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Eric T. Laity

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OIL, GAS, AND MINERALS

by

*Eric T. Laity**

THIS Article surveys the significant developments of the past year in the Texas law of oil, gas, and minerals. The scope of this Article is limited to decisions by Texas and federal courts, to enactments of the Texas Legislature, and to the rules and regulations promulgated by Texas administrative agencies.[1]

I. JUDICIAL DEVELOPMENTS

A. *Surface Deposits of Minerals*

In *Friedman v. Texaco, Inc.*[2] the Supreme Court of Texas reaffirmed that the rules in *Moser v. United States Steel Corp.*[3] apply prospectively only.[4] Thus, in determining whether the surface estate owner or the mineral estate owner holds title to an unnamed mineral substance, Texas courts will apply the surface destruction test as refined in *Reed v. Wylie*[5] in any case in which the mineral and surface estates were severed prior to June 8, 1983.[6] The *Moser* test[7] applies to severances that occurred after that date.[8]

The Friedman family leased their minerals to an oil company in 1939, and

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* A.B., J.D., Harvard University. Attorney at Law, Kilgore & Kilgore, Inc., Dallas, Texas.

1. The law of oil, gas, and minerals has focused historically on the exploration for and production of minerals and hydrocarbons. Pursuant to this tradition, the law of oil, gas, and minerals has not included the legal aspects of the transportation, refining, and marketing of minerals and hydrocarbons. Neither have the organization and financing of the enterprises conducting these activities been considered within the ambit of oil, gas, and mineral law. This Article preserves the traditional focus on exploration and production.

2. 691 S.W.2d 586 (Tex. 1985).

3. 676 S.W.2d 99 (Tex. 1984).

4. 691 S.W.2d at 587.

5. 597 S.W.2d 743 (Tex. 1980). Under the *Reed* test an unnamed mineral substance near the surface is part of the surface estate if any reasonable method of removal would consume, deplete, or destroy the surface. *Id.* at 747.

6. *Friedman*, 691 S.W.2d at 589. June 8, 1983, was the date of the Texas Supreme Court's first opinion in *Moser*. This opinion was subsequently withdrawn. Upon issuing the second *Moser* opinion, the court announced that the rules of the second opinion would apply prospectively from the date of the first opinion. Moser v. U.S. Steel Corp., 676 S.W.2d at 103.

7. According to the test announced in *Moser*, a severance of minerals clause includes the severance of any substance within the ordinary and natural definition of the word "minerals," regardless of the depth at which the substance is found and regardless of whether the presence or value of the minerals is known at the time of severance. *See* 676 S.W.2d at 102.

8. *Friedman*, 691 S.W.2d at 587, 589. If a given mineral estate and surface estate, severed prior to June 8, 1983, are merged and subsequently severed after June 8, 1983, the rules announced in *Moser* apply. *Id.* at 589.

some twenty years later sold the surface estate while reserving the minerals. The holder of the surface estate gave a mining lease to Texaco after the Texas Supreme Court's decision in *Acker v. Guinn*,[9] in which the court had announced the first version of the surface destruction test for determining the ownership of near-surface minerals.[10] This mining lease expressly included uranium. Based upon the specific facts of this case, the Texas Supreme Court ruled that the new owner of the Friedman tract's surface estate was the owner of the uranium under the tract, subject to his mining lease with Texaco.[11] In so ruling, the court stated that the surface destruction test as elaborated in *Acker* and in *Reed* applies to severances of mineral estates occurring prior to those decisions.[12]

B. *Mineral Deeds*

In *Blanton v. Bruce*[13] the Eastland court of appeals held that the rule of after-aquired title applies to any deed that purports to convey a definite interest in property, regardless of whether the deed's grantor expressly warrants title in the grantee.[14] The Blantons' predecessor-in-title had conveyed by deed to the Bruces' predecessor-in-title a quarter section in Eastland County, Texas, reserving an undivided one-half of all oil, gas, and other minerals underlying the tract. Previous to this grant, the Blantons' predecessor-in-title had conveyed an undivided one-quarter of the oil, gas, and minerals under the tract to a third person. The deed to the Bruces' predecessor-in-title contained no express warranty. The Blantons argued before the court of appeals that the rule of after-acquired title, as stated in *Duhig v. Peavy-Moore Lumber Co.*,[15] did not apply to their situation because the deed given to the Bruces' predecessor-in-title did not contain a general warranty.[16]

Citing the case of *Lindsay v. Freeman*,[17] the court of appeals held that the *Duhig* rule applied to any deed that purported to convey a definite interest in property, regardless of whether the grantor specially or generally warranted title in the grantee or whether the grantor warranted title in the grantee at

9. 464 S.W.2d 348 (Tex. 1971).
10. *Id.* at 352.
11. *Friedman*, 691 S.W.2d at 589.
12. *Id.*
13. 688 S.W.2d 908 (Tex. App.—Eastland 1985, writ ref'd n.r.e.).
14. *See id.* at 913-14.
15. 135 Tex. 503, 144 S.W.2d 878 (1940). The *Duhig* court stated the rule as follows:

> "[A] deed purporting to convey a fee simple or a lesser definite estate in land and containing covenants of general warranty of title or of ownership will operate to estop the grantor from asserting an after-acquired title or interest in the land, or the estate which the deed purports to convey, as against the grantee and those claiming under him." [American Jurisprudence] Vol. 19, p. 614, Sec. 16.

Id. at 507, 144 S.W.2d at 880 (quoted language presently appearing at 23 AM. JUR. 2d *Deeds* § 348 (1983)).
16. 688 S.W.2d at 911.
17. 83 Tex. 259, 264-65, 18 S.W. 727, 730 (1892) (covenants of warranty held not necessary for patronage of after-acquired title by estoppel if the conveyance purports to convey a definite estate).

all.[18] The court expressly followed the suggestions of leading writers in the field of oil and gas law in broadly applying the *Duhig* rule.[19] The court of appeals therefore upheld the trial court's judgment that the Bruces' predecessor-in-interest had received an undivided one-half interest in all of the oil, gas, and minerals underlying the quarter section in question, and that the Blantons' predecessor-in-title owned only a one-quarter mineral interest in the tract.[20]

C. Oil and Gas Leases

In *Clark v. Perez*[21] the San Antonio court of appeals found that an amendment to an oil and gas lease did not properly amend the habendum clause and thus failed to prevent the lease from expiring.[22] The Perez family had given leases at different times on two adjacent tracts in Starr County, Texas. Several years after these leases were signed the Perezes entered into an agreement with their lessee that merged the two leases together and amended various provisions of the original leases. Each lease had called for a primary term of five years. The amending agreement deleted the delay rental payments provision, and replaced it with the following:

> This lease shall not terminate at the end of the primary term or thereafter if Lessee (a) pays Minimum Annual Advance Royalty for the ensuing year; (b) is conducting Operations; or (c) does both. . . . This lease may not be maintained for a period longer than ten (10) years from the date hereof unless at or prior to such time Mining Operations are or have been conducted.[23]

The lessee conducted mining operations within the meaning of the amending agreement after that agreement entered into force.

Despite the lease amendment's specific reference to the primary term and its contemplation of a lease term longer than the original primary term even in the absence of production, the court of appeals held that since there was no production from the combined tract at the end of the five-year primary term stipulated in the later of the two original leases, the merged lease had expired prior to the bringing of suit.[24] The court recited two reasons for the amendment's failure to prolong the lease. First, the court pointed out that the lease amendment did not delete the habendum clause of the original leases.[25] Second, the court relied on the Texas Supreme Court's opinion in *Gulf Oil Corp. v. Southland Royalty Co.*,[26] which held that a lease's fixed

18. 688 S.W.2d at 913-14. The court's discussion indicates that its holding would not extend to quitclaim deeds. *See id.* at 911.
19. The court cited R. HEMINGWAY, THE LAW OF OIL AND GAS § 3.2, at 118 (2d ed. 1983); 1 H. WILLIAMS & C. MEYERS, OIL AND GAS LAW § 311.1, at 584 (1984); Hemingway, *After-Acquired Title in Texas—Part II*, 20 SW. L.J. 310, 322 (1966).
20. 688 S.W.2d at 914.
21. 679 S.W.2d 710 (Tex. App.—San Antonio 1984, no writ).
22. *Id.* at 714.
23. *Id.* at 712.
24. *Id.* at 714.
25. *Id.*
26. 496 S.W.2d 547, 552 (Tex. 1973).

term cannot be changed with words found elsewhere in the lease that are not specifically directed to the term of the lease.[27] The court of appeals believed that the amendment in the *Clark* lease failed specifically to change the term of the lease, and therefore, held that the lease expired at the end of its primary term.[28]

D. *Pooling of Oil and Gas Leases*

In *Ladd Petroleum Corp. v. Eagle Oil & Gas Co.*[29] the Fort Worth court of appeals held that production from a tract that no longer is subject to an oil and gas lease will hold in force a lease on an adjacent tract if the two tracts previously have been pooled.[30] Ladd Petroleum had been the lessee of both the Blair and Woody leases, which covered adjacent tracts in Parker County, Texas. The two leaseholds had been pooled prior to their acquisition by Ladd, and one well on the Woody tract accounted for all production within the unit. In 1976 Ladd filed a release of the Woody lease. A little more than one year later Ladd realized its mistake and secured a new lease from the Woody mineral interest owners. Two years later Ladd completed a producing well on the Blair tract, and several of the Blair mineral interest owners brought suit. The Blair mineral interest owners claimed that the release by Ladd of the original Woody lease had dissolved the pooled unit and that without production either from the Blair tract or any land pooled with the Blair tract the Blair lease had terminated pursuant to its habendum clause.

The court of appeals held that even though the Woody lease had terminated, the Woody tract itself remained pooled with the Blair lease.[31] The court of appeals noted that the pooling provision of the Blair lease permitted pooling with "other lands, lease or leases."[32] In the court's view, the lessee was not restricted to pooling the Blair lease with an existing lease, and the continuing validity of the pooling unit did not depend upon the existence of a lease covering the adjacent tract.[33] The court's opinion did not specify the exact interests that constituted the pooling unit. The pooling agreement stated that it covered "the lease acreage hereinafter expressly designated."[34] The agreement apparently described as designated lease acreage only the two tracts of land, although it might also have included descriptions of the leases.

In drawing its conclusion, the court of appeals distinguished[35] the case of *Texaco, Inc. v. Lettermann*.[36] In *Texaco* two of the three leases subject to a pooling declaration had terminated for lack of production according to the terms of their habendum clauses. Under a complicated set of facts, the *Tex-*

27. 679 S.W.2d at 714.
28. *Id.*
29. 695 S.W.2d 99 (Tex. App.—Fort Worth 1985, writ ref'd n.r.e.).
30. *Id.* at 105-06.
31. *Id.* at 106.
32. *Id.*
33. *Id.* at 105-06.
34. *Id.* at 101.
35. *Id.* at 106.
36. 343 S.W.2d 726 (Tex. Civ. App.—Amarillo 1961, writ ref'd n.r.e.).

aco court held that a pooled unit terminates when only a single lease remains in effect.[37] The *Ladd Petroleum* court distinguished *Texaco* on the overly facile ground that the Texaco leases had expired for lack of production, whereas the Woody lease had expired through a release.[38]

The result in *Ladd Petroleum* at the court of appeals level is analogous to the result in *Duffy v. Callaway*,[39] a case concerned with a community lease. In *Duffy* part of the acreage subject to a community lease was released by the lessee. The *Duffy* court refused to hold that as a matter of law the minerals underlying the released acreage did not remain communitized among all of the lessors to the community lease.[40] The law dealing with involuntary terminations of pooled units is unclear and the question of whether an analogy between the *Ladd Petroleum* circumstances and community leases ought to be drawn would benefit from a thorough analysis by the Texas Supreme Court. That court, however, refused an application for writ of error in *Ladd Petroleum*, finding no reversible error.

E. Standards of Care Owed by Lessees

In *Texas Oil & Gas Corp. v. Hagen*[41] the Texarkana court of appeals upheld a trial court's determination that an oil and gas lessee had breached the standard of highest good faith in performing pursuant to an implied covenant to market production, and affirmed the trial court's award of exemplary damages against the lessee.[42] Texas Oil & Gas was the operator of three gas wells in which the plaintiffs held royalty interests. As operator of the wells, Texas Oil & Gas had entered into a gas purchase contract with Delhi Pipeline Company, its wholly owned subsidiary. The gas purchased by Delhi Pipeline Company under this contract was first transported away from the wells to plants for dehydration and the removal of various substances, and was then transported an additional distance for delivery to several end users. The price paid by the end users to Delhi was fifteen cents per thousand cubic feet of gas higher than the price provided in the contract between Delhi and Texas Oil & Gas. Under the terms of the oil and gas leases covering the gas wells in question, the landowner royalties on gas sold at the well were to be computed as a fraction of the sale proceeds obtained by the operator. If, however, the gas was sold away from the well, the leases provided that royalties were to be computed as a fraction of the fair market value of the gas as it was produced at the well. Texas Oil & Gas had been paying the plaintiffs on the basis of the sale proceeds of the gas under its contract with Delhi rather than on the basis of the fair market value of the gas as it was produced at the well.

The trial court found that the gas purchase contract between Texas Oil &

37. *Id.* at 731.
38. 695 S.W.2d at 106.
39. 337 S.W.2d 388 (Tex. Civ. App.—Eastland 1960, no writ).
40. *Id.* at 388-89.
41. 683 S.W.2d 24 (Tex. App.—Texarkana 1984, writ requested).
42. *Id.* at 28-29.

Gas and Delhi was a sham transaction, and that the sale of the gas had in fact occurred off the premises in transactions with the end users. In finding that the gas purchase contract was a sham transaction, the trial court had determined that Delhi in these circumstances was merely the alter ego of Texas Oil & Gas. In upholding the trial court's determinations, the court of appeals noted that the two companies had the same office and field personnel, that Texas Oil & Gas directly paid all of the payroll for Delhi and directly controlled all of Delhi's business functions, and that Texas Oil & Gas had acted as Delhi's representative for the gas sales agreements with the end users in this case.[43]

The court of appeals thus upheld the trial court's finding that Texas Oil & Gas sold the gas from the plaintiffs' wells directly to the end users and affirmed the lower court's judgment on the basis of breach of contract.[44] The appellate court held that Texas Oil & Gas had breached the terms of the applicable oil and gas leases by failing to calculate correctly the royalties due to the plaintiffs.[45] The plaintiffs' royalties should have been calculated on the basis of the market value of the gas as produced at the well, subject to the applicable price ceilings established by the Natural Gas Policy Act.[46] Further, the court of appeals affirmed the lower court's award of exemplary damages against Texas Oil & Gas on the basis that an oil and gas lessee must be held to a standard of highest good faith while fulfilling its implied covenant to market the production from leases in a manner that will secure the highest price reasonably obtainable.[47] The court of appeals reasoned that such a high standard of care places the lessee in a position of trust toward its lessors and that a violation of that relationship justifies an award of exemplary damages.[48]

In concluding that the lessee was obligated to act in highest good faith toward its lessors in the matter of marketing production, the court of appeals cited *Amoco Production Co. v. First Baptist Church*.[49] In that case, however, the El Paso court of appeals inferred an implied covenant in an oil and gas lease to market natural gas at fair market value.[50] Ordinarily, a breach of an implied covenant in an oil and gas lease is considered a breach of contract and will not support an award of exemplary damages.[51] Furthermore, the *First Baptist Church* court did not address the question of exemplary damages. The Texarkana court of appeals nevertheless affirmed the exemplary

43. *Id.* at 28.
44. *Id.*
45. *Id.*
46. *Id.* at 29; *see* 15 U.S.C. §§ 3301-3432 (1982). The court of appeals was unable to ascertain whether the market value found by the district court for gas sold after passage of the Natural Gas Policy Act exceeded the Act's maximum allowable price. The court of appeals, therefore, remanded the cause to the district court. 683 S.W.2d at 29.
47. 683 S.W.2d at 29.
48. *See id.* at 29-30.
49. *Id.* at 29. The *Amoco* case appears at 579 S.W.2d 280 (Tex. Civ. App.—El Paso 1979), *writ ref'd per curiam*, 611 S.W.2d 610 (Tex. 1980).
50. 579 S.W.2d at 285-87.
51. *See* Amoco Prod. Co. v. Alexander, 622 S.W.2d 563, 571 (Tex. 1981) (exemplary damages held recoverable only when plaintiff pleads and proves a tort).

damages award.[52] The court justified its decision on the basis that exemplary damages may be awarded in a breach of contract case when the breach is accompanied by fraud, especially if the defendant's concealment requires the plaintiffs to go to great lengths and expend substantial sums to discover the fraud.[53] The court stated that bad faith was synonymous with fraud, and that the breach of a confidential relationship or the use of any device to deceive another may in a proper case amount to fraud.[54] Whether any of these arguments will persuade the Texas Supreme Court to uphold the award of exemplary damages for a breach of contract remains to be seen.

In *Fuqua v. Taylor*[55] the Dallas court of appeals upheld the imposition of a constructive trust on a geologist's overriding royalty interest in favor of owners of working interests in an overlapping but expired prospect.[56] Fuqua was a geologist who from time to time reworked unproductive gas wells in hope of making them productive. In such an effort, Fuqua acquired four leases that together formed the necessary spacing unit around an unproductive gas well. To finance the necessary reworking operations, Fuqua assigned working interests in the leases to investors in exchange for funds. With each of these investors, Fuqua signed a letter agreement that provided that " '[i]f at a later date it is deemed advisable to drill a second well you will be given the option to participate. . . .' "[57] The reworking operations were not successful, and the leases were permitted to lapse.

Prior to the completion of reworking the first well, however, Fuqua received a commitment from another operator for the acquisition of leases surrounding a nearby well. After the leases forming the spacing unit around the first well expired, Fuqua obtained a new lease on part of the first well's spacing unit and assigned the new lease to the second operator, reserving an overriding royalty for himself. At this point, the investors in the first well, who had been working interest owners in the expired leases, brought suit to impose a constructive trust for their benefit on Fuqua's overriding royalty interest.

The court of appeals held that the individual letter agreements between Fuqua and his investors established the relationship of joint venturers among them.[58] Citing the case of *Rankin v. Naftalis*,[59] the court of appeals further held that the joint venture relationship between Fuqua and each of his investors was fiduciary in character.[60] Fuqua had failed to inform the investors of

52. 683 S.W.2d at 29.
53. *Id.* at 29-30.
54. *Id.* at 30.
55. 683 S.W.2d 735 (Tex. App.—Dallas 1984, writ ref'd n.r.e.).
56. *Id.* at 738.
57. *Id.* at 737.
58. *Id.* at 738. The court of appeals does not reveal in its opinion whether the investors had entered into a joint operating agreement with Fuqua for the reworking of the first well. Whether an area of mutual interest agreement was in force among the investors and Fuqua cannot, therefore, be determined.
59. 557 S.W.2d 940 (Tex. 1977) (fiduciary duty applying to parties to oil and gas venture extends only so far as relationship of parties).
60. 683 S.W.2d at 738.

the opportunity to acquire a new lease on part of the spacing unit for the first well. The court held that this omission constituted a breach of his fiduciary duty and, therefore, supported the imposition of a constructive trust.[61]

II. STATUTORY DEVELOPMENTS

In an overhaul of the responsibilities of state leasing boards, the Texas Legislature abolished the Board for Lease of State Park Lands and the Board for Lease of Eleemosynary and State Memorial Park Lands.[62] The legislature transferred the activities of these abolished boards to the School Land Board.[63] Among the activities transferred is the supervision of the preferential right, newly created by the legislature,[64] in favor of adjacent mineral owners to lease state-owned rights-of-way.[65] The legislature enacted additional provisions regarding the appointment of individuals to the School Land Board,[66] as well as additional qualifications on the method by which the board can offer leases to the public and on the terms of those leases.[67] Despite the legislature's general consolidation of state leasing in the School Land Board, it continued the separate leasing boards for lands owned by the Texas Parks and Wildlife Department and the Texas Department of Corrections.[68] The legislature placed the appointment of individuals to these boards, the manner in which leases are offered, and the terms of those leases under strictures similar to those enacted for the School Land Board and its leases.[69]

The legislature also increased the penalties for late royalty payments to the State of Texas, and set an annual rate of interest for delinquent royalties.[70] Certain oil and gas leases and mineral leases must now include a provision requiring the payment of damages to the state for the use of the surface.[71] The amount of these surface damages will be set by rule of the Commissioner of the General Land Office.[72]

In amendments to the Relinquishment Act[73] the legislature decreed that the surface owner of land subject to the Act may not lease the land to himself or to a related party.[74] In addition, the surface owner owes the State of Texas a fiduciary duty, a duty of utmost good faith, and all of the common law duties of a holder of executive rights.[75] The attorney general may file an

61. *Id.*
62. Act of June 14, 1985, ch. 624, § 55, 1985 Tex. Sess. Law Serv. 4727, 4757 (Vernon).
63. *Id.*
64. TEX. NAT. RES. CODE ANN. §§ 34.0511-.0513 (Vernon Supp. 1986).
65. Act of June 14, 1985, ch. 624, § 51, 1985 Tex. Sess. Law Serv. 4727, 4756 (Vernon).
66. TEX. NAT. RES. CODE ANN. §§ 32.0121-.0123, .0171 (Vernon Supp. 1986).
67. *Id.* §§ 32.107-.1073, .151-.156.
68. *Id.* § 34.011.
69. *Id.* §§ 34.0131-.0135, .0191-.0192.
70. *Id.* § 52.131(c), (e)-(i).
71. *Id.* §§ 52.297, 53.155.
72. *Id.* §§ 52.297(b), 53.155(b).
73. *Id.* §§ 52.171-.187 (Vernon 1978 & Supp. 1986).
74. *Id.* § 52.187 (Vernon Supp. 1986). The surface owner, however, may become the assignee of an oil and gas lease with prior approval of the General Land Office. *Id.*
75. *Id.*

action to enforce these duties or to cause the forfeiture of the surface owner's agency rights.[76]

The legislature transferred jurisdiction over brine mining from the Texas Water Commission to the Railroad Commission of Texas.[77] The Railroad Commission is now empowered to issue permits for injection wells used for brine mining.[78] The legislature also gave the Railroad Commission jurisdiction over the discharge of waste or other substances from uranium exploration activities[79] and specified civil, administrative, and criminal penalties for violations of rules, orders, and permits issued by the commission.[80] The Railroad Commission may now authorize the confiscation of production-related equipment at the site of an abandoned well for the purpose of compensating a person who plugs the well as agent for the commission.[81]

The legislature enacted a requirement that electric logs now be filed with the Texas Railroad Commission.[82] A basic electric log made when drilling a well must be filed at the time a person files a completion report for the well or, in the case of a dry hole, at the time a person files an application to plug the well.[83] A log filed with the commission becomes public information unless the person who is required to file the log requests confidential treatment of the log.[84] Confidential treatment is temporary, lasting from one to seven years depending on circumstances.[85] During the period of confidentiality, the log remains in the possession of the person who would otherwise be required to file it, unless the commission requires the filing of the log.[86] The commission may refuse to assign an allowable for a well's production if a required electric log has not been filed for that well.[87]

The legislature also passed new royalty reporting standards. Royalty interest owners are now entitled to be furnished certain production and financial information with each royalty check.[88] No express penalties are provided for those who fail to furnish this information.

III. ADMINISTRATIVE DEVELOPMENTS

During the survey period the Railroad Commission of Texas adopted amendments to its rules dealing with the release of hydrogen sulfide gas dur-

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76. *Id.*
77. TEX. WATER CODE ANN. § 27.036 (Vernon Pam. Supp. 1986).
78. *Id.*
79. TEX. NAT. RES. CODE ANN. §§ 131.301-.302 (Vernon Supp. 1986).
80. *Id.* §§ 131.303-.305.
81. *Id.* § 89.085.
82. *Id.* §§ 91.551-.556.
83. *Id.* § 91.552.
84. *Id.* § 91.553.
85. *Id.*
86. *Id.* § 91.553(b). *Id.* § 91.554 contemplates that the commission may require that a confidential log be filed with the commission before the expiration of the period of confidentiality.
87. *Id.* § 91.556.
88. *Id.* §§ 91.501-.506.

ing drilling operations.[89] The amendments require operators to maintain certain safety equipment at specified sites, to institute training programs for employees, and to notify the commission of hazardous releases of hydrogen sulfide gas.[90] The amendments are designed better to protect the public from the dangers of hydrogen sulfide gas.[91]

The Railroad Commission also replaced its rules dealing with the allocation of skim hydrocarbons to producing properties.[92] Skim hydrocarbons are oil and condensate accumulations that result from salt water disposal skimming operations.[93] The new rule allocates these liquid hydrocarbons, for purposes of reporting production, proportionately to all producing properties that contributed water to the salt water disposal system.[94] The old rule allocated these skim hydrocarbons only to the producing properties that were classified as oil properties.[95]

89. Tex. R.R. Comm'n., 10 Tex. Reg. 2069 (1985) (amending 16 TEX. ADMIN. CODE § 3.36).
90. *Id.*
91. *Id.*
92. Tex. R.R. Comm'n, 10 Tex. Reg. 4279 (1985) (replacing 16 TEX. ADMIN. CODE § 3.56).
93. *Id.* at 4280.
94. *Id.*
95. *See id.*