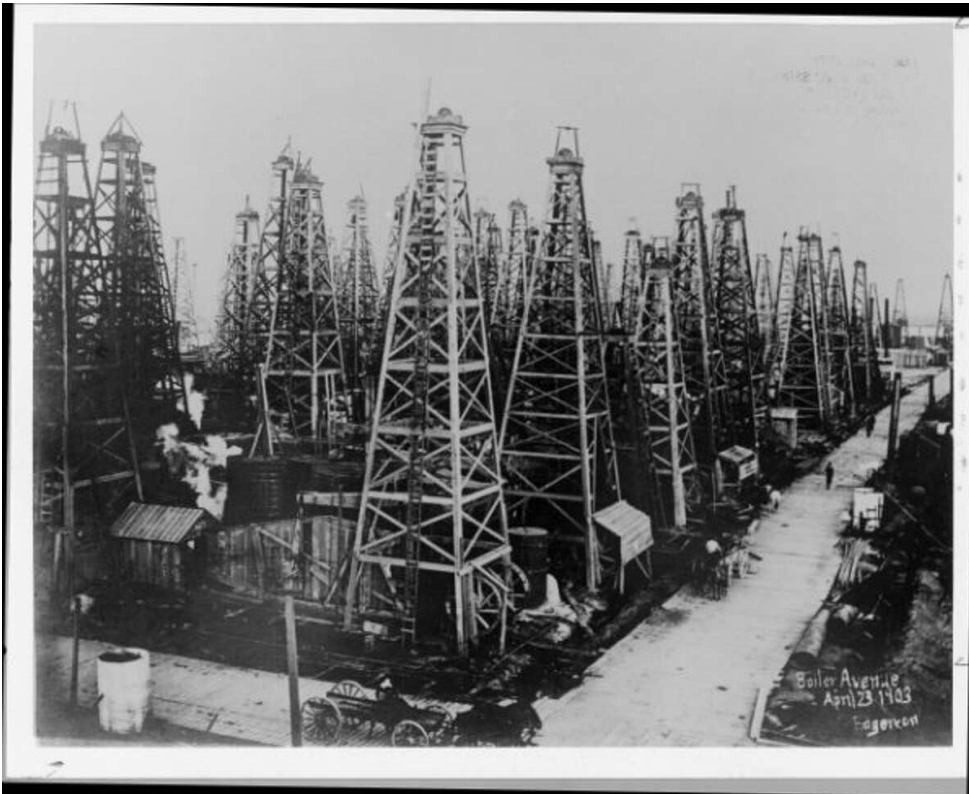


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Negotiating in the Gray Zone: Potential Liability Concerns with Carbon Sequestration Agreements in Texas

The Gray Zone



Cotton Valley Oil Operators Named in Suit

Alleged Violation
Of Anti-Trust Law
Charged by Govt.

Fifteen corporations and 18 individuals were named in a suit filed Tuesday in federal district court, Shreveport, by U. S. District Attorney Malcolm E. LaFargue against the Cotton Valley operators' committee for violation of the Sherman Anti-Trust Act.

Charging that the committee



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Pore Space



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The Question of Pore Space

- American Rule – states that the pore space belongs to the surface estate
- English Rule – states that the pore space belongs to the mineral estate

- *Mapco Inc. v. Carter*, 808 S.W.2d 262 (Tex. App. 1991) – holding that mineral estate is the owner of the underground cavern that was created from salt extraction, even after the mineral was extracted – “the owner of the fee interest in the salt retains a property interest in the cavern created by its mining activities.”
- *FPL Farming v. Texas N.R.C.C.*, No. 03-02-00477-CV (Tex. App. Feb. 6, 2003) – court assumed without discussion that the surface estate has ownership of the underground pore space
- *Myers-Woodward, LLC v. Underground Servs. Markham*, No. 13-20-00172-CV (Tex. App. Jun. 16, 2022). – holding that the surface owner owns pore space and specifically rejecting *Mapco*

Subsurface Trespass



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The Rule of Capture



The Rule of Capture

- *Pierson v. Post*
- Title to oil and gas is perfected when it is brought up above ground and contained
- Rule of non-liability.
- Allowed the industry to develop in light of imperfect knowledge of oil and gas.

The Question of Subsurface Trespass

- *Coastal Oil v. Garza Energy Trust*, 268 S.W.3d 1 (Tex. 2008) – holding that drainage of oil and gas from land caused by fracking cannot constitute injury...under the rule of capture. The court left open the possibility for claim of subsurface trespass where the mineral owner can show injury.
- *FPL Farming v. Texas N.R.C.C.*, No. 03-02-00477-CV (Tex. App. Feb. 6, 2003) – holding that as a waste plume migrates through the subsurface and causes harm, an injured party could seek damages.
- *Railroad Commission of Tex. v. Manziel*, 361 S.W.2d 560 (Tex. 1962) – holding that when injected fluids cross property lines as part of oil and gas recovery efforts, a trespass does not occur.

Showing Injury

- Sweeping away hydrocarbons.
- Making it more difficult and/or costly to drill for oil & gas.

Unitization



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The Question of Unitization

- Fieldwide Unitization
 - Reforms the leases
 - Reforms the rights of the mineral owners
 - Reforms the rights of the working interest owners
 - Field to be operated as a unified whole
 - Private state action exemption

Regulatory Taking



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