

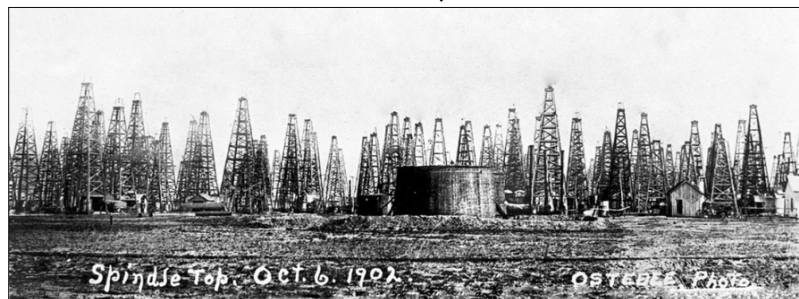
Royalty Clause Construction in Texas: Is *Hyder* part of the *Heritage* or more surplusage?

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Wick Phillips
Fort Worth, Texas



← Spindletop, January 10, 1901

Less than two years later....





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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