



Post-Production Royalty Disputes

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1

THE ROYALTY CLAUSE & TEXAS DECISIONS



- Heritage v. Nationsbank
 - The Chesapeake Trio
 - Texas Crude v. Burlington
- Modern Custom Royalty Clauses
 - Devon v. Sheppard

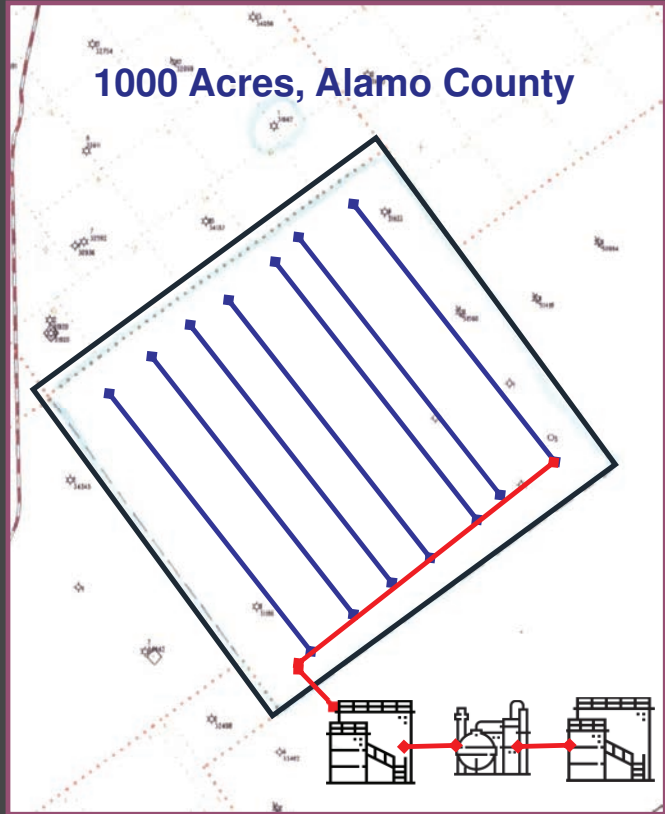
ROYALTY AUDIT ISSUES

Downstream Commingling
Condensate Shrinkage
Lease/Plant Fuel
Flaring/Venting
Lost & Unaccounted for (LUF)
T&F Fees
Skim Oil, etc

2

POST PRODUCTION EXPENSES

1000 Acres, Alamo County



3

POST PRODUCTION EXPENSES

Heritage v. Nationsbank (Tex. 1996)

- Lessee was taking transportation costs from the wellhead to the point of sale and deducting them from royalty payments.
- The lease provided that royalties were to be paid on “market value at the well” and yet still free of any “deductions...by reason of any required processing, cost of dehydration, compression, transportation, or other matter to market such gas.”
- **Held:** The term “market value at the well” entitled lessee to make reasonable post production deductions in order to arrive at a price reflecting value “at the well”.
- The ‘no deductions’ clause was a merely a restatement of “existing law” and “surplusage”.



4

POST PRODUCTION EXPENSES AFTER HERITAGE

Warren v. Chesapeake Expl., L.L.C., 759 F.3d 413, 414 (5th Cir. 2014)

- “20% of the amount realized, computed at the mouth of the well”
- No deductions clause
- Post-production deductions: **OK**
- But not 3rd lease: “market value at the point of sale”

5

POST PRODUCTION EXPENSES AFTER HERITAGE

Potts v. Chesapeake Expl., L.L.C., 760 F.3d 470 (5th Cir. 2014)

- CHK sold gas at the well to its affiliate CEMI
- Gas royalties are “the market value at the point of sale of ¼ of the gas sold or used”
- No deductions clause
- Post production deductions: **OK**

6

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