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OIL & GAS E-REPORT

3	WEST VIRGINA APPELLATE COURT VACATES UNITIZATION ORDER AND REMANDS
5	WEST VIRGINIA APPELLATE COURT AFFIRMS UNITIZATION ORDER
7	TEXAS UPDATES OIL AND GAS WASTE RULES FOR THE FIRST TIME IN 40 YEARS
9	LOUISIANA THIRD CIRCUIT RAISES THE BAR FOR LEGACY LAWSUIT PLAINTIFFS
11	CLIMATE ANALYSIS IN LOUISIANA'S COASTAL PERMITTING REGIME: THE SECOND COMMONWEALTH LNG PETITION
13	COAL COMPANY PREVAILS IN DISPUTE WITH OIL & GAS LESSORS
15	NORTH DAKOTA SUPREME COURT VACATES REGULATOR'S ORDER ALLOCATING PRODUCTION FROM LEASE-LINE SPACING UNIT
18	LOUISIANA SUPREME COURT HOLDS THAT PUBLIC PORT'S TAKING OF PROPERTY TO LEASE TO LNG FACILITY WAS NOT FOR A "PUBLIC PURPOSE"
21	TEXAS BUSINESS COURT HOLDS THAT OIL AND GAS LESSEE WAS NOT THIRD-PARTY BENEFICIARY OF AGREEMENT ENTERED BY AFFILIATE THAT SERVED AS OPERATOR
24	BOEM PROPOSES AMENDMENTS TO ITS 2024 OFFSHORE FINANCIAL ASSURANCE RULE
25	TEXAS COURT RESOLVES LEASE DISPUTE

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Editorial Board

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West Virginia Appellate Court Vacates Unitization Order and Remands

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In *Hull-Wright v. Arsenal Resources, LLC*, 2026 WL 125974 (W. Va. Ct. App. 2026), four owners of mineral royalties ("Petitioners") appealed a unitization order from the Oil and Gas Conservation Commission of West Viriginia.

Background

In May 2025, Arsenal Resources, LLC ("Arsenal") filed an application with the Oil and Gas Conservation Commission of West Virigina ("Commission"),[1] seeking an order creating a drilling unit for a horizontal well to be drilled to the Marcellus Shale in Harrison County, West Virginia. The application was filed pursuant to West Virginia Code § 22C-9-7a, which was enacted in 2022.[2] This statute requires that, prior to filing an application for a drilling unit, a prospective applicant must obtain approval from at least 75% of the royalty interests in the proposed unit,[3] and that the applicant make good-faith offers to pool or unitize, and negotiate in good faith with, all known and locatable owners of royalty interests in the unit.[4] At the time Arsenal filed its application, it had obtained consent from 88.03% of the royalty interests. In addition, Arsenal attached to its application an affidavit stating that the company had made good faith offers to all owners of oil and gas interests in the proposed unit.

The Commission held an evidentiary hearing in early July 2025. At the hearing, a landman for Arsenal testified about the company's good faith efforts to negotiate with Petitioners, who own royalty interests. On the other hand, the Petitioners asserted that Arsenal had not negotiated in good faith. The Petitioners' lawyer cross-examined Arsenal's landman, attempting to undermine his testimony. In addition, one of the Petitioners testified, seeking to support the Petitioners' contention that Arsenal had not negotiated in good faith.

About two weeks after the hearing, the Commission issued an order that combined fifty-eight tracts, totaling 361.52 acres into a drilling unit and designating Arsenal as operator for the unit. The order noted that Arsenal's landman had

[1] The Commission is part of the West Virginia Department of Environmental Protection.
[2] West Viriginia Code § 22C-9-7a is entitled "Unitization of interests in horizontal well drilling units." Before enactment of this statute, the only statutory authority for the Commission to create drilling units and pool interests within a unit was found in West Virginia Code § 22-9-7, and it only applies to formations developed by "deep wells," with "deep well" being defined by West Viriginia Code § 22-9-2 as being wells drilled for formations below the top of the "Onondaga Group." The Onondaga Group is deeper than the Marcellus Shale. Thus, § 22-9-7 did not provide a basis for the Commission to create drilling units for development of the Marcellus Shale.
[3] West Virginia Code § 22C-9-7a(c)(2)(A).
[4] West Virginia Code § 22C-9-7a(c)(2)(C)(i).

testified about the company's good faith efforts to negotiate. The order also noted that the Petitioners asserted that Arsenal had not negotiated in good faith and that one of the Petitioners had testified. The order then stated the Commission's determination that Arsenal had negotiated in good faith.

The Appeal

The Petitioners appealed, pursuant to West Virginia Code § 22C-9-11. This section of West Virginia's conservation laws provides that any person adversely affected by an order of the Commission has the right judicial review of the order, with such review being governed by West Virginia Code § 29A-5-4, part of the state's Administrative Procedures Act ("APA"). The appellate court noted that another section of West Virginia's conservation laws, West Virginia Code § 22C-9-10, states that the Commission's hearings are governed by § 29A-5-3 of West Virginia's APA. That provision of the APA states that final orders issued in contested cases must contain findings of fact. Further, if findings of fact are "set forth in statutory language," they must be "accompanied by a concise and explicit statement of the underlying facts supporting the findings." The appellate court went on to state that the West Virginia Supreme Court has explained that "[a] simple recitation of findings of fact in bare statutory language will not suffice."

Applying this standard to the Commission's order creating the contested unit, the appellate court concluded that the order was deficient. The order noted the witnesses each party had called to testify and what exhibits had been admitted into evidence. The order also contained "conclusory statements" that Arsenal had negotiated in good faith, but the order did not include findings of fact regarding the dates on which Arsenal had made offers or the amount of compensation included in the offers that it made. The order did not discuss the credibility of the opposing testimony or reconcile conflicting evidence. The court stated that these "deficiencies in the order prevent this Court from engaging in a meaningful appellate review." Therefore, the court vacated the Commission's order and remanded the matter to the Commission for further proceedings.

West Virginia Appellate Court Affirms Unitization Order

Keith B. Hall
LSU Law Center

In *Haughtland Resources, LLC v. SWN Production Co., LLC*, 2025 WL 3162008 (W. Va. Ct. App. 2025), Haughtland appealed a February 13, 2025 order from the Oil and Gas Conservation Commission of West Viriginia (the "Commission"). The order combined 112 separate tracts totaling nearly 491 acres into a horizontal drilling unit for development of a portion of the Marcellus Shale Formation in Brooke County, West Viriginia.

Background

SWN filed an application with the Commission in December 2024, pursuant to West Virginia Code § 22C-9-7a, seeking an order creating a horizontal drilling unit. Prior to filing the application, SWN obtained the consent of 84.45% (by net acreage) of the royalty owners and 90.94% of the operating interests. In support of its application, SWN attached an affidavit of a landman, attesting that SWN made good faith offers and good faith efforts to obtain leases or consents to pooling. The affidavit spoke about in-person visits, telephone calls, and letters that SWN had sent in an effort to obtain leases or consents to pooling.

Haughtland held oil and gas interests in a portion of the area included in SWN's proposed unit. In January 2026, Haughtland filed an objection to SWN's application that it failed to satisfy requirements set forth in West Virginia Code § 22C-9-Ua because SWN allegedly failed to negotiate in good faith or to make good faith offers. Haughtland noted that it had filed a claim against SWN that is being litigated in federal court. In that federal litigation, Haughtland alleges that SWN breached an oil and gas lease between Haughtland and SWN. That lease that SWN allegedly breached covers land outside the unit proposed by SWN's December 2024 application to the Commission, but Haughtland argued that any good faith negotiations regarding the possibility of voluntarily pooling the area included in SWN's proposed unit must wait until resolution of Haughtland's claim that SWN breached an oil and gas lease covering other areas.

In January 2025, the Commission held a hearing. SWN offered testimony supporting its contention that it had negotiated in good faith. For example, SWN's witness testified that SWN made multiple offers to Haughtland relating to its oil and gas interests in the Marcellus Shale in the area covered by the unit that SWN proposed. A representative of Haughtland cross-examined SWN's witness, but the cross-examination did not address SWN's offers to Haughtland or SWN's negotiations with Haughtland. Instead, the cross-examination primarily addressed issues relating to the federal court litigation between Haughtland and SWN regarding an alleged breach of contract.

After the hearing, the Commission entered an order granting SWN's application to form the proposed horizontal drilling unit. The Commission made a factual finding that, prior to SWN filing its application, SWN made three good faith offers to pool Haughtland's interest or to modify a lease between SWN and Haughtland so that the lease itself would authorize pooling. The Commission also found that SWN had made a fourth offer after filing its application. Haughtland appealed the order.

The Appeal

Haughtland made two assignments of error. The first was that SWN was not entitled to an order creating a pooled drilling unit because SWN allegedly had not negotiated in good faith. The court acknowledged West Virginia's horizontal well pooling statute makes good faith negotiations a prerequisite to a pooling order, but the court rejected Haughtland's first assignment of error. The court characterized the evidence offered by SWN to support its contention that it had negotiated in good faith as being "minimal," the court stated that Haughtland offered "no evidence" to contest SWN's contention. The court held that there was sufficient evidence to support the Commission's finding of good faith.

In its second assignment of error, Haughtland argued that SWN and the Commission had improperly classified Haughtland's interest as a lessee's interest, but that its interest should not be classified as a lessee's interest because its lease did not allow Haughtland to extract gas from the Marcellus Shale, the formation at issue in pooling order. The court rejected this assignment of error. The court stated that the Commission's order had "loosely" referred to Haughtland as a lessee, but that the Commission's order did not purport to characterize Haughtland's interest as being either leased or unleased and that the purported finding regarding the nature of Haughtland's interest "is without effect and is considered harmless error."

For these reasons, the court affirmed the Commission's order creating the horizontal drilling unit and pooling the interests in the unit.

Texas Updates Oil and Gas Waste Rules for the First Time in 40 Years

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For the first time in nearly four decades, the Railroad Commission of Texas (RRC) updated the existing rules in connection with the handling, storage, treatment, and disposal of oil and gas waste. The new rules, effective July 1, 2025, consolidate Statewide Rule 8 (governing disposal of oil and gas waste) and Rule 57 (recycling of produced water) into a new framework under Chapter 4 of the Texas Administrative Code. This update reflects an effort to align industry needs with landowners' environmental concerns.

The new rules introduced new or heightened standards for pits used in connection with oil and gas waste, recycling produced water and drill cuttings, and transportation of oil and gas waste. Texas Administrative Code Sections 4.113 and 4.114 establish updated construction, closure, and registration requirements for pits used in oil and gas operations. Certain pits — such as reserve and circulation pits — may now be used without a permit, provided they meet revised technical standards. For the first time, operators must register qualifying pits with the RRC. Qualifying pits that were in existence prior to July 1, 2025, must be registered or closed by July 1, 2026. Therefore, it is crucial that operators take inventory of their oil and gas waste pits and ensure compliance with the new rules in the coming year.

The RRC has also broadened recycling options under Texas Administrative Code Sections 4.112 and 4.115. Operators may now recycle produced water on their own leases without a special permit, provided they comply with operational standards. Notably, the rules require an operator of a produced-water recycling pit to maintain a performance bond or other financial security pursuant to Texas Natural Resources Code Section 91.109(a). An operator with five or fewer pits must file evidence of financial security in an amount equal to $1 per barrel of water total pit capacity. An operator with more than five pits must file evidence of financial security in an amount equal to either the greater of (a) $1 per barrel of water for 10% of an operator's total produced-water recycling pit capacity or (b) $1 million or simply $20,000 per pit, capped at $5 million.

The rules also address the transportation of oil and gas waste and application for and approval of waste facilities. Texas Administrative Code Sections 4.190-195 require more enhanced recordkeeping in connection with the transportation of oil and gas waste and those parties responsible for hauling such

waste. Specifically, Section 4.125 sets forth a process for notifying affected parties of applications to construct waste facilities, including the rights of recipients to protest such applications, though this does not extend to reserve pits.

The RRC's new Chapter 4 rules reflect both modernization and heightened oversight. While they facilitate waste recycling and clarify operational rights, they also bring increased bonding, documentation, and notice obligations. As a result, operators should review their current methods for handling waste, including transportation and disposal, and ensure that they comply with the new rules.

These updates mark a significant regulatory shift for Texas oil and gas operations. Staying ahead of compliance deadlines will be key to maintaining ongoing operations and avoiding costly disruptions.

Louisiana Third Circuit Raises the Bar for Legacy Lawsuit Plaintiffs

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The Louisiana Third Circuit recently made clear that landowners in "Legacy" lawsuits cannot win liability findings just by pointing to the presence of regulated substances on their property. They must show those substances interfere with their use of the land. Legacy lawsuits claim that historical exploration and production activity caused contamination to soil and groundwater. The Legislature recently passed legislation significantly limiting landowners' ability to pursue lucrative damage awards, effective for suits filed beginning September 2027. However, the Third Circuit opinion makes it clear that landowners cannot, even under existing law, establish liability by simply demonstrating that some regulatory exceedance exists on the property. The decision significantly curtails recent attempts by landowners to argue that low levels of regulated substances establish liability, particularly where those levels would not normally require remediation or support attorney fee awards that often reach millions of dollars.

In *WMH Farms, LLC v. Apache Corp.* (of Del.) (Jan. 26, 2026), the Third Circuit rejected the plaintiff's argument that exceedances of regulatory standards constitute "contamination" entitling a landowner to summary judgment that a defendant is "responsible for environmental damage." This is the key liability finding under Act 312 (La. R.S. 30:29), the statute that governs all lawsuits brought by landowners alleging environmental damage from exploration and production activities. A finding of liability results in a defendant being referred to the Louisiana Dept. of Conservation & Energy (C&E) to develop and implement a "feasible plan" to restore the property (and the attorney fee award). The Court relied on the statutory definitions of "contamination" and "environmental damage" to hold that the presence of potentially harmful substances must render soil or groundwater "unsuitable for their intended use" to trigger a finding of liability for a feasible plan.

The Court separately upheld a defendant's appeal of the district court's dismissal of its third-party demand against the company from which it purchased its interest in the property. The third-party defendant successfully argued that contractual language making the sale "as is" and requiring the buyer to restore the surface effectively transferred liability to the purchaser. The Court further rejected a third-party claim for contribution, reasoning that both parties were solidary obligors and that the third-party defendant's prior settlement with the landowner plaintiff extinguished any right to contribution from other defendants.

On a more practical note, the *WMH Farms* opinion also made a key evidentiary ruling that a personal affidavit attaching environmental sampling data and attesting it was submitted to C&E was not competent summary judgment evidence. This is a common workaround when certified copies of public records

have not been obtained, and a reminder of the importance of adhering to the strict limitations on evidence that can support motions for summary judgment.

Climate Analysis in Louisiana's Coastal Permitting Regime: The Second Commonwealth LNG Petition

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Liskow

In October 2025, a district court in Cameron Parish granted a challenge brought by environmental justice groups who sought to vacate a coastal use permit (CUP) issued by the Office of Coastal Management (OCM) for the construction of an LNG facility. In granting petitioners' challenge, the district court primarily cited OCM's failure to analyze climate change and environmental justice impacts in issuing the permit. Two months later, the same petitioners—a collection of national and state non-profit environmental groups—are petitioning the same district court to vacate the "re-issued" CUP for substantially similar reasons but also for failing to abide by lawful permitting procedures.

The original permit authorized Commonwealth LNG, LLC to build a Liquid Natural Gas (LNG) export terminal along the Calcasieu Ship Channel. During the application process, petitioners submitted public comments, expressing concerns regarding the Parish's wetlands from dredging, as well as the interference with use and access of the Ship Channel by fisherman and boaters.

In October 2025, the district court vacated the original coastal use permit, holding that OCM failed to comply with the Louisiana Constitution, the Coastal Resources Program, and its own regulations. Among the several deficiencies identified, the court focused on OCM's failure to meaningfully evaluate climate impacts and cumulative effects, particularly in light of the concentration of other LNG facilities in Cameron Parish.

Rather than initiate an entirely new permitting process with renewed notice and public comment, OCM issued a "Revised Basis of Decision" to address the factors that the district court found lacking in its original analysis. The Petitioners' December 2025 petition for judicial review once again challenges the "re-issued" permit for the Commonwealth LNG export terminal in Cameron Parish. The petition argues that once the permit was vacated, it ceased to exist; any subsequent authorization required a new administrative process and a fresh substantive analysis; and it raises the question to what extent Louisiana agencies must consider climate impacts in coastal zone decision making.

Permitting Procedures for Re-Issuing a Vacated CUP

Central to the petitioners' challenge is the procedural viability of re-issuing a virtually identical CUP after a court vacates the original permit without going through an entirely new permit application process. While petitioners acknowledge that OCM does not have rules addressing the process for re-issuing a CUP, they

interpret this silence as a need to start anew from the beginning of the permitting process.

The Public Trust Doctrine and Substantive Obligations

Alternatively, Petitioners argue that OCM did not remedy the deficiencies identified by the court in its October 2025 decision, which included a violation of Louisiana's constitutional public trust doctrine. Citing to Louisiana's Constitution and a handful of court decisions, Petitioners contend that OCM has a mandate—as a "public trustee" of the state's natural resources—to consider or mitigate environmental impacts. The petition contends that OCM's revised decision fails to do so and that while the agency purported to conduct an "independent analysis" of the factors the district court said it must consider, its analysis was actually derived from an environmental review conducted by Federal Energy Regulatory Commission (FERC). According to petitioners, that analysis has already been criticized by a federal appellate court for insufficiently addressing air pollution and health impacts associated with LNG exports. By adopting those conclusions wholesale and labeling them and "independent analysis" the petition argues that OCM failed to conduct the state-specific evaluation required under Louisiana law.

Broader Implications

This case reflects a continuing trend in which concerns over climate change are the basis for challenging the issuance of permits.

Ultimately, the petition presents a question increasingly central to climate litigation: what is the proper balance between the continued use of fossil fuel infrastructure and climate impacts. Louisiana's resolution of this issue may carry significant weight for future permitting decisions.

Coal Company Prevails in Dispute with Oil & Gas Lessors

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In *Wendt v. West Virginia Land Resources, Inc.*, 2025 WL 3285431 (W. Va. 2025), an affiliate of a coal company obtained a wellbore assignment for a natural gas well operated by an oil and gas lessee on land owned by Allen and Carolyn Wendt in Marshall County, West Virginia. The coal company's affiliate obtained the assignment for the purpose of plugging and abandoning the well, so that the well would not interfere with the coal company's longwall mining beneath the Wendts' land. The Wendts objected to any plugging and abandonment of the well, asserting that such actions would be a violation of their rights.

To resolve the dispute, the coal company and its affiliate filed suit, seeking a declaratory judgment that they had a right to plug and abandon the well, and seeking injunctive relief to prevent the Wendts from interfering with that work. The Circuit Court of Marshall County granted a preliminary injunction in favor of the coal company and its affiliate, and the Wendts appealed to the Supreme Court of Appeals of West Virginia.

In its decision resolving the appeal, the Supreme Court noted that Marshall County Coal Resources, Inc. ("MCCR") holds coal rights beneath the Wendts' land, pursuant to coal rights granted in a 1902 severance deed. The 1902 deed contains certain provisions that factored into the parties' arguments in this case. One such provision prohibits the owner of the coal estate, now MCCR, from conducting surface operations within 500 feet of the Wendts' residence. Another relevant provision expressly reserves oil and gas operating rights to the owners of the land, but provides that oil and gas drilling "shall not in any manner interfere with the mining" of coal.

The court also noted that the Wendts' land is subject to an oil and gas lease granted in 1929. Pursuant to that lease, the Wendts have rights to a royalty on oil and gas production from the land, and the right to "free gas" from wells on their land. One of the wells drilled pursuant to the oil and gas lease is "Well 3403," a natural gas well drilled within 500 feet of the Wendts' residence by a predecessor-in-interest to Leatherwood, LLC, the current oil and gas lessee. At the time this dispute arose, Well 3403 continued to operate.

MCCR concluded that Well 3403 creates a risk that methane will enter MCCR's coal mine. MCCR also concluded that mining regulations and safety concerns required that Well 3403 be plugged and abandoned, if MCCR's longwall mining was going to continue as planned beneath the Wendts' land. For this reason, an affiliate of MCCR (West Virginia Land Resources, Inc. or "WVLA") obtained from Leatherwood a limited assignment of rights under the 1929 oil and gas lease. The assignment gave WVLA rights to the wellbore of Well 3403, but only for purposes

of plugging and abandoning it, and gave WVLA the oil and gas lessee's rights of ingress and egress, but only for the purpose of plugging and abandoning Well 3403. This led to the Wendts' objection, WVLA's lawsuit, the trial court's preliminary injunction, and the Wendts' appeal to the Supreme Court.

On appeal, the Wendts argued that plugging and abandoning Well 3403 would violate the 1902 severance deed's prohibition on MCCR conducting surface operations within 500 feet of their residence. The court disagreed. The court concluded that this restriction applies to MCCR's coal operations under the 1902 severance deed, but that plugging and abandoning Well 3403 was an oil and gas operation under the oil and gas lease. Further, the 1902 severance deed prohibited any oil and gas drilling from interfering with coal operations, and the record before the court suggested that Well 3403 was interfering with coal operations. The Supreme Court therefore affirmed the preliminary injunction in favor of the coal company and its affiliate, preventing the Wendts from interfering with work to plug and abandon the well.

North Dakota Supreme Court Vacates Regulator's Order Allocating Production From Lease-Line Spacing Unit

Keith B. Hall
LSU Law Center

In *Garaas v. North Dakota Industrial Commission*, 2026 WL 303563 (N.D. 2026), the trustees of three trusts that own mineral interests in McKenzie County, North Dakota appealed an order of the Industrial Commission that allocated production from a lease-line spacing unit. The district court affirmed the Commission's order, and the trustees appealed. The North Dakota Supreme Court then reversed the district court's decision, vacating the Commission's order.

Background

North Dakota Industrial Commission (NDIC) Order No. 13922 established an approximately, 1,280-acre spacing unit that consisted of Sections 19 and 20 of a particular township (Township 153 North, Range 95 West). Consistent with the typical public land survey system layout, Section 19 and Section 20 are each squares that are one square mile in area, with Section 19 being immediately west of Section 20. Thus, the unit is a rectangle that is two miles wide (east to west) and one mile tall (from north to south), making it a so-called "laydown" unit (this shape contrasts with the shape of "standup" units that are longer in the north-south direction than in the east-west direction). For purposes of this article, the spacing unit that consists of Sections 19 and 20 is called "Base Unit 1."

Immediately to the north of Section 19 is Section 18, and immediately to the north of Section 20 is Section 17. Like Sections 19 and 20, Sections 18 and 17 constitute a laydown spacing unit approximately 1,280 acres in size. This unit can be called "Base Unit 2."

Immediately to the west of Section 19 is Section 24 of a different township (Township 153 North, Range 96 West), and immediately to the west of that Section 24 is Section 23 of Township 153 North, Range 96 West. Together, those Sections 24 and 23 constitute a laydown spacing unit. This can be called "Base Unit 3."

And finally, immediately to the north of Sections 23 and 24 are, respectively, Sections 14 and 13 of Township 153 North, Range 96 West. Together, Sections 14 and 13 constitute a laydown spacing unit approximately 1,280 acres in size. This can be called "Base Unit 4."

Each of the spacing orders provided that unit production from a well anywhere in the unit would be allocated amongst each of the separately owned tracts in the unit, with each tract's allocation being proportional to its surface acreage.

In addition, each of the orders creating a spacing unit also created setback distances and prohibited anyone from drilling a well any closer than the specified setback distance from any of the boundaries of the spacing unit. Such setbacks can make it difficult to develop the oil and gas resources near the unit boundaries, particularly in tight formations in which hydraulic fracturing is needed to efficiently develop the resources.

To facilitate production from the area in the vicinity of the one-mile boundary between Base Units 1 and 3 and also (to the immediate north) the one-mile boundary between Base Units 2 and 4, the NDIC issued Order No. 30323, which established a 2,560-acre spacing unit that is a "lease-line" unit or an "overlapping unit." It is an overlapping unit in the sense that the southeast quarter of this overlapping unit is Section 19 from Base Unit 1. The northeast quarter of this overlapping unit is Section 18 from Base Unit 2. The southwest quarter of this overlapping unit is Section 24 from Base Unit 3, and the northwest quarter of the overlapping unit is Section 13 from Base Unit 4. The order creating the overlapping unit named Petro-Hunt as the operator and authorized the drilling of an approximately two-mile horizontal well (the "lease line" well) running along the border between Sections 19 and 24 and along the border between Sections 18 and 13.

Consistent with traditional practices of allocating unit production by surface acreage, Petro-Hunt allocated 25% of the lease line well to each of the four Sections in the overlapping unit. This means that Petro-Hunt allocated 25% of the production from the lease-line well to Section 19. Then, based on the theory that the portion of production allocated from the lease line well to Section 19 would count as production from Base Unit 1, the spacing unit that consists of Sections 19 and 20, Petro-Hunt allocated that portion of production amongst the various tracts in Base Unit 1. Because Sections 19 and 20 are the same size, this effectively amounted to allocating 12.5% of the lease line production to Section 19 and 12.5% to Section 20.

The Trusts sued Petro-Hunt, arguing that it should not have "reallocated" half of the lease-line production allocated to Section 19 to Section 20. Petro-Hunt applied to the NDIC for an order clarifying that the lease line production allocated to Section 19 had to be shared with mineral interests located in Section 20. In March 2024, the NDIC issued Order No. 33435, which provided that the lease line production allocated to Section 19 should be considered Base Unit 1 production that would be shared between all the tracts in Base Unit 1—both those in Section 19 and those in Section 20. The Trusts appealed Order 33435.

The North Dakota Supreme Court's Decision

The Trusts argued that North Dakota Century Code § 38-08-08(1) limits allocation of production from a spacing unit to tracts in the spacing unit. Thus, they argued, it was improper for Petro-Hunt to allocate any production from the overlapping unit to tracts in Section 20, which is not in the overlapping unit.

The NDIC interpreted N.D.C.C. § 38-08-08(1) differently. The NDIC contended that, under the statute, the production from a spacing well that is allocated to a tract is considered as having been actually produced from that tract. Thus, the portion of the overlapping unit's production allocated to tracts in Section 19 should be treated as if it was actually produced from those tracts. Further, under § 38-08-08, production from a tract in a unit, such as Base Unit 1, is allocated amongst all the tracts in the unit. Thus, the portion of the overlapping units production allocated to Section 19 should be shared amongst the mineral interests in Base Unit 1—both tracts in Section 19 and tracts in Section 20.

The North Dakota Supreme Court noted that, in a prior decision, *Dominek v. Equinor Energy*, 982 N.W.2d 303, the Court considered whether N.D.C.C. § 38-08-08(1) considered a somewhat similar question. In that prior case (*Dominek*), as in the present case (*Garaas*), a portion of a base unit was within an overlapping unit and a portion of the base unit was outside the overlapping unit. *Dominek* considered whether N.D.C.C. § 38-08-08(1) *required* that that portion of the overlapping unit's production allocated to each base unit tract located within the overlapping unit had to be shared with all the other base unit tracts, including those outside the overlapping unit. *Dominek* concluded that N.D.C.C. § 38-08-08(1) does not require this. *Dominek* left open the question whether N.D.C.C. § 38-08-08(1) would *allow* such an allocation. Ultimately, *Garaas* concluded that N.D.C.C. § 38-08-08(1) does not authorize such an allocation.

Petro-Hunt argued, however, that even if N.D.C.C. § 38-08-08(1) does not authorize such an allocation, N.D.C.C. § 38-08-04(1)(c) gives the NDIC authority to reallocate production between two spacing units. The North Dakota Supreme Court agreed with that argument. However, the Trusts argued that, even if N.D.C.C. § 38-08-04(1)(c) authorizes the NDIC to allocate production amongst spacing units, the NDIC "did not regularly pursue that authority." The Court agreed with this argument too, noting that the language of the NDIC's orders did not expressly or implicitly authorize allocation of production to tracts in other spacing units.

Finally, the Court noted that the NDIC order approving Petro-Hunt's allocation scheme effectively enlarged the overlapping unit to include Section 20. North Dakota's spacing statute, N.D.C.C. § 38-08-07 authorizes the NDIC to enlarge or shrink units, but the NDIC had not followed the required procedures, such as the requirement to provide notice and an opportunity for all affected parties to participate in the process.

Accordingly, the North Dakota Supreme Court reversed the district court's decision and vacated the NDIC's order approving Petro-Hunt's method of allocation.

Louisiana Supreme Court Holds That Public Port's Taking of Property to Lease to LNG Facility Was Not for a "Public Purpose"

Keith B. Hall
LSU Law Center

In *Plaquemines Port Harbor & Terminal District v. Nguyen*, 2026 WL 632408 (La. 2026), a public port authority filed a quick-take action to expropriate privately-owned land near the port for the purpose of leasing the land to a liquefied natural gas export facility. The owner of the land challenged the quick-take, arguing that it was improper because the land was not being expropriated for a public purpose. The district court agreed and dismissed the Port's quick-take action. The appellate court affirmed. The Louisiana Supreme Court granted a writ of certiorari to review the case. The Supreme Court then affirmed.

Background

The Plaquemines Port, Harbor & Terminal District (the "Port") filed a quick-take expropriation action, pursuant to Louisiana Revised Statute 19:147, to expropriate 29 acres of land owned by Tuan Nguyen. The land is within a 630-acre footprint of a planned liquefied natural gas (LNG) and container port complex being developed as the Delta LNG Project. As part of the project, the Port will lease land to Venture Global LNG. Under the lease, the Port is required to acquire land, including the land owned by Nguyen, to include as part of the leased area. The Port asserted that the Delta LNG Project serves an important purpose because it promotes goals of economic growth, job creation, energy security, and environmental stewardship. The Port deposited $441,000 into the registry of the court, and stated that this amount represents just compensation for the 29 acres owned by Nguyen.

Nguyen filed a motion to dismiss, pursuant to a provision in La. R.S. 19:147 that authorizes a defendant in a quick-take action brought pursuant to the statute to file a motion to dismiss based on a contention that the expropriation sought in the quick-take action is not for a public purpose. When such a motion is filed, the motion is to be decided after a contradictory hearing in which the parties may present evidence. Nguyen supported his motion to dismiss with a contention that the Port's sole purpose for the expropriation was to lease the land to Venture Global and receive rent.

The district court granted Nguyen's motion to dismiss. The Port appealed, but the Louisiana Fourth Circuit affirmed.[1] The Louisiana Supreme Court then granted the Port's application for a writ of certiorari to review the lower courts' rulings.

[1] *Plaquemines Port, Harbor & Terminal Dist. v. Nguyen*, 421 So. 3d 176 (La. App. 4th Cir.).

The Louisiana Supreme Court's Decision

The Louisiana Supreme Court noted that both the federal and the state constitutions prohibit the taking of property, except for a public purpose and with just compensation. For example, Article I, section 4(B) of the Louisiana Constitution states, "Property shall not be taken or damaged by the state or its pollical subdivisions except for public purposes and with just compensation[.]"

The Louisiana Supreme Court also noted that Louisiana amended the state constitution to what qualifies as a "public purpose" in 2006, in response to *Kelo v. City of New London*, 125 S. Ct. 2655 (2005). In *Kelo*, a local government entity used eminent domain to take privately owned land, in order to transfer the property to another private entity for an economic development project. The owner of the property that was taken appealed, arguing that transferring the property to another private entity for economic development did not qualify as a public purpose. Therefore, the former owner argued, the taking was unconstitutional. The United Supreme Court disagreed, holding that this qualified as a "public purpose" for purposes of the Takings Clause of the United States Constitution.

Louisiana (and several other states) responded by amending their state constitutions to add so-called "anti-*Kelo*" amendments that placed narrower limits on what qualifies as the sort of "public purpose" needed to justify an exercise of eminent domain under state law. As amended, for purposes of the Takings Clause of the Louisiana Constitution, Article I, section 4(B)(2), limits "public purposes" to three categories, two of which the court did not bother discussing—"[a] general public right to a definite use of the property," and "[t]he removal of a threat to public health or safety caused by the existing use or disuse of the property."

The remaining category is "[c]ontinuous public ownership of property dedicated to one or more" of six listed "objectives and uses." One of these is six is "[p]ublic ports and public airports to facilitate the transport of goods or persons in domestic or international commerce." The Court concluded, however, that this category requires both continuous public ownership and continuous use as a public port. Because the Port is a public entity, the continuous public ownership requirement would be met. However, the Court concluded that the Port's plan to lease the land "to a private company to facilitate transportation of the private company's own goods" would effectively make the facility a "private port."

As for the economic benefits cited by the Port, the Court noted that Article I, section 4(B)(3) states, "Neither economic development, enhancement of tax revenue, or any incidental benefit to the public shall be considered in determining whether the taking or damaging of property is for a public purpose. . . ."

The Port argued that Article VI, section 21 makes an exception to the limitations contained in Article I, section 4. Article VI, section 21 states that the legislature may authorize certain types of entities, including public ports, to acquire

property via eminent domain. The Court acknowledged this provision of the Louisiana Constitution, but concluded that this provision did not apply given that the Port would not be using the land at issue as a public port, but instead would be leasing it to a private company for use as a private port. Therefore, the Court affirmed the dismissal of the Port's quick-take action.

Texas Business Court Holds That Oil and Gas Lessee Was Not Third-Party Beneficiary of Agreement Entered by Affiliate That Served as Operator

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In *Slant Operating LLC v. Octane Energy Operating, LLC*, 2025 Tex. Bus. 52 (Tex. Bus. Ct. 8th Div. 2025), Slant WTX Holdings II, LLC ("Slant Holdings") was the lessee under an oil and gas lease that was operated by an affiliated company, Slant Operating, LLC ("Slant Operating"). Slant Holdings sued a neighboring operator, alleging the defendant breached a contract between them. Later, Slant Operating filed an amended petition in which Slant Holding joined as an additional plaintiff.[1] The Texas Business Court dismissed Slant Holding's claim, holding that Slant Holding was not a third-party beneficiary to the agreement between Slant Operating and the operator of the neighboring tract.

Background

Slant Holdings owns an oil and gas lessee's interest that is operated by an affiliated company, Slant Operating. Octane Energy Operating, LLC ("Octane") operates on a tract that is adjacent to the tract where Slant Holding has its lease interest.

Slant Operating and Octane entered a "penetration waiver agreement" in which they each agreed to waive any objection to the other party seeking an "off-lease penetration permit" from the Texas Railroad Commission ("RRC"). Such a permit authorizes an operator to drill a horizontal well that passes through a tract where the operator does not have operating rights, though all the well's take points will be within the tract where the operator has operating rights. It can be advantageous for an operator to begin its horizontal well on a tract other than that from which it will extract oil and gas via take points because it is undesirable to make perforated take points in or near the "elbow" portion of a horizontal well, where the wellbore is turning from the vertical to a horizonal direction. For this reason, a company with the right to extract oil and gas from a particular tract sometimes prefers to locate the vertical and elbow portions of the well on an adjacent tract, so that the entire portion of the well on the operator's tract can be perforated to create take points.

After Slant Operating and Octane entered their agreement, Slant Operating waived all objections to Octane's applications for permits on five wells from penetration points on Slant Holding's leasehold. But when Slant Operating sought

[1] A parent company also joined as plaintiff, but the parent company later nonsuited its claim, leaving Slant Holding and Slant Operating as plaintiffs.

permits to drill a well with a penetration point on Octane's leasehold, Octane refused to waive its objections.

Slant Operating sued, alleging that Octane breached the parties' penetration waiver agreement. Slant Operating amended its petition and later filed a second amended petition. The second amended petition added Slant Holdings as an additional plaintiff. Octane filed a plea to jurisdiction, arguing that the court lacked subject matter jurisdiction for Slant Holdings' claim. Octane also filed a no-evidence motion for summary judgment, seeking dismissal of Slant Holdings' claim. Finally, Slant Operating and Slant Holding filed a motion for a partial summary judgment that Slant Holding is a third-party beneficiary of the contract between Slant Operating and Octane.

The Texas Business Court's Decision

The Texas Business Court stated that, if a plaintiff lacks standing to present a claim, a court lacks subject matter jurisdiction to hear the claim. Further, for a person to have standing to assert a claim for breach of contract, the person must be either a party to the contract or third-party beneficiary under the contract. Here, it was undisputed that Slant Holding was not a party to the contract between Slant Operating and Octane.

The plaintiffs argued, however, that Slant Holding was a third-party beneficiary of the agreement between Slant Operating and Octane. For a person to be a third-party beneficiary, the contracting parties must have intended to benefit the person. It is not sufficient that the contract will incidentally benefit the person who is not a party to it. Further, under Texas law, there is a presumption against holding that non-parties are third party beneficiaries of a contract, and "[a]ll doubts must be resolved against conferring third-party beneficiary status."

Slant Operating and Slant Holding argued that, when lessees such as Slant Holdings use contract operators such as Slant Operating, the operators "contract solely to benefit their affiliated leasehold interest owners." Thus, they argued, Slant Operating and Octane knowingly entered an agreement to benefit Slant Holdings. Octane disagreed, asserting that the agreement was "no more than a reciprocal agreement to benefit operations by two operators." The Business Court agreed, stating that even if Slant Operating intended to benefit Slant Holdings, no evidence before the court indicated that Octane intended to benefit Slant Holdings. Further, reasoned the court, a presumption that all contracts involving operators are designed to benefit the operators' leaseholders would be inconsistent with the presumption under Texas law against conferring third-party beneficiary status.

Slant Holdings and Slant Operating also pointed to RRC Statewide Rule 86. Rule 86 (16 Tex. Admin. Code § 3.86) requires an applicant for a horizontal well permit to provide written notice to all mineral owners of any offsite tracts that the proposed wellbore will traverse. The plaintiffs argued that Rule 86, combined with

the agreement between Slant Operating and Octane to waive objections to off-site penetration points, showed that the parties to the agreement intended to benefit Slant Holdings. The Business Court disagreed. For these reasons, the Court sustained Octane's plea to jurisdiction and dismissed Slant Holdings' claim.

The Court then discussed Octane's no-evidence motion for summary judgment. The Court began by noting that, in a traditional motion for summary judgment, the moving party must show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. In contrast, a no-evidence motion for summary judgment is effectively a pretrial directed verdict. The moving party must show that there is no evidence to support at least one essential element of the nonmoving party's claim. Then, the burden switches to the nonmoving party to produce "at least a scintilla of evidence raising a genuine issue of material fact as to the challenged elements." After providing that overview, the Court denied Octane's no-evidence motion for summary judgment, concluding that the motion was moot given the Court's dismissal of Slant Holdings' claim based on a lack of standing and jurisdiction.

Finally, the Court denied the plaintiffs' motion for a partial summary judgment that Slant Holdings was a third-party beneficiary, based on the same reasoning that led the Court to conclude that Slant Holdings lacked standing to assert a third-party beneficiary claim.

BOEM Proposes Amendments to Its 2024 Offshore Financial Assurance Rule

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On Monday, March 9, 2026, the Department of the Interior's Bureau of Ocean Energy Management ("BOEM") published a proposed rule (91 Fed. Reg. 11212, the "Proposed Rule") proposing amendments to the existing financial assurance regulatory framework, which was updated in 2024, 89 Fed. Reg. 31544 (the "2024 Rule"). The 2024 Rule has not been fully implemented. And, in litigation that is currently stayed, various industry associations and states are challenging the 2024 Rule. No. 2:24-cv-00820 (W.D. La. 2024). The BOEM's stated purpose underlying the Proposed Rule is to respond to E.O. 14154 (Unleashing American Energy) and "to reduce the economic burden on OCS lessees and grant holders."

Proposed changes to the 2024 Rule include (but are not limited to) the following:

- BOEM proposes to consider the financial viability of predecessors with joint and several liability when evaluating whether to require supplemental bonding.
- When decommissioning is scheduled within one year of receipt of a demand for supplemental bonding, the Proposed Rule would give BOEM the discretion to "accept third-party decommissioning contracts and decommissioning schedules . . . in lieu of providing new supplemental financial assurance[.]"
- BOEM proposes removing the requirement in the 2024 Rule that a lessee challenging a supplemental bonding demand provide an appeal bond in an amount equivalent to the supplemental bonding demand to obtain a stay of that demand pending appeal.
- BOEM proposes to explicitly reference dual-obligee bonds (which identify multiple obligees) "as an acceptable financial instrument for financial assurance[.]"

The period to submit comments in response to the Proposed Rule closes on May 8, 2026.

Texas Court Resolves Lease Dispute

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In *MRC Permian Co. v. Point Energy Partners Permian LLC*, 2025 WL 3532442 (Tex. App.—El Paso), the parties disputed issues that included quasi-estoppel, the effect of a lessor's failure to timely make and designate unit declarations under leases with continuous drilling clauses, and the proper interpretation of a lease provision that specified the maximum size of a production unit that could be held by a horizontal well.

Background

In 2014, the lessors executed four identical leases that granted MRC oil and gas lease rights covering about 4,000 acres in Loving County, in West Texas. Each lease provided that MRC could maintain the lease beyond the three-year primary term through continuous drilling, which the lease defined as spudding a new well within 180 days of spudding the last prior well. If MRC failed to spud a new well by that time, and the lease's force majeure clause did not apply, the lease would terminate at to any areas outside designated "Production Units."

The lease required MRC to file written designation of a Production Unit within 90 days of completing a well. For horizontal wells, MRC could designate a Production Unit of no more than 160 acres in size, plus a ten percent tolerance—if the length of the horizontal wellbore within the producing formation extended less than 5,000 feet. If the horizontal wellbore extended more than 5,000 feet within the production formation, MRC could designate a Production Unit of more than 320 acres, plus a ten percent tolerance.

MRC drilled five horizontal wells during the primary term of the leases, but MRC did not file a written designation of Production Units within ninety days of drilling any of the wells. MRC mis-calendared the deadline to spud a sixth well and failed to spud a sixth well within ninety days of spudding the fifth well. The lessors, however, granted new leases to Point Energy. In June 2017, MRC filed suit against Point Energy and the lessors, bringing claims for trespass-to-try-title, breach of contract, and tortious interference with contract. The defendants answered, asserting affirmative defenses and counterclaims. MRC answered the counterclaims with its own affirmative defenses, including force majeure and quasi-estoppel. While the litigation was pending, MRC also belatedly filed designations of Production Units.

The parties filed cross-motions for summary judgment. The district court ruled on certain issues, then allowed an interlocutory appeal on certain issues, including applicability of MRC's force majeure and quasi-estoppel defenses. The

appellate court exercised its discretion to accept the appeal, then issued a ruling.[1] The Texas Supreme Court granted a petition for review. The Court then, as a matter of law, found that force majeure did not apply and that MRC's leases had terminated as to any areas outside Production Units.[2] The Supreme Court remanded to the appellate court issues relating to quasi-estoppel and the size of the Production Units where MRC's lease rights were retained.

The Appellate Court's Ruling After Remand

The Texas appellate court addressed the quasi-estoppel issue, noting that MRC argued that quasi-estoppel should defeat the lessors' argument that MRC's lease rights had terminated because the lessors accepted royalty payments after the date when they assert the lease terminated.

Analyzing this question, the court explained that "[q]uasi-estoppel precludes a party from asserting, to another's disadvantage, a right inconsistent with a position previously taken," and that "acceptance of benefits" can be an action that will trigger quasi-estoppel when a party's prior acceptance of benefits is inconsistent with a position that the party later asserts, and it "would be unconscionable to allow a party to maintain a [current] position inconsistent with" the prior acceptance of benefits. The court also noted, "Unlike equitable estoppel, quasi-estoppel does not require misrepresentation by the estopped party and ignorance or reliance by the other party as essential elements." However, the parties' relative knowledge is relevant in determining whether it is appropriate to apply quasi-estoppel.

The court pointed to various cases in which a court rejected the application of quasi-estoppel. In one of these cases, a court held that a lessor's acceptance of royalty checks did not preclude the lessor from arguing that pooling was invalid when the lessor believed that she was owed significant royalties with or without pooling and she made a contemporaneous objection to the lessee's claim that it had created a pooled unit. In another, a court held that post-termination acceptance of shut-in royalties could not trigger quasi-estoppel in the absence of evidence that the recipient knew material facts.

In this case, Point Energy and the lessors did not know the extent of lease rights retained by MRC or how much they were entitled to receive from MRC. Further, they notified MRC that any royalty payments paid during the litigation would be subject to an accounting regarding how much money had been owed by MRC and whether there had been an overpayment. Under these circumstances, the court concluded that it was not unconscionable to allow Point Energy and the

[1] *MRC Permian Co. v. Point Energy Partners Permian, LLC*, 624 S.W.3d 643 (Tex. App.—El Paso 2021), *rev'd in part*, 669 S.W.3d 796 (Tex. 2023).
[2] *Point Energy Partners Permian, LLC v. MRC Permian Co.*, 669 S.W.3d 796 (Tex. 2023).

lessors to assert that MRC's lease had terminated. Therefore, quasi-estoppel did not apply and therefore did not preclude lease termination.

The court proceeded to determine the size of the Production Units. Point Energy and the lessors argued that MRC's failure to timely file a designation of Production Units precluded MRC from declaring Production Units any larger than the minimum size provided under the leases—160 acres. The court reasoned that the validity of that argument depended on whether the lease clauses providing that MRC would designate and file unit declarations within ninety days of completing a well were special limitations or contractual covenants. The court stated that a special limitation in an oil and gas lease is a provision that the lease will automatically terminate, in whole or part, upon the occurrence of a specified event. If the provision indicating that MRC should make and file declarations within ninety days was a special limitation, then perhaps the leases terminated outside the minimum area for a Production Unit—160 acres.

On the other hand, a covenant is a contractual promise, the breach of which gives the non-breaching party a cause of action to seek damages or specific performance (but, by this time, MRC already had made and filed declarations, so damages would be the only viable remedy). Based on the language in the leases, the court concluded that the provision regarding MRC making and filing unit designations are covenants, not special limitations. Therefore, MRC's failure to timely make and file a designation of drilling of Production Units did not result in lease termination for areas outside the minimum-sized area for Production Units. Instead, the failure merely gave the lessors a right to seek and recover damages, if any, that flowed from the breach. And, MRC still had a right, after the ninety-day period, to make and designate Production Units up to the maximum size allowed.

The maximum size of Production Unit allowed depended on the length of horizontal wellbore contained in the producing formations. If the length was less than 5,000 feet, the maximum size for the production unit was 160 acres, plus a ten percent tolerance. If the length was greater than 5,000 feet, the maximum size that MRC could designate was 320 acres, plus a tolerance of ten percent. There was not any dispute between the parties regarding the path of the wellbores and the length within the producing formation. They disputed, however, which portion of the wellbore within the producing formation counted.

MRC contended that it was the entire length of the wellbore from the point where it penetrated the producing formation until the terminus of the well. But Point Energy and the lessors contended that the parties only intended to count the portion of the well between the first and last take points (or perforations). They also contended that the parties had only intended to count any portion of the wellbore in which the orientation of the wellbore was horizontal or approximately horizontal, not vertical or still turning from vertical toward horizontal. For a couple of the wells drilled by MRC, the length of the wellbore would be sufficient to justify a 320-acre (plus ten percent tolerance) Production Unit under MRC's contention regarding what portion of the wellbore counted, but the length would only justify a 160-acre (plus

ten percent tolerance) under Point Energy's and the lessors' contention regarding what portion of the wellbore counted.

The court noted that the lease language contained no language indicating that only the productive portion of the well (between the take points) counted. The court also considered certain cases that Point Energy and the lessors cited, and the court distinguished those cases, concluding that they addressed issues that were not helpful in this case. Thus, the portion of the wellbore that counted was not limited to the portion between the first and last take points.

The court then addressed the contention that only portions of the wellbore where the orientation was horizontal or nearly horizontal counted. The court acknowledged that the lease language referred to the length of "horizontal" wellbore, but the lease did not define "horizontal." MRC had presented testimony that, at the kickoff point, the well began to deviate from a vertical toward a horizontal orientation, and that during the transition of orientation, while the orientation was diagonal, the wellbore was proceeding in both a vertical and horizontal direction. Therefore, from all points past the kickoff point, the well should qualify as horizontal. The court adopted this rationale. Thus, the court ultimately agreed with MRC, concluding that the entire portion of the wellbore within the producing formation counted (so long as it was past the kickoff point), from penetration point to terminus, in determining whether the length of the horizontal wellbore within the producing formation was greater than 5,000 feet. Thus, as to the two wells in question, MRC was entitled to designate a Production Unit with a size up to 320 acres, plus a ten percent tolerance.

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