

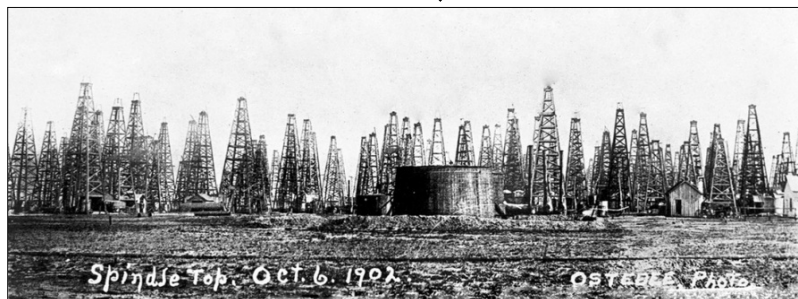
# Royalty Clause Construction in Texas: Is *Hyder* part of the *Heritage* or more surplusage?

David Drez and Jacob Fain  
Wick Phillips  
Fort Worth, Texas



Spindletop, January 10, 1901

Less than two years later....



Spindletop, Oct. 6, 1902

OSTERLIND PHOTO





**Fort Worth, Texas**  
circa 2006



## ***Heritage Resources (1996)***

3 different royalty provisions:

1. on gas...sold or used off the premises...the market value at the well of 1/5 of the gas...on gas sold at the well...1/5 of the amount realized....
2. 1/4 of the market value at the well for all gas...produced from the leased premises
3. 1/4 of the market value at the well for all gas...produced from the leased premises and sold by Lessee or used off the leased premises

Each provision above concluded with: "provided, however, that there shall be no deductions from the value of Lessor's royalty by reason of any required processing, cost of dehydration, compression, transportation, or other matter to market such gas."



## ***Heritage Resources (1996)***

- Issue: did the lessor improperly deduct transportation costs from royalties?
- Market value at the well was the lessor's value from which there can be no deductions – arrived at by net-back or comparable sales – effectively net proceeds at the well
- “[T]he commonly accepted meaning of the ‘royalty’ and ‘market value at the well’ terms renders the post-production clause in each lease surplusage as a matter of law.”



## ***Warren v. Chesapeake***



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