

Turn Around, Don't Drown: A New Generation of Oil and Gas Lease “Washouts” in Texas and How to Avoid Them

47th Annual Ernest E. Smith Oil, Gas & Mineral Law Institute

March 26, 2021

Brandon Durrett, Partner

California | Illinois | Michigan | Minnesota | Texas | Washington, D.C.
www.dykema.com

1

Road Washout



2

Lease Washout

- A “washout” occurs when an oil and gas lease operator terminates and reacquires a lease in order to:
 - eliminate lease burdens; or
 - annex non-operating working interests.

Lease Washout

- Elements of washout transaction:
 1. Operating lessee releases lease or allows it to terminate for lack of production.
 2. Lease burdens and/or non-op interests co-terminate with lease.
 3. Operating lessee acquires new lease on same mineral interest free and clear of burdens and non-op interests.

Why Washout?

- Operator has financial incentive to increase NRI and/or WI by washing out lease burdens and non-ops.
- May be cheaper and easier to acquire new lease than buy outstanding interests.
- Texas law generally permits washout transactions, even when done intentionally.
- See paper for review of other jurisdictions.

Types of Washouts

- Overriding royalty interest (ORRI) washout
 - Any type of lease burden that does not confer the right to drill and produce
 - Net profits interest, security interest, back-in option
- Working interest washout
 - Cotenants in same lease
 - Cotenants in separate leases

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Turn Around, Don't Drown: A New Generation of Oil and Gas Lease "Washouts" in Texas and How to Avoid Them

First appeared as part of the conference materials for the

47th Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session

"Turn Around, Don't Drown: A New Generation of Oil and Gas Lease "Washouts" in Texas and How to Avoid Them"