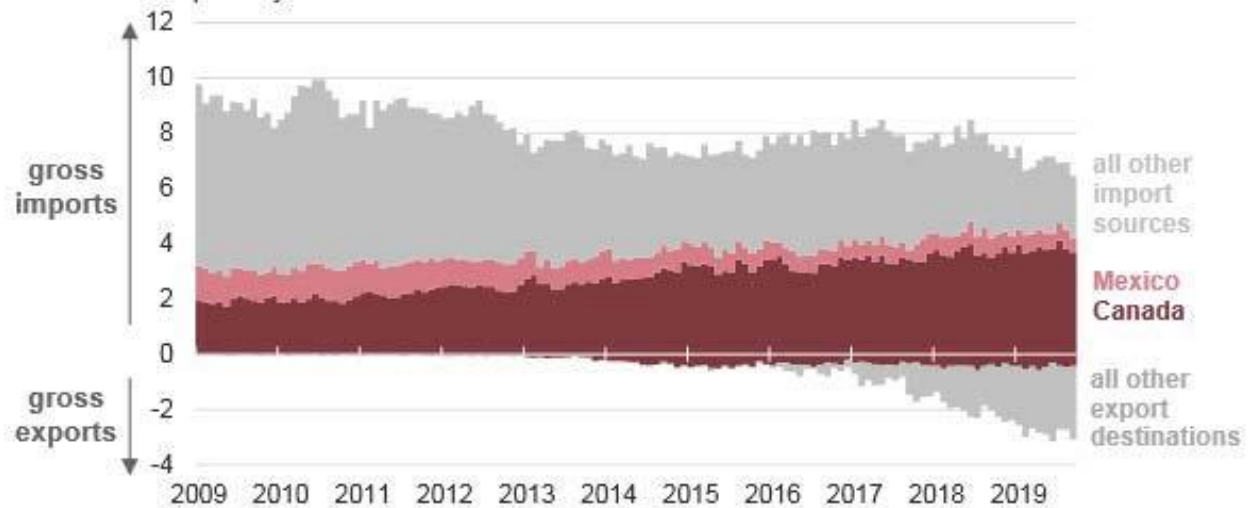
[Increasing U.S. crude oil production](#), which rose from an average of 5.3 million b/d in 2009 to 12.1 million b/d in 2019 (through September), has resulted in a decrease in U.S. crude oil imports from an average of 9 million b/d in 2009 to 7.0 million b/d in 2019 (through September). The decrease in U.S. crude oil imports also corresponded with a [decrease in the number of sources](#) the United States imported crude oil from.

In December 2015, the United States lifted restrictions on exporting domestically produced crude oil. Since then, U.S. crude oil exports have been the largest contributor to U.S. petroleum export growth; [U.S. crude oil exports](#) have grown from 591,000 b/d in 2016 to 2.8 million b/d in 2019 through September.

Despite increasing exports of crude oil, however, the United States remains a net importer of crude oil. The United States continues importing primarily heavy high-sulfur crude oils that most U.S. refineries are configured to process, and more than 60% of U.S. crude oil imports come from Canada and Mexico.

Monthly U.S. crude oil trade balance (Jan 2009-Sep 2019)

million barrels per day



Source: U.S. Energy Information Administration, [Petroleum Supply Monthly](#)

At the same time, U.S. refineries responded to increasing domestic and international demand for petroleum products (such as distillate fuel, motor gasoline, and jet fuel) by increasing throughput. Gross inputs into U.S. refineries rose from an annual average of 14.6 million b/d in 2009 to 17.0 million b/d through the third quarter of 2019, and they have [regularly set new monthly record highs](#).

The increase in refinery production of petroleum products has outpaced the increase in U.S. consumption, contributing to an increase in petroleum product exports. The United States has gone from net petroleum product imports of 698,000 b/d in 2009, to net petroleum product exports of 3.2 million b/d so far in 2019. In the first nine months of 2019, the United States exported 1.4 million b/d of distillate, 1.1 million b/d of propane, and 864,000 b/d of motor gasoline, [the three largest petroleum product exports](#).

What Is the Mineral Interests Pooling Act of Texas?

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In states with mineral interests, the idea of forced pooling continues to be controversial. Individuals and groups in Ohio, Colorado, and Pennsylvania have gone to court to fight forced mineral pooling of their mineral interests.

While it's always been an issue, forced pooling is seeing renewed enforcement due to horizontal drilling. This year, the 86th Texas Legislature updated the state's Mineral Interest Pooling Act (MIPA) that was originally passed in 1965.

Here is how MIPA evolved, what MIPA is, in a nutshell, and how it applies to [property owners and operators in the state of Texas](#).

Atlantic Refining Co. V. Railroad Commission - The Normanna Case

In 1961, Atlantic Refining Company took the Texas Railroad Commission (RRC) to court in a case subsequently named the *Normanna* case, after the Normanna oil field. Atlantic Refining cited irreparable damages and the inability to remedy under the Rule of Capture due to the RRC granting an unleased owner a spacing exception. In addition, the Commission allowed the unleased owner to drill on his own land and produce 200 times more per acre than the pooled interest was allowed.

The Texas Supreme Court vacated the RRC's order stating that the proration formula used was an unreasonable basis for allocating production from the Normanna reservoir. The court also ruled that the RRC does not compel ratable production nor afford each producer the opportunity to produce his or her fair share.

The court stopped short of establishing a guiding rule for allocating production, but it did mandate that the RRC had the responsibility to create a rule of proration that would conserve the mineral interest (gas, in this case), and be "fair and just" to all parties while not depriving them of property.

The Normanna decision has become the precedent for challenging the Texas Railroad Commission's orders. However, because the decision restricted small tract owners from producing became a political and operational issue. So, the RRC came up with a Special Allowables for small tracts.

Special Allowables was an attempt to encourage small tracts to negotiate with neighbors for fair and just treatment and to incentivize fair voluntary pooling. In the meantime, the smaller owners would have leverage to encourage neighbors toward "reasonable" treatment.

The Default Allocation Formula was entirely acreage-based but Special Allowables exceptions could be made for gas wells of less than 100 acres as long as the operator could not operate on his or her tract because of the per-acre allowable and adjacent owners refused to pool.

The Mineral Interest Pooling Act of 1965 - An Overview

The Mineral Interest Pooling Act (MIPA) is the Texas version of compulsory or mine that is the legislative response to the Normanna court decision. In brief, MIPA:

- Was enacted to encourage voluntary pooling.
- Allowed the RRC to compel pooling for separately owned tracts in the same field reservoir.
- Required a qualified owner to apply for MIPA.
- Prevented unnecessary well drilling and waste and protected correlative rights.

What Is the Mineral Interests Pooling Act of Texas?

(continued)

Correlative rights are the rights of all owners in a common source or supply.

In order to apply MIPA, the party wishing to pool or unitize must demonstrate that it has exhausted all efforts to negotiate pooling. The end result is typically forced voluntary pooling (which sounds like an oxymoron).

The passage of MIPA shifted the balance of power to the larger owners, leaving small owners rather helpless against forced pooling, especially since they were still required to pay a risk penalty in return for participating in a working interest.

By the way, MIPA is only available for gas and oil interests.

Texas Railroad Commission Order 2009

Almost 45 years later, in 2009, the RRC handed down an order in response to a MIPA application from Finley Resources. The acreage where Finley wished to begin horizontal drilling was relatively urban, and not all owners would sign leases. Finley's application was to form a pooled unit in the Barnett Shale through forced pooling of the owners who refused leases. The operator had made a "good faith" offer of 1/5th royalty and 4/5ths working interest, without result.

This case was studied for a year before the RRC approved the MIPA application.

Interestingly, the application did not allow or require the unleased owners to pay a risk penalty even though they could participate in revenues as a working interest owner once the operator had recovered 100% of the drilling and completion costs. Most MIPA applications require the penalty risk to be applied to owners who refuse to voluntarily join a unit.

Mineral owners were concerned this use of MIPA would lead to forced pooled units against their will. In the meantime, landowners were protected.

Texas HB 3266 - 2019

MIPA contains an automatic dissolution provision. If, after one year, no drilling or production had been achieved from the unit, the unit pool would automatically dissolve. The update extends the provision to two years if no drilling or production is achieved.

Another change is an expansion for unit-maintaining production or operations to be performed beyond the unit itself including the surface locations. Horizontal well operators tend to produce from a reservoir via pipelines with an entry point, not on unitized lands, but on an offsite tract. This change made it easier to use MIPA.

Who Can Apply for MIPA?

There are three types of owners who can apply for MIPA to encourage or require forced pooling.

- The owner of any working interest.
- The owner of any interest in gas or oil in an existing or proposed proration unit.
- Any owner of an unleased tract other than a royalty owner.

What Is the Mineral Interests Pooling Act of Texas?

(continued)

A Notice of MIPA application must be provided to all interested parties 30 days before the hearing. However, MIPA applicants can serve notice by publication if owners are unknown or missing.

There is no standard application form, but the application must include:

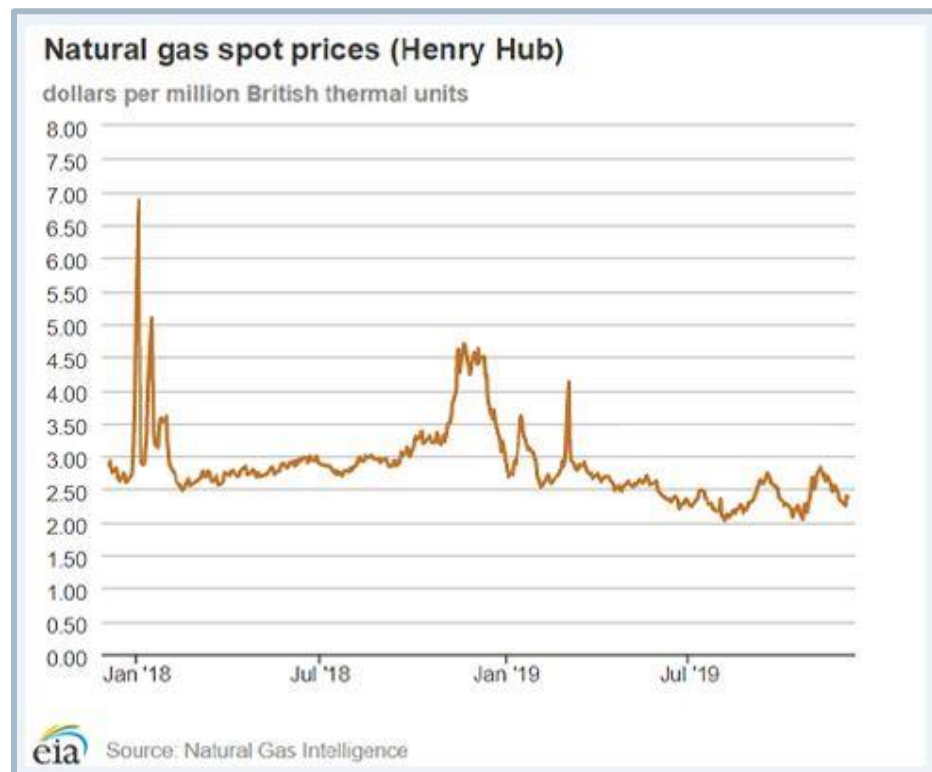
- A request for a hearing for a compulsory pooling order.
- A detailed record of voluntary pooling offers made by the applicant that were rejected by owners.
- Identification of the tracts of land involved.
- Identification of all interest owners.

Upon receipt of the list of interest owners, the Railroad Commission mails a notice to all listed entities and publishes a notice of the applicant's responsibility. MIPA applications can take six to twelve months to generate an action.

MIPA only applies to a field that was not discovered and produced before March 8, 1961, the date of the Normanna decision. It only applies to private minerals with some exceptions, and the application must meet certain requirements for separate tracts, common reservoir, existing field rule, and existing or pending operations.

Gas and oil well exploration and production operators should keep the Mineral Interest Pooling Act in mind when offering leases toward unitization of a pool of mineral interests. It can be frustrating to be held back by one or more owners who refuse to sign a lease no matter what you offer. There is a remedy available.

2018 – 2019
Historical
Gas Spot
Prices from
the EIA



Your Tax Dollars at Work

Short-Term Energy Outlook from the EIA

Global liquid fuels

- Brent crude oil spot prices averaged \$63 per barrel (b) in November, up \$3/b from October. EIA forecasts Brent spot prices will average \$61/b in 2020, down from a 2019 average of \$64/b. EIA forecasts that West Texas Intermediate (WTI) prices will average \$5.50/b less than Brent prices in 2020. EIA expects crude oil prices will be lower on average in 2020 than in 2019 because of forecast rising global oil inventories, particularly in the first half of next year.
- On December 6, the Organization of the Petroleum Exporting Countries (OPEC) and a group of other oil producers announced they were deepening production cuts originally announced in December 2018. The group is now targeting production that is 1.7 million barrels per day (b/d) lower than in October 2018, compared with the former target reduction of 1.2 million b/d. OPEC announced that the cuts would be in effect through the end of March 2020. However, EIA assumes that OPEC will limit production through all of 2020, amid a forecast of rising oil inventories. EIA forecasts OPEC crude oil production will average 29.3 million b/d in 2020, down by 0.5 million b/d from 2019.
- EIA data show that the United States exported 90,000 b/d more total crude oil and petroleum products in September than it imported. This is the first month recorded in U.S. data that the United States exported more crude oil and petroleum products than it imported. U.S. imports and exports records of crude oil and petroleum products started on an annual basis in 1949 and on a monthly basis in 1973. EIA expects total crude oil and petroleum net exports to average 570,000 b/d in 2020 compared with average net imports of 490,000 b/d in 2019.
- EIA expects U.S. crude oil production to average 13.2 million b/d in 2020, an increase of 0.9 million b/d from the 2019 level. Expected 2020 growth is slower than 2018 growth of 1.6 million b/d and 2019 growth of 1.3 million b/d. Slowing crude oil production growth results from a decline in drilling rigs over the past year that EIA expects to continue into 2020. Despite the decline in rigs, EIA forecasts production will continue to grow as rig efficiency and well-level productivity rises, offsetting the decline in the number of rigs.
- EIA estimates that propane inventories in the Midwest—Petroleum Administration for Defense District (PADD) 2—were 22.0 million barrels at the end of November, 17% lower than the five-year (2014–18) average for the end of November. Colder-than-normal temperatures and strong grain drying demand in November contributed to large draws on Midwest propane inventories. Also, Western Canadian rail shipments of propane to the Midwest have declined since the opening of a new propane export terminal in Western Canada in May. EIA forecasts Midwest inventories at the end of March will be 32% lower than the five-year (2015–19) average and the lowest for that time of year since 2014.

Your Tax Dollars at Work

(continued)

Natural gas

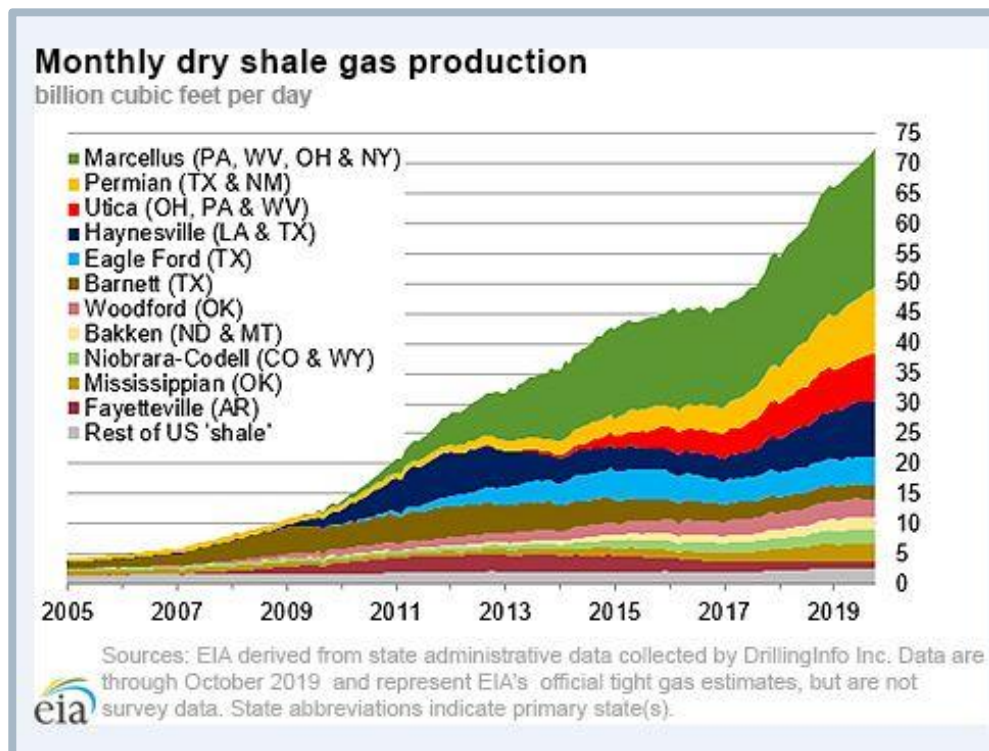
EIA estimates that the U.S. total working gas inventories were 3,616 billion cubic feet (Bcf) at the end of November. This level was about equal to the five-year (2014–18) average and 19% higher than a year ago. EIA expects storage withdrawals to total 1.9 trillion cubic feet (Tcf) from the end of October to the end of March, which is less than the five-year average winter withdrawal. A withdrawal of this amount would leave the end-of-March inventories at almost 1.9 Tcf, which would be 8% higher than the five-year (2015–19) average.

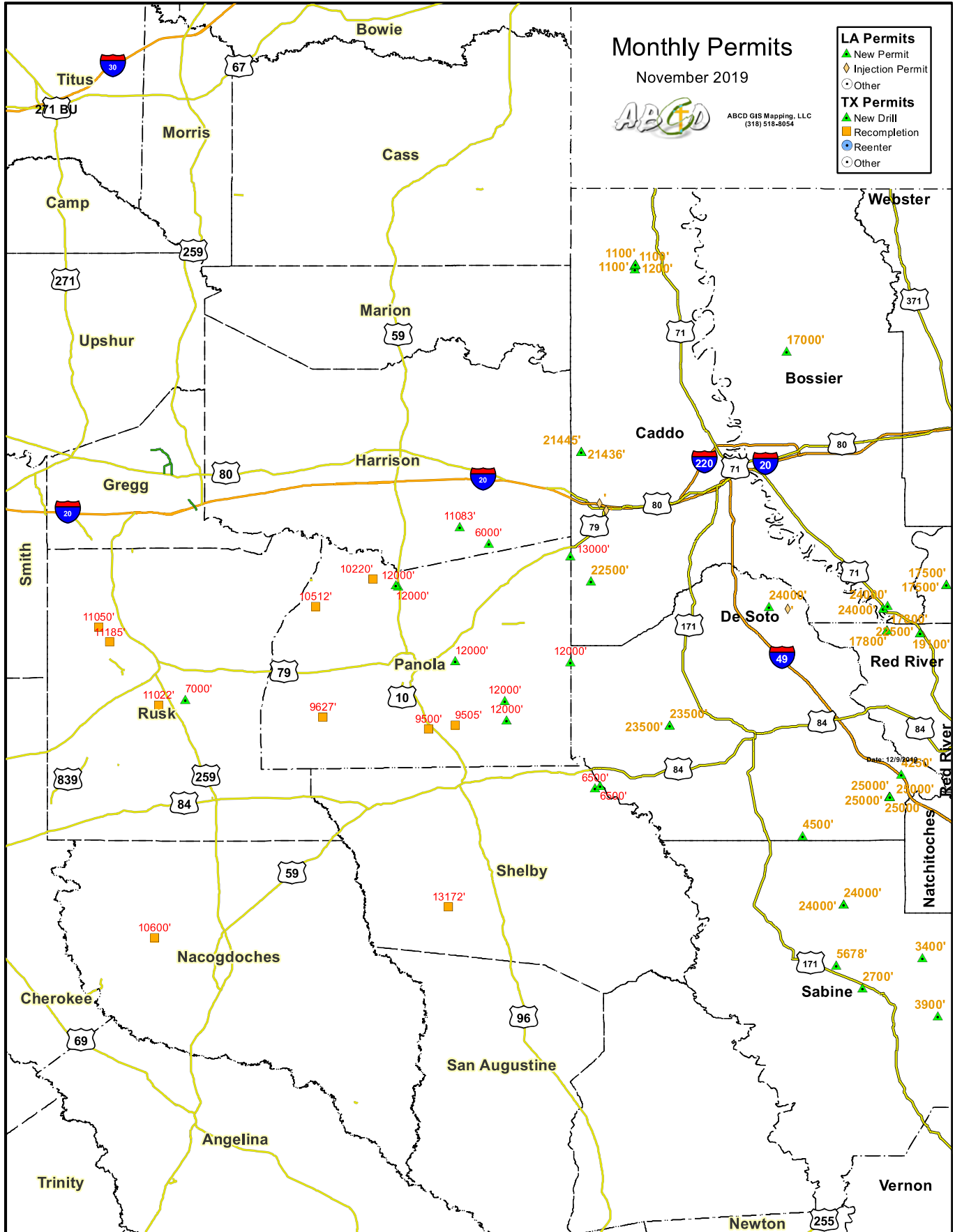
The U.S. benchmark Henry Hub natural gas spot price averaged \$2.64 per million British thermal units (MMBtu) in November, up 31 cents/MMBtu from October. Prices increased as a result of November temperatures that were colder than the 10-year (2009–18) average. EIA forecasts the Henry Hub spot price to average \$2.45/MMBtu in 2020, down 14 cents/MMBtu from the 2019 average.

EIA forecasts that annual U.S. dry natural gas production will average 92.1 billion cubic feet per day (Bcf/d) in 2019, up 10% from 2018. EIA expects that natural gas production will grow much less in 2020 because of the lag between changes in price and changes in future drilling activity. Low prices in the third quarter of 2019 will reduce natural gas-directed drilling in the first half of 2020. EIA forecasts natural gas production in 2020 will average 95.1 Bcf/d.

For more information, visit:

www.EIA.gov





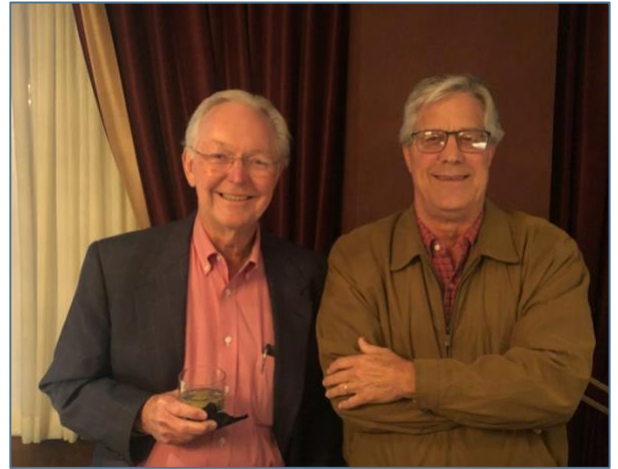
Texas Permits – November 2019
provided by Xingwen Chen of ABCD GIS Mapping

AppDate	API	Operator	County	Purpose	TD
11/1/19	36538423	ROCKCLIFF ENERGY OPERATING LLC (722890)	PANOLA	New Drill	12000
11/4/19	36538498	ROCKCLIFF ENERGY OPERATING LLC (722890)	PANOLA	New Drill	12000
11/5/19	41931813	GREER EXPLORATION CORPORATION (331861)	SHELBY	New Drill	6500
11/5/19	41931814	GREER EXPLORATION CORPORATION (331861)	SHELBY	New Drill	6500
11/6/19	36530710	TANOS EXPLORATION II, LLC (835976)	PANOLA	Recompletion	9500
11/8/19	36531033	TANOS EXPLORATION II, LLC (835976)	PANOLA	Recompletion	9505
11/8/19	36535967	DANMARK ENERGY SERVICES, INC. (199614)	PANOLA	Recompletion	10512
11/12/19	36538383	ROCKCLIFF ENERGY OPERATING LLC (722890)	PANOLA	New Drill	12000
11/12/19	40131988	CCI EAST TEXAS UPSTREAM LLC (120023)	RUSK	Recompletion	11050
11/13/19	40132206	CCI EAST TEXAS UPSTREAM LLC (120023)	RUSK	Recompletion	11185
11/13/19	20335379	TANOS EXPLORATION II, LLC (835976)	HARRISON	New Drill	11083
11/14/19	36538536	R. LACY SERVICES, LTD. (687208)	PANOLA	New Drill	12000
11/19/19	36538391	ROCKCLIFF ENERGY OPERATING LLC (722890)	PANOLA	New Drill	12000
11/19/19	36535835	BUFFCO PRODUCTION INC. (106406)	PANOLA	Recompletion	9627
11/20/19	34731778	ARK-LA-TEX ENERGY, L.L.C. (030584)	NACOGDOCHES	Recompletion	10600
11/21/19	36538535	ROCKCLIFF ENERGY OPERATING LLC (722890)	PANOLA	New Drill	13000
11/21/19	40134208	AMPLIFY ENERGY OPERATING LLC (020467)	RUSK	Recompletion	11022
11/22/19	36536230	CRD OPERATING, LLC (186953)	PANOLA	Recompletion	10220
11/22/19	20335391	SABINE OIL & GAS CORPORATION (742143)	HARRISON	New Drill	6000
11/25/19	41931237	SHERIDAN PRODUCTION COMPANY, LLC (775854)	SHELBY	Recompletion	13172
11/26/19	36538537	R. LACY SERVICES, LTD. (687208)	PANOLA	New Drill	12000
11/26/19	40135449	SABINE OIL & GAS CORPORATION (742143)	RUSK	New Drill	7000

Louisiana Permits – November 2019
provided by Xingwen Chen of ABCD GIS Mapping

County	WellSN	WellName	PermitDate	Depth	Organization
BIENVILLE	252115	HA RA SUB;B'VILLE S & G 2 H	11/22/19	17500	AETHON ENERGY OPERATING LLC
BIENVILLE	252116	HA RA SUB;B'VILLE S & G 2 H	11/22/19	17500	AETHON ENERGY OPERATING LLC
BOSSIER	252113	VUA;GRISHAM 13-12 H	11/21/19	17000	EMPRESA OPERATING, LLC
BOSSIER	252114	HA RA SUT;HOSIER 35-22-15 HC	11/22/19	24000	COVEY PARK GAS LLC
BOSSIER	252117	MARTIN 23-14 HZ	11/25/19	24000	COMSTOCK OIL & GAS--LA, LLC
BOSSIER	252118	HA RA SUI;MARTIN 23-14 HC	11/25/19	24000	COVEY PARK GAS LLC
CADDO	252075	SUTHERLIN	11/1/19	1100	EGH OPERATING, LLC
CADDO	252083	HUDSON ETAL 4-33 H	11/5/19	22500	BLUE DOME OPERATING, LLC
CADDO	252100	STARKS-BARR	11/15/19	1200	COY W. HALE
CADDO	252101	HA RA SUCC;MITCH-WILL 17-8 H	11/15/19	21445	TRINITY OPERATING (USG), LLC
CADDO	252102	HA RA SUCC;MITCH-WILL 17-8 H	11/15/19	21436	TRINITY OPERATING (USG), LLC
CADDO	252109	ANKERSON	11/20/19	1100	EGH OPERATING, LLC
CADDO	252110	ANKERSON	11/20/19	1100	EGH OPERATING, LLC
CADDO	252111	ANKERSON	11/20/19	1100	EGH OPERATING, LLC
CADDO	975665	FLOURNOY SWD	11/4/19	0	HENERGY OIL & GAS LLC
CADDO	975666	LATHAM-BRYSON SWD	11/4/19	0	HENERGY OIL & GAS LLC
DE SOTO	252086	RRBB LITTON RA SU;JJ RAMBIN	11/8/19	4250	PERRY POINT, INC.
DE SOTO	252089	HSR 23&26&35-11-11 H	11/8/19	25000	INDIGO MINERALS LLC
DE SOTO	252090	HSR 23&26&35-11-11 H	11/8/19	25000	INDIGO MINERALS LLC
DE SOTO	252091	HSR 23&26&35-11-11 H	11/8/19	25000	INDIGO MINERALS LLC
DE SOTO	252092	HSR 23&26&35-11-11 H	11/8/19	25000	INDIGO MINERALS LLC
DE SOTO	252093	NABORS-LOGAN	11/13/19	4500	NABORS-JOHNSON PROD CO., INC.
DE SOTO	252098	WHT 1&12&13-12-15 H	11/14/19	23500	INDIGO MINERALS LLC
DE SOTO	252099	WHT 1&12&13-12-15 H	11/14/19	23500	INDIGO MINERALS LLC
DE SOTO	975667	MORGAN ETAL SWD	11/6/19	0	AETHON ENERGY OPERATING LLC
RED					
RIVER	252076	HA RA SUR;MONDELLO 51 HC	11/1/19	24000	VINE OIL & GAS LP
RED		JUR RB SUC;DIANNE MARTIN 30			
RIVER	252077	H	11/1/19	20000	BRIX OPERATING LLC
RED					
RIVER	252120	HA RA SUK;SAMPLE 3-14-11 H	11/26/19	17800	AETHON ENERGY OPERATING LLC
RED					
RIVER	252121	HA RA SUK;SAMPLE 3-14-11 H	11/26/19	17800	AETHON ENERGY OPERATING LLC
RED					
RIVER	252122	HA RA SU56;CONNIE G 8-5 HC	11/26/19	19100	GEP HAYNESVILLE, LLC
RED					
RIVER	252123	HA RA SU56;CONNIE G 8-17 HC	11/26/19	22500	GEP HAYNESVILLE, LLC
SABINE	252074	J O KIMBRELL 2	11/1/19	5678	ACTIVA RESOURCES, LLC
SABINE	252079	OLYMPIA MINERALS 20	11/4/19	2700	PORTRUSH OPERATING LLC
SABINE	252080	OLYMPIA MINERALS 32	11/4/19	3400	PORTRUSH OPERATING LLC
SABINE	252081	OLYMPIA MINEALS 3	11/4/19	3900	PORTRUSH OPERATING LLC
SABINE	252104	OLYMPIA MIN 25-24 H	11/20/19	24000	GEP HAYNESVILLE, LLC
SABINE	252105	OLYMPIA MIN 36-1 H	11/20/19	24000	GEP HAYNESVILLE, LLC

ALTAPL-SGS Christmas Social



ALTAPL-SGS Christmas Social

(continued)



Print this application and give it to a future ALTAPL member!

ARK-LA-TEX ASSOCIATION OF PROFESSIONAL LANDMEN



APPLICATION FOR MEMBERSHIP
PLEASE TYPE OR PRINT

FULL NAME: _____
MAILING ADDRESS (Street, City, State Zip): _____
BUSINESS TELEPHONE NUMBER: _____ CELL (Optional) _____
EMAIL ADDRESS: _____
EMPLOYED BY: _____ TITLE: _____
DATE YOU BEGAN PETROLEUM LAND WORK: _____

ARE YOU A MEMBER OF THE AAPL (American Association of Professional Landmen)?
 yes # _____ no

ARE YOU CERTIFIED by AAPL (American Association of Professional Landmen)?
 yes no

CPL _____ RPL _____ RL _____

Please circle the category for which you are applying:

- ACTIVE — Minimum of four (4) years active experience as a Landman;
- APPRENTICE — Less than four (4) years active experience as a Landman;
- ASSOCIATE — Non-Landman requesting membership.

Please give a brief but specific statement on the experience that qualifies you for membership:

Have you ever been convicted of a felony? Yes No (circle one)
If yes, attach a detailed description of the offense and the status of the matter.
Have you been found guilty of an ethics violation by ALTAPL or any other professional organization?
Yes No (circle one)
If yes, attach a detailed description of the offense and the status of the matter.

Applicant's Signature: _____ Date: _____

EACH APPLICANT MUST HAVE TWO (2) SPONSORS (Sponsors Must be active and current members of the ALTAPL):

1. _____ 2. _____
Signature Signature

1. _____ 2. _____
Sponsor's Printed Name Sponsor's Printed Name

MEMBERSHIP FEE: \$45.00, which includes annual dues of \$40.00 and a one-time processing fee of \$5.00. Please make your check payable to ALTAPL and return with your application to:

ALTAPL
Attention: Membership Chairman
P.O. Box 1296
Shreveport, LA 71163-1296