

# Annual Oil Gas Update

## 46th Annual Ernest E. Smith Oil, Gas and Mineral Law Institute

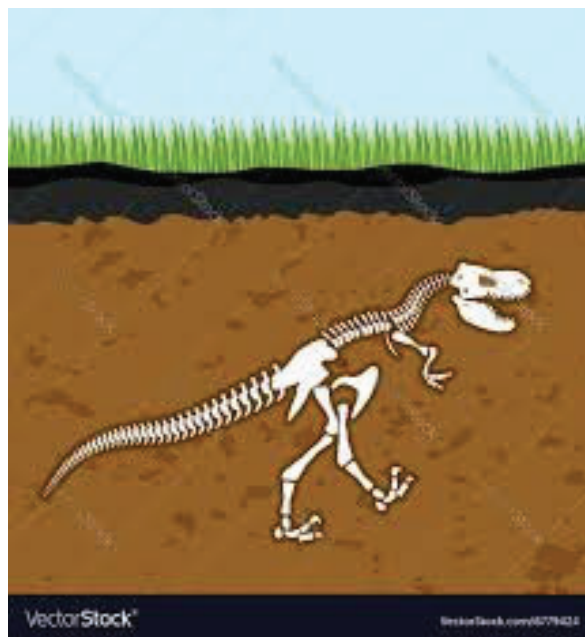
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# Dem Bones, Dem Bones, Dem Dry Bones



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*Murray v. BEJ Minerals, LLC*, No. OP 19-0304, 2019 WL 2383604 (Mont. June 4, 2019) certified question from the 9th Cir.)

- United States District Judge Robreno that started with, “Once upon a time, in a place now known as Montana, dinosaurs roamed the land . . .”
- The Ninth Circuit Court of Appeals determined that fossils were “minerals” and belong to the owners of the mineral estate.
- In *Murray v. BEJ Minerals, LLC*, the Montana Supreme Court accepted a certified question from the Ninth Circuit Court of Appeals concerning “whether, under Montana law, dinosaur fossils constitute ‘minerals’ for the purpose of a mineral reservation.”
- On September 27, 2019, oral argument was rescheduled and set for November 6, 2019.

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*Energy Transfer Partners, L.P. v. Enterprise Products Partners, L.P.*, No. 17-0862, 2020 WL 500259 (Tex. Jan. 31, 2019)

- Reimbursement agreement: Nothing shall “be deemed to create or constitute a joint venture, a partnership, a corporation, or any entity taxable as a corporation, partnership or otherwise.”
- Letter Agreement: “[N]o binding or enforceable obligations shall exist between the Parties with respect to the Transaction unless and until the Parties have received their respective board approvals and definitive agreements memorializing the terms and conditions of the Transaction have been negotiated, executed and delivered by both of the Parties.”

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## Three holdings on the same issue:

1. The issue in this case is whether Texas law permits parties to conclusively agree that, as between themselves, no partnership will exist unless certain conditions are satisfied. We hold that it does and that the parties here made such an agreement.
2. We hold that parties can contract for conditions precedent to preclude the unintentional formation of a partnership under Chapter 152 and that, as a matter of law, they did so here.
3. We hold that parties can conclusively negate the formation of a partnership under Chapter 152 of the TBOC through contractual conditions precedent. ETP and Enterprise did so as a matter of law here, and **there is no evidence that Enterprise waived the conditions.**

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46<sup>th</sup> Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session  
"Case Law Update: Part One"