

Make Peace, Not War:

Negotiating and Drafting Accommodation Agreements in the Oil and Gas Industry with Wind and Solar Companies.

Rod E. Wetsel

1



Mineral Accommodation Doctrine


- Judicial, non-statutory concept requiring the mineral owner to act with prudence and “due regard” for existing surface uses.
- Focuses only on the method of the mineral owner’s operations—not a limitation on mineral owner’s right whether or not to extract.
- Parties are at the mercy of a judge’s discretion to weigh the factors.

2



Important Oil and Gas Accommodation Cases

3



Early Days – Strengthening the Mineral Estate

- *Harris v. Currie*, 176 S.W.2d 302 (Tex. 1943).
- *Grimes v. Goodman Drilling Co.*, 216 S.W. 202, 204 (Tex. Civ. App. Fort Worth 1919, writ dism'd).
- *Warren Pet. Corp. v. Martin*, 271 S.W.2d 410, 412 (Tex. 1954).
- *Warren Pet. Corp. v. Monzingo*, 304 S.W.2d 362, 363 (Tex. 1957).

4



The Accommodation Doctrine

- *Getty Oil Co. v. Jones*, 470 S.W.2d 618 (Tex. 1971).
- *Tarrant County Water Control & Improvement Dist. No. One v. Haupt, Inc.*, 854 S.W.2d 909 (Tex. 1993).
- *Texas Genco LP v. Valence Operating Co.*, 187 S.W.3d 118 (Tex. App.—Waco 2006, pet. denied).
- *Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244 (Tex. 2013).
- *VirTex Operating Co. v. Bauerle*, No. 04-16-00549-CV, 2017 WL 5162546, (Tex. App.—San Antonio Nov. 8, 2017) rev. denied (Mar. 29, 2019), reh'g filed (May 15, 2019) (mem. op.)

5



Wind Leases and Mineral Leases – Major Issues

- Concurrent use of surface improvements: roads, gates, etc.
- Drill sites near Wind Turbines

6

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 \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Make Peace, Not War: Negotiating and Drafting Accommodation Agreements in the Oil and Gas Industry with Wind and Solar Companies

Also available as part of the eCourse

[2021 Ernest E. Smith Oil, Gas, and Mineral Law eConference](#)

First appeared as part of the conference materials for the

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

"Make Peace, Not War: Negotiating and Drafting Accommodation Agreements in the Oil and Gas Industry with Wind and Solar Companies"