

**WELLBORE TRANSACTIONS UPDATE -
CONVEYANCES, RESERVATIONS AND
RELATED LEASE SEVERANCE ISSUES**

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WELLBORE INTERESTS GENERALLY

- What is a “wellbore interest”?
 - It is a fractionalized carveout from a larger real property estate (typically a leasehold estate).
 - The “narrowest” form of oil and gas interest.

Petro Pro, Ltd. v. Upland Res., Inc., 279
S.W.3d 743, 752 (Tex. App.—Amarillo 2007)

- All of Seller's right, title and interest in and to the oil and gas leases described in Exhibit "A" attached hereto and made a part hereof ("Subject Leases") insofar and only insofar as said leases cover rights in the wellbore of the King "F" No. 2 Well.

Three Competing Interpretations

- 1.) conveyance conveyed all of the assignor's right, title and interest in and to the entire 704-acre unit, including the right to “extend one or more horizontal drainholes from the King “F” No. 2 wellbore into other productive areas of the lease.” – Petro Pro

- 2.) conveyance language conveyed to the assignee only rights in the wellbore of the King “F” No. 2 Well limited to the then producing formation in such well (being the Cleveland formation) - Upland

- 3.) conveyed to the assignee rights only in the wellbore of the King “F” No. 2 Well (similar to Upland’s argument) but that these rights were further limited to an undetermined 40 acres surrounding the well in accordance with the applicable density rules of the Railroad Commission
- Intervenor

Holding

- “insofar and only insofar” functions the same way as the phrase “subject to”, thus the “insofar” language created a limitation on the overall grant.

- As to vertical rights, the court held that the conveyance granted rights in the entire depth of the existing wellbore (not just as to the Cleveland formation as argued by Upland)
- additional limiting language “that does not exist.”

- As to horizontal rights, the assignments were limited only to the horizontal area covered by the actual hole of the King “F” No. 2 wellbore.

- Petro was granted the right to develop and/or rework the “King “F” No. 2 well so as to produce from any formation that might possibly be reached by the existing wellbore” but that it does “not have the right to drill horizontally beyond the confines of the existing wellbore.”
- all other appurtenant rights to use the leases (including the surface estate) as reasonably necessary to produce the King “F” No. 2 well

Unit Petroleum Co. v. David Pond Well Serv., 439 S.W.3d 389 (Tex. App.—Amarillo 2014).

- The Right to Establish Proration Units

- **RESERVATION OF WELLBORE OF TARBOX UNIT #1:** LESSOR reserves the wellbore of the Tabox (sic) Unit #1 well located on the leased premises, to be produced by LESSOR or his assigns and lessees. This reservation only applies to the wellbore as it currently exists and production only from the Cleveland formation, defined herein as between the depths of 7,930 feet subsurface to 7,990 feet subsurface, in which the wellbore is currently completed.

- Notwithstanding anything herein to the contrary, LESSEE's right of exploring, drilling and operating for and producing oil and/or gas from the Leased Premises shall be confined to the existing borehole of the Tarbox #1 well, located 467 feet from the South line and 457 feet from the West line of Section 539, Block 43, H.&.T.C. RR. Co. Survey, Lipscomb County, Texas, and any exploration, drilling, or production operations conducted by LESSEE at any other location upon the Leased Premises shall be considered a trespass for any and all purposes.

Two Differing Interpretations

- Unit argued that its lease from the Tarboxes granted it a fee simple determinable in the entire leased premises (less the wellbore of the Tarbox #1 well) and that it was also granted the exclusive right to establish proration units for any part of the leased premises.

- Pond argued that it had the appurtenant right (as the operator of the Tarbox #1 well) to “dictate the size and configuration of a proration unit of sufficient acreage necessary to allow the well’s production under appropriate governmental regulations.”

Holding

- Tarboxes had conveyed a full fee simple determinable in the subject land to Unit, less certain rights in the Tarbox # 1 well
- Unit was granted the “executive right to make decisions concerning the mineral estate” of the subject lands.

- Unit lease contained “no language reserving . . . any right to use acreage outside the wellbore [of the Tarbox #1 well]”
- the “executive right to establish a proration unit encompassing all or any part of the Unit leasehold estate passed exclusively to Unit.”

- Unit was subject to an implied duty to “designate sufficient acreage to permit the Railroad Commission to issue an allowable for the Tarbox No. 1 well.”

*Cabot Oil & Gas Corp. v. Newfield
Exploration Mid-Continent, Inc., 2017
Tex. App. LEXIS 12155 (Tex. App.—
Amarillo 2017).*

- Wellbore Interests and the Statute of Frauds

- all of its right, title and interest in and to the Oil, Gas and Mineral Leases described on Exhibit "A" attached hereto, hereinafter referred to as said Leases, less and except the EEX McCoy #27 -1 wellbore located 791' FSL and 21 07' FWL of Sec. 27 Camp School Lands, Wheeler County, Texas and the 160 acre proration unit surrounding said well from the surface down to 15,500'

Two Differing Interpretations

- First, the description in the reservation of a “160 acre proration unit” was not sufficient to satisfy the statute of frauds
- the reference to the “160 acre proration unit” was sufficient to identify the quarter section where the EEX McCoy #27-1 well was located

Holding

- the reservation was insufficient to satisfy the statute of frauds

- “[m]erely identifying the property as some specific quantum of acreage ‘surrounding’ a well does not meet the demands of the statute of frauds . . . [u]ntil designated
- “it likened to an amoeba with potentially shifting yet unknown boundaries”

Piranha Partners v. Neuhoff, 596
S.W.3d 740 (Tex. 2020).

- Potential Conflicts in the Property Description

- [Neuhoff Oil] does hereby assign, sell and convey unto [Piranha] . . . without warranty or covenant of title, express or implied, subject to the limitations, conditions, reservations and exceptions hereinafter set forth . . . all of [Neuhoff Oil's] right, title and interest in and to the properties described in Exhibit "A" (the "Properties")

- All oil and gas leases, mineral fee properties or other interests, INSOFAR AND ONLY INSOFAR AS set out in Exhibit A . . . whether said interest consists of leasehold interest, overriding royalty interest, or both . . . which [interest] shall include any working interest, leasehold rights, overriding royalty interests and reversionary rights held by [Neuhoff Oil] as of the Effective Time

Lands and Associated Well(s):

- Puryear #1-28
- Wheeler County, Texas
- NW/4, Section 28, Block A-3, HG&N Ry Co. Survey

Oil and Gas Lease(s)/Farmout Agreement(s):

- Oil & Gas Lease(s)
- Lessor: [the Puryears]
- Lessee: Marie Lister
- Recorded: Volume 297, Page 818

Piranha Partners

- assignment covered all of the lands covered by the Puryear Lease and that the reference to the Puryear B #1-28 and the NW/4 of Section 28 were only included for identification purposes

Neuhoff

- At trial court, argued that Piranha Partner's interest in the ORRI was limited only to the Puryear B #1-28 well
- On appeal, argued that assignment covered both the Puryear B #1-28 well and the entirety of the NW/4 of Section 28

Holding

- discussion of the surrounding circumstances of the assignment from Neuhoff Oil to Piranha Partners, including a review of the initial auction documentation and offering materials
- none of the foregoing analysis was determinative as to the extent of the interests the parties intended to assign in the assignment

- “[s]tanding alone, Exhibit A is at least ambiguous, if not completely unenforceable”
- “[b]ut our ‘holistic and harmonizing approach’ to construing deeds and similar documents requires us to consider all of the Assignment’s provisions”

- “shall include any . . . overriding royalty . . . held by [Neuhoff Oil] as of the Effective Time.”
- included the entirety of any overriding royalty owned by Neuhoff Oil to the extent that such interest was identified on Exhibit A

- “[a]ll presently existing contracts . . . to the extent they affect the Leases” indicated that Neuhoff Oil intended to convey its entire interest in the Puryear Lease and not just the lands and the well listed on Exhibit A
- payment of the ORRI was to be made “out of and only out of the oil and gas produced, saved and marketed pursuant to the terms and provisions of the *oil and gas leases* described on Exhibit A”

- taken in its totality, the assignment conveyed to Piranha Partners the entire ORRI owned by the Neuhoff Oil in the Puryear Lease

Dissent

- found the assignment to be ambiguous
- “Exhibit A is at least ambiguous, if not completely unenforceable”

Example Language

- Assignor hereby SELLS, ASSIGNS, TRANSFERS, GRANTS, BARGAINS, and CONVEYS unto Assignee all of Assignor's right, title and interest in and to: (i) the wellbore of the oil and gas well described on Exhibit "A" (the "Wellbore"), attached hereto; (ii) the associated oil, gas and other associated hydrocarbons produced from the Wellbore; and (iii) the oil, gas and mineral leases described on Exhibit "A," INSO FAR AND ONLY INSO FAR as they cover the Wellbore or are necessary to entitle Assignee to the production of hydrocarbons from the Wellbore and to participate in operations with respect thereto and to any pooling and unitization rights associated therewith

- “Assignor hereby SELLS, ASSIGNS, TRANSFERS, GRANTS, BARGAINS, and CONVEYS unto Assignee all of Assignor’s right, title and interest in and to i) the wellbore of the oil and gas well described on Exhibit “A” INSO FAR AND ONLY INSO FAR as to the Target Formation (the “Wellbore”)”

Potential Issues

- Lease Maintenance and Penalties
- Concurrent Surface Use
- Subsurface Interference
- Maintenance of Uniform Interest