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**LEGAL UPDATE:  
RECENT  
DEVELOPMENTS IN  
NON-REGULATORY OIL  
& GAS LAW**

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# ***PanAmerican Operating v. Maude Smith Estate***

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## **Apparent Authority of Landman**



# *PanAmerican Operating v. Maude Smith Estate*

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- Facts:
  - PanAmerican Operating contracted with independent landman to acquire leases in Archer County, Texas.
  - Landman used email address which contained “@panamop.com” in negotiating with lawyer for landowner on lease.
  - Attorney and landman reached agreement for \$150 per acre bonus and 1/5<sup>th</sup> royalty.



# *PanAmerican Operating v. Maude Smith Estate*

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- Facts:
  - Exchange of emails occurred with attorney accepting terms of lease.
  - Attorney mailed the lease to the landman at PanAmerican's offices.
  - Price of oil later dropped.
  - PanAmerican refused to pay bonus claiming that the landman did not have general power of agency.



# *PanAmerican Operating v. Maude Smith Estate*

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- Trial court
  - ruled for the plaintiff landowner.
- Court of Appeals:
  - Affirmed trial court ruling.
  - Court reasoned that PanAmerican:
    - Provided the landman with an “@panamop.com” email address
    - Cubicle in its offices
    - Phone landline in its Company offices
    - Made landman the point person in negotiations.
    - Never informed landowner of landman’s lack of authority.



# *PanAmerican Operating v. Maude Smith Estate*

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- Court reasoned:
  - Person has apparent authority to act on behalf of principal and bind principal when principal either:
    - Knowingly permits its agent to hold himself out as having authority to negotiate agreement or:
    - Demonstrates a lack of ordinary care by clothing its agent with authority to act on its behalf.



# *Friddle v. Fisher*

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**Duty owed by executive right holder to  
NPRI owners**



# *Friddle v. Fisher*

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- NPRI owner did not ratify lease/unit.
- Operator pays executive mineral owner.
- Court addressed duty owed by executive right owner to NPRI owner





# *Friddle v. Fisher*

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- “fiduciary duty of utmost fair dealing”
  - Person holding executive right must acquire for the holder of the non-executive right every benefit that he extracts for himself.
  - If the holder of executive right receives royalties pursuant to the rights held by the NPRI holder, he is chargeable in equity as **constructive trustee** with duty to hold the royalties attributable to the NPRI holder



# *Friddle v. Fisher*

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- Court held:
  - Once executive right holder (Fisher) receives royalties payable to NPRI interest, executive right holder had duty to hold funds as constructive trustee for benefit of NPRI interest.
  - Issue over whether had sufficient information about names/whereabouts of NPRI owners.



# ***Merriman v. XTO Energy, Inc.***

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## **Accommodation Doctrine Case**



# *Merriman v. XTO Energy, Inc.*

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- Case dealt more with proof required by surface owner to take advantage of Accommodation Doctrine.



# *Merriman v. XTO Energy, Inc.*

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- Facts
  - Merriman raised cattle.
  - 40 acre tract owned
  - 15 acre tract leased.
  - Annual cattle roundup
  - XTO drilled well near barn, Merriman sought Permanent Injunction
  - Trial court granted summary judgment in favor of XTO.



# *Merriman v. XTO Energy, Inc.*

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- Court of appeals affirmed
  - Held Merriman did not prove
    - he could not use land for any agricultural purpose and
    - He had failed to establish he did not have any reasonable alternatives available on lands leased by Merriman.



# *Merriman v. XTO Energy, Inc.*

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- Supreme Court:
  - Merriman only had to prove the he had no reasonable alternative as to his cattle operation—no other use needed to be considered.
  - Merriman was not required to show impossible to use other leased lands for the cattle operations.



# *Springer Ranch, Ltd. v. Jones*

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## Apportionment of Royalties—Horizontal Well





# *Springer Ranch, Ltd. v. Jones*

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- Facts:
  - Owner of 8,545 acres executes oil and gas lease in 1956.
  - Property partitioned in 1990
  - Agreement between surface owners in 1993



# *Springer Ranch, Ltd. v. Jones*

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- 1993 Agreement—The parties agreed:
  - “that all royalties payable under the [lease] from any wells or wells on the 8,545 acre tract, shall be paid to the owner of the surface estate on which **such well or wells are situated**, without reference to any production unit on which such well or wells are located.”
- No mention of horizontal wells.



# *Springer Ranch, Ltd. v. Jones*

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- Well had surface location on tract that belonged to Springer Ranch
- Lateral crossed under the surface of the contiguous Sullivan Tract.
- Productive intervals completed under both tracts.
- No royalty was paid to the owner of the tract without the wellhead.



# *Springer Ranch, Ltd. v. Jones*

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- Springer Ranch argued that it was entitled to 100% of royalties arguing that “wellhead” and “well” were essentially the same.
- Sullivan Ranch owners argued that they were entitled to a proportionate share of royalties because the wellbore crossed under their surface.
  - Argued the term “well” used in 1993 agreement referred to the length of the productive interval.



# *Springer Ranch, Ltd. v. Jones*

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- Trial Court:
  - Ruled for Sullivan tract owners.
  - Royalty payments to be paid to owner of surface under which productive portions of the well are located.
- Court of Appeals
  - Ruled for Sullivan tract owners.
    - “well” construed as the entire productive length of the lateral.



# *Springer Ranch, Ltd. v. Jones*

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- Apportionment of Royalties
  - Springer Ranch argued:
    - allocation should be based on length of well under each tract.
  - Sullivan Ranch argued:
    - should be based on distance between first and last perforation points
    - Each owner then entitled to percentage based on proportion of lateral covering ownership



# *Springer Ranch, Ltd. v. Jones*

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- Court of Appeal:
  - Well produces over the interval of the reservoir.
  - Discrete interval of production is more accurate for apportioning royalties.
    - Court considered each foot of productive interval to be equally productive.
    - Court did not address scenario where multiple productive intervals were interspersed with non-productive intervals.



# ***Circle Ridge Prod. v. Kittrell Family Minerals LLC***

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## **Overriding Royalty**





# *Circle Ridge Prod. v. Kittrell Family Minerals LLC*

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- Facts:
  - Plaintiff assigned lease to defendant and reserved an overriding royalty:

“[O]verriding royalty payments shall not be delayed beyond ninety (90) days after the last day of the month during which production commences from any well...If royalty is not paid by such due date, Assignor may give Assignee written notice of nonpayment of the overriding royalty (via certified mail to address Assignee at the address show herein) and if Assignor’s overriding royalty is not paid on or before the expiration of sixty (60) days from Assignee’s receipt of such notice, Assignor may terminate this agreement and evict Assignee forth with.”



# *Circle Ridge Prod. v. Kittrell Family Minerals LLC*

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- Facts:
  - Plaintiff did not timely receive ORRI.
  - Plaintiffs sent letter demanding payment within 60 days to the address specified but with wrong zip code.
  - Defendant received letter and responded by sending a division order which Plaintiff refused to sign.
  - Defendant paid royalty but beyond 60 day period after receiving letter.



# *Circle Ridge Prod. v. Kittrell Family Minerals LLC*

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- Facts:
  - Plaintiff filed suit seeking declaration that the assignment had terminated.
  - Trial court granted summary judgment in favor of Plaintiff.



# *Circle Ridge Prod. v. Kittrell Family Minerals LLC*

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- Court of Appeals found that although strict compliance is required for mineral interest to terminate, the forfeiture clause focused on receipt of the notice.
- The court reasoned that the wrong zip code did not prevent Defendant from receiving the notice.



***Wynne/Jackson Dev., L.P.  
v. PAC Capital Holdings, Ltd.***

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**Fraction of Royalty v. Royalty Fraction**



# *Wynne/Jackson Dev., L.P. v. PAC Capital Holdings, Ltd.*

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- Facts:
  - Porter deeds reserved NPRI interest.
  - Extent of the interest was in dispute.
  - NPRI described as:
    - “one-half (1/2) of the usual one-eighth (1/8) royalty in and to all oil, gas, and other minerals produced, saved and sold ...”
  - Current lease provides for  $\frac{1}{4}$  royalty.



# *Wynne/Jackson Dev., L.P. v. PAC Capital Holdings, Ltd.*

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“There is excepted herefrom and reserved unto Grantor a non-participating royalty of **one-half (1/2) of the usual one-eighth (1/8) royalty** in and to all oil, gas, and other material produced, saved and sold from the above-described property, provided, however, that although said reserved royalty is non-participating and Grantee shall own and possess all leasing rights in and to all oil, gas and other minerals, **Grantor shall nevertheless, have the right to receive one-half (1/2) of any bonus, overriding royalty interest, or other payments, similar or dissimilar,** payable under the terms of any oil, gas and mineral lease covering the above-described property.”



# *Wynne/Jackson Dev., L.P. v. PAC Capital Holdings, Ltd.*

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- Owner of NPRI interest claimed:
  - Reserved “fraction of royalty.”
- Grantee claimed:
  - Reserve “fixed royalty.”
- Court held:
  - Language of deed reserved fixed royalty—not floating.





# ***Graham v. Prochaska***

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**Fraction of Royalty v. Royalty Fraction**



# Graham v. Prochaska

## Grantors' Reservation Language:

“SAVE AND EXCEPT, however, there is reserved unto [Grantor], his heirs, and assigns one-half (1/2) of the one-eighth (1/8) royalty to be provided in any and all leases for oil, gas and other minerals now upon or hereafter to be given on said land...., same being equal to one-sixteenth (1/16<sup>th</sup>) of all oil, gas and other minerals...

\*\*\*

AND PROVIDED this reservation is burdened with paying two outstanding mineral reservations, each one-fourth (1/4) of one-eighth (1/8) royalty....; And this reservation shall only be effective to the extent that one or both of said outstanding reservations become terminated. It being the intent of the parties that [Grantees] as of the effective date hereof shall be vested with and entitled to one-half (1/2) of the usual one-eighth (1/8) royalty... and the reservation hereinabove recited in favor of grantor herein shall relate to and cover only one-half (1/2) of one-eighth (1/8) royalty previously reserved in favor [of the two prior parties], if, as and when said interest in favor of said parties terminates.”



# *Graham v. Prochaska*

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- Trial Court and Court of Appeal:
  - Grantor held to have held a “floating” royalty entitling them to one-half of the royalty in new lease and in all future leases.
    - Court reasoned that all of the language in the instrument should be construed together.
    - The reference to “the” one-eighth royalty in the save and except language must be interpreted in the context of the fact that deed executed at time when it was commonly mistakenly assumed that landowner’s royalty would always be 1/8<sup>th</sup>.
    - Court reasoned that grantor’s interest burdened by prior reservations which were construed as floating interests.



# ***Colt Unconventional Resources, LLC v. Resolute Energy Corporation***

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**Arbitration Provision in Exploration Agreement  
and Effect upon non-signatories**



# *Colt Unconventional Resources, LLC v. Resolute Energy Corporation*

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- Facts:
  - Exploration agreement between Resolute Natural Resources Southwest and Colt Unconventional Resources.
  - Agreement provided for “evaluation, leasing, drilling, exploration, and development of oil and/or natural gas” on tract in Reeves County, TX.
  - Exploration agreement contained a binding arbitration provision.



# *Colt Unconventional Resources, LLC v. Resolute Energy Corporation*

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- Operating Agreement was entered into which incorporated the E&D Agreement.
- Colt elected to participate in the construction of a pipeline project.
  - Resolute Natural Resources Southwest designated two affiliates (non-signatories) to the E&D Agreement as affiliates in charge of day-to-day operations in the project area.
  - Resolute's affiliate (non-signatory) sent Colt bills that went unpaid.



# *Colt Unconventional Resources, LLC v. Resolute Energy Corporation*

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- Resolute's affiliate sought to compel arbitration and Colt filed lawsuit against Resolute's affiliate.
- Issues:
  - Whether non-signatories to a contract subject to arbitration could compel Colt to arbitrate; and
  - Whether the claims at issue were arbitrable.



# *Colt Unconventional Resources, LLC v. Resolute Energy Corporation*

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- Court held that Colt was required to arbitrate dispute with non-signatories.
  - Court used equitable estoppel
    - Colt relied upon contract that contained arbitration provision in suit against non-signatories.
      - Colt had claimed breach of contract, improper billing, etc.
    - Court held dispute fell within scope of arbitration clause.
      - Court reasoned that Colt relied upon disputed part of E&D Agreement related to claims pipeline not permitted under agreement.





# ***Richmond v. Wells***

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## **Trespass to Try Title**



# *Richmond v. Wells*

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- Facts
  - Richmond owned the surface and minerals on which well was completed.
  - Richmond then conveyed property to Zugg by warranty deed without reservation of minerals.
  - Zugg subsequently conveyed property to Wells by warranty deed without reservation of minerals.
  - Dispute arose as to whether Richmond or Wells owned the mineral interest.



# *Richmond v. Wells*

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- Wells brought declaratory suit against Richmond group claiming ownership of minerals with surface.
- Richmond filed third party suit against Zugg attempting to reform the deed to Zugg by reserving a mineral interest.
- Zugg answered suit agreeing that deed from Richmond was for the surface only.



# *Richmond v. Wells*

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- Trial court granted summary judgment in favor of Wells
  - declaring that both deeds had conveyed the mineral estate to Wells as well as the surface estate.
  - Richmond had not reserved the mineral interest.



# *Richmond v. Wells*

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- On appeal, Richmond claimed Wells claim should have been brought as a trespass to try title action.
- Court of Appeals disagreed:
  - Distinguished *Martin v. Amerman*
  - Mineral interests and royalty interests were non-possessory—thus trespass to try title action not required.



# ***Key Operating & Equip., Inc. v. Hegar***

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## **Trespass Action**



# *Key Operating & Equip., Inc. v. Hegar*

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- Facts:
  - 1994, Key obtained oil and gas lease covering Curbo tract that abutted Richardson tract.
  - Key built road across the Curbo tract to access its wells on both tracts starting in 1994.
  - In 2000, when the wells on the Curbo tract stopped producing, Key pooled its mineral interests from both tracts.
  - In 2002, Hegars bought the surface of the Curbo tract.
  - When Hegar acquired surface, Hegar had actual notice that tract was subject to oil and gas leases and that Key accessed its wells on the adjacent Richardson tract by using the road on the Curbo tract.
  - In 2007, Key drilled new well on Richardson tract which led to significant increase in use of the road.
  - Hegars brought suit seeking to permanently enjoin Key's continued use of road.



# *Key Operating & Equip., Inc. v. Hegar*

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- Trial Court:
  - Following bench trial, court permanently enjoined Key from using the road on the Curbo tract to produce oil on the Richardson tract.
- Court of Appeals:
  - Affirmed the trial court ruling.
  - Court held that Key only entitled to use the road on Curbo tract so long as oil produced from the pooled Curbo/Richardson tract included oil produced from Curbo tract.





***Crosstex NGL Pipeline, L.P.  
v. Reins Road Farms-1, Ltd.***

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**Pipeline—Common Carrier Status—NGLs**



# *Crosstex NGL Pipeline, L.P. v. Reins Road Farms-1, Ltd.*

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- Facts:
  - In 2011, RRC granted Crosstex permission to build a pipeline that would transport NGLs.
  - Surface owner (Rein Road Farms) denied entry to Crosstex.
  - Crosstex brought suit as common carrier for entry onto land and sought temporary injunction.



# *Crosstex NGL Pipeline, L.P. v. Reins Road Farms-1, Ltd.*

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- Crosstex based its common carrier status on two factors:
  - common carriers transport crude petroleum and the proposed pipeline would transport natural gas which is considered a type of crude petroleum.
  - Crosstex is a common carrier because the pipeline would be under the RRC authority and available for public use.



# *Crosstex NGL Pipeline, L.P. v. Reins Road Farms-1, Ltd.*

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- Trial Court:
  - Denied Crosstex’s request for temporary injunction.
- Court of Appeals:
  - Trial court did not abuse discretion
    - “crude petroleum” as used in eminent domain provisions of Texas Natural Resources Code does not include by-products like NGLs.
    - Legislature recognized distinction between “crude petroleum” and by-products.
  - Rejected Crosstex’s argument for common carrier status based on “crude petroleum” transportation.



# *Crosstex NGL Pipeline, L.P. v. Reins Road Farms-1, Ltd.*

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- While Crosstex argued entitled to common carrier status under Texas Business Organizations code, the pipeline would be available for public use and under RRC authority.
- Landowner argued that pipeline could possibly be common carrier in future—it was likely to currently be used exclusively by Crosstex and its affiliates.



# *Crosstex NGL Pipeline, L.P. v. Reins Road Farms-1, Ltd.*

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- Court reasoned:
  - Conflicting evidence presented about customer at trial. No abuse of discretion.
  - Although Crosstex had obtained a T-4 permit from RRC, this was not enough by itself to presume common carrier status.
- Take away:
  - Prospective NGL pipelines should make sure some of your capacity will be contracted to third parties.
  - Courts are closely scrutinizing.



# ***Crawford Family Farm Partnership v. TransCanada Keystone Pipeline, L.P.***

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**Pipeline—Common Carrier Status—  
Interstate Pipeline**



# ***Crawford Family Farm Partnership v. TransCanada Keystone Pipeline, L.P.***

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- Challenge by landowner to eminent domain authority related to Keystone Pipeline.
- Landowner argued that TransCanada Keystone Pipeline as an interstate pipeline was not common carrier under Section 111.002(1) of the Texas Natural Resources Code.





# *Crawford Family Farm Partnership v. TransCanada Keystone Pipeline, L.P.*

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- Texas Natural Resources Code:
  - “[a] person is a common carrier subject to the provisions of this chapter.”
- Landowner argued TransCanada could not comply with all of the provisions of the TNRC.
  - For instance, could not comply with requirement of publishing a tariff because was instead subject to FERC.
- Trial court and Appellate court rejected arguments.



# *Crawford Family Farm Partnership v. TransCanada Keystone Pipeline, L.P.*

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- Court reasoned:
  - Introductory phrase of Section 111 of the TNRC was descriptive rather than a requirement to be a common carrier.
  - Section 111.002(1) and the RRC's regulatory authority do not distinguish between interstate and intrastate pipelines.



# Contact Information

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