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The Law of Pooling and Unitization

Publication 455 Release 53 September 2023

HIGHLIGHTS

Updates Throughout the Treatise

- Numerous topics related to pooling and unitization have been updated to reflect the latest developments.

Updated State Statutes

- The state-by-state compilation of legislation has been thoroughly revised to reflect the latest statutory changes affecting the law of pooling and unitization.

Release 53 brings you the newest developments in oil and gas pooling and unitization law, including the following:

Rule of Capture: Offset Drilling Rule; Vacuum Pumps—The rule of capture allows a mineral owner to produce minerals using artificial means, such as by using a vacuum pump, even though the hydrocarbons have migrated across property lines. *Finite Resources, Ltd. v. DTE Methane Resources* (7th Cir. 2022), discussed at §§ 2.01, 2.02.

Pennsylvania Department of Environmental Protection Regulations: Act 13—The Pennsylvania Department of Environmental Regulations dealing with shale wells were upheld by the Pennsylvania Supreme Court as being within the delegated authority of PA DEP. *Marcellus Shale Coalition v. Pennsylvania Department of Environmental Protection* (Pa. 2023), discussed at §§ 3.01, 24.02[3].

Confidential Well Data: Preemption—The Alaska Oil & Gas Conservation Commission regulation requiring the release of confidential well data within two years of achieving production is preempted by fed-

eral statutes. *ConocoPhillips Alaska v. Alaska Oil & Gas Conservation Comm'n* (D. Alaska 2023), discussed at §§ 3.01[1], 24.03.

Major Questions Doctrine: Delegation of Authority to Administrative Agencies—States have standing under the *Lujan* three-part test to challenge EPA regulations relating to climate change issues. Congress may not delegate broad authority to administrative agencies to regulate matters of substantial importance or involving issues traditionally dealt with by state and local governments without having sufficient standards or guidelines to limit the agency's discretion. *West Virginia v. U.S. Environmental Protection Agency* (U.S. 2022), discussed at §§ 4.03[b][5], 24.02.

Zoning: Louisiana; Preemption; Moratorium Ordinance—A municipal ordinance attempting to impose a moratorium on the issuance of certain types of disposal well operations was preempted by state statutes giving sole authority to regulate such operations to the Commissioner of Conservation. *Air Products Blue Energy LLC v. Livingston Parish Gov't* (M.D. La. 2022), discussed at §§ 4.05[2][b][viii], 24.04[1].

Pennsylvania Cross-Unit Wells—Pennsylvania Act 85 of 2019 amended the Pennsylvania Oil and Gas Lease Act, 58 Pa. Stat. § 33.1 *et seq.*, to facilitate cross-unit wells. Discussed at §§ 5.04[4][g], 8.03, 24.01[2].

Pooling/Combination Clause Permitted Cross-Unit Wells—A federal court in Pennsylvania interpreted a pooling/combining clause to allow defendants to couple or join the leasehold with contiguous or noncontiguous lands beyond unit boundaries. It also ruled that the Pennsylvania Act 85 of 2019 was not unconstitutional. *Warner Valley Farm, LLC v. SWN Production Co.* (D. Pa. 2023), discussed at §§ 7.05, 8.03, 24.01[2].

Ratification of Pooling by Operator Not Found—A unit operator mistakenly paid royalties to a royalty owner whose lessee had not joined the unit. The court rejected the royalty owner's assertion that operator had ratified the pooling by its mistaken payments, and the operator was entitled to recoup its overpayments. *In re MTE Holdings*, (D. Del. 2023), discussed at § 8.03.

Vagueness of Oklahoma Corporation Commission Order; Jurisdiction; Reduction of Burdens—Ruling that the Commission does not have jurisdiction to alter the ownership of royalty or to shift royalty away from the party taking the working interest pursuant to a pooling order, the Oklahoma appeals court reversed an order requiring a corporation and royalty owners to reduce the total royalty burdening the corporation's relinquished leasehold of a drilling and spacing unit from 30% to 20%. *Toklan Oil & Gas v. Citizen Energy* (Okla. Civ. App. 2022), discussed at §§ 12.03[1][a], 25.06[20][d].

Allocation of Production when Units Overlap—A complex problem

involving overlapping units was left unresolved on a certified question from the federal district court to the North Dakota Supreme Court. Unit A was a 2560-acre unit for one formation; beneath it was a 1280-acre unit to a different formation. Only one section of the lower unit was coextensive with acreage in the upper unit. The question was whether the production allocated in Unit A to the section that was also in Unit B be allocated as well to the section of Unit B that was not overlain by Unit A. Ruling only on that question, the court held that the North Dakota conservation statute did not compel allocation from Unit A to be allocated to Unit B. *Dominek v. Equinor Energy L.P.* (ND 2022), discussed at §§ 13.07, 20.06[5].

Federal Oil and Gas Leases: Communitization—Before a federal oil and gas lease may be communitized, the responsible federal official must determine that the federal lease may not be separately developed and that the communitization will be in the best interests of the United States. *Kraken Oil Co.* (IBLA 2022), discussed at § 16.03.

Ad Valorem Tax: Unit Agreement; Unit Operator; Standing—Under Colorado's ad valorem tax statute, the unit operator is solely responsible for paying such tax on behalf of all of the working interest owners in the unit. As such, only the unit operator has standing to challenge the assessment or amount owed so that the non-operating working interest owners may not independently judicially challenge the tax assessment or tax owed. *Colorado Property Tax Administrator v. CO2 Committee, Inc*. (Colo. 2023), discussed at § 17.02.

Texas: Royalty Payment Statute; Safe Harbor Provision—A unit operator will fall under the safe harbor provision of the Texas royalty payment statute, Tex. Nat. Res. Code § 91.401 *et seq.*, if there is either a dispute raising title questions about the distribution of funds or reasonable doubt that the payee has title to the interests it claims. *Freeport McMoran Oil & Gas v. 1776 Energy Partners* (Tex. 2023), discussed at § 17.02.

North Dakota Pore Space Legislation Invalidated—The North Dakota Supreme Court struck down most provisions of a 2019 Act that addressed various aspects of subsurface pore space while not disturbing its prior rulings recognizing that an implied easement allows the mineral developer to conduct disposal operations within a pooled spacing unit or unitized field for saltwater produced from wells located within that particular unit or field. The statute allowed an oil and gas operator to use subsurface pore space and denied the surface owner the right to exclude others or demand compensation for the subsurface use; it was a regulatory taking without just compensation. *Northwest Landowners Ass'n v. State* (ND 2022), discussed at §§ 20.06[1][g]; 24.01[2], 24.05[4].

Rulemaking vs. Adjudication, Deference to Agency—The Alaska

Supreme Court upheld the Alaska Department of Natural Resources' denial of approval of overriding royalty interests to be created on two groups of state leases. *AVCG, LLC v. Department of Natural Resources* (Alaska 2023), discussed at § 25.06[2].

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Publication 455 Release 53 September 2023

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