2025 Annual Case Law Update

Prepared by

Mazurek, Belden & Burke, P.C.

An Energy and Transactional Law Firm

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Mazurek, Belden & Burke, P.C. is a San Antonio, Texas-based law firm that handles oil and gas matters, particularly in the fields of title examination, merger and acquisition due diligence, and regulatory advising. MBB represents clients in Texas, Ohio, Oklahoma, New Mexico, Utah, Colorado, and Massachusetts. To find out more about us, please visit: www.mbb-legal.com.

If you have any questions, or if you would like to discuss any of the cases set forth herein in greater detail, please do not hesitate to contact us.

Sincerely,

Mazurek, Belden & Burke, P.C.

Acknowledgment

A sincere thank you to all those who helped publish the 2025 Case Law Update.

Joseph D. Belden, Shareholder
Tiffany M. Shute, Shareholder
Benjamin Shaver, Shareholder
Nicole Meche, Senior Associate Attorney
Georgia-Beth Molak, Senior Associate Attorney
Kristyn Anderson, Associate Attorney
Alexia Contreras De Castillo, Associate Attorney
Ru Ding, Associate Attorney
Kambri Garcia, Associate Attorney
Linda T. Hesles Quintero, Associate Attorney
Jacob Hernandez, Associate Attorney
Brendan Pak, Associate Attorney
Andrew Thetford, Associate Attorney
Michael D. Briscoe, Law Clerk
Joshua J. Ensley, Law Clerk
Anniela M. Gonzalez, Law Clerk
Parker Yuchinski, Law Clerk

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FEDERAL CIRCUIT COURTS OF APPEALS CASES

1. Fifth Circuit Court of Appeals

DDR Weinert, Ltd. v. Ovintiv USA, Inc. [1]

Fifth Circuit Court of Appeals

In this case, the court analyzed whether the doctrine of equitable recoupment barred the plaintiff's claim to recover a sum of royalties that were withheld. Ovintiv USA, Inc. ("Ovintiv") overpaid the Richter family for oil and gas extracted from their four tracts of land in Karnes County, Texas. Before Ovintiv discovered the mistake, the Richters had transferred their interests to DDR Weinert, Ltd. and DDR Williams, Ltd. (collectively referred to as "DDR"), making DDR the successor lessors of the subject property. On June 26, 2018, Ovintiv informed DDR of its plan to conduct a "Prior Period Adjustment" to recoup overpayments to the Richters from future royalty payments to DDR. Ovintiv then withheld royalties from DDR in the amount it overpaid the Richters. Subsequently, DDR filed suit and claimed that Ovintiv had wrongfully withheld more than $608,000 in royalties.[2]

In order to determine whether DDR was entitled to the sum of royalties that the Richters were overpaid, the court applied the doctrine of equitable recoupment. The doctrine of equitable recoupment takes place when "the lessee or the purchaser of royalty oil or royalty gas…overpay[s] a lessor or…[pays] a person not entitled to receive such payment, [therefore] such a lessee…may or may not be entitled to a refund of the amount erroneously paid, depending upon the circumstances of the payment."[3] Under equitable recoupment, two general elements must be met: (1) some type of overpayment must have been made, and (2) both the creditor's claim and the amount owed to the debtor must arise from a single transaction.[4] Here, it was clear that an overpayment had been made. A single transaction for the purposes of recoupment must be examined in all its aspects and judged as a whole.[5] For this reason, the Court held the overpayment to Ovintiv and the underpayment to DDR arose from a single transaction and was barred from equitable recoupment.

The Court further explained that but for the doctrine of equitable recoupment, Ovintiv would be forced to pay the amount twice, once to the Richter family and once more to DDR. Since Ovintiv did not profit by underpaying DDR, Ovintiv was not unjustly enriched from underpaying DDR. Additionally, the Richter family-controlled DDR, so DDR and the Richters would be unjustly

[1] *DDR Weinert, Ltd. v. Ovintiv USA, Inc.*, No. 23-50479, 2025 WL 636315 (5th Cir. 2025 Feb. 27, 2025).
[2] *Id*. at *1 ("In September 2016, Ovintiv mistakenly adjusted the gas flow on several properties but did not catch the error until January 2018. As a result…Ovintiv underpaid some royalty owners and overpaid others").
[3] *Id*. at *2.
[4] *Id*.
[5] *Id*. (referencing *W&T Offshore, Inc. v. Bernhardt*, 946 F.3d 227 (5th Cir. 2019) which held a monthly obligation under the same lease as part of a single transaction).

enriched if DDR's claim were to prevail. DDR could alternatively seek reimbursement from the Richters, who were the only parties unjustly enriched by Ovintiv's error. Therefore, the overpayment to the Richters and the underpayment to DDR were part of a single transaction such that the doctrine of equitable recoupment applies and prevents DDR's claim against Ovintiv.

Dow Construction LLC v. BPX Operating Company [6]

Fifth Circuit Court of Appeals

In this case, the court assessed the operator's right to deduct post-production costs under Louisiana's forced pooling statute. BPX Operating Company ("BPX"), was the operator of a forced pooled unit in Louisiana, in which Dow Construction ("Dow") was a lessee of leased property within the unit. Dow argued that it was an "unleased interest" in the unit and was, therefore, entitled to demand a statutory accounting.[7] Dow previously sent two demands for accounting of costs to BPX's predecessor, both of which were ignored. Dow argued that BPX's inaction triggered the forfeiture of the operator's right to deduct post-production costs under the forced pooling statute.[8]

First the court addressed whether DOW was an unleased interest owner under the statute. The court held that the term "unleased interest" in the statutory scheme was in reference to being unleased *as to the operator* – thus any unleased non-operator or mineral interest owner in the unit, including DOW, qualify as "unleased" under the statute.

Next, the court determined whether the doctrine of *negotiorum gestio* allowed unit operators to recover post-production costs in accordance with § 30:10(A)(3). BPX argued *negotiorum gestio* gives operators the ability to recover post-production costs incurred by an operator in marketing a mineral interest owner's share of production. Following the Louisiana Supreme Court's holding in a similar case, the court held that *negotiorum gestio* did not apply to unit operators selling production under statutory authority because a party is only a gestor if the action is taken without authority.[9]

Finally, the court addressed which costs are covered by the phrase "costs of drilling operations" in § 30:103.2 and subject to forfeiture for failure to deliver accounting to unleased owners. BPX argued these costs include only enumerated specific drilling costs while Dow argued the phrase referred to "funds expended to enhance . . . the production of the well," which includes post-production costs. The court determined that the "costs of drilling operations" includes the total cost of drilling and completing a unit, in addition to all other unit costs. Accordingly, the court held that post-production costs are an "operational expense" and thus, included in the forfeiture provision.[10]

[6] *Dow Constr., L.L.C. v. BPX Operating Co.*, 140 F.4th 246 (5th Cir. 2025).
[7] LA. REV. STAT. § 30:103.
[8] When an operator fails to deliver the required information timely under § 30:103.1, the operator forfeits the right to demand contribution from the owners of unleased interest owners. *See* LA. REV. STAT. § 30:103.1.
[9] *Id*. at 253 (citing *Self v. BPX Operating Co.*, 80 F.4th 632 (5th Cir. 2023) (Dennis, J., dissenting)).
[10] *Id*. at 255.

Indigenous Peoples of Coastal Bend v. U.S. Army Corps of Engineers [11]

Fifth Circuit Court of Appeals

In this case, the court determined whether the Army Corps of Engineers properly issued a permit to dredge in U.S. waters. The owner of the largest oil export terminal in North America, Moda Ingleside Crude Export Terminal, sought to expand their operations which required dredging seafloor and discharging the dredged material into U.S. waters.[12] They applied to the U.S. Army Corps of Engineers ("Corps") for a permit to allow them to dredge and deposit the dredged material. The Corps held a notice and comment period, issued an Environmental Assessment ("EA") as required by federal law, and ultimately approved the permit to dredge. The Bay Coastal Watch Association and two Native American tribes ("Ingleside") sued to invalidate the permit, claiming the Corps failed to account for the cumulative impacts on seagrass beds, the cumulative impacts to the climate, and failed to prepare an Environmental Impact Statement ("EIS") in violation of the National Environmental Policy Act (NEPA), the Clean Water Act (CWA), and the Administrative Procedure Act (APA). After considering the claims made by Ingleside, the court found the Corps acted appropriately and did not violate NEPA, CWA, nor the APA.

Ingleside's first claim was that the Corps failed to substantively consider the cumulative impacts of the dredging to the seagrass and neighboring community. In the EA, the Corps weighed the economic benefits of a larger terminal against the damage that would be caused to the surrounding wetlands from dredging and found the benefits outweighed the impact of the project. The Corps' existing analysis within the EA met the regulatory requirements and a more in-depth analysis of the cumulative impacts on seagrass beds was not required.

Ingleside's second claim was that the Corps failed to sufficiently analyze the effects of the dredging project on climate change. The Corps assessed the impact on the climate in the EA through the release of greenhouse gases and found that the release of greenhouse gases would have a negligible impact on climate change which does not outweigh the economic, energy, and national security interests associated with expanding the terminal. This court determined that the analysis was sufficient, noting that Ingleside did not provide any authority requiring a more rigorous analysis.

Finally, Ingleside claims that the Corps failed to prepare an EIS. To comply with federal regulations the Corps must first prepare an EA to determine the potential environmental impacts. If that EA finds there will be a significant environmental impact, they must complete an EIS.[13] The Corps completed the EA appropriately—by showing that they at least considered each Council on Environmental Quality regulation factor—and determined that there would be no significant impact on the environment. The court ultimately held that because the Corps' EA determined there was no significant impact, the Corps was not required to prepare an EIS.

[11] *Indigenous Peoples of the Coastal Bend v. U.S. Army Corps of Eng'rs.*, 132 F.4th 872 (5th Cir. 2025).
[12] *Id*. at 879.
[13] *Id*. at 890.

Matter of Jet Oilfield Services [14]

Fifth Circuit Court of Appeals

In this case, the court determined whether Brian Owens ("Owens") acted as an agent of Jet Oilfield Services ("Jet"), and whether he had either actual or apparent authority to bind Jet under the contract terms or through its actions. Jet was formed in 2018, and shortly after Owens acquired 43% of Jet's membership interest. Under Jet's Amended and Restated Company Agreement, Owens lacked authority to enter into transactions on behalf of Jet without the consent of at least one other member.

In 2022, Owens executed an agreement with Spin Capital L.L.C. ("Spin"), purporting to have Jet sell 4.5 million dollars of its future receivables in exchange for 3 million dollars. As part of its due diligence, Spin reviewed Jet's bank statements and tax returns, noting Owens' access to Jet's deposit account and his designation as a "Partnership Representative" on the tax return, though the return was not signed by a member-manager of Jet. Further, in October of 2022, Jet filed for bankruptcy, and Spin filed a proof of claim based on the agreement. The bankruptcy court dismissed the claim, ruling that Owens lacked authority to bind Jet and that the contract lacked consideration. Spin filed this appeal of the bankruptcy court's judgment.

The Fifth Circuit held that Owens was not considered an agent of Jet and lacked authority to bind Jet under Texas law.[15] Apparent authority arises only when a principal knowingly permits an agent to hold himself out as having authority, or when a principal's failure to exercise ordinary care clothes the agent with the indicia of authority, leading a reasonably prudent person to believe that the agent has the authority he purports to exercise. Here, Jet's member-managers did not hold Owens out to be an authorized agent. Although, Owens was listed as a general partner or LLC member-manager on Jet's tax return, the return was not signed by any of Jet's principals and therefore did not constitute a statement by Jet.[16] Moreover, Spin did not communicate with any of Jet's principals, nor did it review Jet's Certificate of Formation. As a result, it was not reasonable for Spin to assume Owens' authority just because he had access to Jet's bank accounts.[17] Accordingly, the court concluded that Owens did not have actual or apparent authority to bind Jet, rendering Spin's claim against Jet unenforceable.

[14] *In re Jet Oilfield Services*, 160 F.4th679 (5th Cir. 2025.).
[15] *Id.* at 682.
[16] *Id.* at 683.
[17] *Id.*

New Orleans City v. Aspect Energy, LLC, et. al. [18]

Fifth Circuit Court of Appeals

In this case, the court determined a pipeline operator was improperly joined in a lawsuit because its activities were exempt under the Historical-Use Exception of Louisiana's State and Local Coaster Resources Management Act of 1978 ("SLCRMA"). The City of New Orleans ("City") filed a lawsuit against several pipeline operators including Entergy New Orleans, LLC ("Entergy") in state court alleging their oil and gas production and transportation caused damage to the City's coastal zone, thus violating SLCRMA. The operators removed the case to federal court on the basis of diversity jurisdiction arguing that Entergy, the only in-state defendant, was improperly joined because Entergy's activities were exempt under SLCRMA's Historical-Use Exception:

> . . . [i]ndividual specific uses legally commenced or established prior to the effective date of the coastal use permit program shall not require a coastal use permit.[19]

SLCRMA generally prohibits any parties from commencing a use of the Louisiana coastal zone without a coastal use permit, but the Historical-Use Exception exempts uses legally commenced prior to 1980 (the statute's effective date) from this requirement. Entergy's pipelines and pipeline canals were constructed and acquired before the statute's effective date, thus exempting them from the permit requirements. City argued the Final Environmental Impact Statement ("FEIS") negated Entergy's Historical-Use Exemption because Entergy's negligence led to significant changes in their historical use of the coastal zone. The court reasoned that this "exception-to-the-exception theory" was inapplicable because it was developed as part of the federal regulatory approval process for the Louisiana Coastal Resources Program under National Environmental Policy Act ("NEPA").[20] NEPA is a procedural statute and it does not impose substantive environmental obligations on agencies or third parties, nor does it "displace the unambiguous text of SLCRMA."[21]

Ultimately, the court concluded that Entergy qualified for the Historical-Use Exception, thus Entergy was improperly joined in the suit. Because the court held Entergy was improperly joined in the suit, the district court was free to disregard the citizenship of Entergy for diversity purposes, allowing the case to be properly removed to federal court.

[18] *New Orleans City v. Aspect Energy, L.L.C.*, 126 F.4th 1047 (5th Cir. 2025).
[19] *Id*. at 1051 (citing L.A. R.S. § 49:214.34(C)(2)).
[20] *Id*. at 1053.
[21] *Id*.

United States v. Davis [22]

Fifth Circuit Court of Appeals

In this case, the court determined whether a drafting error was fatal to a petition to claim an interest in forfeited property. Scott Davis ("Davis") purchased property in Tomball, Texas, paid for with loan proceeds that were fraudulently obtained. Davis then used the property as collateral to secure a subsequent loan from Gravity Capital. Davis later pled guilty to wire fraud and as part of a plea bargain, agreed to the forfeiture of the property. As required by 21 U.S.C. § 853(n), Gravity Capital filed a petition to claim an interest in the forfeited property. The district court, however, denied their petition due to a drafting error: the attorney who had been working on the petition mistakenly signed on behalf of "Gravity Funding," instead of "Gravity Capital."

Gravity Funding and Gravity Capital appealed the denial of their petition and argued that it should be granted because they attempted to amend it. In response, the court emphasized that 21 U.S.C. § 853(n) - which authorizes and outlines the rules for innocent third parties asserting an interest in forfeited property – requires strict compliance.[23] Noncompliance with the requirements therein is fatal to a petition.[24] The court reasoned that because Gravity Funding signed the petition instead of Gravity Capital - the entity who actually had an interest in the Tomball property - the petition was correctly denied. Moreover, although Gravity Capital attempted to amend and correct the petition, this was done so eleven months after the thirty day deadline had lapsed to petition the court for a hearing on the issue, as set forth in § 853(n)(2).[25] The court ultimately concluded Gravity Capital's petition was properly denied and their attempt to amend the petition was untimely.

[22] *United States v. Davis*, 137 F.4th 349 (5th Cir. 2025).
[23] *See id.*at 352 (stating courts construe the requirements of Section 853 strictly).
[24] *Id.* at 352.
[25] *Id.* at 352 (citing 21 U.S.C. § 853(n)(2)).

2. Tenth Circuit Court of Appeals

Graham v. U.S. [26]

*Tenth Circuit Court of Appeals *

In this case, the court determined whether a general warranty deed gave constructive notice of an adverse claim to mineral rights. Here, the Grahams sought a declaration stating that they held the title to the mineral estate under land in Adams County, Colorado, conveyed to the United States of America ("U.S.") in a 1943 warranty deed ("1943 Deed"). The 1943 Deed conveyed fee simple title to the land with no reservation or exception of mineral rights. Further, there are no recorded deeds in the Adams County public records indicating the mineral estate was ever severed from the surface. However, internal government documents state that mineral rights were reserved to a David Graham (the predecessor to the Grahams). In 2018, the Bureau of Land Management informed the Grahams that the government would not recognize the claim to the mineral rights. The Grahams filed a quite title suit, claiming to own the mineral estate under the lands. At trial, the U.S. successfully argued the Graham's claim was time-barred by the 12-year statute of limitations in the Quite Title Act ("QTA").[27]

The QTA is the "exclusive means by which adverse claimants [may] challenge the United States' title to real property."[28] Causes of action under the QTA accrue "on the date the plaintiff or his predecessor in interest knew or should have known of the claim"[29] of the U.S. to the lands in question, and an action must be commenced within 12 years of the date upon which the claim accrued. On appeal, the Grahams argued the statute of limitations began to run in 2018. The U.S. argued, because the 1943 Deed purported to include mineral rights, the Grahams' predecessors were on notice of the U.S.'s claim beginning in 1943.

The appellate court looked to Colorado law to determine whether the 1943 Deed should be construed as imparting constructive notice of the U.S.'s claim to the minerals. Colorado law provides: (1) fee simple title is comprised of the "legal estate in fee, free and clear of all valid claims, liens and encumbrances[,]"[30] (2) mineral reservations and pre-existing mineral severances constitute an encumbrance,[31] and (3) recording deeds in the public records provides constructive notice of interests affecting title.[32] The appellate court also considered whether the government 's internal documents abrogated its claim to the mineral estate by defeating the constructive notice afforded by the deed. Ultimately, the appellate court affirmed the district court's judgment application of the QTA. The appellate court held that 1943 Deed acted as constructive notice under Colorado law and the government documents could not have acted as an abandonment of the U.S.'s claim to the minerals because the documents never became public nor were they made available to the Grahams or their predecessors prior to the litigation.

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[26] *Graham v. United States*, No. 24-1164, 2025 WL 1233526 (10th Cir. Apr. 29, 2025).
[27] 28 U.S.C. § 2409a.
[28] *Graham* at *2 (quoting *Block v. North Dakota ex rel. Bd. Of Univ. & Sch. Lands*, 461 U.S. 273, 286 (1983)).
[29] 28 U.S.C. § 2409a(g).
[30] *Walpole v. State Bd. Of Land Comm'rs*, 163 P. 848, 850 (Colo. 1931).
[31] *Eychaner v. Springer*, 527 P.2d 903 (Colo. 1974).
[32] Colo. Rev. Stat. § 38-35-109.

Knellinger v. Young [33]

Tenth Circuit Court of Appeals

In this case, the court analyzed Colorado's Revised Uniform Unclaimed Property Act ("RUUPA") and its interactions with the Takings Clause of the 5th Amendment. In 2022, David Knellinger and Robert Storey (collectively, "Knellinger") discovered their property was listed on Colorado's state website for unclaimed property. Knellinger never received notice from the state regarding their taking of the property for public use nor received compensation for it. Through 42 U.S.C. § 1983, Knellinger sued Colorado's Treasury ("Colorado"), alleging that Colorado violated the 5th Amendment Takings Clause. The district court dismissed Knellinger's claim for lack of standing since they failed to provide sufficient proof of ownership of the property at issue, and they did not file an administrative claim as required by RUUPA to establish their ownership of their alleged property. Knellinger appealed to the 10th Circuit. To have a standing to sue under the Takings Clause, a plaintiff must plead that:

> (1) something was "taken" by the government; (2) it was "property"; (3) it was the plaintiff's property; and (4) it was taken "for public use, without just compensation." [34]

Knellinger claimed their property was taken without compensation by Colorado, which used the funds from these unclaimed properties to pay public expenses. The court concluded the facts showed this was an uncompensated taking sufficient to confer standing and reasoned that the district court erred in two respects in its judgement. First, the district court failed to draw all reasonable inferences in favor of Knellinger by improperly inferring the property belonged to others who had similar names. Second, it mistakenly imposed a requirement that Knellinger pursue an administrative claim prior to filing their claim in federal court.[35] Knellinger's right to sue under the Takings Clause vested when Colorado took the property without compensation, so Knellinger was not required to seek a remedy through state administrative proceedings or litigation in state court in order to proceed in federal court. Therefore, Knellinger had standing, and the dismissal was reversed.

The court then considered Knellinger's argument to enjoin Colorado from violating the Takings Clause in the future. Courts have previously reasoned that "as long as an adequate provision for obtaining just compensation exists, there is no basis to enjoin the government's action effecting a taking."[36] The court concluded that a suit filed under § 1983 would allow Knellinger to obtain just compensation, thus, the court did not need to enjoin Colorado from continuing to employ its unclaimed property procedures. The court here did not rule on the merits of the case, only reversed the district court's decision that Knellinger lacked standing to sue, and remanded the case for further proceedings on the issue of the alleged taking by Colorado. This is an important case, primarily because the court adjudged the holding of unclaimed property by the state as being subject to the Takings Clause.

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[33] *Knellinger v. Young*, 134 F.4th 1034 (10th Cir. 2025).
[34] U.S. Constitution Amendment V Takings Clause.
[35] *Knellinger*, 134 F.4th at 1044.
[36] *Id.* quoting *Knick v. Twp. of Scott*, 588 U.S. 180, 201 (2019).

B. NEW MEXICO CASE LAW UPDATE

SUPREME COURT OF NEW MEXICO CASES

Blanchard Corona Ranch, LLC v. Richard [37]

The Supreme Court of New Mexico

In this case, the Court determined whether the object of a suit was an interest in land. The Commissioner of Public Lands of the State of New Mexico (the "Commissioner") issued an Agricultural Lease to Blanchard Corona Ranch, LLC ("Blanchard"). The Commissioner reserved the right to execute additional leases on the land for renewable energy projects. Thereafter, the Commissioner issued two wind energy leases (the "Energy Leases") that overlapped with land under the Agriculture Lease. Blanchard filed a complaint in Lincoln County claiming the Commissioner violated the State Land Office ("SLO") rules when Energy Leases were issued. The Commissioner moved to dismiss the complaint arguing that Lincoln County was an improper venue, and the case needed to be brought in the county where Blanchard resides, where the Commissioner's office is located, or the capital. Blanchard argued that Lincoln County was proper venue according to Section 38-3-1(D)(1) of New Mexico's venue statute which states:

> When lands or any interest in lands are the object of any suit in whole or in part, the suit shall be brought in the county where the land or any portion of the land is situated.[38]

The question of venue depended on whether the object of the suit was an interest in land. The Court first looked at the plain meaning of the statute. According to Black's Law dictionary, "the object of an action is the legal relief that a plaintiff seeks; the remedy demanded or relief sought in a lawsuit."[39] While the suit was related to land, Blanchard was seeking a declaration that the Commissioner had violated SLO rules, rather than attempting to alter the property interests of the parties. The Court reasoned that relation to land in some way was insufficient for the object of the suit to have an interest in lands. Because the relief sought would not impact the leasehold interests, the Court reasoned that under the plain meaning of the statute, Blanchard's suit did not have an interest in the land.[40] The Court then turned to *Kaywal, Inc. v. Avangrid Renewables, LLC*, in which the plaintiff filed suit in Chaves County arguing the defendant trespassed on the plaintiff's ranch located in Torrance County. The defendant moved to dismiss the case for improper venue arguing the suit should have been filed in Torrance County. The court in *Kaywal* denied the motion to dismiss and held that because the suit did not seek to create, transfer, or revoke an interest in the land, the object of the suit was not an interest in lands.[41] Accordingly, the Court held here that because the object of the suit at issue would not affect a current possessory issue and only affect the future usability of the land, venue was improper in Lincoln County.[42]

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[37] *Blanchard Corona Ranch, LLC v. Richard*, 2025-NMCA-026, 578 P.3d 1044 (No. S-1-DC-39065, April 7, 2025).
[38] NMSA 1978, § 38-3-1(D)(1) (1978).
[39] *Blanchard,* 2025-NMCA-026, ¶ 14.
[40] *Id.* at 16.
[41] *Id.* at 19.
[42] *Id.* at 27.

State ex rel. Office of State Engineer v. Intrepid Potash, Inc. [43]

Supreme Court of New Mexico

In this case, the Court determined whether Intrepid Potash, Inc. ("Intrepid") abandoned its water rights by non-use and established the applicable standard for abandonment of such rights. The Office of the State Engineer ("OSE") initially issued Intrepid licenses for consumptive and non-consumptive water rights in the Pecos River; however, Intrepid had already acquired a significant portion of those rights in the early 1930s during its development of the Loving Refinery. As part of that operation, Intrepid was granted rights to 34,315.374 acre-feet per year of nonconsumptive water and an additional 19,836 acre-feet per year of consumptive water from the Pecos River.[44] Water was beneficially used for cooling and sluicing undissolved waste salts, and after 1948, nearly all water diverted into the refinery was consumptively used.

In the late 1960s and early 1970s, Intrepid built a new refinery closer to its mine and obtained new groundwater rights. Intrepid subsequently closed the Loving Refinery and dismantled the infrastructure necessary to use the Pecos River water rights. Intrepid filed applications with the OSE, seeking extensions of time to place the Pecos River water to beneficial use. However, Intrepid did not intend to use the water, as it did not consider the water suitable for its operational needs and instead viewed the water as a marketable asset. Aware that failure to place the water to beneficial use could result in forfeiture, Intrepid attempted to transfer the rights to third parties, ultimately entering into an agreement to divert 150 acre-feet per year.

From 1978 to 2017, Intrepid sought and obtained multiple extensions from the OSE to place the water to beneficial use, citing insufficient water in the Pecos River. During that period, Intrepid entered into a water conservation agreement with the Interstate Stream Commission ("ISC") from 1995 to 2001, which did not constitute beneficial use. The ISC declined to extend the agreement due to concerns regarding the validity of Intrepid's water rights.[45] In 2016 or 2017, Intrepid made improvements to its diversion structures and filed applications to change the purpose of use for some of its water rights, which prompted objections and an administrative proceeding before the OSE. In 2019, the parties agreed to pursue a judicial proceeding to determine whether Intrepid had forfeited or abandoned its water rights.

The abandonment of water rights means to discontinue, desert, relinquish, surrender, vacate, or give up the rights.[46] It requires both the intent to abandon and an act that supports this intent. Nonuse of water for unreasonable period of time can create a presumption of intent to abandon, but nonuse alone is insufficient; there must be clear and convincing evidence of both the intention and the act.[47] To determine abandonment, the Court applied the *South Springs* abandonment test, which involves three key elements:: (1) abandonment is the relinquishment of the right by owner with the intention to forsake and desert it; (2) proof of nonuse for an unreasonable period establishes a presumption of abandonment and is prima facie proof thereof; and (3) to rebut the presumption of abandonment arising from such long period of nonuse, there must be established

[43] *State ex rel. Office of State Engineer v. Intrepid Potash, Inc.*, 2025-NMSC-130, 580 P.3d 130.
[44] *Id.* at 3.
[45] *Id.* at 9.
[46] *Id.* at 24.
[47] *Id.*

not merely expressions of desire or hope or intent, but some fact or condition excusing such long nonuse.[48]

The Court noted that, to preserve water rights and avoid abandonment, a water rights holder must apply the water to beneficial use. This requires actively using the water for its intended purpose and not merely holding onto the rights for future use or speculation. The Court further explained that actions inconsistent with an intent to abandon, such as maintaining diversion structures, attempting to put the water to beneficial use, or overcoming economic or legal obstacles to using the water, may help rebut the presumption of abandonment.[49] Ultimately, the Court affirmed the Court of Appeals decision that Intrepid abandoned all but the 150 acre-fee per year of its Pecos River water rights. The Court found that Intrepid's actions, including the forty-four years of nonuse and dismantling of the Loving Refinery, warranted the presumption of abandonment. Intrepid's attempt to sell, lease, or transfer its rights, as well as its improvements to diversion infrastructure, was insufficient evidence to rebut this presumption. The Court further determined that Intrepid's holding of the water rights for future sale or lease was merely speculation by precluding others from using the water and was not sufficient beneficial use to avoid abandonment. The Court concluded that Intrepid's actions were more consistent with an intent to abandon rather than intent to use those water rights. Accordingly, since Intrepid's actions did not show sufficient evidence of excuse for nonuse, nor an intent to not abandon by showing intent to use the water for beneficial use, the Court affirmed the Court of Appeals.[50]

[48] *State ex rel. Reynolds v. South Springs Co.*, 1969-NMSC-023, 452 P.2d 478.
[49] *Intrepid Potash, Inc.*, 2025-NMSC-040, 34.
[50] *Id.* at 56.

NEW MEXICO COURT OF APPEALS CASES

SM Energy Company v. Colgate Production, LLC [51]

New Mexico Court of Appeals

In this case, the court determined whether the settlement notice provision in an indemnification agreement was a condition precedent for indemnification obligation or a mere covenant. SM Energy Company, ("SM Energy") and Colgate Production, LLC ("Colgate") executed a Purchase and Sale Agreement, ("PSA") which included a settlement notice provision related to indemnification for third-party claims. After the effective date of the PSA, a worker was injured while performing repair work on an oil and gas well that was among the assets acquired by Colgate in the PSA and filed a lawsuit for negligence and premises liability against SM Energy. In response, SM Energy demanded defense and indemnification from Colgate, which Colgate denied, leading SM Energy to file a third-party complaint against Colgate for indemnification under the PSA. Section 13.7(e) of the PSA provides that if Colgate, the indemnifying party, had not yet admitted its obligation to indemnify, SM Energy, the indemnified party, must send written notice of any proposed settlement, after which Colgate had ten business days to review the proposal and decide whether to admit its indemnification obligation. Ultimately, SM Energy reached a final settlement for the personal injury claims but did not provide Colgate with written notice of the final proposed settlement ten business days before the final proposed settlement was agreed to. The district court found that notice requirement in the PSA was a condition precedent and SM Energy's failure to provide notice excused Colgate from any duty to indemnify.

On appeal, the court explained a "condition precedent is an event that must happen or be performed before a right can accrue to enforce an obligation", whereas a covenant "is an agreement to act or refrain from acting in a certain way."[52] For an obligation to be expressly conditional, the contract ordinarily must include clear conditional language such as, "if," "provided that," or "on the condition that," and that language must directly link the condition to the obligation it qualifies. However, here the presence of conditional language by itself did not establish a condition precedent since it was lacking "any plain connection to the indemnifying party's obligation to indemnify."[53] The court found that Section 13.7(e) outlined procedural steps without directly connecting them to the obligation to indemnify. Section 13.7(b) of the PSA explicitly connected a condition to the indemnification obligation, which further supported the interpretation that the notice provision in Section 13.7(e) was a covenant. Section 13.7(b) stated that failure to give notice would not relieve Colgate of its indemnification obligations unless it resulted in insufficient time to defend against the claim or materially prejudiced Colgate's ability to defend.

Accordingly, because Section 13.7(e) lacked the language necessary to create a condition precedent, the court found that it was a covenant, such that Colgate should only be excused from its indemnification obligation if the breach was material. Because the district court did not make a finding as to a material breach, Colgate was not automatically relieved of its indemnification obligation, and the case was reversed and remanded for a materiality determination.

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[51] *SM Energy Company v. Colgate Production, LLC*, No. A-1-CA-41055, mem. op. (N.M. Ct. App. Sept. 23, 2025).
[52] *Id*. at 14.
[53] *Id*. at 16.

Smith & Marrs Inc. v. Hoskins Family Enterprises, Inc. [54]

New Mexico Court of Appeals

In this case, the court considered whether Smith & Marrs Inc. ("SMI") breached its duty of a reasonably prudent operator in managing certain oil, gas, and mineral well interests and whether its president was individually liable for that breach. In 2012, SMI assumed control of certain well interests from Hoskins Family Enterprises, Inc. ("HFE") and became operator of the well. Following the transition, HFE argued that the SMI had breached its duties as a reasonably prudent operator. The lower court concluded that this evidence supported a finding that SMI breached its duty, resulting in compensable loss.

Generally, in oil and gas operations, operators have an implied duty to act as reasonably prudent operators. This duty requires operators to make diligent efforts to market production so that lessors can capitalize on their royalty interests. Although this duty most commonly arises in the context of written lease agreements, the duty may also be implied as a matter of law. The New Mexico Supreme Court has recognized that this duty can be implied either through interpretation of the parties' written agreement and conduct or as a legal obligation imposed independent of the parties' express terms.

SMI argued that it did not have the duty to act as a reasonably prudent operator because no written lease agreement existed between the parties. The court rejected this argument, relying on *Davis v. Devon Energy Corp.*, indicating that courts may imply a covenant either (1) by "effectuating the parties' intentions by interpreting the written terms of an agreement and analyzing the parties' conduct", or (2) by "stating that a duty imposed by law creates an obligation on one or more of the parties to the agreement."[55] Here, the court found that the duty could be implied by law. Although this duty is traditionally applied in the lessor-lessee context, the court found the same rational applicable here, where HFE and SMI had a joint-interest relationship. The individual interest owners such as HFE had no right to develop and work the well interests themselves and had fully entrusted the operations to SMI. Affirming the lower court's ruling, the court held that SMI's conduct breached its duty, concluding that the relationship sufficiently resembled a traditional lessor–lessee relationship to justify imposing the reasonably prudent operator standard to the operator of the well.

Finally, the court considered whether Ricky Smith, SMI's President, could be held individually liable for the breach. Although SMI argued that individuals cannot be liable for actions taken in a representative capacity, the court noted that corporate officers may be personally liable for their own intentional torts. [56] The damages assessed against Smith were supported by evidence that Smith intentionally managed operations in a manner that generated excessive expenses relative to revenues, including the incurrence of unnecessary costs. Accordingly, the court affirmed the judgment imposing individual liability on Smith.

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[54] *Smith & Marrs Inc. v. Hoskins Fam. Enters.*, Inc., No. A-1-CA-41111, mem. op. (N.M. Ct. App. May 22, 2025).
[55] *Id*. at 11 (citing *Davis v. Devon Energy Corp.*, 2009-NMSC-048, ¶ 35, 147 N.M. 157, 160, 218 P.3d 75,78).
[56] *Id*. at 18.

Richard v. Marathon Petroleum Corp. [57]

New Mexico Court of Appeals

In this case, the court determined whether the Commissioner of Public Lands of the State of New Mexico's approval of a lease assignment relieves an assignor of not only their contractual obligations, but also of obligations arising under statute or common law. In 1964, Tesoro Petroleum Company ("Tesoro") was assigned two oil and gas leases that encompassed 560 acres of state trust land. Tesoro operated on the land from 1964 to 1988. At some point between 1988 and 1993, the sitting Commissioner of Public Lands of the State of New Mexico (the "Commissioner") approved Tesoro's assignment of the leases to another company. The New Mexico Statutes Annotated Section 19-10-13, which governs the duties and obligations of assignors and assignees after approval from the Commissioner, contains the following language:

> [T]he assignor shall stand relieved from all obligations to the state with respect to lands embraced in the assignment and the state shall likewise be relieved from all obligations to the assignor as to such tract or tracts, and thereupon the assignee shall succeed to all of the rights and privileges of the assignor with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the state as to such tracts.[58]

The current Commissioner sought common law, statutory, and contractual claims against Marathon Petroleum Corporation ("Marathon"), Tesoro's successor in interest, for damages to the leased land that allegedly occurred before Tesoro's lease assignments. Marathon, in response, claimed that the statute released them from all contractual, statutory, and common law obligations upon the Commissioner's approval of the Tesoro's assignments.

The court determined that the phrase, "all obligations," was ambiguous, so the court looked to the purpose of the Section 19-10-13 to try to ascertain the intent of the Legislature.[59] At the time of the statute's inception, the general principle was that an assignment does not relieve the assignor of its obligations unless it was expressly stated.[60] Thus, the court held the inclusion of "all obligations" phrase in the statute only relieved an assignor of its contractual obligations under the lease, not its extra-contractual obligations or its liability for past misconduct.[61] Therefore, when the Commissioner authorized the Tesoro's lease assignments, Tesoro was relieved of its contractual obligations such as lease payments and royalty payments, but it did not relieve Tesoro of its liability for damages to the leased land allegedly caused by Tesoro's negligence.

[57] *Richard v. Marathon Petroleum Corp.*, No. A-1-CA-40747 (N.M. Ct. App. May 14, 2025).
[58] N.M. Stat. Ann. § 19-10-13 (West).
[59] *Richard*, No. A-1-CA-40747, ¶ 51.
[60] *Id.* at 56.
[61] *Id.* at 59.

C. OHIO CASE LAW UPDATE

OHIO DISTRICT COURT OF APPEALS

1. Second District Court of Appeals

Stephan v. Wacaster [62]

2nd District Court of Appeals of Ohio, Miami County

In this case, the court determined whether the grandchildren of a testator possessed the statutory right to request a partition of lands. In her Last Will & Testament, Margaret Stephen devised the following interest:

> I give, devise, and bequeath my 95-acre farm … to my daughter, Connie Wacaster, and my son, DeWayne Stephan, equally, share and share alike, for Life. The Remainder of the Life Estate of Connie Wacaster, I give, devise, and bequeath to her children, Tami Body and Todd Wacaster, equally, and share and share alike. The Remainder of the Life Estate of DeWayne Stephan, I give, devise, and bequeath to his children, Chris Stephan and Rick Stephan, equally, and share and share alike.[63]

In 2021 after DeWayne's Stephan's ("DeWayne") passing, his children sought to partition the farm, arguing that Margaret's will created a tenancy in common, resulting in DeWayne's interest in the Farm vesting in his children upon his death. In contrast, Connie Wacaster ("Connie") argued the will created a joint tenancy with right of survivorship, which vested in her upon DeWayne's death. Accordingly, DeWayne's children lacked any interest in the Farm and could not request a partition of the lands.

Under Ohio law, "if any interest in real property is conveyed or devised to two or more persons, such persons hold title as tenants in common and the joint interest created is a tenancy in common," unless language specifically indicates the property is to be held in joint tenancy. [64] The court noted that there was no language in Margaret's will to indicate any intent to create a joint tenancy. Rather, the will demonstrated the intent to create a tenancy in common by providing that upon the deaths of Connie and DeWayne their interests would vest immediately in each of their children.

The court cited *Jackson v. Brown* and *Weeks v. Thompson*, wherein the courts held that once a life tenant dies, the remainderman receives a vested fee simple interest and is entitled to seek partition of their respective shares.[65] Relying on these cases, the court concluded that Margaret's will created a tenancy in common between DeWayne and Connie and upon DeWayne's death, the remainder interest in one-half of the property vested in his children. As such, DeWayne's children owned the possessory interest in the Farm required to bring a partition action under Ohio law.

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[62] *Stephan v. Wacaster*, 2025-Ohio-565, 283 N.E.3d 1180 (2d Dist.).
[63] *Id.* at 2
[64] See R.C. 5302.19 (defining survivorship tenancy and requiring clear language to establish such an estate.)
[65] *Jackson v. Brown*, 17 Ohio L. Abs. 414, 415-17 (2d Dist. 1934). *Weeks v. Thompson*, 66 Ohio App. 1, 9-14, 31 N.E.2d 454 (2d Dist. 1940).

2. Fifth District Court of Appeals

Hursey v. McPeek [66]

5th District court of Appeals of Ohio, Tuscarawas County

In this case, the court determined whether a grantor effectively reserved a life-estate interest in mineral rights. In 2000, David Hursey ("Hursey") received an 86.738-acre tract of land from his parents. The 2000 Deed provided, in part:

> RESERVATION OF MINERAL AND OIL AND GAS RIGHTS: Reserved to the Grantors John L. Hursey, Sr. and Mary Ann Hursey, or to the survivor thereof, all coal, mineral, and oil and gas rights underlying the 86.738-acre tract. At the death of the last Grantor to survive, said reservation shall inure to the Grantee, his heirs, administrators or assigns.[67]

In 2006, after Hursey filed for bankruptcy, the bankruptcy trustee conveyed the 86.738-acre tract to the McPeeks, subject to any and all reservations of record (the "2006 Deed"). Hursey's last remaining parent passed away in 2019. Thereafter, in 2023, the McPeeks executed an oil and gas lease covering the tract. Hursey subsequently filed this action to quiet title to the minerals claiming that at the time of the 2006 Deed, his interest in the mineral estate had not yet vested. Accordingly, the McPeeks only received a surface interest in the 86.738-acre tract.

The court began their analysis by holding that the 2000 Deed was unambiguous: it clearly demonstrated the grantors intent for the minerals to transfer to the grantee upon their death. Although the reservation did not explicitly state "life estate," the description indicated the grantors' intended to reserve the minerals only for the duration of their lives. Thus the 2000 Deed created a life estate in favor of the grantors and the grantee, Hursey, as having a vested remainder interest in the minerals.[68]

In Ohio, "a remainder is vested when there is a present fixed right to a future enjoyment and there is a certain and definite person in being who would have the right of possession immediately upon the termination of the intervening estate which supports it."[69] Furthermore, vested remainder interests are "descendible, devisable, and alienable in the same manner as estates in possession."[70] The court held that Hursey received a vested remainder interest in the 2000 Deed and therefore, Hursey's mineral rights were transferable by himself, or in this case, the bankruptcy trustee. Accordingly, the McPeeks received all Hursey's interest in the 2006 Deed, including the minerals.

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[66] *Hursey v. McPeek*, 5th Dist. Tuscarawas No. 2025 AP 03 0012, 2025-Ohio-5707.
[67] *Id.* at 3.
[68] *Id*. at 31.
[69] *Id*. at 37 (*quoting Miller v. Berk*, 14 Ohio Laws Abs. 23, 26 (9th Dist. 1933)).
[70] *Id*. at 38.

3. Sixth District Court of Appeals

Board of Trustees Wood County Property Trust Agreement v. McAnally [71]

6th District Court of Appeals of Ohio, Wood County

In this case, the court determined whether declining to exercise an option to purchase property served as a disclaimer of interest in the property. A couple created a trust to hold property for a camping facility until no longer practical. Article IV of the trust agreement provided the property to be sold in the following manner:

> A. Dennis McAnally ("McAnally") and Michael Melcher ("Melcher") shall have a joint option to purchase the said property (as joint owners) at 75% of the then fair market value. *If either one of them is no longer living at the time of the disposition of said property, the survivor may exercise the option alone*.
>
> B. Should Dennis McAnally and Michael Melcher be *both* unwilling or unable to exercise this option, and said property is being farmed . . . by another party, an option shall be extended to said party allowing them to purchase the property under the same terms and conditions covered in "A" above. [72]

Upon deciding to sell the property, McAnally notified the Trustees that he declined to exercise the option to jointly purchase the property with Melcher. Thereafter, the Trustees offered to sell the property to a third-party tenant. McAnally executed a release which indicated his declination to exercise the purchase option with Melcher, with the understanding that Melcher was executing a similar release. Melcher refused to sign the release, noting his desire to purchase the property individually and the Trustees brought this action seeking declaratory judgment declaring the option granted in the Trust may only be exercised jointly. Melcher argued that when McAnally executed the release, his interest was disclaimed and the law treated him as predeceasing Melcher, allowing Melcher to exercise the option to purchase individually.[73]

On review, the court analyzed whether the option to purchase must be executed jointly by McAnally and Melcher and the distinction between declining to exercise an option versus disclaiming an interest in property. The court held that had McAnally disclaimed the option, he would have abandoned his right to make any choice about exercising the option. Accordingly, since McAnally chose not to exercise the option, there was no disclaimer, and the statute did not apply. The court further stated that disclaimer only applies *before* the disclaimant accepts an interest in the property. Because McAnally already had an interest in the property at issue, a release or disclaimer was ineffective. Furthermore, the court held that Section B of the trust agreement clearly indicated that *both* McAnally and Melcher must exercise the option jointly, and since McAnally refused to exercise the option with Melcher, the option passed to the third-party tenant.

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[71] *Bd. of Trustees Wood Cnty. Prop. Tr. Agreement, UAD June 4, 2008 John F. Nixon, Chairman v. Melcher, et al.*, 2025-Ohio-1000, 266 N.E.3d 971 (6th Dist.).
[72] *Id*. at 2.
[73] *Id*. at 3.

4. Seventh District Court of Appeals

AMP V, LP v. Long Point Energy, LLC [74]

7th District Court of Appeals of Ohio, Harrison County

In this case, the court determined whether delayed due diligence and partial performance entitled a buyer to specific performance for the purchase and sale of mineral rights under the parties' agreement. AMP V, LP ("Buyer") entered into a purchase and sales agreement (the "Agreement") with Long Point Energy, LLC ("Seller") to buy mineral interests underlying three tracts of land. The Agreement contained a due diligence period whereby the Seller was to fulfill the Buyer's reasonable requests relating to the Agreement. The parties closed on the first tract prior to the closing date. For the second and third tracts, Buyer requested that Seller execute documents confirming an agent's signing authority and the name change of a predecessor in title (collectively "Affidavits"). Communications between both parties about the Affidavits continued past the closing date. Thereafter, Seller sent Buyer a termination letter, citing breach of contract for failing to close within the agreed period. Buyer filed a complaint to enforce the contract and was awarded specific performance at the trial court. This appeal followed.

First, the court analyzed the inclusion of a "time is of the essence" clause in the Agreement. The court held that even when time appears to be of the essence in an agreement, such a provision may be waived if a party who benefits from it acts inconsistently with the time requirement.[75] Here, the communications between the parties did not indicate time was of the essence because both parties were attempting to obtain the Affidavits beyond the closing date. Accordingly, the court concluded time was not of the essence and neither party considered the closing date to be vitally important.
Next, the court determined whether Buyer's request for the Affidavits was a repudiation of the Agreement. An anticipatory breach of contract must be an unequivocal repudiation of the contract.[76] The court reasoned the request for the execution of the Affidavits did not constitute anticipatory repudiation because Buyer only requested the execution of the Affidavits and indicated they were required for closing, but never unequivocally indicated it would not perform without them.[77] The court reasoned the Affidavits were reasonable assurances, permitted by the Agreement, which the Buyer timely requested two days prior to closing. Accordingly, the court held the request for execution of the Affidavits was not a repudiation.

Finally, the court addressed whether the trial court erred by ordering the seller to deliver closing documents before receiving payment from Buyer, thus modifying the terms of the agreement. The court determined that the trial court did not err, as it simply ordered closing in the same manner in which the parties closed on the first tract. Ultimately, the court determined that specific performance was validly awarded because the Agreement did not indicate time was of the essence, the request of the Affidavits was neither untimely nor an indication of Buyer's unwillingness to proceed under the Agreement, and the order for specific performance did not materially alter the terms of the Agreement.

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[74] *AMP V, LP v. Long Point Energy, LLC*, 2025-Ohio-201, 262 N.E.3d 1009 (7th Dist.).
[75] *Id.* at 36.
[76] *Id.* at 55.
[77] *Id.* at 71.

Cardinal Minerals, LLC v. Blatt [78]

7th District Court of Appeals of Ohio, Monroe County

In this case, the court considered whether Cardinal Minerals, LLC ("Cardinal") held a valid mineral interest under the Dormant Mineral Act ("DMA"), and if a quitclaim deed executed by Cardinal constituted champerty. In 1959, the land's prior owner (the "Original Owner") conveyed the tract of land at issue (the "Property") and reserved the mineral estate. Subsequently, in 2012, the surface owner ("Binegar") initiated the DMA abandonment process by serving notice of his intent by publication, filing an affidavit of abandonment and requesting a notation of abandonment. Thereafter, Binegar entered into an oil and gas lease covering the Property, upon which a producing was completed and royalties were paid to Binegar.

In 2021, Cardinal located the heirs of the Original Owner and acquired a majority mineral interest through a series of quitclaim deeds after it was publicly abandoned. Cardinal subsequently filed a suit to quiet title against Binegar, claiming the attempted abandonment of the severed mineral interest failed because the Binegars did not satisfy the notice requirements of the DMA. At trial, Binegar successfully argued that Cardinal lacked standing to bring suit because it was not a legal holder of the severed mineral interest. Cardinal then appealed.

In prior *Cardinal* cases, Cardinal argued it "stepped into the shoes" of the heirs and, thus, had standing to sue. The court stated that Cardinal could neither step into the shoes of the Original Owner's heirs nor qualify as a "holder" under the definition of the DMA.[79] The court reasoned that a quitclaim deed does not establish ownership, rather it merely conveys whatever interest that grantor has in the property. Accordingly, when Cardinal acquired the quitclaim deeds, the heirs did not own an interest in the Property as it had already been recorded as abandoned years prior. Under the DMA, only the holder of a mineral interest may challenge its abandonment. The court held that the heirs neither sought a judicial declaration nor filed a claim to preserve their rights prior to executing the quitclaim deeds.[80] As a result, the court held that Cardinal lacked standing to sue, emphasizing that "the assignment of rights to a lawsuit [are] to be void as champerty."[81]

Just as in the prior cases, the court noted that when Cardinal acquired its purported mineral interest from the heirs of the Original Owner, it did so with the awareness of both the prior abandonment proceedings and the existence of producing wells on the Property. Consistent with the court's prior *Cardinal* decisions, the court held in this case that Cardinal acquired no interest from the heirs as the heirs owned nothing to quitclaim. Accordingly, Cardinal lacked standing to challenge the abandonment and the court further declined to address Cardinal's arguments as to the sufficiency of the Binegar abandonment process.

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[78] *Cardinal Minerals, LLC v. Blatt*, 7th Dist. Monroe Nos. 24 MO 0008, 24 MO 0009, 24 MO 0011, 24 MO 0012, 2025-Ohio-1159.

[79] *Cardinal Minerals, LLC v. Miller*, 2025-Ohio-3121, 249 N.E. 3d 868 (7th Dist.) at ¶ 16; *see also* R.C. 5301.56(H)(2) (defining "holder" as "the record holder of mineral interest, and any person who derives the person's rights from…and whose claim does not indicate…that it is adverse to the interest of the record holder.").

[80] *Id*. at 8 (citing Ohio Rev. Code Ann. § 5301.56).

[81] *Id*. at 51; Champerty is a form of maintenance in which a nonparty in a lawsuit furthers a party's interest with the view of sharing the disputed property if the suit succeeds.

Claugus Family Farm & Forests, L.P. v. Piatt [82]

7th District Court of Appeals of Ohio, Monroe County

In this case, the court determined that a residuary clause in a will may prevent extinguishment under the MTA, that a name variance may still create a recorded title transaction, and that the preservation of one royalty interest does not preserve a separate interest created in the same deed. On May 14, 1900, Isaac and Matilda Agin conveyed a 3/4 interest to J.T. Craig and a 1/4 interest to M.F. Piatt (the "1900 Conveyance"). The root of title established by a deed in 1961 failed to mention both royalty interests, which set the stage for extinguishment under the Marketable Title Act ("MTA").[83]

Claugus Family Farm & Forests, L.P., the surface owners, ("Claugus") brought suit to have the royalty interests extinguished under the MTA. First, Claugus argued that transfers of property through wills did not constitute recorded title transactions, asserting that court precedent had been overturned by the Ohio Supreme Court in the *Peppertree* case.[84] In *Warner v. Palmer*,[85] the court held that a residuary clause in a will qualified as an MTA savings event. The court explained that the *Peppertree* holding, which determined that a will without a specific bequest *or* residuary clause would not qualify as a savings event under the MTA, was consistent with their own precedent. As in *Warner* and consistent with *Peppertree*, the wills in this case had residuary clauses and fell within the forty-year MTA timeline. The court held that Claugus' challenge to *Warner* held no merit. Second, Claugus argued that J.T. Craig's devise to daughter Anna Holtsclaw under his will was a very different name than Margaret Ann Holtsclaw, the name she used in her own will. Claugus argued that no reasonable title examiner could have concluded that these were the same two people. The court held that a search of the deed records would reveal Mrs. Holtsclaw's interchangeable use of "Anna" and "Margaret," was evident in the public record. The court emphasized that in Claugus' own prior complaint, Claugus knew Anna Holtsclaw and Margaret Holtsclaw were one and the same. Accordingly, the court held this argument also had no merit.

Lastly, Claugus argued that the interest conveyed to Piatt in the 1900 Conveyance was not preserved by the title transaction by the successors of J.T. Craig. The court found Claugus' argument had merit, explaining, that while the interests were created by the same document, they are two "separate and distinct conveyances to separate and distinct individuals."[86] Accordingly, transactions by the Craig successors would not prevent the extinguishment of the Piatt royalty. The court reversed and vacated the summary judgment in favor of the Piatt heirs, limiting the scope of this case to the interests of the Craig successors.

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[82] *Claugus Family Farm & Forests, L.P. v. Piatt*, 2025-Ohio-291, 263 N.E.3d 400 (7th Dist.).
[83] *Id.* at 30 (explaining that "the Marketable Title Act [operates] to extinguish interests and claims in land that existed prior to the root of title", therefore allowing persons to rely on a record chain of title).
[84] *Id.* at 34. (Claugus argued that the court's holding in *Warner v. Palmer 2019-Ohio-4078*, in which they established that a residuary clause could be a savings event under the MTA, was overruled by the Ohio Supreme Court in *Peppertree Farms, L.L.C. v. Thonen*, 2022-Ohio-396. 167 Ohio St. 3d 61(2022).)
[85] *Warner v. Palmer*, 7th Dist. Belmont No. 18 BE 0012, 2019-Ohio-4078 (Sept. 30, 2019).
[86] *Id*.

Gateway Royalty, LLC v. EAP Ohio, LLC [87]

7th District Court of Appeals of Ohio, Carroll County

In this case, the court determined whether post-production costs may be deducted from overriding royalty interest ("ORRI") payments when the agreement creating the ORRI is silent about post-production costs. Gateway Royalty, LLC ("Gateway") owned the ORRI in gas wells in Carroll and Columbiana Counties. EAP Ohio, LLC ("EAP") ultimately acquired the entity responsible for making royalty payments to Gateway. In 2020, Gateway filed a complaint for breach of contract against EAP, alleging EAP wrongfully deducted post-production costs from the ORRI payments. In 2024. Gateway filed a motion for summary judgment arguing that the language of the assignment was unambiguous and silent about whether post-production costs could be deducted from royalty payments. The trial court held that post-production costs were inappropriately deducted from the ORRI payments. EAP then filed this appeal.

The appellate court's decision in this case relied on the precedent set in *Gulfport*,[88] which established the presumption that no post-production costs should be deducted when the agreement creating the ORRI is silent as to post-production costs. Here, all of the contracts involved in the creation of the ORRI were silent as to whether post-production costs were deductible.[89] In *Gulfport*, the court held that unless a contract expressly provided otherwise, post-production costs may not be deducted from ORRI payments. EAP argued that the holding in *Gulfport* contradicts the oil and gas industry standard practice of deducting post-production costs unless the contract expressly prohibits such deductions. Instead, the court adhered to its prior holding in *Gulfport,* finding that EAP presented no evidence that the agreements creating the ORRI allowed for the deduction of post-production costs, nor did the court find EAP's arguments about industry custom persuasive. Ultimately, the court affirmed the trial court's judgment, holding that if the instrument creating an ORRI is silent on post-production costs, it is presumed to prohibit deductions of those costs. Accordingly, Gateway was entitled to a refund of all post-production costs deducted from the ORRI payments.

[87] *Gateway Royalty, LLC v. EAP Ohio, LLC*, 7th Dist. Carroll No. 24 CA 0980, 2025-Ohio-2961.
[88] *Gateway Royalty II, LLC et al. v. Gulfport Energy Corporation*, 2024-Ohio-4844, 255 N.E. 3d 110 (7th Dist.).
[89] *Gateway Royalty*, *LLC,* 2025-Ohio-2961 at 33.

John T. Vickers et al., v. Capstone Holding [90]
7th District Court of Appeals of Ohio, Jefferson County

In this case, the court determined the meaning of "heretofore conveyed" in the context of an exception to the conveyance and warranty in a 1995 deed. In 1992, R & F Coal Company acquired property without any oil and gas reservations. In 1995, R & F Coal Company conveyed the property to John Vickers, Angelo DiLuzio, and Rich Pilney ("Vickers") though a limited warranty deed containing the following language:

> UNDER AND SUBJECT to any and all exceptions, reservations, restrictions, easements, rights of way, highways, estates, covenants and conditions apparent on the record or shown by instruments of record.
>
> EXCEPTING AND RESERVING all coal, oil, gas and other minerals, mining rights and other rights and privileges heretofore conveyed.[91]

R & F Coal Company then merged with Capstone Holding Company ("Capstone"). A dispute arose when Gulfport leased the property from both Vickers and Capstone. Vickers filed a suit to quiet title to the oil, gas, and other minerals underlying the property. The trial court granted summary judgment in favor of Vickers, finding that the 1995 deed unambiguously conveyed the minerals to Vickers. Capstone filed this appeal.

On appeal, Capstone argued that the phrase "heretofore conveyed" in the deed does not limit the reservation of minerals to those previously conveyed, and the above-quoted language unambiguously constituted a new reservation of all oil and gas underlying the property. Capstone asserted that the inclusion of "heretofore conveyed" in the language constituted a false recital which should not limit the rights excepted or reserved. The court rejected the argument and found that the phrase "heretofore conveyed" did limit the exception to only those minerals that had been previously conveyed. The court relied on its prior decision in *Kocher*, which established that the language "previously conveyed" in a deed did not make a new reservation, but was instead only repeating rights that had been excepted.[92]

As a further consequence, Gulfport was required to pay interest on the withheld royalties because the court found that the clause in Appellees' lease allowing Gulfport to withhold payments until adverse title claims were fully resolved, did not eliminate the statutory right to interest on the withheld amounts.[93] The court noted that a contractual waiver of a statutory right should not be implied, and the lease did not explicitly waive the right to interest. Therefore, Gulfport was required to pay interest on the withheld royalties.

[90] *Vickers v. Capstone Holding*, 2025-Ohio-3172, 272 N.E.3d 1226 (7th Dist.).
[91] *Id*. at 47.
[92] *Kocher v. Ascent Resources-Utica, LLC*, 2023-Ohio-3592, 225 N.E.3d 528 (7th Dist.).
[93] *Vickers*, 2025-Ohio-3172 at 4.

Mineral Development, Inc. v. SWN Production (Ohio), LLC [94]

7th District Court of Appeals of Ohio, Monroe County

In this case, the court was asked to determine whether "future wells drilled *on* the premises" included horizontal wells with surface hole locations on adjacent properties. In this case, Appellant, Michael W. Shroyer, acquired approximately 82 acres of land (the "Premises") subject to a royalty reservation owned by Appellee, Mineral Development, Inc., created by a 1918 Deed, which reads, in part, as follows:

> [R]eserving therefrom all the oil and gas now or hereafter produced from the wells that are already drilled and 1/16 of oil and gas or 1/2 of the Royalty from future wells drilled on these premises.[95]

In 2012, Appellant executed a lease in favor of the predecessor to SWN Production Company, LLC ("SWN"). The lease was pooled into the Ballpark Unit and the Shroyer Unit. Four horizontal wells were drilled, the surface hole locations of which were located on land adjacent to the Premises. Appellee received 1/16 of the lease royalty on production. When Appellee requested payment on 1/2 of the oil and gas royalty, pursuant to the reservation quoted above, Appellant refused and Appellee filed suit. The trial court granted Appellee's motion for summary judgment, adopting Appellee's interpretation of the 1918 Deed and Appellant filed an appeal.

Appellant stated because the surface hole locations of the horizontal SWN wells were located on adjacent lands, they did not constitute future wells drilled "on the Premises." According to Appellant, the common definition of "on" relates to placement on top of the surface of something. In contrast, Appellee argued the SWN wells qualified as future wells stating "on" encompasses various locations and is not limited to a location on top of a noun's surface. Furthermore, the 1918 Deed reserving the royalty interest includes both the surface and minerals, therefore, horizontal wells with laterals underlying the Premises would qualify as wells.

In evaluating Appellant's argument, the court stated that it is ordinary and not unreasonable that the word "on" includes not only surface activities, but also subsurface mining activities.[96]. The court went on that Appellant's interpretation of the 1918 deed would allow landowners to deprive NPRI owners of their rights in oil and gas production by depleting the minerals through horizontal wells drilled adjacent to the surface of the premises and collecting all of the royalties. In conclusion, the court held a horizontal well traversing beneath the surface plainly qualifies as a well drilled on the Premises. Accordingly, Appellee was entitled to payment on 1/2 of the royalties on production.

[94] *Mineral Development, Inc. v. SWN Production (Ohio), LLC*, 2025-Ohio-395, 263 N.E.3d 1034 (7th Dist.).
[95] *Id*. at 3.
[96] *Id*. at 46.

Ohio River Resources LLC v. Westfall [97]

7th District Court of Appeals of Ohio, Monroe County

In this case, the court looked at whether Ohio River Resources, LLC ("River") had standing to challenge the abandonment of mineral rights under the Ohio Dormant Mineral Act ("ODMA") after abandonment was complete. River contended that it acquired 55% of an oil, gas, and mineral reservation ("Jackson Interest"),[98] which was improperly abandoned by Kevin and Janet Westfall in 2013 due to failure to provide proper notice of abandonment as required by O.R.C. 5301.56. River sought a declaration that the Jackson Interest was not abandoned and that it was entitled to royalties from oil and gas production on the property. River alleged that Westfalls' notice of intent to abandon and affidavit of abandonment ("Affidavit") through publication lacked a volume and page number that referenced the instrument where the Jackson Interest was created which is contrary to statutory requirements in O.R.C. 5301.56(F)(3) and (G)(2). All of River's assertions were dismissed when the trial court held that River lacked standing to challenge the Westfalls' abandonment proceedings and this appeal followed.

Standing presents a threshold issue in which a party must have a personal stake in the outcome of the controversy to make a legal claim or seek judicial enforcement of a duty or right.[99] In determining whether River had standing to challenge the Westfalls' abandonment, the court based their reasoning on the application of the ODMA and by way of precedent in the *Cardinal Mineral I* cases ("*Cardinal*"). In that case, the court found that a party which accepts quitclaim deeds of interests that are abandoned of record does not confer standing to the transferee to challenge an abandonment.[100] In the present case, the court applied section O.R.C. 5301.56(H) of the ODMA, which states once a mineral interest has been declared abandoned and the notice is recorded, the interest vests in the surface owner, and the record of the interest ceases to be notice to the public.[101] Accordingly, since River received quitclaim deeds of an interest that was abandoned in public record, the court concluded River's allegations challenging the abandonment were irrelevant to its standing determination.

The court further concluded that River, as subsequent purchaser of record of an abandoned mineral right, lacked standing to challenge the abandonment process, as the record chain of title showed abandonment was complete before the transfer of the Jackson Interest to River occurred.[102] Because River did not have a personal stake in the outcome of the controversy, and the record chain of title showed that abandonment was completed before the transfer, River did not have a legal interest to challenge it and therefore lacked standing.[103]

[97] *Ohio River Resources, LLC v. Westfall*, 7th Dist. Monroe No. 24 NO 0017, 2025-Ohio-2379.
[98] River began acquiring this interest by deed dated from December 2022 through March 2023.
[99] *Id*. at 47.
[100] *Id*. at 50; *Cardinal Minerals, LLC v. Miller*, 2024-Ohio-3121, 249 N.E.3d 868 (7th Dist.).
[101] *Ohio River Resources, LLC*, 2025-Ohio-2379 at 63.
[102] *Id.* at 66.
[103] *Id*.

1803 Resources, LLC v. Lineback [104]

7th District Court of Appeals of Ohio, Monroe County

In this case, the court analyzed whether an interest in oil and gas royalties was extinguished under the Marketable Title Act ("MTA"). This dispute pertains to severed mineral interests reserved by the Baker family in 1922 ("Baker Interest"). 1803 Resources, LLC ("1803 Resources") acquired the severed interests through conveyances from some of the Baker successors. 1803 Resources filed its initial complaint, asserting the Baker Interest was preserved by title transactions that qualified as saving events under the MTA. The trial court granted summary judgment in favor of the current surface owners, concluding the Baker Interest was extinguished in 1974 by the MTA and 1803 Resources lacked standing to pursue its claims. This appeal followed. The 1922 Deed from five Baker heirs contains the following two exceptions:

> In addition…the grantor, Charles H. Baker, reserves and excepts from this conveyance, an undivided 1/8 part of all the royalty in oil and gas in and underlying said premises, the same to be the 1/64 part of all the oil produced and saved there-from, and the 1/8 part of all moneys received as rental for gas from gas wells now on or hereafter drilled thereon.
>
> And the grantors, Charles H. Baker, Everett Baker, Maudie Moore, Opal Leach and Elizabeth E. Baker,…[,] reserve and except from this conveyance an additional undivided 1/8 part of all the royalty in oil and gas in and underlying said premises, the same to be the 1/64 part of all the oil produced and saved therefrom, and the 1/8 part of all moneys received as rental for gas from gas wells now on, or hereafter drilled thereon.[105]

Subsequent instruments in the chain of title repeated the exception language, including the names of the original grantors, though the fractions used in the later deeds were inconsistent. 1803 Resources claimed the interests were preserved from extinguishment by the MTA by a savings event, being the recording of a 1956 affidavit for transfer from Charles Baker to his wife and daughter. 1803 Resources also argued the root of title was insufficient because it contained specific references to both Baker reservations.[106]

The appellate court began its analysis by determining whether an affidavit of transfer qualifies as a savings event under the MTA. To qualify as a savings event, a recorded instrument must be a "title transaction," defined in O.R.C. 5301.47(F) as "any transaction affecting title to any interest in land, i*ncluding title by will or descent*…[.]" (court's emphasis). The court held that an affidavit of transfer does not qualify as a savings event because it is not a title transaction. Instead, the affidavit describes and memorializes a prior title transaction, here Charles Barker's.[107]

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[104] *1803 Resources, LLC, v. Lineback et al.*, 7th Dist. Monroe Nos. 24 MO 0019, 24 MO 0023, 2025-Ohio-3271.
[105] *Id.* at 25.
[106] *Id.* at 16.
[107] *Id.* at 89 (referencing *Hutchins v. Baker*, 2020-Ohio-1108, 153 N.E.3d 140 at ¶ 25-26.). We note that the appellate court did not state Charles Baker's date of death nor what must be filed of record to qualify as a savings event for tile passing by descent.

Next, the appellate court applied the *Blackstone* test to determine whether the exception language used throughout the chain of title, including the root of title, was general or specific.[108] The alleged root of title is a 1934 deed which identified Charles E. Baker and the five Baker heirs in its exception of two called 1/64 royalty interests. The court applied the *Blackstone* test and determined that the references to the Baker royalty interest were specific because the precise names of the grantors in the 1922 Deed were repeatedly identified, despite inaccuracies in the fractions recited. The court held that a reasonable title examiner would not be precluded from finding the severance deed due to errors in subsequent deeds. Accordingly, the court ruled that this specificity meant that the Baker Interest was preserved from extinguishment by the MTA.[109] Further, because the Baker royalties were not extinguished by the MTA, 1803 Resources owned a valid interest in the land and, thus, had standing to file its suit. [110]

Finally, the court addressed whether the trial court erred in its interpretation of the 1922 Deed. The court disagreed with the trial court's narrow interpretation that the 1922 Deed did not reserve oil *and* gas. Instead, the court found the lead clause of the reservation, being "all the royalty in oil *and* gas in and underlying said premise" to be indicative of the grantors' intent – for the reservation to cover both oil *and* gas.[111] Furthermore, the court found that the third clause in the 1922 Deed mentioned "the 1/8 part of all moneys received as rental for gas wells now on, or hereafter drilled thereon[,]" was a separate reservation and did not modify the reservation set forth in the first clause.[112] The court ultimately determined that the gas reservations were not limited by the second clause and were intended to be a 1/8 interest in the entirety of the gas in the underlying property.[113] The court reversed the trial court's decision and remanded the case to determine the scope of the gas reservations.

[108] *Blackstone v. Moore,* 155 Ohio St.3d 448, 2018-Ohio-4959, 122 N.E. 3d 132 at ¶12 (specifying the 3-step *Blackstone* test as: (1) Is there an interest described within the chain of title? (2) If so, is the reference to that interest a "*general reference*"? (3) If the answers to the first two questions are "yes," does the general reference contain a specific identification of a recorded title transaction?).
[109] *1803 Resources, LLC*, 2025-Ohio-3271 at ¶ 114.
[110] *Id.* At 124.
[111] *Id.*
[112] *Id.* at 144.
[113] *Id.* at 167.

5. *Tenth District Court of Appeals*

Eric Petroleum Corp. v. Vendel [114]

10th District Court of Appeals of Ohio, Franklin County

In this case, the court addressed the threshold for standing to challenge a statutory unitization order. In 2021, EAP Ohio, LLC ("EAP") was granted a statutory unitization order (the "Order") by the Division of Oil and Gas Resources Management of the Ohio Department of Natural Resources (the "Division") to unitize multiple leased and unleased parcels in the Dawson Unit. The Order attributed the entire interest in Dawson Unit Tract 12 to EAP. Eric Petroleum Corp. ("Eric Petroleum") filed a notice of appeal with the Ohio Oil and Gas Commission (the "Commission") challenging the validity of the Order. Erik Petroleum claimed that ownership in a 2008 oil and gas lease covering Dawson Unit Tract 12 (the "2008 Lease") entitled it to participate in the Dawson Unit, and the Order failed to protect Eric Petroleum's correlative rights.

At the time of Eric Petroleum's appeal, the ownership rights in the 2008 Lease were being litigated in Columbiana County. In the Columbiana County litigation, Eric Petroleum claimed it owned rights in the 2008 Lease which EAP was disputing. Citing the pending litigation, both the Division and EAP filed motions to dismiss Eric Petroleum's notice of appeal. Ultimately, the Commission determined that Eric Petroleum lacked standing to appeal the Order because Eric Petroleum was not an "interested party" under Adm. Code 1509-1-02(I) and could not demonstrate any real or current injury traceable to the Order. The Commission's order was then appealed to the Franklin County Court of Common Pleas. The trial court concluded that Eric Petroleum did have standing to administratively appeal the Order on multiple grounds, including that the Commission is authorized to determine property rights within the confines of determining if the Order is reasonable and lawful. The Division and EAP appealed the trial court's decision.

To have standing to sue, Eric Petroleum needed to demonstrate that it was adversely affected by the Order. Importantly, the appeals court explained that specific harm must be demonstrated, not merely a "claim" that harm may occur.[115] The court stated:

> . . . to have standing to appeal a Chief's Order pursuant to O.R.C. 1509.36, a person must demonstrate he or she was "adversely affected" by showing the Order produced an effect that is harmful to his or her interest, *i.e.*, an actual injury or a realistic danger of injury arising from the challenged action that is not so remote as to be merely speculative.[116]

[114] *Eric Petroleum Corp. v. Vendel*, 10th Dist. Franklin Nos. 24AP-272, 24AP-275, 2025-Ohio-1238.
[115] *Id.* at 29.
[116] *Id*. at 33.

Because Eric Petroleum's ownership claim was the current subject matter of separate litigation and all of its arguments hinged on prevailing in said litigation, the court found that Eric Petroleum was incapable of demonstrating non-speculative harm.[117]

[117] The appeals court also refused to consider arguments regarding the Commission's authority to determine property rights as a moot issue and dismissed Eric Petroleum's claim that the Order violated the retroactivity clause set forth in Ohio Constitution, Article II, Section 28.

Save Ohio Parks v. Oil & Gas Land Management Commission [118]

10th District Court of Appeals of Ohio, Franklin County

In this case, the court determined whether a state agency's approval of oil and gas exploration on state-owned land was subject to challenge and appeal. After the Oil & Gas Land Management Commission ("Commission") approved several nominations of state-owned land for oil and gas lease bidding, Save Ohio Parks ("S.O.P."), among others, filed an appeal seeking to challenge those decisions. The trial court held for the Commission asserting a lack of subject matter jurisdiction and a lack of standing on the part of S.O.P. This appeal followed.

First, S.O.P. argued that the Commission's approval of nominations was subject to appeal under O.R.C. 199.12 because the approvals were orders of a state agency performing a licensing function. The court referenced its analysis in a similar case, stating, "an agency does not qualify for an appeal pursuant to O.R.C. 119.12 unless…the agency action involves licensing functions of the agency."[119] Thus, an agency decision that does not include the issuance, renewal, revocation, or suspension of a license is *not* an agency action subject to appeal under O.R.C. 119.12. Here, the agency did not revoke, suspend, issue, or renew a license. In fact, "no license was ever applied for nor is there evidence of any license revocation or suspension."[120] The court held that the Commission's actions did not involve a licensing function nor were the Commission's action an 'agency' decision under O.R.C. Ch. 119. Thus, S.O.P. could not appeal the approval of the nominations because the Commission's actions were not available for appeal under O.R.C. 119.12.

Second, S.O.P. argued they had standing to appeal the Commission's decision to approve leasing a state park and wildlife areas because possible oil and gas exploration threatened S.O.P.'s members with harm from the exploration on the land. Specifically, S.O.P. alleged "such exploration, development and production ensure on the nominated lands, they will no longer be able to enjoy these lands and further, that the lands *may be* negatively impacted…"[121] The court reiterated the well-settled rule that "a general interest as a citizen does not convert an individual right into a right which would permit any citizen who suffers no distinct harm to sue a government agency."[122] Here, S.O.P.'s allegations of harm were mere speculation of unproven, future harm. The court found the possibility of future harm "far too tenuous of a connection to the actions of the Commission of which [S.O.P.] complain to be able to assert standing."[123] Therefore, even if S.O.P. could file an appeal pursuant to O.R.C. 1119.12, their claim would fail for lack of standing.

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[118] *Save Ohio Parks v. Oil & Gas Land Mgt. Comm*., 10th Dist. Franklin No. 24AP-206, 2025-Ohio-847.
[119] *Id.* at 13 *(*relying on *Brown v. Ohio Dept. of Transp.*, 83 Ohio App.3d 879, 881, 615 N.E.2d 1126).
[120] *Id.* at 19.
[121] *Id.* at 26.
[122] *Id.* at 27.
[123] *Id.* at 26.

D. OKLAHOMA CASE LAW UPDATE

SUPREME COURT OF OKLAHOMA CASES

Icon at Norman Apartments, LP v. Warr [124]

Supreme Court of Oklahoma

In this case, the Court determined whether the transfer of partnership interests to new owners should be treated as though title to the partnership's real property was "transferred, changed, or conveyed to another." The Icon at Norman Apartments ("Icon"), a limited partnership, owned certain real property ("the real property") since 2012. In 2022, the partnership interests in Icon were transferred to new owners. Subsequently, the Cleveland County Tax Assessor (the "Assessor") raised the fair cash value of the real property from $18,437,401 to $42,500,000. Icon protested this, arguing it violated the Oklahoma Constitution, which prevents the Assessor from increasing the value of a non-homestead property by more than 5% per year. The relevant provision states:

> [T]he fair cash value of any parcel of locally assessed real property shall not increase by more than five percent (5%) in any taxable year. . . The provisions of this section shall not apply in any year when title to the property is transferred, changed, or conveyed to another person or when improvements have been made to the property.[125]

The case centered on whether the transfer of partnership interests in 2022 constituted a transfer, change, or conveyance of the title to the real property. The Court noted that a limited partnership is an entity separate and distinct from its partners and the property of a partnership is owned by the firm, not the individual partners.[126] Icon was the owner of record prior to the transfer of partnership interests and remained the owner after the partnership transfer. Accordingly, the Court concluded that Icon still holds legal title to the real property and the sale of Icon's partnership interests were transfers of personal property, not title to real property.[127] Since the sale and transfer of partnership interests was not the transfer, change, or conveyance of title to real property, the Court held that the Assessor was not permitted to raise the fair cash value of the Icon Apartments above the 5% increase.

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[124] *Icon at Norman Apartments, LP v. Warr*, 2025 OK 42, 577 P.3d 259, (mandate issued June 17, 2025).
[125] Okla. Const. art. X, § 8B.
[126] *Icon*, 2025 OK 42 at 19.
[127] *Id*.

Mills v. J-M Mfg. Co. Inc. [128]

Supreme Court of Oklahoma

In this case, the court looked at: (1) whether a party may seek indemnity from another party in the absence of an independent legal relationship; and (2) whether the economic loss rule bars indemnity when damage occurs to property owned by a third party. The court held that indemnity may be sought even without an independent relationship, and that under the "other property" exception, the economic loss rule does not bar indemnity for damage to property owned by a third party. Charter Oak Production Co., LLC ("Charter Oak") owned an easement on the Millses' land and hired C&M Roustabout Services, LLC ("C&M") to install a saltwater transfer pipeline within that easement. C&M purchased the pipeline materials from Rainmaker Sales, Inc. ("Rainmaker"), who acquired the pipe from JM Eagle, Inc. ("JM"), the manufacturer. Shortly after installation, a manufacturing defect caused the pipeline to fail. This resulted in a saltwater spill on the Millses' property, which, in turn, caused significant damage.

Charter Oak sought indemnity from JM and Rainmaker after settling with the Millses pursuant to its non-delegable duty as the dominant tenant of the easement. JM and Rainmaker asserted that a legal relationship had to exist independently of Charter Oak's duty to the Millses before seeking indemnity against them. However, the court noted that "a person who, without fault on his own part, has been compelled to pay damages occasioned by the negligence of another is entitled to indemnity from the latter, *whether contractual relations exist between them or not*." [129] The court reasoned that although Charter Oak owed a non-delegable duty to the Millses, it bore no fault for the defective pipe. While the non-delegable duty arose as a matter of law, the actual fault for the damage done to the Millses' property was caused by JM and/or Rainmaker. As a result, Charter Oak could seek indemnity from JM and Rainmaker because its liability was entirely vicarious.

JM and Rainmaker alternatively asserted that even if Charter Oak were entitled to indemnity, its claim was barred by the economic loss rule, which prohibits recovery in products liability suits for purely economic injury to the product itself. They contended that because Charter Oak did not suffer damage to its own property but instead compensated the Millses for damage to their land, its loss was purely economic and therefore unrecoverable. They also argued that the "other property" exception to the economic loss rule did not apply because the damaged property belonged to a third party, not Charter Oak. The court rejected these arguments, explaining that the "other property" exception applies when a defective product causes damage to property other than the product itself. Here, the Millses' land was clearly distinct from the defective pipeline and qualified as "other property." The court further clarified that the economic loss rule is meant to limit recovery for purely economic losses where contract law provides remedies—not to bar indemnity when a party fulfills its non-delegable duty for damage to third party property. Finally, the court reasoned that it would be inequitable and contrary to the principles underlying indemnity to punish Charter Oak for damage that they did not directly cause. Thus, the court ruled that if a party satisfies their legal obligation to compensate a third party for damage caused by a defective product, the economic loss rule does not bar a claim for indemnity.

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[128] *Mills v. J-M Mfg. Co., Inc.*, 2025 OK 23, 567 P.3d 385.

[129] *Id.* at 12, (citing *Porter v. Norton-Stuart Pontiac-Cadillac of Enid.* 1965 OK 18, ¶14, 405 P.2d, 113) (emphasis added).

OKLAHOMA COURT OF APPEALS CASES

Mills v. Fuhrmann [130]

Court of Civil Appeals of Oklahoma

In this case, the court determined whether the owner of landlocked property was entitled to an easement and if other landowners could be permanently enjoined from obstructing it. The disputed easement was an unpaved trail crossing the Fuhrmann Property that provided access from a county road to the Mills Property. The Mills asserted they historically used the trail, particularly when flooding along the Red River blocked other routes, leaving crossing private land as the only practical access. The Mills property traces back to Ms. Mills' ancestors in 1905. In 1967, Ms. Mills' father acquired an additional 20 acres from the prior owner of the Fuhrmann Property. The Mills and their predecessors had crossed the Fuhrmann land since at least 1929, and after the Fuhrmanns purchased the property in 1956, both parties used a dual lock system allowing shared roadway access. In 1969, the Fuhrmanns acquired the remaining property from the prior owner.

The court first addressed determined whether an easement existed by necessity or implication. An easement by necessity requires unity of title, severance of that unified title and necessity of access at the time of severance.[131] An easement by implication requires prior use of one part of the property for the benefit of another, that use must be apparent and continuous, and that it was reasonably necessary to the enjoyment of the tract.[132] Both theories require unity of title, but only implied easements require proof of actual use. Here, unity of title existed because the properties were originally part of one tract. Evidence also showed that prior to the Fuhrmann's purchase of the property, Ms. Mills' father had made apparent and continuous use of the easement to access the property and continued to do so afterward. Testimony established that the Mills' only feasible access required crossing private land, satisfying the necessity requirement. Therefore, the court concluded that both an easement by necessity and implication existed.

However, the court found that the trial court erred in permanently enjoining the Fuhrmann successors from interfering with the easement. Easements by necessity exist only as long as the necessity continues and terminates once access is no longer indispensable. Easements by implication may terminate by abandonment, condemnation, merger, or extinguishing events. Because neither type of easement can exist in perpetuity as a matter of law, the court vacated the portion of the judgment imposing a permanent enjoinment. Next, the court considered whether the Mills had acquired a prescriptive easement, which required actual, open, continuous, and hostile possession of property for the statutory period. Because Mr. Fuhrmann allowed the Mills' predecessor to use a designated route, the use was permissive rather than hostile and therefore no prescriptive easement was acquired. Finally, the court addressed limits on use and improvement of the easement, noting any changes must be reasonable and not unreasonably burden the servient estate. Because the easement was an unpaved pathway, any increased traffic, expansion, or commercial use would burden the servient estate and diminish the Fuhrmann Property's value. The court therefore affirmed the trial court's limitations on the Mills' use and improvements.

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[130] *Mills v. Fuhrmann*, 2025 OK CIV APP 23, 576 P.3d 454.
[131] *Johnson v. Suttles*, 2009 OK CIV APP 89, 9, 227 P.3d 664, 667, as corrected (Oct. 30, 2009) (citing 28A C.J.S. Easements § 93 (1996).
[132] *Story v. Hefner*, 1975 OK 115, 16, 540 P.2d 562, 565.

E. TEXAS CASE LAW UPDATE

SUPREME COURT OF TEXAS CASES

Cromwell v. Anadarko E&P Onshore, LLC [133]

Supreme Court of Texas

In this case, the Texas Supreme Court examined whether passive-voice habendum clauses in a pair of oil-and-gas leases required a lessee to personally produce minerals to maintain the lease. David Cromwell ("Cromwell") and Anadarko E&P Onshore, LLC ("Anadarko") were oil-and-gas co-tenants who both owned a working interest under the same land. Cromwell, as the lessee, acquired two leases in early 2009, one from Carmen Ferrer ("Ferrer Lease"), and the other from Tantalo Trust ("Tantalo Lease"). The primary term of Ferrer Lease ended in February 2012, and the primary term of the Tantalo Lease ended in March 2014. Anadarko was the lessee under previously acquired leases from different mineral co-tenants. Anadarko drilled three wells on the lands prior to the execution of either Cromwell lease and additional wells thereafter. Between 2009 and 2018, Cromwell asked Anadarko numerous times to enter into a joint operating agreement and participate in production, but Anadarko refused. Instead, Anadarko treated Cromwell as a non-participating working interest owner in all of its wells between 2009 and 2017. In 2017, Anadarko acquired top leases from Cromwell's lessors, later informing Cromwell that it believed his leases had terminated. Cromwell then filed suit against Anadarko for declaratory relief and trespass to try title.

At trial, Anadarko argued that Cromwell's leases terminated at the end of their respective primary terms because Cromwell failed to personally cause production on the land.[134] Cromwell countered that the leases did not terminate under unwritten conditions and instead never expired because oil production in commercial paying quantities had continuously occurred. [135] The trial court and the court of appeals followed the ruling in *Cimarex*, holding that Cromwell's leases could not rely on a co-tenant's production and automatically terminated at the end of their primary terms.[136] The Texas Supreme Court disagreed and, on review, looked to the plain language of the habendum clauses in Cromwell's leases. The Ferrer Lease habendum clause provided that:

> This lease . . . shall be in force for a term of three (3) years from this date (called "primary term") and as long thereafter as oil, gas or other minerals are produced from said land, or land with which said land is pooled hereunder, or as long as this lease is continued in effect as otherwise herein provided.[137]

The Tantalo Lease habendum clause provided that:

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[133] *Cromwell v. Anadarko E&P Onshore, LLC*, No. 23-0927, 2025 WL 1478494 (Tex. May 23, 2025).
[134] *Id.* at *5
[135] *Id.* at *4
[136] *Id*. at *3 (citing *Cimarex Energy Co. v. Anadarko Petroleum Corp.*, 574 S.W.3d 73, 93 (Tex. App.—El Paso 2019, pet. denied) (holding that an oil-and-gas lease terminated because the lessee did not personally cause production, despite that requirement appearing nowhere in the lease)).
[137] *Id*. at *2.

> [T]his lease shall be for a term of five (5) years from the date first above written (hereinafter called the "primary term") and as long thereafter as oil, gas, liquid hydrocarbons or their constituent products, or any of them, is produced in commercial paying quantities from the lands leased hereby.[138]

The Court determined that the habendum clauses imposed a special limitation—that the leases terminate if oil and gas are no longer produced on the land—but the clauses did not specify which party must do the producing and the court was unwilling to write in such specificity.[139] Consequently, the Court stated that it would not hold a lease's language to impose special limitations unless the language is "so clear, precise, and unequivocal" that it reasonably gives no other meaning.[140] Therefore, because oil and gas was produced in commercial paying quantities on the land in accordance with the lease clauses, Crowell's Leases were maintained by Anadarko's production.

Further, by holding that a passive-voice habendum clause does not require a lessee to produce to maintain their interest, the Court disapproved of the *Cimarex* ruling to the extent it held otherwise. In *Cimarex*, the court relied on a misguided notion of an oil-and-gas lease's purpose and held that a non-operating co-tenant must personally produce to maintain its lease.[141] In the present case, the Court recognized that the *Cimarex* court departed from the plain language of the lease to make the lease say what it unambiguously did not say.[142] However, the Court noted that Anadarko is not without remedy, as co-tenancy law provides a remedy if Cromwell does not complete his obligations as a co-tenant.

[138] *Id*.

[139] *Id*. at *5 (citing *Tenneco Inc. v. Enter. Prods. Co.*, 925 S.W.2d 640, 646 (Tex. 1996) (holding that courts must not "rewrite agreements to insert provisions parties could have included or to imply restraints for which they have not bargained")).

[141] *Id*. at *7 (citing *Cimarex Energy Co.*, 574 S.W.3d at 95–96).

[142] *Id*. at *7.

Myers-Woodward, LLC v. Underground Services Markham, LLC [143]

Supreme Court of Texas

In this case, the Court determined whether ownership of a mineral right for salt includes ownership of the empty spaces created from salt extraction and whether a non-participating royalty interest on salt is payable in-kind. Myers-Woodward ("MW") owned the surface rights to 160 acres of land ("the Land"). The predecessors of MW conveyed all of the mineral interest in the 160-acre tract to the predecessor of MW, Texas Brine Company ("TBC") and Underground Services Markham ("USM") (the "1947 Deed"). The 1947 Deed reserved unto the predecessor of MW a 1/8th royalty on all oil, gas or other minerals. In 2008, TBC owned the mineral estate described in the 1947 Deed. That same year, USM acquired all of TBC's interest in the salt on the property described in the 1947 Deed, subject to all royalty obligations, conveyed through the following grant ("Salt Deed"):

> [a]ll of [TBC's] right, title and interest, in and to all of the salt and salt formations only, in, on and under and that may be produced from the property described [herein.][144]

First, USM sought a declaration that they owned the cavern space created by the salt extraction on the Land and, in turn, could use the space to store hydrocarbons. However, MW argued that as the owners of the Land's surface rights, they were the sole owners of the empty cavern space. Previous courts reasoned that no matter the value, empty space is not a mineral and the general rule in Texas, absent a contrary agreement, is that underground storage space belongs to the surface owner.[145] In this case, the Salt Deed conveyed the rights to the salt formations to USM, whereas TBC received a conveyance of only mineral rights through the 1947 Deed and owned only the salt, not salt formations. The Court also states that, although the surface owner owns the salt caverns, the mineral owner of the salt is allowed to make use of the salt caverns, insofar as is reasonably necessary for the production of salt. Therefore, the Court held that since USM did not have an agreement showing they owned the salt formations, USM's ownership of underground salt did not include the ownership of the empty space within or around the salt formation created from extraction.

Next, USM sought a declaration that they satisfied their royalty obligations by tendering to MW 1/8th of the market value of the salt produced from the land. MW, however, argued they were entitled to an in-kind royalty in the form of either physical possession of 1/8th of the salt produced from its land or 1/8th of the net proceeds from the sale of that salt. The 1947 Deed reserved unto the surface owner a 1/8th royalty interest in all oil "to be delivered at the wells or to the credit of Grantors" which was then corrected to include minerals and gas in a corrected Deed stating:

> The aforesaid mineral deed of May 17, 1947, shall be, and it is hereby, amended so as to provide that in addition to the royalties on oil and sulphur therein reserved, the Grantors…shall be entitled to a royalty of 1/8 of all the gas or other

[143] *Myers-Woodward, LLC v. Underground Servs. Markham, LLC*, No. 22-0878, 2025 WL 1415892 (Tex. May 16, 2025).
[144] *Id*. at *2.
[145] *Id*. at *1, *7.

> minerals in, on, or under, or that may be produced from the above described land and does hereby grant to the [Grantors] such royalty interest, it being intended that they shall receive a total royalty interest of 1/8 of all the oil, gas, or other minerals (except sulphur) produced from said land.[146]

The resolution of the dispute turned on whether the corrected 1947 Deed, reserving a non-participating 1/8th royalty of all gas or other minerals, including salt, reserved an in-kind royalty for MW. To be characterized as an in-kind royalty, the royalty language should explicitly require delivery—which USM argued was missing from the corrected 1947 Deed. Here, the Court reasoned that the language of the original 1947 Deed, reserving a 1/8th royalty on all oil "to be delivered at the wells or to the credit of Grantors," left no doubt the original 1947 Deed reserved an in-kind oil royalty.[147] Although USM argued the corrected 1947 Deed reserved a different royalty, one based on the market value for gas and other minerals, the Court held that based on the entire correction deed, the drafting parties intended to create identical royalites for oil, gas, and other minerals. The Court reasoned that the correction deed described the oil, gas, and other minerals in the same manner that the original 1947 Deed described the in-kind oil royalty. Therefore, the Court concluded that it was the intention of the drafting parties in the correction deed for the royalty of gas and other minerals to mirror the royalty for oil in the original 1947 Deed. Ultimately, MW was entitled to an in-kind royalty for the salt taken from their property.

[146] *Id*. at *10.
[147] *Id*.

Roxo Energy Company, LLC v. Baxsto, LLC [148]

Supreme Court of Texas

In this case, the court considered whether written agreements in an oil and gas lease contradicted prior oral agreements regarding the sale of a mineral interest, and whether such contradictions amounted to fraud. In 2016, Baxsto, LLC ("Baxsto") negotiated a lease of its mineral interests with Roxo Energy Company, LLC ("Roxo"). During these negotiations, Roxo allegedly made three oral representations: "(1) if Baxsto would execute a lease quickly, Roxo would give the most favorable deal of any owner in the area; (2) Roxo was 'not in the business of flipping mineral interests' and intended to drill the acreage; and (3) Roxo planned to make its money…by drilling and developing land."[149] These negotiations resulted in three written instruments: a paid-up lease, lease purchase agreement, and a lease memorandum.

The lease purchase agreement and the lease memorandum stated Roxo could only record the lease after it paid a bonus payment to Baxsto and Roxo had an option period to purchase the lease. However, "[w]ithout Baxsto's knowledge, Roxo recorded the lease memorandum before making any bonus payment."[150] Roxo was later given two extensions of time on the lease purchase option. The first extension included a "most favored nations" clause, which provided that if, within the next six months, Roxo paid a larger bonus to a qualifying lessor, Roxo would pay the same amount to Baxsto. Before the second extension was signed, Roxo informed Baxsto of its ongoing negotiations with another mineral owner in the same acreage as Baxsto. After the second extension, Roxo paid the bonus and acquired the lease. On May 26, 2017, the parties closed on the sale of Baxsto's mineral interests. Contrary to Roxo's alleged oral representations, they never drilled a well on Baxsto's acreage and later sold the acquired minerals to another operator. Baxsto filed suit, alleging that Roxo committed fraud in its oral representations during their negotiations. Baxto further argued that Roxo's representations were false and intended to induce Baxsto to lease and sell their mineral interest for a price lower than market value. Roxo argued that they abided by the written terms in the lease agreements and denied any fraudulent conduct.

The Supreme Court of Texas has held that claims of fraud require justifiable reliance, which is negated when the terms of a written contract conflict directly with prior oral representations "such that a reasonable person could not read the [contract] and still plausibly claim to believe the earlier representations."[151] The Court first addressed Roxo's alleged oral representations: that they intended to develop Baxsto's acreage rather than "flip" the lease. Despite the oral negotiations, the parties later executed an agreement with a standard assignment provision which granted Roxo an unqualified right to transfer the lease rather than drill. This provision directly contradicted the alleged oral promise that Roxo would not assign the lease and instead drill. Thus, the Court held this claim lacked justifiable reliance.[152]

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[148] *Roxo Energy Co., LLC v. Baxsto*, *LLC*, No. 23-0564, 2025 WL 1349581 (Tex. May 9, 2025).
[149] *Id*. at *1.
[150] *Id*. at *1.
[151] *Id*. at *2 (quoting *Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc.*, 590 S.W.3d 471, 498 (Tex. 2019)).
[152] *Id*. at *3.

Next, the Court addressed Roxo's alleged oral representation that Baxsto would receive the most favorable bonus payment of any qualified lessor in the area. The court explained that the omission of an alleged oral representation from the final written agreement can negate justifiable reliance. In determining this, courts will consider "the circumstances in their entirety while accounting for the parties' relative levels of sophistication."[153] Here, the Court concluded the alleged oral representations were never incorporated into the parties' agreements. It stated Cole Stout, Baxsto's representative in the negotiations with Roxo, was an experienced oil and gas businessman who had negotiated numerous leases. As such, he was in a position to understand the differences between the deal he signed and any prior oral discussions. Furthermore, Stout was uniquely positioned to seek and obtain information other than Roxo's self-serving statements regarding the value of Baxsto's mineral interests. Consequently, the Court concluded that Baxsto's reliance on Roxo's alleged misrepresentations about bonus payments was unjustifiable as a matter of law.

Lastly, the Court addressed Roxo's alleged promise not to record the lease until after Baxsto paid its bonus payment, and Roxo's subsequent failure to disclose that it had recorded the lease too early. The Court noted that a claim based on a fraudulent promise requires "proof that the defendant knew the representation was false when made and intended to induce the plaintiff's detrimental reliance on it."[154] The Court found that Baxsto presented no evidence of a confidential or fiduciary relationship with Roxo that required a duty of disclosure. Rather, the parties were counterparties in a business deal. The Court reasoned that the promise not to record the lease was too remote from the object of the inducement—the sale—which did not happen for several more months. Therefore, the Court concluded Roxo had no legal duty to inform Baxsto that it had prematurely recorded the lease.

[153] *Id*. at *4 (quoting *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 656 (Tex. 2018)).
[154] *Id*. at *5.

TEXAS DISTRICT COURT OF APPEALS

1. Third District Court of Appeals

Trivista Oil Company LLC v. Fort Apache Energy, Inc. [155]

Austin Court of Appeals

In this case, the court determined whether the Texas Citizens Participation Act ("TCPA") applied to communications from a Lessee soliciting and acquiring top leases from lessors under active oil and gas leases. In March 2024, Trivista Oil Company, LLC, ("Trivista") learned that Fort Apache Energy, Inc., ("FAE") acquired top leases over Trivista's active oil and gas leases. Trivista alleged that FAE tortiously interfered with the bottom leases by contacting lessors to convince them to sign top leases and terminate the bottom leases. FAE filed a motion to dismiss Trivista's suit under the TCPA, claiming its communications were protected as free speech. The trial court dismissed Trivista's TCPA's claim and this appeal followed.

The TCPA is designed to protect speech on matters of public concern by allowing courts to conduct an expedited review of claims that might stifle such speech through civil liability and damages.[156] The process involves three steps: First, the movant must show the TCPA applies because the legal action is based on or in response to the exercise of the right of free speech. Second, if the TCPA applies, the claimant must establish a prima facie case for each essential element of the claim. Third, if the claimant meets this burden, the court must still grant the motion if the movant establishes an affirmative defense or other grounds for judgement as a matter of law. Additionally, a non-movant can avoid the TCPA's burden-shifting by asserting one of the TCPA's exemptions, such as the commercial-speech exemption.[157]

Here, the court found that FAE's communications implicated issues of public concern, as they focused on the safety and environmental risk posed by the condition of wells and equipment, Trivista's failure to pay royalties or produce oil and gas, and the accuracy of production reported to the Texas Railroad Commission. The court deemed these communications to have public relevance beyond the private interest of the parties involved, given the scale of the land and the community's response.[158] Additionally, the court held that the TCPA's commercial speech exemption was inapplicable because it is limited to actions against a person primarily engaged in the selling or leasing goods or services where the challenged statements arise from commercial transactions with an actual or potential customer. Here, the court concluded that Trivista did not meet this burden because an interest in an oil and gas lease is considered a real property interest, and not a good under the TCPA.[159] Ultimately, the court affirmed the trial court's dismissal of Trivista's claims under the TCPA because FAE's solicitation of top leases implicated issues of public concern, and Trivista failed to show the commercial-speech exemption applied.[160]

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[155] *Trivista Oil Co. LLC v. Fort Apache Energy, Inc.*, No. 03-24-00682-CV, 2025 WL 3560683 (Tex. App.—Austin Dec. 12, 2025).
[156] *Id.* at * 2, quoting *Lilith Fund for Reprod. Equity v. Dickson*, 662 S.W.3d 290, 296 (2021).
[157] *Id*.
[158] *Id*. at *7.
[159] *Id*. at *8.
[160] *Id*.

2. Fourth District Court of Appeals

EOG Resources, Inc. v. CNH Enterprise Holdings, Ltd.[161]

San Antonio Court of Appeals

In this case, the court determined whether a "Failure to Protect from Drainage" claim is barred by the Texas Citizens Participation Act ("TCPA") because it relates to a well permit application. In 2009, Charles and Nancy Hundley executed an oil and gas lease ("Hundley Lease") which was later assigned to EOG Resources, Inc. ("EOG"). Thereafter, EOG obtained a permit to drill the Gary 2H Well on the premises of a second lease ("Gary Lease") that adjoined the Hundley Lease along a shared boundary. The Eagleville Field Rules, which governed the well, required a minimum 330-foot lease-line distance; however, EOG, without consent or notice to the lessors of the Hundley Lease, waived any notice or hearing on the Rule 37 exception and permitted itself to drill the Gary 2H Well at a location closer than allowed by the lease line rule. CNH Enterprise Holdings, Ltd. ("CNH"), successor to Charles and Nancy Hundley, alleged that the Gary 2H Well subsequently caused substantial drainage to the lands covered by the Hundley Lease and EOG did not drill an offset or answering well on the Hundley Lease to prevent such drainage. Based on these allegations, CNH asserted a claim for failure to protect from drainage, and EOG challenged CNH's claim with a motion to dismiss under the Texas Citizens Participation Act ("TCPA").

The TCPA allows for the dismissal of a legal action that is "based on or is in response to" a party's exercise of its right to petition, which includes certain communications to governmental bodies.[162] While a TCPA motion is subject to a three-step analysis with shifting burdens, the parties here dispute only the first step: the movant must demonstrate that the TCPA applies.[163] To meet this burden, the movant must demonstrate that the nonmovant's legal action is "based on or is in response to" the movant's exercise of a right to associate, speak freely, or petition.[164] CNH did not contest that EOG's communications with the Texas Railroad Commission when applying for a drilling permit and Rule 37 exception were considered exercises of the right to petition; rather, CNH only disputed whether their failure-to-protect claim is based on or is in response to EOG's communications.

The court noted that while "based on" or "in response to" are not defined under the TCPA, Texas courts of appeals have described the "based on" portion of the standard as requiring either: 1) the exercise of a protected right be the "gravamen" of the claim; 2) that the claim be "factually predicated on" the exercise; or 3) that the exercise be a "main ingredient" or "fundamental" part of the claim.[165] Here, the Court found that the gravamen of CNH's claim is that EOG breached its obligation to protect the Hundley Lease by failing to drill an offset well, not EOG's communications with the Railroad Commission. Further, CNH's claim is "based on" EOG's failure to drill an offset well on the Hundley Lease because the claim is "factually predicated on" the failure to drill, the failure to drill is "a main ingredient of" the claim, and the failure to drill is "a

[161] *EOG Resources, Inc. v. CNH Enterprise Holdings, LTD.*, No. 04-24-00160-CV, 2025 WL 2807775 (Tex. App.—San Antonio Sep. 30, 2025, no pet.) (mem. op.).
[162] *Id.* at *3.
[163] *Id.*
[164] *Id.*
[165] *Id.* at *4.

fundamental part of the claim."[166] Contrastingly, EOG's communications with the Railroad Commission could not be the basis of CNH's claim because the communication only concerned regulatory approval for the Gary 2H Well and did not concern an offset well or the failure to drill an offset well. [167]

The court found that the link between EOG's communication with the Railroad Commission and the actual conduct that forms the basis of CNH's claim, being the failure to drill an offset well, was too attenuated to satisfy the TCPA's required nexus between a protected activity and the claim.[168] In other words, CNH's failure-to-protect claim was not "based on" or "in response to" EOG's protected communication with the Railroad Commission; therefore, the TCPA does not apply. Accordingly, CNH's failure-to-protect claim was not subject to dismissal under the TCPA.

[166] *Id.* at *5.
[167] *Id.*
[168] *Id.* at *6.

Eckford v. Korth [169]

San Antonio Court of Appeals

In this case, the court determined whether the Korths conclusively established ouster for their adverse possession claim. The legal dispute concerned a 147.5-acre property (the "Property") in Karnes County, Texas, where the Eckfords claimed a 17/36 ownership interest while the Korths asserted full ownership. Louis Eckford died without a will in 1896, and, pursuant to the intestacy laws at the time, a one-half interest in the Property passed to his wife, Eliza Eckford, and the remaining one-half interest passed in equal shares to the nine surviving Eckford children. Eliza Eckford died testate in 1925. During the probate of her will, a court approved administrator executed a deed purporting to convey the Property in fee simple to Fritz Korth (the "1939 Deed"). The Korths have occupied the land since then and filed a trespass to try title action against the Eckfords.

In Texas, a legal presumption of ouster exists when the act is "so overt and notorious that no further action is necessary to provide notice to a cotenant."[170] For example, the court highlighted *Parr v. Ratisseau*, which concluded that a deed conveying a fee simple interest in a portion of a larger tract owned by multiple cotenants, when coupled with open possession, was sufficient to establish ouster without the need for actual notice.[171] In other words, a cotenant who is unaware of or fails to assert his rights must bear the resulting consequences. Here, the Korths exclusively possessed the Property for about seventy years. Additionally, between 1939 and 2012, the Eckfords exercised no instances of ownership over the Property. They never entered or sought access to the land, paid property taxes, identified the tract as an asset in any written record, funded improvements, or provided financial support for its maintenance. In defense of their claim to title, the Eckfords characterized the 1939 Deed as a quitclaim deed and pointed to occasions when the Korths acknowledged their interest. However, the court rejected Eckford's argument. The court reasoned that such acknowledgments from the Korths did not destroy an ouster claim but merely created confusion as to who owned the Property in fee simple. The hostility requirement is not dependent on an "intent to dispossess" but rather on an "intent to claim the land."[172]

In conclusion, the 1939 Deed purported to convey a fee simple interest in the Property, an interest hostile to the Eckfords ownership. Although the Korths occasionally acknowledged their shared cotenancy, such acknowledgments did not destroy the Korths' claim of ouster. The court concluded that the 1939 Deed and the probate decree were "sufficiently notorious" to prove ouster as a matter of law. Furthermore, the evidence showed that the Korths exclusively possessed the Property for 73 years, far exceeding any applicable limitations period. Accordingly, with all evidence taken together, the court found that the record conclusively demonstrated constructive ouster, thereby establishing adverse possession.

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[169] *Eckford v. Korth*, No. 04-24-00183-CV, 2025 WL 2845033 (Tex. App.—San Antonio Oct. 8, 2025).
[170] *Id.* at *7
[171] *See Parr v. Ratisseau*, 236 S.W.2d 503, 506 (Tex. App.—San Antonio 1951, writ ref'd n.r.e.).
[172] *See BP Am. Prod. Co. v. Marshall,* 342 S.W.3d 59, 72 (Tex. 2011).

San Miguel Electric Cooperative, Inc. v. Lively [173]

San Antonio Court of Appeals of Texas

In this case, the court determined that a deed reserving "all coal" includes lignite. In 1931, a deed divided the Franklin Ranch (the "Ranch") into various tracts, each subject to an express reservation of "all Coal and Kaolin or Clay Products on or under" the Ranch (the "1931 Reservation").

San Miguel Electric Cooperative, Inc. ("San Miguel"), through purchases and leases, acquired a 68.5% interest in "all coal" on the Ranch from the successors of the original reserving parties. In March of 2021, San Miguel submitted a coal mining operating permit application to the Texas Railroad Commission—which declared its intent to strip mine the Ranch for lignite. The successors in title to the 1931 grantees ("Lively") filed suit seeking a declaratory judgment that "all coal" in the 1931 Reservation did not include lignite. The trial court agreed with Lively, holding that lignite was not included in the 1931 Reservation. San Miguel filed this appeal.

When interpreting deeds, courts adopt the term's ordinary meaning unless it is otherwise defined.[174] Further, the ordinary meaning of a term does not change over time and retains the same meaning as it did when the deed was filed. Thus, the appellate court was tasked with determining the ordinary meaning of the words "all" and "coal" insofar as such words were used in the 1931 Reservation. The 1913 version of the Oxford English Dictionary defines "all" as: "The entire or unabated amount or quantity of; the whole extent, substances, or compass of; the whole."[175] The same dictionary defines "coal" as:

> [a] mineral, solid, hard opaque, black or blackish, found in seams or strata in the earth and largely used as fuel; it consists of carbonized vegetable matter deposited in former epochs of the world's history. According to the degree of carbonization, coal is divided into three principal kinds, anthracite or glance coal, black or bituminous coal, and brown coal or *lignite*[.] (court's emphasis)[176]

Previous courts have also treated lignite as a type of coal.[177] Accordingly, the court determined that the ordinary meaning of "all coal" in the 1931 Reservation must include lignite, resulting in the trial court's order being reversed with judgment rendered in favor of San Miguel.

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[173] *San Miguel Elec. Coop., Inc. v. Lively*, No. 04-24-00383-CV, 2025 WL 2976756 (Tex. App.—San Antonio Oct. 22, 2025) (mem. op.).
[174] *Van Dyke v. Navigator Grp.*, 668 S.W.3d 353, 359 (Tex. 2023) (reh'g denied).
[175] *San Miguel* at 3, quoting *All*, OXFORD ENGLISH DICTIONARY (1st ed. 1913).
[176] *Id.* at 3, quoting *Coal*, OXFORD ENGLISH DICTIONARY (1st ed. 1913).
[177] *Id*. citing *Cannel Coal Co. v. Luna.* 144 S.W. 721, 723 (Tex. App.—San Antonio 1912, writ dism'd w.o.j.).

3. Seventh District Court of Appeals

In The Estate of Jimmy Allen Bird, Deceased [178]

Amarillo Court of Appeals

In this case, the court held the decedent's Will and Codicil devised a fee simple absolute interest to the decedent's wife, rather than a life estate interest. Jimmy Allen Bird ("Jimmy") died testate in 2020, and his Will and First Codicil were admitted to probate on March 11, 2021. Jimmy devised his surviving spouse, Ada Lou Chambliss Bird ("Ada"), the following:

> Paragraph IV. "…all of my property, real, personal and mixed…for her Natural Life…"
>
> Paragraph VI. "…power and authority to sell, lease, encumber, partition, and divide…all of my estate in such manner as she may see fit…"
>
> Paragraph VII. "[a]ll the rest, residue of my estate, I give, devise and bequeath to [Ada] for her natural life."[179]

Ada exercised the broad powers granted in Jimmy's Will and Codicil by deeding four tracts of land to her grandson, Brandon, and entered into a Family Settlement Agreement dividing sale proceeds with her daughters. She also executed a new Will and granted Brandon a long-term option to purchase over 5,000 acres, which he exercised after her death in January 2023. After Ada's death, the Successor Co-Executors of Jimmy's Estate disputed Brandon's attempt to exercise the purchase option Ada had granted him. They argued that Ada only held a life estate and, therefore, lacked the authority to bind the Estate to the option. Brandon filed suit, seeking a declaratory judgment that Jimmy devised his entire estate to Ada in fee simple absolute. The trial court agreed with Brandon, concluding that a presumption exists that Jimmy intended for his entire estate to pass through the Will, there was no provision in the Will creating a remainder interest, and despite using the term "for her natural life," Jimmy intended for Ada to receive a fee simple interest in all of the Estate's property. This appeal followed.[180]

On appeal, Jimmy's Estate argued the Will demonstrates an intent to create a life estate in Ada, and the lack of a remainder devise results in the remainder interest passing to Jimmy's heirs. The appeals court disagreed, holding that partial intestacy should only be upheld in exception cases. The court agreed with the trial court's initial interpretation that the plain language in the will and codicil clearly demonstrate Jimmy's intent not to die intestate. Because there can be no life estate in property without a remainder, the court construed the will as devising the greatest estate the devise would permit, in this case, a fee simple estate.

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[178] *In the Estate of Jimmy Allen Bird, Deceased*, No. 07-24-00184-CV, 2025 WL 1774192 (Tex. App.—Amarillo June 26, 2025, no pet. h.) (mem. op.).
[179] *Id*. at *1.
[180] *Id.* at *3.

Meador v. Guadalupe-Blanco River Trust [181]

Amarillo Court of Appeals

In this case, the court determined whether the severance and conveyance of ground water rights breached a conveyance prohibition in an agricultural lease. In 2017, Don B. Meador and Karen S. Meador (the "Meadors") executed an Agricultural Land Lease (the "Ag Lease") that encompassed their Dreamcatcher Ranch (the "Ranch") with Guadalupe-Blanco River Trust ("Guadalupe-Blanco"). The Ag Lease contained the following provision:

> Separate conveyance of a portion of the Property or division or subdivision of the Property is prohibited, except where state or local regulations explicitly require subdivision to construct residences for employees working on the Property.[182]

Notwithstanding this provision, in November 2018, the Meadors executed a water deed that conveyed to BK Edwards Water Trust ("BK") "Water Rights," which included the right to extract 103.788 acre-feet per year of Edwards Aquifer permitted unrestricted groundwater from the Ranch.[183] This transaction led to Guadalupe-Blanco alleging that the Meadors breached the Ag Lease as a matter of law by making a prohibited separate conveyance of the Ranch's groundwater rights. The separate conveyance occurred when the Meadors severed and conveyed groundwater rights via the water deed to BK. The trial court agreed with Guadalupe-Blanco, entering a summary judgment that the Meadors breached the Ag Lease when they sold the groundwater to BK. This appeal followed.

Generally, the court noted, a landowner owns the groundwater below the land's surface, such that it may be sold or otherwise severed from the surface just like minerals.[184] Consequently, the court found that the groundwater under the Meadors' land was a part of the realty and Meador had the right to sell interests in that water. Therefore, the Meadors effectively conveyed a portion of the Ranch's real property by selling the Water Rights and used the term "deed" to effectuate the transfer—as deeds purport to convey real estate.[185] The court determined that Meador violated the lease by engaging in a separate conveyance of a portion of the real property, specifically the groundwater rights, which was prohibited under the terms of the Ag Lease with Guadalupe-Blanco. The trial court's conclusion that Meador violated the Ag Lease was affirmed.

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[181] *Meador v. Guadalupe-Blanco River Tr.*, No. 07-24-00355-CV, 2025 WL 2233382 (Tex. App.—Amarillo Aug. 5, 2025, no pet.) (mem. op).
[182] *Id*. at *1.
[183] *Id*.
[184] *See City of Del Rio v. Clayton Sam Colt Hamilton Trust*, 269 S.W.3d. 613, 617 (Tex. App.—San Antonio 2008, pet. denied).
[185] *See Lockridge v. McCommon*, 90 Tex. 234, 239, 38 S.W. 33, 35 (1896).

Southwestern Public Service Company v. Ridge Renewables, LLC [186]

Amarillo Court of Appeals

In this case, the court determined whether the legal description in a wind lease satisfied the statute of frauds and, if so, whether the wind lease expired by its terms. On August 24, 2010, Glendale King ("King") entered into a Wind and Easement Lease Agreement (the "2010 Agreement") with Hale County Wind Farm, LLC ("HCWF") that granted HCWF exclusive wind development rights to the 256-acre property individually owned by King in Hale County, Texas, described as follows:

> Glendale King-100%,
> All that real property located in Hale County, Texas containing 256 acres, more or less, described as follows:
>
> Tract 1: S/PT of E ½ of section 58, Block R, Abstract AB 1695, Hale County, Texas being 256 acres.[187]

The 2010 Agreement included a two-year extension of the Development Term if construction commenced before the deadline but also stated the lease would expire without timely construction. The 2010 Agreement's Development Term ended on the earlier of the following events:

> (1) HCWF beginning to sell electrical energy, or (2) seven years from the effective date (i.e., August 24, 2017)[188]

In January 2011, King conveyed interests in the property to Kelly and Ronna Smalley (the "Smalleys") but retained a life estate in all royalties derived from wind energy from the property and the right to lease the property for wind energy purposes. In July 2015, King executed an amendment of the 2010 Agreement deleted and replaced the development term as follows (the "First Amendment"):

> (a) the date [Lessee] begins selling electrical energy generated by wind turbines, or (b) the seventh (7th) anniversary of the Effective Date, unless construction [is] timely commenced.

The First Amendment defined "Effective Date" to be July 30, 2015.[189] In October 2017, the Smalleys executed a second amendment to the 2010 Agreement wherein they purported to extend the development term to August 24, 2020 (the "Second Amendment"). King was not a party to the Second Amendment. Southwestern Public Service Company ("SPSC") acquired the 2010 Agreement in June 2018. SPSC began construction in June 2018 and completed two wind turbines by June 2019.

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[186] *Southwestern Public Serv. Co. v. Ridge Renewables, LLC*, No. 07-23-00421-CV, 2025 WL 2046136 (Tex. App.—Amarillo July 21, 2025, no pet. h.) (mem. op.).
[187] *Id*. at *1.
[188] *Id*. at *1.
[189] *Id* at *2.

In September 2020, King executed a Wind Deed and Conveyance (the "Conveyance") to Ridge Renewables, LLC ("Ridge"). Ridge filed suit in December 2020 arguing that the 2010 Agreement expired in 2017 based on the original Development Term, making SPSC's operations an unlawful trespass. Ridge also argued the 2010 Agreement was invalid because the property description violated the statute of frauds. In March 2022, the trial court granted Ridge's motion for summary judgment on these issues. On appeal, the court held that Ridge failed to conclusively prove either the statute of frauds violation or the expiration of the 2010 Agreement as a matter of law.

The first issue addressed was whether the legal description in the 2010 Agreement violated the statute of frauds. Texas courts interpret property descriptions liberally to uphold valid transactions, emphasizing the statute's purpose to prevent fraud rather than invalidate legitimate agreements due to technicalities. The court reasoned that the description must allow someone familiar with the area to identify the property with reasonable certainty. In *Pickett v. Bishop*, the Texas Supreme Court held that "stated ownership of the property is in itself a matter of description which leads to the certain identification of the property."[190] Pursuant to the Texas Supreme Court's holding in *Pickett*, the court here emphasized that ownership language can provide sufficient property identification "when it is shown by extrinsic evidence that the party to be charged owns only one tract of land answering the description."[191] Ridge's argument against the adequacy of the description focused on how the property could not be identified using the description alone, without considering the ownership statement and potential extrinsic evidence. However, this approach violated established precedent that Texas courts may uphold property descriptions that combine ownership statements with general location information, even in the absence of precise boundary descriptions.[192] The court held that Ridge failed to conclusively prove the inadequacy of the property description, as it did not address whether a person familiar with the area could identify the tract using the ownership statement and location reference.

The second issue addressed by the court was whether the 2010 Agreement expired in 2017. Ridge contended that the First Amendment did not extend the Development Term beyond its original expiration date of August 24, 2017, because the operative portion of the amendment deleted and replaced the development term provision, but did not delete and replace the effective date provision. The court disagreed, noting the Ridge's argument, at most, demonstrates an ambiguity that precludes summary judgment. The court reasoned that since the parties deleted and replaced the original language of the 2010 Agreement in its entirety, the parties showed an intent to modify the initial expiration date to July 15, 2022. Ultimately, the court reversed and remanded the trial court's summary judgment in favor of Ridge because Ridge failed to conclusively prove that the 2010 Agreement expired without a valid extension or that the legal description violated the statute of frauds.

[190] *See Southwestern Public Serv. Co.,* 2025 WL 2046136, at *4; *see also Pickett v. Bishop*, 219 S.W.2d 732 (Tex. App. – Amarillo 1949), *rev'd* 223 S.W.2d 222, 223 (1949).
[191] *Id*.
[192] *Southwestern Public Serv. Co.,* 2025 WL 2046136, at *5.

State v. Riemer [193]

Amarillo Court of Appeals

In this case, the court considered whether claims of a regulatory taking against the State of Texas (the "State") were time-barred. This case involves a dispute over mineral rights along a six-mile stretch of the Canadian Riverbed which arose after the construction of a dam altered the flow of the river and exposed previously submerged land. Landowners argued the State committed a taking when it renewed leases for oil and gas wells, divesting the landowners of their property interest in the mineral estate without compensation.

Before considering whether a taking occurred the court questioned if the claim was time-barred. In doing so, the court determined the statute of limitations duration and when the limitations period started. Since there is no dedicated statute of limitations in Texas for inverse condemnation claims, the court relied on the ten-year statute of limitations period for adverse possession. The court reasoned that a landowner should have at least the same amount of time to seek compensation as an adverse possessor would have to obtain title.[194] The application of the statute of limitations then turned on whether the landowners could aggregate their acreage such that a 160-acre restriction applied, allowing the landowners to avoid the limitations period. The statute only applies when an adverse possession is limited to 160 acres "unless the number of acres actually enclosed exceeds 160 [acres]."[195]The court interpreted the words "actually enclosed" to pertain to individual property interests. Since the statute expressly left out words such as "aggregate" or "total," the court reasoned the 160-acre restriction applied to individual landowners' separate acreage, not an aggregation of all the claimants' acreage.

The ten-year period for adverse possession starts when the taking occurs or when entry on the land is made.[196] Here, the statute of limitations began to run on January 28, 1982, being the date a General Land Office survey was recorded which showed the lands subject to the dispute. The landowners filed their constitutional takings claims between October 1999 and April 2000. The landowners did not bring suit within the allowed period; therefore, the claim against the State asserting a takings claim was time-barred.

Had the landowners sued the State in a timely manner, they would have had standing to do so. When a landowner seeks compensation due to a governmental taking, they must prove "(1) an entity with eminent domain power intentionally performed certain acts (2) that resulted in taking, damaging, or destroying the property for, or applying it to, (3) public use.[197] In this case, the landowners satisfied the standing requirement when they asserted that the State's leasing of the previously submerged land burdened the landowners' rights to lease that same mineral estate.

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[193] *State v. Riemer,* No. 07-24-00302-CV, 2025 WL 1757924 (Tex. App.—Amarillo June 25, 2025, no pet. h.).
[194] *Id*.
[195] TEX. CIV. PRAC. & REM. CODE ANN. § 16.026(b).
[196] *Riemer*, 2025 WL 1757924 at *5; *see also Lowenberg v. City of Dallas*, 168 S.W.3d 800, 802 (Tex. 2005).
[197] *Id.*

4. Eighth District Court of Appeals

Kevin F. Karli et al. v. Claude Wilson et al. [198]

El Paso Court of Appeals

In this case, the court interpreted a reservation clause in a 1950 oil and gas deed concerning the rights reserved by the grantors, and the fractional share of those rights. The 1950 deed contained the following reservation clause:

> SAVE AND EXCEPT, however, there is reserved and retained by C. R. Wilson an undivided one-thirty second right, title and interest in and to all oil, gas and other minerals in and under said lands or that may be produced or saved from said lands, and there is reserved and retained unto Mary Ida Wilson Allums an undivided one-thirty-second right, title and interest in and to the oil, gas and other minerals in and under said lands or that may be produced or saved from said lands; *[hereinafter "FIRST PORTION"]*
>
> provided, however, that the said C. R. Wilson and Mary Ida Wilson Allums shall not be entitled to receive any rental or bonus moneys paid for leases, *[hereinafter "SECOND PORTION"]*
>
> and it being the intention to reserve unto the said C.R. Wilson a one-fourth non-participating interest in the customary one-eighth royalty and unto the said Mary Ida Wilson Allums a one-fourth nonparticipating interest in the customary one-eighth royalty.[199] *[hereinafter "THIRD PORTION"]*

Disputes arose between the successors of the grantors ("Wilson Successors") and the successors of the grantee ("Karli Successors") regarding the character and extent of the reserved interest. The Wilson Successors asserted that the reservation created a floating non-participating royalty interest which entitled them to 1/4 of the lease royalties collectively. Whereas, the Karli Successors argued that the grantors reserved a 1/32 mineral interest stripped of bonus and rental rights. The court examined three portions of the reservation clause and sought to harmonize the inconsistencies in the reservation language.

In regard to the first portion, the court agreed with the Karli Successors that the phrase "interest in and to all oil, gas and other minerals in and under said lands," was sufficient to create an interest in the full mineral estate.[200] However, the additional language "or that may be produced or saved from said lands," introduced ambiguity, as the use of "or," rather than "and," is more commonly found in royalty deeds.[201] The second portion excluded the rights to receive rental and bonus

[198] *Karli v. Wilson*, No. 08-24-00065-CV, 2025 WL 3039609 (Tex App.— El Paso, Oct. 30, 2025) (mem. op.).
[199] *Id.* at *1.
[200] *Id.* at *5.
[201] *Id.* at *6.

payments, which may either be stripped from a mineral interest or confirm that such rights were never included in a royalty interest. Considering historical drafting practices, the court concluded that the exclusion of bonus and rental payments indicated a mineral interest, while also suggesting that a lesser interest may have been intended. The third portion provided a statement of intent, as the language closely resembled a non-participating royalty interest. The court noted that the use of a double fraction (1/4 of the customary 1/8) suggested a floating royalty interest rather than a fixed fractional interest, concluding that the deed reserved a 1/4 interest in the mineral estate, divested of all rights except the right to receive royalty payments equal to 1/4 of the lease royalty.[202] The Supreme Court of Texas has held that a reference to 1/8 in a multiple fraction deed creates a rebuttable presumption that the parties intended for 1/8 to mean the entire mineral estate.[203] Ultimately, the court held that the 1950 Deed reserved a "1/4 non-participating mineral interest, stripped of all attributes aside from the right to receive royalty payments in the amount of 1/4 of the lease royalty under the current and any future leases[.]"[204]

[202] *Id.* at *13.
[203] *Id.* at *13, citing *Van Dyke v. Navigator Group*, 668 S.W.3d 353 (Tex. 2023).
[204] *Id.* at *14.

MRC Permian Company v. Point Energy Partners Permian LLC [205]

El Paso Court of Appeals

In this case, the court reviewed two issues: (1) whether the doctrine of quasi-estoppel can prevent the termination of an oil and gas lease based on the lessors' acceptance of royalty payments; and (2) how the retained acreage clause in the lease should be construed. In 2014, MRC Permian Company ("MRC") obtained four identical oil and gas leases which granted MRC the exclusive right to develop and produce oil and gas on approximately 4,000 acres in Loving County. The leases contained a three-year primary term and provided that the leases could be maintained thereafter through continuous drilling, defined as spudding a new well within 180 days of the previous well. The leases also included a force majeure clause that could extend the drilling deadline in the event of certain non-economic delays beyond MRC's control. Additionally, the leases contained a retained-acreage clause providing that, upon termination, MRC would retain only the acreage included within designated "Production Units" associated with producing commercial wells. During the primary term, MRC drilled five horizontal oil wells but failed to timely spud a sixth well due to a calendaring error.[206] After discovering the missed deadline, MRC claimed a force majeure event, which Point Energy Partners Permian LLC ("Point Energy") rejected. Litigation ensued over whether the leases terminated in May 2018. While litigation was pending, MRC continued to make royalty payments to the lessors, totaling approximately $900,000. The lessors accepted those payments but only after issuing a reservation-of-rights letter, which maintained their position that the leases had terminated and stated that any payments would be credited subject to final accounting.[207] During the litigation, MRC also recorded production unit designations claiming two Production Units of 352 acres each, for a total of 704 acres.[208]

First, quasi-estoppel precludes a party from asserting a right inconsistent with a position previously taken, especially when it would be unconscionable to allow a party to maintain a position inconsistent with one to which the party accepted a benefit.[209] MRC raised quasi-estoppel as a defense to argue that the lease should not have been deemed terminated because the lessors continued to accept royalty payments from MRC after the alleged termination. MRC asserted that it would be unconscionable for Point Energy and the lessors to accept substantial royalties "as if the leases had not" terminated. To determine whether MRC had grounds to raise a quasi-estoppel defense, the court focused on two dispositive factors: (1) what MRC knew when it made the royalty payments; and (2) what Point Energy knew when those payments were received. Here, the evidence showed that MRC made the royalty payments with full knowledge of the lessor's claims that the lease terminated. Furthermore, it is undisputed that Point Energy did not know what MRC was ultimately owed or what Point Energy was entitled to receive.[210] The royalty payments were

[205] *MRC Permian Company v. Point Energy Partners Permian LLC*, No. 08-19-00124-CV, 2025 WL 3532442 (Tex. App.—El Paso Dec. 9, 2025, no pet.).
[206] *Id*. at *2.
[207] *Id*. at *7.
[208] *Id*. at *2.
[209] *Id.* at *6 (referencing *Lopez v. Munoz, Hockema & Reed*, L.L.P., 22 S.W.3d 857, 864 (Tex. 2000.)).
[210] *Id.* at *7; *See Frazier,* 472 S.W.2d at 753*; BPX,* 629 S.W.3d at 201*; Sun Operating Ltd. P'ship v. Holt*, 984 S.W.2d 277, 292 (Tex. App.—Amarillo 1998, pet. denied) (post-termination

distributed while the claim that the lease had been terminated was actively being litigated in court. The lessors reserved their rights and clarified that receipt of the royalties would be accounted for if MRC prevailed. Point Energy and the lessors' pleadings stated that any damages awarded against MRC "will of course be offset by the money MRC paid the lessors as royalties."[211] Accordingly, the court found that quasi-estoppel did not apply because MRC issued royalty payments with full knowledge of the lessors' position that the lease had terminated, and the lessors only deposited the royalty payments after sending reservation of rights letters.

The court then turned to the retained-acreage clause and the dispute on how to measure whether a wellbore extends more than 5,000 feet horizontally in its producing formation. Oil and gas leases are construed under general contract principles. Courts enforce the plain meaning of unambiguous lease language and avoid rewriting the agreement to add specific requirements not expressed by the parties.[212] The retained-acreage clause at issue provides:

> [A] Production Unit shall not exceed 160 acres plus 10% tolerance if less than 5000 feet of its wellbore extends horizontally in the producing formation, and shall not exceed 320 acres plus 10% tolerance if more than 5000 feet of its wellbore extends horizontally in the producing formation.[213]

Point Energy argued that only the producing or perforated portions of the wellbore should be measured and that a wellbore should not be considered horizontal until it reached a near-90-degree angle. Under that approach, MRC would be limited to smaller Production Units. The court rejected this interpretation because it is inconsistent with the lease text. The clause does not reference perforations, take points, productivity, or specific angles of inclination. Instead, it focuses on how far the wellbore extends horizontally within the producing formation, which describes the wellbore's location rather than its productive function at each point. The court emphasized that horizontal wells necessarily follow a curved path after the kick-off point and that requiring a specific angle or limiting measurement to producing segments would improperly rewrite the lease. The court applied the plain meaning of the clause and concluded that the size of the Production Units should be determined by the measured depth of the wellbore from the point after it deviates from its vertical orientation and has entered the producing formation (the penetration point), to the terminus.[214] Measured in that manner, the undisputed well data showed that the relevant wells exceeded 5,000 feet horizontally in the producing formation. As a result, MRC was entitled to the larger Production Units permitted by the lease.

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acceptance of shut-in royalty could not establish quasi-estoppel in absence of evidence that recipient knew material facts).

[211] *Id*. at *7.

[212] *Id.* at *8 (referencing *Finley Res., Inc. v. Headington Royalty, Inc*., 672 S.W.3d 332, 339 (Tex. 2023)).

[213] *Id*. at *11.

[214] *Id.* at *15.

Ramos v. Marroquin [215]

El Paso Court of Appeals

In this case, the court determined whether a spouse rightfully conveyed a community property homestead interest without their spouse's joinder. In 1998, Anna Marroquin acquired 5.141 acres in Uvalde County. Her father, Louis Almaraz, then built a home for himself and his wife, Jeanette Almaraz, on the property. In 2001, Jeanette moved out of the home, and Louis filed for divorce; however, the couple remained legally married until Louis' death. In 2004, Anna deeded the property to Louis as "a single man," and, in 2016, Louis deeded the property (the "2016 Deed") back to Anna and Jose Marroquin (the "Marroquins"). Despite the 2016 Deed, Louis changed his will two months later to leave the property to Maria Luisa Ramos ("Maria"). In January 2018, Louis died, and, the next month, Jeanette signed a deed granting all of her interest in the property to Maria. Maria filed suit against the Marroquins, claiming that the 2016 Deed was void and she owed the property pursuant to Louis's will and Jeanette's deed. The Marroquins asserted the 2016 Deed was valid because Jeanette abandoned the homestead, and the property was in Louis' name only. The trial court held that the 2016 Deed was valid, but that it only conveyed Louis' one-half community property interest. This appeal followed.

The general rule in Texas is that homestead property, whether community or separate, may not be conveyed without the joinder of both spouses. The appellate court's analysis hinged on the application of Tex. Fam. Code § 5.101, which provides a statutory mechanism for one spouse to unilaterally sell homestead property. Essentially, the spouse wanting to sell the homestead must file a sworn petition alleging "the facts that make it desirable for the [petitioning] spouse to sell…the homestead without the joinder of the other spouse[.]"[216] The petition must also allege one of four enumerated reasons why the other spouse cannot join in the deed. It was uncontroverted that Jeanette did not join in the 2016 Deed nor did Louis obtain a court order to convey the property.

The Marroquins also argued that Louis could convey his interest in the homestead because it was in his name only, as his sole management property. The court explained that homestead rights are not extinguished because the property is in one spouse's name, and that joinder is required to convey the homestead regardless of whether the property is characterized as sole management property or joint management property.[217] Lastly, the Marroquins argued that under Tex. Fam. Code Ann. § 3.104, they were entitled to rely on the 2016 Deed as protected purchasers because Louis was presumed to have sole management of the property and they had no notice of Louis' lack of authority to convey the property. The court noted that, although § 3.104 conflicts with the homestead protections in Chapter 5 of the Family Code, relying on § 3.104 to allow one spouse to sell a homestead without consent would violate the Texas constitution. Further, because § 3.104 is a general provision which makes no mention of homesteads, and Chapter 5 contains specific provisions – the specific provision prevails under Texas law.[218] Ultimately, the court concluded that the 2016 Deed to the Marroquins was void, and Maria had superior title to the subject property.

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[215] *Ramos v. Marroquin*, No. 08-23-000289-CV, 2025 WL 660806, at *1 (Tex. App. —El Paso Feb. 28, 2025, no pet.) (mem. op.).
[216] *Id.* at *3, quoting Tex. Fam. Code Ann §§ 5.101, .102.
[217] *Id*. at *6.
[218] *Id*. at *7.

5. Eleventh District Court of Appeals

SM Energy Company v. Buzzard Roost Farms, Inc[219]

Eastland Court of Appeals

In this case, the court interpreted the application of a Right of First Refusal ("ROFR") provision in a Surface Use and Compensation Agreement. The Surface Use and Compensation Agreement was between Buzzard Roost Farms and C&L Solutions (the "Surface Owners") and SM Energy Company's (the "SM Energy") predecessor-in-interest. The agreement contains the following the right of first refusal ("ROFR") provision:

> [S]hould Operator choose to drill a Saltwater Disposal Well within 5 miles of the Surface Lands, Operator shall give Surface Owner first right of refusal to have said Salt Water Disposal placed on the Surface Lands or other lands adjacent thereto which are owned by Surface Owner.[220]

The dispute over the ROFR arose when the SM Energy purchased two parcels of land in fee and drilled two saltwater disposal ("SWD") wells within the specified radius without offering the Surface Owners the opportunity to have the wells drilled on their lands.[221] At trial, a jury determined that SM Energy breached the agreement and awarded damages to the Surface Owners. On appeal, SM Energy argued that the Surface Owners would have rejected any offer to enter into a similar arrangement (selling the surface in fee), but the Surface Owners contended that they would have accepted a legitimate offer to drill SWD wells on their land.

The appellate court analyzed the ROFR provision and determined that SM Energy was obligated to offer to drill and place any SWD well it chose to drill within five miles of the Surface Lands, on the Surface Lands, or other adjacent land owned by the Surface Owners. The court emphasized that the right of first refusal was a constraint on the use of the land and the business decisions of an oil and gas operator, rather than a constraint on the alienation of real property. SM Energy's strategic business decision to own the property on which it chose to drill such wells was beyond the scope of the right and not a term or condition the Surface Owners were required to accept.[222] Accordingly, the court ruled that the Surface Owners were expressly entitled to an offer to drill SWD wells on the specified lands they owned.

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[219] *SM Energy Co. v. Buzzard Roost Farms, Inc.*, No. 11-23-00222-CV, 2025 WL 3275033 (Tex. App.—Eastland Nov. 25, 2025).
[220] *Id.* at *2.
[221] *Id.* at *2.
[222] *Id.* at *13.

Thagard Mineral Partnership, LP v. Cass [223]

Eastland Court of Appeals

In this case, the court determined whether two assignments were unambiguous and if they effectively transferred the assignor's entire interests. This ownership dispute originated from a series of assignments made in 1990. First, Michael Cass ("Cass") assigned an overriding royalty interest (the "ORRI") to Greg Thagard ("Thagard") in Sections 32 and 41 of Block 38, Township 4 South, Texas & Pacific Railway Company Survey, in Midland County (the "Lands"). Thereafter, Thagard executed an assignment ("Thagard Assignment") granting "all right, title, and interest in and to the lands, tracts, oil and/or mineral leases and leasehold interests in and to the subject land, which are listed and to the extent described on Exhibit 'A'" to Cass.[224] Exhibit "A" of the Thagard Assignment only contained descriptions of real property, including the Lands, but did not list any oil and gas leases. Soon after, Cass executed an assignment ("Cass Assignment") granting his interest in the Lands to Plains Petroleum, the predecessor-in-interest to the RIM Parties ("RIM Parties"). A quiet title dispute arose over whether or not the Thagard Assignment or the Cass Assignment included the ORRI. During the litigation, Thagard filed an affidavit in which he asserted that the transactions were part of an ongoing, verbal agreement between the parties wherein Thagard would obtain mineral leases on properties that he would later assign to Cass in exchange for an ORRI in those properties. The trial court granted partial summary judgment, concluding that the Thagard Assignment unambiguously conveyed all of Thagard's property interest to Cass, including the ORRI, and that the ORRI was thereafter conveyed by the Cass Assignment. An interlocutory review of the summary judgment was then granted.

On appeal, Thagard argued that the Thagard Assignment was ambiguous and incomplete because it referred to leases listed in Exhibit A but did not list any leases and was purportedly "subject to" a missing instrument. Thus, Thagard claimed that the omissions rendered the assignment ambiguous and incapable of interpretation as a matter of law, and the use of extrinsic evidence to complete the terms is justified to show the parties did not intend to convey the ORRI. Further, Thagard contended that the assignment did not convey any ORRI because it failed to identify associated leases as required under the statute of frauds. However, Cass countered that the Thagard Assignment was unambiguous because the only reasonable interpretation is that Thagard conveyed all of his interests in Sections 32 and 41, which would include the ORRI. Cass responded that the missing instrument does not exist because the "subject to" phrasing in Exhibit A refers to the Thagard Assignment itself.

The court reviewed the operative language in the Thagard Assignment which stated, "Subject to that certain Assignment, Bill of Sale and Conveyance dated July 5th, 1990, by and between Greg Thagard, Assignor, and Michael L. Cass, Assignee…all of [Thagard's] right, title, and interest in and to the lands, tracts, oil and gas and/or mineral leases and leasehold interests in and to the subject lands, which are listed and to the extent described on Exhibit 'A'"[225] The court found this language unambiguous and conveyed all of Thagard's property interest, including the ORRI.[226] The court

[223] *Thagard Mineral P'ship, LP v. Cass*, No. 11-23-00207-CV, No. 11-23-00208-CV, 2025 WL 2412837 (Tex App.—Eastland Aug. 21, 2025, pet. filed).
[224] *Id.* at *2.
[225] *Id.* at *7.
[226] *Id.* at *10.

concluded that the omission of specific leases from Exhibit A did not restrict the conveyance, as the broad granting language encompassed all of Thagard's interests. The court cited *Rahlek*, which held that a deed will pass whatever interest the grantor has in the land, unless it contains language showing a clear intention to grant a lesser estate.[227] Likewise, the court concluded that the "subject to" language in Exhibit A referred to the Thagard Assignment itself, and not a missing instrument.[228] Finally, the court reasoned that, to be effective, the assignment of an ORRI does not require a description of the lease it burdens when the assignment involves a broad grant of "all" the assignor's right, title, and interest.[229]

Second, the court examined the Cass Assignment. The granting clause stated that Cass conveyed "all" of his rights, title, and interests in the described estates or interests, including those in Exhibit A, which contains a "Producing Properties" table labeled "MICHAEL L. CASS' PERSONAL INTEREST INCLUDING HIS O.R.R.I. & MINERAL INTEREST," that did not contain any limitations.[230] After the first table, the same exhibit included "Leases Covering" list of oil and gas leases, including leases covering the Lands in depths from the surface to 8,700 feet. The RIM Parties argued that the depth limitations noted in the "Lease Coverings" section of Exhibit A do not apply to the descriptions in the "Producing Properties" section, because that table compiled all of Cass's personal interest in those properties that were to be conveyed, rather than the specific leases that cover the same property.[231] Cass contended that the depth limitations in the "Lease Coverings" section applied to the entire assignment.

The court agreed with the RIM Parties, concluding that the Cass Assignment conveyed all of Cass's personal interests in the mineral fee, including the ORRI in the Lands in all depths. The court reasoned the Exhibit A was designed to have two separate parts, and that the "Producing Properties" section is not associated with the depth limitations contained in the "Lease Coverings" section. While there were minor ambiguities in Exhibit A, the court reasoned that the coverage of the granting language in Section 1 of Exhibit A favored a broader reading of the assignment. Furthermore, the court determined that the depth limitation could not be read to apply to the Producing Properties" section of Exhibit A because 1) Exhibit A contained minor ambiguities, 2) the granting language was broad throughout the assignment, 3) Exhibit A was separated into two parts and labeled for different purposes, and 4) the "Producing Properties" table did not include depth limitations but did include decimal percentages that were specifically disclaimed as limitations.[232] Since the depth limitation did not apply to the "Producing Properties" section, the Cass Assignment assigned the ORRI in the Lands.

[227] *See Rahlek, Ltd. v. Wells*, 587 S.W.3d 57 (Tex. App.—Eastland 2019, pet. denied).
[228] *Thagard*, 2025 WL 2412837, at *10.
[229] *Id.* at *9
[230] *Id.* at *11.
[231] *Id.* at *12.
[232] *Id.* at *13.

Vaughn v. Vaughan [233]

Eastland Court of Appeals

In this case, the court determined whether a Deed of Trust secured an interest in the mineral estate in addition to the surface estate of the subject property. In July of 2004, Douglas Isaacs ("Douglas") executed a partition deed (the "Partition Deed") on land that he jointly owned. This Partition Deed divided the surface estate, giving Douglas the SE/4, but left the mineral interest as jointly owned. In August of 2004, Douglas took out a note secured by the property in a Deed of Trust. The body of the Deed of Trust provided:

> Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property situated in the State of Texas, County, or Counties of Borden
>
> *See attached Exhibit A for legal description.*
>
> together with all rights (including the rights to mining products, gravel, oil, gas, coal[,] or other minerals), interests… and improvements now or later attached thereto…[234]

Exhibit A of the Deed of Trust described the subject property as limited to the "SURFACE ESTATE ONLY." [235] Douglas then defaulted on the note and the property was sold at a foreclosure to the Brad and Bruce Vaughn Partnership (the "Partnership"), by a Deed by Substitute Trustee (the "Trustee Deed"). The Partnership claimed that the language in the body of the Deed of Trust granted them the mineral estate as well as the surface estate, while Douglas' heirs ("Heirs") claimed that Exhibit A to the Deed of Trust limited the conveyance to the surface estate.

The court looked to a similar situation in *Posse Energy v. Parsley Energy, LP*,[236] where a deed of trust referenced an exhibit to describe the property conveyed and the referenced exhibit expressly limited the conveyance to specific depths. In *Posse*, the court noted that when a conflict arises in a description of the property it is the language in the Exhibit that will control, regardless of the breadth of the granting language.[237] Following *Posse,* the court determined the express language on Exhibit A of the Deed of Trust represents a clear, unambiguous intention to convey only the surface estate. The court also found support in surrounding circumstances, noting the interpretation was consistent with the timing of the Partition Deed, the partition of only the surface estate, and the language in the Trustee Deed that did not include the "surface estate only" qualifier, but instead noted the conveyance was subject to the mineral reservation in the Partition Deed. Taking every document into account, the court determined that the intent was to secure the note with the surface estate only, and thus, at foreclosure, the Partnership purchased the surface estate only.

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[233] *Vaughn v. Vaughan*, 710 S.W.3d 412 (Tex. App.—Eastland 2025, pet. filed).
[234] *Id.* at 415.
[235] *Id.* at 416.
[236] *Posse Energy, Ltd. v. Parsley Energy, LP*, 632 S.W.3d 677, (Tex. App.—El Paso 2021, pet. denied).
[237] *Vaughn,* 710 S.W.3d at 421.

6. Thirteen District Court of Appeals

Alcott v. 1893 Oil & Gas, Ltd. [238]

Corpus Christi-Edinburg Court of Appeals

In this case, the court analyzed whether the legal description in a deed complied with the statute of frauds. In 1917, USIR conveyed to Edward Mattison, the entire surface estate and 75% of the minerals in a 2,092-acre tract, as well as an agreement to develop the minerals to the land (the "Agreement"). Thereafter, Mattison sold some of the 2,092-acre tract to Frank Cosgrove and Richard Canning and assigned the Agreement to Cosgrove. Then, in 1922, Cosgrove conveyed to Robert Alcott the following described property:

> Acre Eight (8) in Tract sixty-nine (69)…[and]…an undivided interest in an undivided one-half of any and all oil, gas or minerals … under or upon *any part of*' the 2,092-acre tract[.] (the "Alcott Deed")[239]

Through a series of subsequent conveyances, 1893 Oil & Gas, Ltd. ("1893") acquired the minerals under the 2,092-acre tract from Mattison and Cosgrove, or their successors. The heirs of Robert Alcott filed a suit to quiet title to the ownership of the minerals under the 2,092-acre tract. The trial court held that the Alcott Deed violated the statute of frauds, rendering judgment in favor of 1893. This appeal followed.

Here, the court analyzed whether the Alcott Deed complied with the statute of frauds. The primary issue is that the Alcott Deed purported to convey minerals under or upon *any part* of 2,092-acre tract; however, the grantor did not own or ever acquire title to the minerals under the entire 2,092-acre tract." [240] To comply with the statute of frauds, an instrument must provide information that is sufficient to reasonably identify the property directly or by referencing other existing writing.[241] The court found there was no language in the Alcott Deed limiting the mineral interest conveyed to the interested owned by the grantor. The Alcott Deed did not contain a legal description that identified with reasonable certainty which portion of the 2,092-acre tract the grantor intended to convey. The court explained that, while the Alcott Deed referenced earlier-recorded plats, the land conveyed still could not be identified, as it was not accompanied by a metes and bounds description or any other valid legal description. Accordingly, the court held the Alcott Deed violated the statute of frauds because it did not (1) adequately identify the fractional mineral interest that Cosgrove sought to convey or (2) sufficiently describe the surface area or any portion of the 2,092-acre tract so that it could be identified with reasonable certainty.

[238] *Alcott v. 1893 Oil and Gas, Ltd.*, No. 13-23-00492-CV, 2025 WL 2858113 (Tex. App.—Corpus Christi Oct. 9, 2025, no pet.) (mem. op.).
[239] *Id*. at *1.
[240] *Id.* at *2.
[241] *Id.*

7. Fourteenth District Court of Appeals

Pertolanitz v. Waldroup [242]

Houston Court of Appeals

In this case, the court determined whether a deed must be recorded to constitute a legally effective conveyance of a real property interest. In May 2022, Dennis Pertolanitz ("Pertolanitz") executed and delivered a General Warranty Deed ("the Deed") to Damon Waldroup ("Waldroup"), conveying a one-acre property. The Deed stated that Pertolanitz was conveying the property to Waldroup and acknowledged that there was valid consideration. However, both parties agreed that the Deed was not properly notarized, which prevented it from being recorded in the county records. By the summer of 2022, the parties' relationship had deteriorated, and Pertolanitz sought to cancel the transfer of the property.

In Texas, for there to be a valid conveyance of real property, the instrument must satisfy the statute of conveyances and statute of frauds. This means the instrument must be in writing, signed by the grantor, and delivered to the grantee. It must also reveal a grantor-grantee relationship, include operative words or words of grant showing the grantor's intent to convey their real property interest, provide a sufficient description of the interest being conveyed, and bear the grantor's signature.

Texas law does not require a deed to be notarized or acknowledged to be legally binding. A deed must be properly notarized and acknowledged if it is to be recorded, but an unrecorded deed remains binding on the parties. The recording of the deed is not necessary to pass title. Instead, title vests in the grantee upon execution and delivery of the deed. "Delivery" is accomplished when the grantor places the deed within the grantee's control with the intent that it will operate as a conveyance.[243]

In this case, title to the property vested in Waldroup after Pertolanitz executed and delivered the Deed to him. Pertolanitz did not dispute that the Deed was in writing and described the property. Likewise, he did not dispute that a grantor and grantee could be ascertained from the Deed, or that the Deed has words of grant showing an intention to convey. Moreover, Pertolanitz conceded that he executed and delivered the Deed to Waldroup, who remained in possession of it, thus establishing delivery. Accordingly, the Court held that title to the property vested in Waldroup upon execution and delivery of the Deed, regardless of whether it was properly recorded.[244]

[242] *Pertolanitz v. Waldroup*, No. 01-24-00033-CV, 2025 WL 1688423 (Tex. App.—Houston [1st Dist.] June 17, 2025, no pet. h.).
[243] *Id*. at *3.
[244] *Id*.