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PRODUCED WATER: THE NEXT “TITLE” WAVE OF LITIGATION

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What is Produced Water?

- Generally speaking, produced water is **water that comes out of the well with other production** and can include:
 - water existing in the shale formation;
 - water injected into the wellbore during production that is now flowing back up the wellbore (“flowback water”);
 - production chemicals;
 - trace amounts of oil; and
 - sand and other deposits.

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What is Produced Water?



Texas Monthly: Briny water spews high into the air from a former oil well in Crane County on January 4, 2022.

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How much produced water is there?

- Changes from well to well and over the life of the well but generally:
 - 3 parts water to 1 part oil;
 - can be as high as 20:1; and
 - estimated that the U.S. produces 20 to 25 billion barrels per year.
- Big Issue = amount of produced water is increasing in highly developed plays such as the Permian Basin.

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How Did We Get Here?

The law of unintended consequences:

1/2 of the usual 1/8

Waste v. Groundwater?

Liability v. Asset?

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How Did We Get Here?

- Up until a few years ago, the fight over produced water was not over who “wanted” to take it, but rather over who “had” to take it.
- Traditionally, produced water was a waste.
- Historically, operators were tasked with disposal.
- These common practices were codified in 2013 and amended in 2019.

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Title search: Produced Water: The Next “Title” Wave of Litigation

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