

Case Law to Consider When Analyzing the Exclusive Right to Use the Pore Space.

- I. A “unit agreement” is an “agreement or plan of development and operation for the recovery of oil and gas made subject thereto as a single consolidated unit without regard to separate ownerships and for the allocation of costs and benefits on a basis as defined in the agreement or plan.” Williams & Meyers, *Manual of Oil and Gas Terms*, 1098 (15th ed. 2012).
- II. The general rule, in Texas and most other jurisdictions, is “the surface overlying a leased mineral estate is the surface owner’s property, and those ownership rights include the geological structures beneath the surface.” *Lightning Oil Co. v. Anadarko E&P Onshore, LLC*, 520 S.W.3d 39, 46 (Tex. 2017); *see also Humble Oil & Ref. Co. v. West*, 508 S.W.2d 812, 815 (Tex. 1974) (recognizing surface owners own “the matrix of the underlying earth, i.e., the reservoir storage space”); *Springer Ranch, Ltd. v. Jones*, 421 S.W.3d 273, 283 (Tex. App.—San Antonio 2013, no pet.) (noting “ownership of the hydrocarbons does not give the mineral owner ownership of the earth surrounding those substances”).
- III. While severed surface owners generally own the surface and non-mineral subsurface, the Texas Supreme Court has long held that the “mineral estate is the dominant estate in the sense that the mineral owner has the right to use as much of the surface ‘as is reasonably necessary to produce and remove the minerals’ encompassed by the lease.” *Lightning Oil*, 520 S.W.3d at 48 (quoting *Getty Oil Co. v. Jones*, 470 S.W.2d 618, 621 (Tex. 1971)).
- IV. The accommodation doctrine generally provides: "Absent an agreement to the contrary, an oil-and-gas lessee has an implied right to use the land as reasonably necessary to produce and remove the minerals but must exercise that right with due regard for the landowner's rights." *Coyote Lake Ranch, LLC v. City of Lubbock*, 498 S.W.3d 53, 55 (Tex. 2016). The Texas Supreme Court has routinely recognized that the accommodation doctrine "has broad application" and applies to all potentially "conflicting estates." *Id.* at 63 (noting that the "accommodation doctrine, based on the principle that conflicting estates should act with due regard for each other's rights, has provided a sound and workable basis for resolving conflicts between ownership interests").
- V. Minerals already severed from the ground are considered personal property, not realty. See *West*, 508 S.W.2d at 817 (citing *Lone Star Gas Co. v. Murchison*, 353 S.W.2d 870 (Tex. Civ. App.-Dallas 1962, writ ref'd n .r.e.)). The Texas Supreme Court has extended this rule to CO2 injected and/or stored in connection with secondary recover operations. See *French v. Occidental Permian Ltd.*, 440 S.W.3d 1, 9 (Tex. 2014) (recognizing "the CO2 injected into the Cogdell Field remains Oxy's property") (citing *West*, 508 S.W.2d at 817).