

Fun New Ways for Density and Proration Rules to Bust Your Lease: Three New Retained Acreage Cases

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About the Presentation

- Three new cases interpreting “governmental authority” language in retained acreage clauses
- First significant movement since 1965
- New benchmarks for drafting and negotiating oil & gas leases

Cases for Discussion

- *Endeavor Energy Resources, L.P. v. Discovery Operating, Inc.*, 448 S.W.3d 169, (Tex. App.—Eastland 2014, pet. denied).
- *XOG Operating, LLC v. Chesapeake Exploration L.P.* 480 S.W.3d 22, (Tex. App.—Amarillo 2015, pet. denied).
- *ConocoPhillips Company v. Vaquillas Unproven Minerals*, 2015 Tex. App. LEXIS 8194 (Tex. App.—San Antonio Aug. 5, 2015, pet. granted, judgment vacated w.r.m.).

Retained Acreage

- Lease clause allowing lessee to keep only productive acreage at end of primary term (or continuous development, if applicable)
- Terminates as to all but acreage around producing wells
- Usually defined by regulatory well units using “governmental authority” language

Retained Acreage

- Incentive for lessee to drill more and allows lessor to lease undrilled acreage to new operator
- Wide variety of forms, often custom
- Governmental authority language also often appears in pooling clauses and Pugh clauses

Jones v. Killingsworth

- 403 S.W.2d 325 (Tex. 1965)
- Seminal Texas case for interpretation of “governmental authority” language
- “Permitted” vs. “Prescribed” drafting paradigm

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