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# Mineral Resources

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# MINERAL RESOURCES

*by*

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THIS Article surveys the significant developments of the past year in Texas law concerning the exploration for and development of mineral resources.[1] Mineral resources, for the purposes of the Article, include both deposits of hydrocarbons, such as oil and gas, and deposits of hard minerals. The scope of this Article is limited to decisions by Texas and federal courts and to rules and regulations promulgated by Texas administrative agencies. This Article includes no coverage of the taxation or federal regulation of mineral resources, nor does the Article cover developments in international energy law.

This Article is divided into four sections. The first part of the Article discusses the recent developments in the case law of the mineral estate. The second part focuses on the principal cases decided during the survey period pertaining to the mineral lease. The third part draws attention to an important case dealing with deemed notice of unrecorded mineral documents. The final part summarizes recent administrative developments.

## I. THE MINERAL ESTATE

### *A. Surface Deposits of Minerals*

The decision in *Martin v. Schneider*[2] divided the courts of appeals on the application of the Texas Supreme Court's surface destruction test to royalty interests. The surface destruction test provides that a conveyance of the mineral estate does not transfer a mineral if, at the time a dispute arises, the mineral could be exploited by any reasonable method that would destroy the surface of the land.[3] The Austin court of appeals in

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1. The law of mineral resources has historically focused on the exploration for and production of minerals and hydrocarbons. Traditionally, the law of mineral resources has not included the transportation, processing, and marketing of minerals and hydrocarbons, nor the organization and financing of the enterprises conducting these activities. This Article preserves the traditional focus on the activities of exploration and production. The reader interested in completing the survey of current developments in the law governing all aspects of the exploitation of mineral resources in our society may wish to supplement his reading with treatments of current developments in public utilities law, environmental law, commercial law, and the law of business associations.

2. 622 S.W.2d 620 (Tex. Ct. App.—Corpus Christi 1981, no writ).

3. Reed v. Wylie, 597 S.W.2d 743, 747 (Tex. 1980). This decision reexamined and refined the interpretation of the surface destruction test offered in Reed v. Wylie, 554 S.W.2d 169, 172 (Tex. 1977).

*DuBois v. Jacobs*[4] had held that an earlier version of the surface destruction test applied to conveyances and reservations of any interest in minerals, including royalty interests.[5] Thus, a grantor's reservation of a royalty in oil, gas, and other minerals would not reserve to the grantor a royalty in a mineral occurring as a surface deposit.[6] The Corpus Christi court of appeals has diverged from the course set by the Austin court and has held that the surface destruction test applies only to ownership interests in minerals and not to royalty interests.[7] In *Martin* the defendants conveyed a tract of land to the plaintiffs and reserved for themselves a royalty interest in oil, gas, other hydrocarbons, and other minerals. Uranium was later discovered on the property and, at the time the plaintiffs brought suit, was being both strip mined and mined by solution. The defendants claimed a royalty from the uranium produced. The court held that the royalty interest reserved by the defendants applied not only to the mineral estate, but to minerals occurring in surface deposits as well.[8]

In reaching its conclusion, the Corpus Christi court of appeals distinguished *Martin* from *DuBois* by the fact that the Austin court decided *DuBois* before the supreme court handed down its decisions in *Reed v. Wylie*.[9] The Corpus Christi court reasoned that the *Reed* decisions expressed the high court's intention to limit the application of the surface destruction test to questions of ownership of minerals in place and not to apply the surface destruction test to royalty interests.[10] In support of its contention the *Martin* court cited two aspects of the *Reed* decisions. First, the *Martin* court pointed out that the conveyance in the *Reed* cases transferred only mineral interests and were written in terms of ownership.[11] Secondly, the appeals court stated that the high court based its development of the surface destruction test in *Reed* on the intentions of a landowner who had conveyed only his mineral estate to another and had retained the surface estate.[12] In *Acker v. Guinn*[13] the supreme court wrote that such a landowner would never have intended to convey minerals occurring as surface deposits, because such a conveyance would result in the destruction of the land's surface and the termination of the landowner's

4. 551 S.W.2d 147 (Tex. Civ. App.—Austin 1977, no writ).

5. *Id.* at 150. The earlier version of the test provided that "a grant or reservation of 'minerals' or 'mineral rights' should not be construed to include a substance that must be removed by methods that will, in effect, consume or deplete the surface estate." Acker v. Guinn, 464 S.W.2d 348, 352 (Tex. 1971).

6. *See DuBois*, 551 S.W.2d at 150.

7. *Martin*, 622 S.W.2d at 622. The court based its holding on the distinction between ownership interests and royalty interests. "[T]he owner of a mere royalty interest has no present or prospective possessory interest in the land; . . . his interest is merely a present vested incorporeal interest in the land." Jones, *Non-Participating Royalty*, 26 TEX. L. REV. 569, 569-70 (1948) (footnote omitted).

8. 622 S.W.2d at 622.

9. *Id.*

10. *Id.*

11. *Id.* at 621-22.

12. *Id.* at 621.

13. 464 S.W.2d 348 (Tex. 1971).

use of his retained estate.[14] The *Martin* court reasoned that the same concern for the surface estate was not present when a landowner conveyed both surface and mineral estates to another and retained only a royalty interest in whatever minerals were later discovered and produced.[15] The court also reasoned that a grantor who had retained only a royalty interest, as contrasted with a mineral interest, has no right to enter the surface estate and begin drilling or mining operations.[16]

The *Martin* court's discussion of the underlying purpose of the surface destruction test is subject to criticism. Although the Texas Supreme Court initially considered the general intentions of a typical landowner when formulating the first version of the surface destruction test,[17] the court was also concerned with developing a general test that could be applied with reasonable certainty without resorting to case-by-case determinations of intentions and geology. The present form of the surface destruction test ignores the intentions of a landowner at the time of the conveyance. The test now refers to mining techniques in use at the time of litigation rather than at the time of the conveyance.[18] The *Martin* court needs to show that the creation of a special qualification of the surface destruction test for royalty interests can be justified on grounds stronger than the citation of a minor line of reasoning behind the general test itself. The divergence of opinion between the Austin court of appeals and the Corpus Christi court of appeals gives the Texas Supreme Court an opportunity to settle the dispute.

### *B. The Scope of Executive Rights*

*Brown v. Getty Reserve Oil, Inc.*[19] clarified the scope of executive rights with respect to pooling and unitization.[20] The holder of the executive right to lease a given tract of land subject to a royalty interest cannot, without the consent of the royalty owner, agree through a lease provision to the pooling or unitization of the tract of land.[21] The executive is permitted, however, to communitize the tract by executing a lease that covers not only the first tract of land, but also covers other acreage owned by the execu-

14. *Id.* at 352. For this proposition the court cited Kuntz, *The Law Relating to Oil and Gas in Wyoming*, 3 WYO. L.J. 107, 112 (1949).

15. 622 S.W.2d at 621.

16. *Id.* at 621-22.

17. *See Acker*, 464 S.W.2d at 352.

18. *See Reed*, 597 S.W.2d at 747.

19. 626 S.W.2d 810 (Tex. Ct. App.—Amarillo 1981, writ dism'd w.o.j.).

20. A second significant case concerning executive rights, Manges v. Guerra, 621 S.W.2d 652 (Tex. Civ. App.—Waco 1981, writ granted), was decided during the survey period. The Texas Supreme Court has granted an application for writ of error in this case, 25 Tex. Sup. Ct. J. 384 (June 16, 1982). Because the supreme court's decision may be delivered before the publication date for this Article, this commentator prefers to delay any analysis of the case until the next survey period.

21. 626 S.W.2d at 814; *see* Brown v. Smith, 141 Tex. 425, 430, 174 S.W.2d 43, 46 (1943). *See generally* 2 H. WILLIAMS & C. MEYERS, OIL AND GAS LAW § 339.3[7] (1981) (discussion of *Brown v. Smith*).

tive.[22] The *Getty* case eliminated the apparent anomaly[23] between the effect of a community lease and a pooling clause at least as to nonexecutive royalty owners. The appeals court in *Getty* held that a community lease will not pool the acreage subject to the lease for purposes of determining shares of income due to nonexecutive royalty owners unless the nonexecutive royalty owners ratify the lease.[24] A community lease will, nevertheless, continue to pool its acreage for purposes of holding all acreage beyond the conclusion of the lease's primary term.[25] Thus, neither a community lease nor a lease pooling clause will pool nonexecutive royalty income without the royalty owners' consent.

The holder of the executive right to lease in *Getty* executed a lease covering two tracts of land. Each tract of land was subject to a one-sixteenth nonexecutive royalty interest. The lessee failed to obtain consent to the community lease from any of the owners of the nonexecutive royalty interests prior to its drilling operations. The lessee drilled a producing well on one of the tracts and then attempted to obtain the consent of the nonexecutive royalty owners to the community lease, which contained an entirety clause.[26] The entirety clause, if it had been effective against the nonexecutive royalty owners, would have pooled the two one-sixteenth nonexecutive royalty interests, and the owners of each nonexecutive royalty interest would have received income based on a one-thirty-second royalty. The owners of the royalty interest encumbering the nonproducing acreage ratified the community lease, thus qualifying for a one-thirty-second share of the income from the producing acreage. Most of the owners of the nonexecutive royalty interest on the producing tract of land refused, however, to ratify the lease. These royalty owners had the opportunity to wait for the proving of their acreage before deciding whether to consent to a pooling of their interests, because the lessee had failed to seek their consent prior to drilling. The Amarillo court of appeals held that the nonconsenting owners of the nonexecutive royalty interest encumbering the producing acreage were entitled to a full one-sixteenth of the production from the well located on their acreage.[27] By failing to obtain the consent of all interest owners to the lease prior to drilling, the lessee increased his royalty obligation to the nonexecutive royalty owners.

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22. 626 S.W.2d at 814; *see* Mathews v. Sun Oil Co., 425 S.W.2d 330, 333 (Tex. 1968). *See generally* 2 H. WILLIAMS & C. MEYERS, *supra* note 21, § 339.3[7] (discussion of *Mathews v. Sun Oil Co.*).

23. For a discussion of the executive's power to communitize tracts of land, see 2 H. WILLIAMS & C. MEYERS, *supra* note 21, § 339.3[7]. Williams and Meyers explain the apparent anomaly as a by-product of limiting the decision in Brown v. Smith, 141 Tex. 425, 174 S.W.2d 43 (1943), and argue that the case should be overruled. 2 H. WILLIAMS & C. MEYERS, *supra* note 21, § 339.3[7].

24. 626 S.W.2d at 814; *see* Montgomery v. Rittersbacher, 424 S.W.2d 210, 213 (Tex. 1968) (pooling not binding absent consent).

25. 626 S.W.2d at 814.

26. For a general introduction to entirety clauses, see 4 E. KUNTZ, A TREATISE ON THE LAW OF OIL AND GAS § 48.2 (1972); 2 H. WILLIAMS & C. MEYERS, *supra* note 2, § 521.3.

27. 626 S.W.2d at 815.

## II. THE MINERAL LEASE

### *A. The Royalty Clause*

The Federal District Court for the Northern District of Texas contributed to the growing case law on royalties from natural gas sold on the interstate market with its decision in *Bowers v. Phillips Petroleum Co.*[28] Both the Fifth Circuit and the Texas Supreme Court have held that a landowner's fair market value royalties from natural gas sold on the regulated interstate market are to be computed with reference to the various federal price ceilings on interstate gas.[29] Such computations are not to reflect the prices paid for natural gas sold on the intrastate market.[30]

The Texas Supreme Court laid a foundation for the case law dealing with interstate fair market value royalties with its decision in *Exxon Corp. v. Middleton*.[31] Although the case concerned fair market value royalties for natural gas produced and sold within the state of Texas, the *Middleton* opinion contained the following language that formed the basis of the supreme court's decision on interstate royalties in *First National Bank v. Exxon Corp.*:[32]

> Market value may be calculated by using comparable sales. Comparable sales of gas are those comparable in time, quality, quantity, and availability of marketing outlets. . . .
>
> . . . Quality also involves the legal characteristics of the gas; that is, whether it is sold in a regulated or unregulated market, or in one particular category of a regulated market.[33]

The *Middleton* court also wrote that "[t]o determine the market value of gas, the gas should be valued as though it is free and available for sale."[34] These two extracts from the *Middleton* decision figured prominently in the *Bowers* opinion. The plaintiffs in *Bowers* argued that in order to calculate their royalties, the fair market value of the natural gas sold in the interstate market should be determined with reference to the federally stipulated price for gas subject to "rollover" or "replacement" contracts. Implicit in the plaintiffs' contention was the idea that gas sold in the interstate market, if it was to be considered "free and available for sale," should be viewed as no longer subject to a gas sales contract and thus subject to a different category of federally mandated price controls.

The trial court, as one of its conclusions of law, rejected the plaintiffs' contention and ruled that the plaintiffs' fair market value royalties were to

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28. 526 F. Supp. 1320 (N.D. Tex. 1981).

29. Kingery v. Continental Oil Co., 626 F.2d 1261, 1264, 1265 (5th Cir. 1980), *reh'g denied*, 654 F.2d 721 (5th Cir. 1981); First Nat'l Bank v. Exxon Corp., 622 S.W.2d 80, 81-82 (Tex. 1981).

30. First Nat'l Bank v. Exxon Corp., 622 S.W.2d 80, 81-82 (Tex. 1981). Fair market value for royalty computation is calculated by using "comparable sales of gas." Exxon Corp. v. Middleton, 613 S.W.2d 240, 246 (Tex. 1981). Intrastate sales of gas and interstate sales of gas are not comparable. *Id.*

31. 613 S.W.2d 240 (Tex. 1981).

32. *See* First Nat'l Bank v. Exxon Corp., 622 S.W.2d 80, 80 (Tex. 1981).

33. 613 S.W.2d at 246 (citation omitted; footnote omitted).

34. *Id.*

be calculated with reference to the price in effect for the federally mandated category into which the sales contract for the natural gas fell.[35] In support of its ruling the trial court cited the proposition the Texas Supreme Court originally stated in *Middleton*: the legal quality of gas varies from one category of the regulated market to another.[36] The court explained that "rollover" and "replacement" sales could not be used to determine the market value of this particular gas because this gas and gas subject to "rollover" sales fall into different legal categories and, therefore, are not comparable sales.[37] The trial court refused to apply the *Middleton* language that stipulated that, for purposes of determining fair market value royalties, natural gas is to be considered as if it were "free and available for sale."[38] The court's reasoning was not persuasive. Rather than pointing out that the "free and available for sale" terminology in *Middleton* was applied to intrastate gas and that it should be interpreted as meaning that gas for purposes of royalty determinations should be free of contract price provisions and not primary statutory classifications, the trial court in *Bowers* simply said that it could not make an assumption contrary to the facts before it.[39]

### *B. Implied Covenants*

Parties to an oil and gas lease are able to prevent the inference of an implied covenant by including within the lease an express provision dealing with the subject matter of the implied covenant.[40] A provision in the lease incompatible with the existence of an implied covenant also prevents the inference of an implied covenant even though it fails to expressly mention its subject matter.[41] For example, to negate an implied covenant of reasonable development[42] the parties to an oil and gas lease can provide a standard for evaluating the lessee's development of the leased acreage, or the parties can provide for delay rental payments. The payment of delay rentals, although not expressly concerned with the development of the leased acreage, has been held to be incongruous with an intention that an implied covenant of reasonable development was to apply to the parties' oil and gas lease.[43]

An implied covenant of reasonable development was at issue before the Texas Supreme Court in *Dallas Power & Light Co. v. Cleghorn*.[44] The

35. *Bowers*, 526 F. Supp. at 1323.
36. *Id.*
37. *Id.* at 1324.
38. *Id.*
39. *Id.*
40. *See* 5 H. WILLIAMS & C. MEYERS, OIL & GAS LAW §§ 826, 835.3 (1982).
41. *Id.* §§ 826, 835, 846.
42. For a general introduction to the implied covenant of reasonable development, see 3 W. SUMMERS, THE LAW OF OIL AND GAS §§ 395-398 (1959); 5 H. WILLIAMS & C. MEYERS, *supra* note 40, §§ 831-835.
43. Link v. State's Oil Corp., 229 S.W. 693, 695 (Tex. Civ. App.—El Paso 1921, no writ). For a general discussion of this proposition, see 5 H. WILLIAMS & C. MEYERS, *supra* note 40, § 835.1.
44. 623 S.W.2d 310 (Tex. 1981).

defendants in *Dallas Power* entered into a number of coal and lignite leases with the plaintiffs. None of the leases before the supreme court contained a primary term,[45] but were to run in perpetuity as long as the lessee continued to make timely payments of the agreed-upon delay rentals. The parties were in the fifteenth year of the leases' term at the time the plaintiffs brought suit, and the defendants had begun no mining activities. The plaintiffs claimed that an implied covenant of reasonable development bound the defendants, and that by failing to mine the land, the defendants breached the covenant. The plaintiffs asked the trial court to declare that the lessees had forfeited the leases or, in the alternative, to enter a declaration of forfeiture conditioned upon the lessees' failure to develop the leased acreage within a certain time period set by the court. The defendants in turn claimed that the parties had expressly provided in their leases that the implied covenant of reasonable development was not to apply to the lessees' operations on the leased acreage.[46] The trial court granted a summary judgment for the defendants. The court of appeals reversed the judgment, holding that an implied covenant existed. The supreme court agreed with the defendants, reversed the appellate court, and held that the lease provisions directly contradicted any implied covenant of development.[47]

The supreme court implicitly transplanted the implied covenant doctrines developed in the area of oil and gas leases to coal and lignite leases. In time, this proposition may be the most significant point of the court's *Dallas Power* opinion and may be the proposition for which the case is cited. Three justices of the Texas Supreme Court, however, were not willing to draw an analogy from oil and gas implied covenants to the jurisprudence of coal and lignite leases.[48] These justices pointed out that the economics of coal and lignite mining require the lessee utility company to construct the ultimate lignite consuming facility.[49] In order for the construction of such a consuming facility to be feasible for a lessee, the lessee

45. Two of the leases before the court of civil appeals below had primary terms, but the court of civil appeals disposed of both these leases to the parties' satisfaction prior to the appeal to the supreme court. *See* Cleghorn v. Dallas Power & Light Co., 611 S.W.2d 893, 897 (Tex. Civ. App.—Houston [14th Dist.]), *rev'd on other grounds*, 623 S.W.2d 310 (Tex. 1981).

46. In support of their claim, the defendants cited the following passages, which were included in each of the disputed leases.

> "It is understood between the parties hereto that this lease shall not be forfeited for any failure to prosecute mining operations on the lands hereinabove described . . . nor shall any forfeiture be claimed or enforced for the breach of any implied covenant, but the title to the minerals in said land hereby leased shall not revert to First Party [lessor] or his assigns so long as the annual rentals as herein provided for are being paid to First Party [lessor] . . . .
>
> . . . .
>
> So long as Second Party [lessee] pays to First Party [lessor] the lease rentals herein specified . . . Second Party [lessee] shall have, and he is hereby granted, the exclusive right to . . . such premises . . . ."

623 S.W.2d at 311 (emendations supplied by the supreme court).

47. *Id.*

48. *See id.* at 312 (Campbell, J., concurring).

49. *Id.*

must be able to control an extremely large acreage of lignite-bearing lands for a long period of time. These distinctive conditions persuaded the concurring justices that the implied covenants developed in oil and gas law should not apply to coal and lignite leases and, specifically, that no implied covenant of reasonable development should be inferred from the *Dallas Power* leases.[50]

The concern for a lignite lessee's burden of constructing an ultimate consuming facility for the mined lignite may also have been the reason for the majority's denial of a distinction validly drawn by the court of civil appeals below. The Houston [14th District] court of civil appeals noted that the provisions in the defendants' leases[51] dealt with remedies for a breach of an implied covenant of development and not with the underlying implied covenant itself.[52] The lower court, therefore, held that the defendants were bound by the implied covenant.[53] Nevertheless, the supreme court found in favor of the lessees. The leases, however, expressly addressed only one of the remedies available for a breach of an implied covenant of reasonable development,[54] and thus the court could have construed the language merely to restrict the lessors' remedies to a suit for damages. Such a reading would allow a lessee to retain the consolidated block of acreage necessary for strip mining activities without fear that those activities would be postponed by negotiations with a hold-out landowner who once again controlled his acreage due to a forfeiture prompted by litigation over implied covenants.

A second curious feature of the majority's opinion in *Dallas Power* was its failure to discuss the effect of the leases' express provision for the payment of delay rentals on an implied covenant of reasonable development. An express provision for the payment of delay rentals, while the provision is in effect, has been held to be an effective negation of an implied covenant of reasonable development.[55] This doctrine appears sufficient to determine the outcome in this case. One possible reason for the supreme court's reluctance to rely expressly on this doctrine may have been the difficulty of applying the threshhold test of an implied covenant of reasonable development to the development of a lignite deposit. No duty under the implied covenant of reasonable development arises until paying quantities of minerals have been discovered on the lessor's property.[56] In the case of hydrocarbons this threshhold test can only be met by actual production in paying quantities.[57] Thus, the lessee cannot meet the threshhold test until he drills a well. Commentators have cited this condition as a possible

50. *Id.*
51. *See supra* note 46.
52. *Dallas Power*, 611 S.W.2d at 896.
53. *Id.*
54. *Id.*
55. Link v. State's Oil Corp., 229 S.W. 693, 695 (Tex. Civ. App.—El Paso 1921, no writ).
56. 5 H. WILLIAMS & C. MEYERS, *supra* note 40, § 832.1.
57. Exxon Co., U.S.A. v. Dalco Oil Co., 609 S.W.2d 281, 285 (Tex. Civ. App.—Corpus Christi 1980, no writ). Production in paying quantities means production of enough of the mineral to give the lessee some profit over operating expenses, but not necessarily a recovery

foundation for the rule that a delay rentals clause necessarily prevents the inference of an implied covenant of reasonable development; if delay rentals are being paid, no producing well has yet been drilled.[58] Recently, the Corpus Christi court of civil appeals held, however, that actual production from the mineral acreage is not necessary to trigger the implied covenant if the existence of a mineral in paying quantities has been demonstrated in some other way.[59] In order to base the *Dallas Power* ruling on the existence of a delay rental provision, therefore, the supreme court would have had to have held that the existence of lignite in paying quantities can be established only through actual production.

## III. NOTICE OF UNRECORDED DOCUMENTS

In *Westland Oil Development Corp. v. Gulf Oil Corp.*[60] the Texas Supreme Court affirmed the rule that an assignee of an interest in real property is charged with notice of all terms of all documents in his chain of title.[61] This rule holds true whether the documents in an assignee's chain of title are recorded or unrecorded.[62] Furthermore, under the rule an assignee is charged with notice of all terms contained in documents referenced in the documents that constitute his chain of title.[63]

The defendants in the case, Gulf Oil Corporation and the Superior Oil Company, had taken assignments of interests in a lease originally given to Mobil Oil Corporation. The Gulf and Superior interests came from Mobil through two different chains of title. One of these chains of title came through the plaintiff, Westland Oil Development Corporation, who had received from its immediate assignee an area of mutual interest agreement. This area of mutual interest agreement provided that, in the event either party to the agreement or its assignees acquired further interests in the area described, the acquiring party was obligated to convey a specified portion of the newly acquired interests to the other party. Gulf and Superior had unwittingly acquired some of their Mobil interests from an assignee of a party to Westland's area of mutual interest agreement. On learning of Gulf and Superior's acquisition of additional Mobil interests, Westland brought suit to compel their conveyance of the stipulated share.

Neither the Westland area of mutual interest agreement nor the operat-

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of initial drilling costs. *Id.*; Cowden v. General Crude Oil Co., 217 S.W.2d 109, 112 (Tex. Civ. App.—El Paso 1948, writ ref'd n.r.e.).

58. 5 H. WILLIAMS & C. MEYERS, *supra* note 40, § 835.1.

59. Exxon Co., U.S.A. v. Dalco Oil Co., 609 S.W.2d 281, 285 (Tex. Civ. App.—Corpus Christi 1980, no writ) (presence of uranium in paying quantities ascertainable without production).

60. 637 S.W.2d 903 (Tex. 1982). The *Westland Oil* case covered several other points of law that are not discussed in this Article.

61. 637 S.W.2d at 908; *see also* Wessels v. Rio Bravo Oil Co., 250 S.W.2d 668, 670 (Tex. Civ. App.—Eastland 1952, writ ref'd); Myers v. Crenshaw, 116 S.W.2d 1125, 1130 (Tex. Civ. App.—Texarkana 1938), *aff'd*, 134 Tex. 500, 137 S.W.2d 7 (1940).

62. 637 S.W.2d at 908 (rule refers to all documents including some not usually recorded).

63. *Id.*; *see also* Wessels v. Rio Bravo Oil Co., 250 S.W.2d 668, 670 (Tex. Civ. App.—Eastland 1952, writ ref'd).

ing agreement covering all the Mobil interests had been recorded. In both chains of title, however, the original assignments from Mobil referred to the operating agreement, which in turn made reference to the Westland area of mutual interest agreement. The supreme court held that Gulf and Superior were charged with notice of the Westland agreement.[64]

Key to the supreme court's holding was the court's view that the operating agreement was an element of the defendants' chain of title.[65] The defendants were therefore charged with its contents, including its reference to the Westland area of mutual interest agreement. The court of appeals had viewed the operating agreement as being outside the chain of title.[66] The lower court believed that the operating agreement did not affect title, and thus framed the notice issue as a factual question of whether a reasonable purchaser, under the circumstances, had the duty to investigate an agreement referred to in an assignment.[67]

Although the supreme court affirmed that an assignee is on notice of all documents in his chain of title, it qualified the rule by suggesting that an assignee might not be bound by the terms of an unrecorded document, a copy of which the assignee could not obtain.[68] "An entirely different result might obtain on the issue of notice," the supreme court wrote, "if, upon diligent inquiry and search, Gulf and Superior were simply unable to obtain a copy of the operating agreement."[69] The court did not pursue this reasoning because evidence existed that the defendants had a copy of the operating agreement.[70] The opinion does not indicate, however, whether a copy of the Westland area of mutual interest agreement was attached to the defendants' copy of the operating agreement.

## IV. ADMINISTRATIVE DEVELOPMENTS

During the survey period the Texas Railroad Commission amended a number of its rules and added others. The Commission's oil and gas division amended four of its rules and added new rule 71. The division amended rule 9 to provide standards and procedures for permit applications for saltwater and other oil and gas waste disposal wells.[71] The permit application procedures require notice of disposal well permit applications to local governments and other interested persons and grant local governments and affected individuals the right to request a hearing on an application.[72] The director of underground injection control may also request such a hearing on behalf of the public.[73] The amendments to rule 9 also

64. 637 S.W.2d at 908.
65. *See id.*
66. Gulf Oil Corp. v. Westland Oil Dev. Corp., 620 S.W.2d 765, 770 (Tex. Ct. App.—El Paso 1981).
67. *Id.*
68. 637 S.W.2d at 908.
69. *Id.*
70. *Id.*
71. Tex. R.R. Comm'n, Rule 051.02.02.009, 7 Tex. Reg. 651 (1982).
72. *Id.*
73. *Id.*

provide standards governing the transfer and termination of disposal well permits, technical standards governing the physical condition of disposal wells, and for reviews by applicants of nearby unplugged wells.[74] The oil and gas division amended rule 31 to permit administrative suspension and reinstatement of the allocation formula for a given gas field.[75] Under the new rule the Commission can suspend the allocation formula for a field's gas well allowables when all of the purchasers from the field have a market for all of the deliverable gas from the field. The Commission may do this only when none of the operators or purchasers from the field objects to suspending the formula, and when suspension will not cause a pipeline limitation for that field or for any other field. Suspension of the allocation formula relieves the parties from the burden of filing the Commission's form G-7.[76]

The oil and gas division amended rule 37 to permit administrative approval of applications for designation of oil or gas fields as salt dome fields.[77] Prior to these amendments applications could be approved only after rulemaking proceedings had been initiated and completed.[78] Certain fields that have been classified as salt dome fields are not subject to the requirements of rule 37, the statewide spacing rule.[79] Amended rule 46 provides standards and procedures for permit applications for fluid injection wells.[80] These amendments provide for notice and hearing as do the amendments to rule 9, which deal with waste disposal wells.[81] Pursuant to recently enacted provisions of the Texas Natural Resources Code, new rule 71 establishes standards and permit requirements for underground hydrocarbon storage.[82] The function of rule 71 is to regulate the "creation, operation, maintenance, and abandonment of underground hydrocarbon storage facilities."[83]

The Commission's surface mining and reclamation division amended several of its rules and added four new rules. Two of the amended rules and all the newly added rules regulate the plugging and closure of test holes drilled in connection with uranium ore exploration. The amendments include a definition of exploration activity[84] and distinguish between overburden removal exploration and hole drilling exploration.[85] The new rules govern the content of the permit that must be obtained prior to any exploration activity, the scope of the permit, reclamation of the drilling site, plugging, and the activity report that must be filed when ex-

74. *Id.*
75. *Id.* Rule 051.02.02.031, 7 Tex. Reg. at 2062.
76. *Id.*
77. *Id.* Rule 051.02.02.037, 7 Tex. Reg. at 1624.
78. *Id.*
79. *Id.*, 7 Tex. Reg. at 1624-25.
80. *Id.* Rule 051.02.02.046, 7 Tex. Reg. at 655.
81. *See supra* notes 71-74 and accompanying text.
82. TEX. NAT. RES. CODE ANN. §§ 91.201-.210 (Vernon Supp. 1982-1983).
83. Tex. R.R. Comm'n, Rule 051.02.02.71, 7 Tex. Reg. 659 (1982).
84. *Id.* Rule 051.07.03.050, 7 Tex. Reg. at 1106.
85. *Id.* Rule 051.07.03.200, 7 Tex. Reg. at 1625.

ploration activities have been completed.[86] Finally, the division adopted amendments to the bonding and insurance sections of its coal mining regulations.[87]

In other administrative action the Texas Railroad Commission, the Texas Department of Water Resources, and the Texas Department of Health published a joint memorandum dealing with waste disposal. Issued at the direction of the Texas Legislature, the Memorandum of Understanding defines the jurisdiction of the respective agencies in the areas of oil, gas, and geothermal resource waste disposal.[88] In addition, the agencies agreed to hold annual meetings for the purpose of discussing needed changes in the Memorandum of Understanding and encouraging communication between the agencies.[89]

86. *Id.* Rules 051.07.03.205-.208, 7 Tex. Reg. at 1625.
87. *Id.* Rule 051.07.05.001, 7 Tex. Reg. at 2474.
88. *Id.*, Memorandum of Understanding, 7 Tex. Reg. at 536.
89. *Id.*