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# Texas Law of Oil and Gas

Publication 82572

Release 12

July 2010

## HIGHLIGHTS

### Updates throughout the publication on such topics as:

- A new chapter section on the regulation of carbon dioxide injection and storage
- A new subchapter B-1 to the plugging statutes, allowing for extensions of the deadline for plugging certain wells
- *Exxon Corp. v. Emerald Oil & Gas Co., L.C.* and *Exxon Corp. v. Miesch*
- *Aurora Petroleum, Inc. v. Newton*, 287 S.W.3d 373, and *Veterans Land Bd. v. Lesley*
- *Texas Rice Land Partners v. Denbury Green Pipeline-Texas LLC*

Release 12 brings you the 2010 revision of *Texas Law of Oil and Gas*, prepared by Ernest E. Smith, Rex G. Baker Centennial Chair in Natural Resources Law, University of Texas School of Law, and Jacqueline Lang Weaver, A.A. White Professor of Law, University of Houston Law Center. This update incorporates the latest statutory, regulatory, and judicial developments into the treatise, including the following:

*Kohout v. City of Fort Worth*, 292 S.W.3d 703 (§§ 1.1[C], 9.1[B]). A Fort Worth court ruled that a group of citizens lacked standing to challenge a waiver to an urban well permit.

*Aurora Petroleum, Inc. v. Newton*, 287 S.W.3d 373, and *Veterans Land Bd. v. Lesley*, 281 S.W.3d 602 (§ 2.6[C] and elsewhere). Two courts ruled that the owner of the exclusive executive right in a mineral estate has no affirmative duty to lease the minerals and therefore that no breach of duty had occurred as a result of a covenant prohibiting any oil and gas development at any time in the future.

*Cambridge Production, Inc. v. Geodyne Nominee Corp.*, 292 S.W.3d 725 (§ 4.8[A]). A court applied the doctrine of quasi-estoppel and ruled that lessor and future lessees from a lessor may be bound by unauthorized pooling or a defective declaration of pooling if they have accepted benefits from the pooling that they would otherwise not be entitled to.

*Advent Trust Co. v. Hyder*, 12 S.W.3d 534 (§ 2.7[B]). A court ruled that a nonoperator's cause of action for economic loss resulting from the operator's failure to file

proper reports relating to a dual-completion well was inherently undiscoverable.

*Anadarko E&P Co. v. Railroad Comm'n*, 2009 Tex. App. LEXIS 2618 (§§ 8.3[B], 9.5[C]). A court held that the Railroad Commission had the discretion to take into account “lease geometry” when choosing whether to grant a Rule 37 exception permit based on waste.

*Texas Rice Land Partners v. Denbury Green Pipeline-Texas LLC*, 296 S.W.3d 877 (§ 13.2[B]). An appellate court held that the mere existence of the public’s right to use a pipeline satisfied the standard for common carrier status, even though the pipeline was not yet completed or operating.

*Exxon Corp. v. Emerald Oil & Gas Co., L.C.* and *Exxon Corp. v. Miesch*, 52 Tex.

Sup. Ct. J. 467, 2009 Tex. LEXIS 113 (§ 13.5[B][2] and elsewhere). Subsequent to its March 27, 2009, decision, the Texas Supreme Court granted motions for rehearing filed by both parties in these long-running cases interpreting Tex. Nat. Res. Code Ann. § 85.321.

A new subchapter B-1 to the plugging statutes, allowing for extensions of the deadline for plugging certain wells, is discussed in § 14.2[B].

Recent EPA investigations of fracking are discussed at § 14.4[B].

Chapter 14 contains a new section, “Carbon Dioxide Control,” which discusses the regulation of underground storage and injection of CO<sub>2</sub> in response to climate change (§ 14.10).

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Publication 82572    Release 12

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