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The Rule of Capture, Correlative Rights, and Principles of Conservation

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I. Traditional State Conservation Regulation

A. THE RULE OF CAPTURE¹

The rule stated:

"the owner of a tract of land acquires title to the oil or gas which he produces from wells on his land, though part of the oil or gas may have migrated from adjoining lands. He may thus appropriate the oil and gas that have flowed from adjacent lands without the consent of the owner of those lands and without incurring liability to him for drainage."

This rule is followed in all producing states, whether they have adopted an "ownership in place" theory, such as Texas, or have adopted a "non-ownership" approach, such as Louisiana and California. The defense to the rule of capture is: the rule of capture. Thus there is a great incentive to drill wells to prevent another party from draining your property and to produce from such wells as rapidly as possible.

1. The Effects of the Rule of Capture.

The rule of capture can lead to the drilling of wells that are unnecessary to drain a reservoir. It can lead to excessive rates of production of oil that may cause coning, fingering, and premature loss of reservoir energy as gas cap gas or solution gas is depleted. Surface effects may include production in excess of storage and marketing facilities.

2. Improper Practices.

Apart from the incentives of the rule of capture, improper practices by operators can cause waste. Incorrect plugging of a well, for example, can lead to migration of oil out of a reservoir to pollute the surface or can lead to communication between formations thus damaging a productive formation. Putting a valuable resource to inferior uses might also be regarded as a wasteful practice.

¹ Kramer & Martin, *Pooling and Unitization*, §2. All citations to this work are to the chapter and section of Bruce M. Kramer & Patrick H. Martin, *Pooling and Unitization* (3rd ed., 1989, 2018) published by LexisNexis Matthew Bender, available in print or online.

B. State Efforts to Promote Conservation²

Conservation of oil and gas is a concern essentially local in character. Each state, that is, has its own program of conservation, and there can be considerable variation in policy and statutory authority from state to state. The influence of the Federal government has been limited, though in recent years the Federal agencies and the Congress have had more involvement with the state programs. While the states may differ, their common features stand out. This is not a matter of coincidence. States consciously borrowed from one another in the development of their programs and continue to do so, both because they wish to benefit from the experience of others, and because common problems often call for common solutions. The states cooperate with one another on conservation matters through the Interstate Oil Compact Commission which was established in 1935, now named Interstate Oil and Gas Compact Commission (IOGCC – <http://www.iogcc.state.ok.us>). It is possible to describe the development of conservation programs as falling into several fairly distinct phases.

1. Regulation up to 1909:

Early regulation of oil and gas production and use was concerned with prevention of subsurface and surface damage that could result from improper drilling techniques. Regulation of casing of wells and plugging of wells was for this purpose. There was restriction of venting of gas, and prohibition of certain uses of gas, such as for flambeau lights and carbon black.

2. Regulation to 1919:

In this period, states enacted a number of laws to prohibit discrimination in purchases of oil or gas by pipelines and to prohibit waste through a variety of practices.

3. Regulation since 1919:

The period since 1919 has seen the development of modern conservation regulation — well-spacing, establishment of allowables, pooling and unitization.

4. New roles for conservation since 1976:

The state regulatory agencies responsible for conservation of oil and gas have assumed new responsibilities. These have primarily related to developments at the Federal level and increased concern for environmental protection at both the state and Federal levels. The agencies were charged with the duty of making well-status determinations for regulation of natural gas prices and reservoir determinations for purposes of price controls on oil (1976-1980) or Windfall Profit Tax implementation. The agencies have authority over underground injection of wastes and new responsibilities regarding transportation and disposal of oil field wastes and site remediation. A number of states also have given responsibility to the conservation agency for underground storage facilities for natural gas. Projects of this nature involve not only a sort of pooling

² Kramer & Martin, *Pooling and Unitization*, §3.

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