

Non-Participating Royalty Interest Litigation

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Frequently Litigated Issues

1. NPRI or non-executive mineral interest
2. Size of the NPRI granted or reserved
3. Ratification and communitization of NPRIs
4. Term NPRIs and their perpetuation
5. Relationship between NPRI owners and their executives

Royalty Interests vs. Mineral Interests

1. Freestanding Royalty, Non-Participating Royalty Interest, Fee Royalty or NPRI
 - Non-possessory, real property interest
 - Carved out of mineral owner's fee simple estate
 - Burdens mineral owner creating the interest
 - Can be fixed ("1/16th royalty") or floating ("1/16th of royalty")
 - May be perpetual, term, or a defeasible term interest; created by various instruments
2. Landowner's Royalty, Lease Royalty
 - Created and reserved by oil and gas lease
3. Overriding Royalty Interest, ORRI
 - Carved out of lessee's leasehold estate

3

Royalty Interests vs. Mineral Interests

- Do the words of grant or reservation create an NPRI or an undivided fractional mineral interest?
 - "Four corners" doctrine
 - Must examine entire instrument in effort to determine parties' intent
 - Determine intent of the parties from terms of the instrument
 - No particular words or phrases are necessary to create a royalty
 - "Oil, gas and minerals in and **under** and that may be **produced**" typically indicative of the parties' intent to create a mineral interest
 - "Interest in oil, gas and minerals produced and **saved**" typically indicative of the parties' intent to create a royalty interest
 - Describing the interest as a "royalty interest" is given weight, but is not dispositive

4

Royalty Interests vs. Mineral Interests

- Is the interest a mineral fee interest stripped of all of the attributes of the mineral estate except the right to receive royalty?
 - Mineral interest automatically floats with the landowner's royalty
- Two cases typify the generally-understood legal framework distinguishing mineral from royalty interests:
 - *French v. Chevron*
 - Entitled to 1/16th mineral interest stripped of all of the incidents of the mineral estate except for the right to receive royalty; entitled to 1/16 of the landowner's royalty under the oil and gas lease (1/16 of the 20% landowner's royalty, or 1.25% of production).
 - *Temple-Inland Forest v. Henderson Family*
 - Entitled to 1/16 (fixed) royalty interest (1/16 of share of 100% of production, or 6.25% of production).

5

Fixed or Floating Royalty

- Even if the interest granted or reserved is clearly a royalty (as opposed to a mineral interest that has been stripped of all rights except right to receive royalty), is the royalty interest a fixed quantum or does it float with the quantum of the landowner's royalty?
- Example:
 - “Grantor reserves to himself half of the usual 1/8 landowner's royalty.”
 - Lease with 1/5 landowner's royalty subsequently executed
 - Has grantor reserved a 1/16 royalty or a 1/10 royalty?

6

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