

BOOK REVIEW

Oil and Gas Implied Covenants for the 21st Century, by John Burritt McArthur,
Juris Publishing Inc. 2014 (ISBN 978-1-57823-340-3)

Every student and practitioner of Oil and Gas Law is confronted with the ‘implied covenants’ to the oil and gas lease. True to their name, ‘implied covenants’ are not written in the lease, but rather have been created by the courts. The Texas Supreme Court has said that a covenant will be implied into an oil and gas lease when it is “so clearly within the contemplation of the parties . . . that they deemed it unnecessary to express, and therefore omitted to do so, or that it is necessary to imply such covenant in order to give effect to and effectuate the purposes of the contract as a whole.” *Freeport Sulphur Co. v. Am. Sulphur Royalty Co.* 117 Tex. 439, 6 S.W.2d 1039 (Tex. 1928). Implied covenants arise out of the written oil and gas lease between the parties and must be complimentary, not contrary, to the express written provisions of the oil and gas lease.

This well researched and well written book examines the origins and rationale for the widely recognized implied covenants, including: the covenant to drill a test well, the covenant to fully develop the lease; the covenant to further explore; the covenant to protect against drainage; and the covenant to market. The book also looks at the accommodation doctrine through the lens of another species of implied covenant.

The author argues forcefully for the adoption of three new implied covenants for today’s oil and gas industry: (1) Covenant to Disclose Material Facts Affecting Lessor Interest; (2) Covenant to Restore Leases upon Termination; and Covenant of Actual, Reasonable Cost Accounting. Whether these “new” and evolved implied covenants will gain traction with the courts remains to be seen, but, as the author notes, state law already addresses some of the issues involved in the recommended new implied covenants.

As an international practitioner, I do not share the author’s view that there is a place for local court created implied covenants in the international oil and gas industry. Unlike domestic U.S. oil and gas leases, international granting instruments are extremely detailed, with express covenants covering most of the issues that are addressed by implied covenants in the U.S. oil and gas lease.

For the oil and gas practitioner, this book is a good and enlightening read, and a great addition to an oil and gas library.