



ENERGY
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UPCOMING WEBINAR

Cases Worth a Closer Look

in North Dakota, New Mexico & Wyoming



Wednesday, September 23, 2026

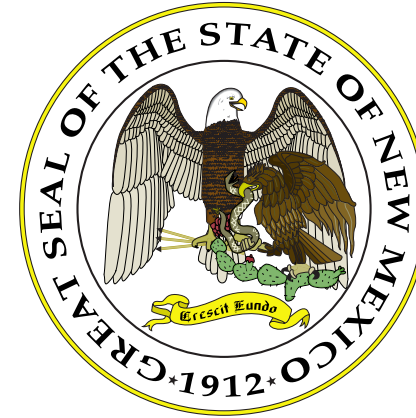
Brad Gibbs
Co-Founder





Cases Worth a Closer Look

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About the Speaker



Brad Gibbs

Co-Founder, Oliva Gibbs (licensed in TX, ND, WY, NM)

Brad Gibbs represents clients in conjunction with upstream energy transactions, complex mineral titles, pooling issues, lease analysis, joint operating agreements, surface use issues, solar development and accommodation, title curative, lithium and brine leasing and development, and general oil and gas business matters. His primary focus is on North Dakota, Texas, and New Mexico. Brad is Board Certified in Oil, Gas, and Mineral Law by the Texas Board of Legal Specialization and has been recognized as a top-rated energy and natural resources lawyer in Houston since 2018.



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Allocation Issues When Drilling Across Existing Production (ND, NM)

- We have all heard about the issues surrounding **allocation wells** and production sharing agreement **(PSA) wells** in Texas
- There are some interesting developments in North Dakota and New Mexico that are getting less attention
- These allocation issues often come up when drilling across tracts, units, or operating agreement contract areas with legacy vertical production (or even “legacy” horizontal production)
- I am going to try to avoid getting too in the weeds!



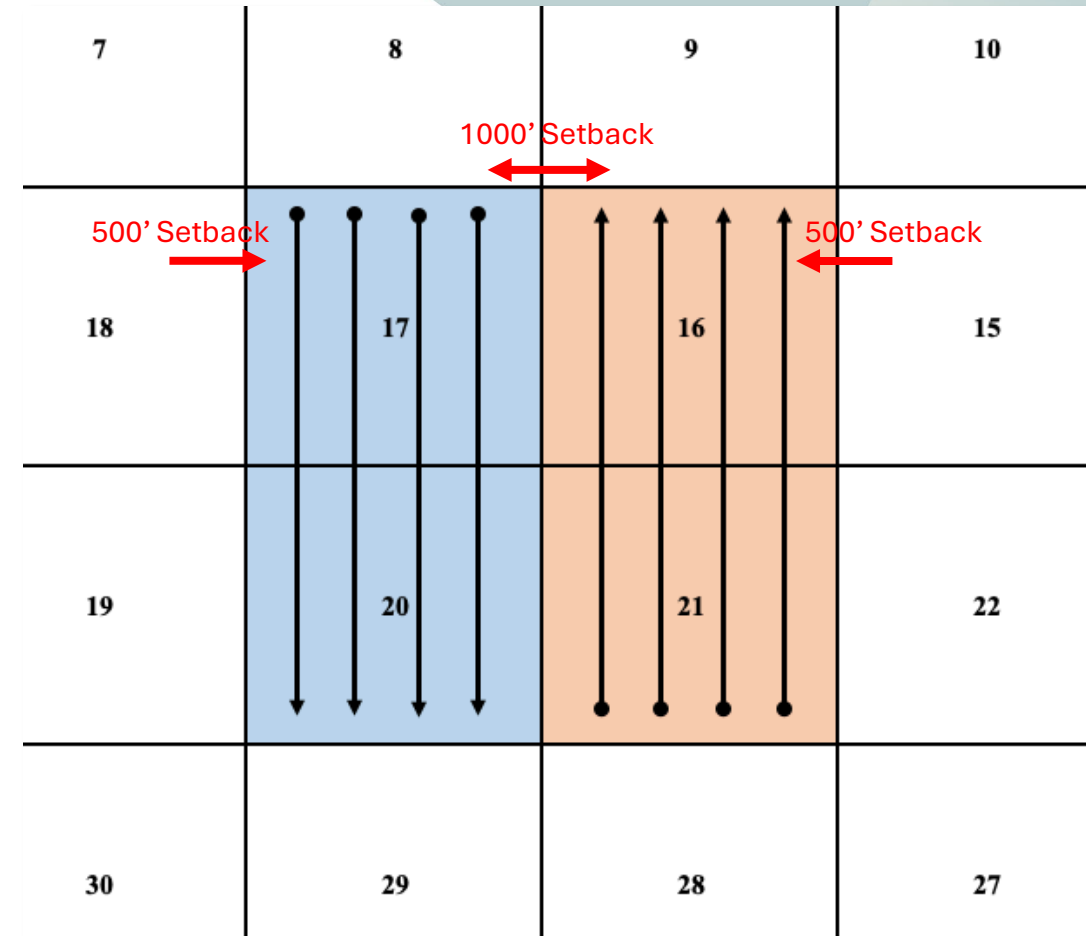
North Dakota – Royalty Allocation in Overlapping Spacing Units

- North Dakota and many other states use the 1785 **Public Land Survey System (PLSS)**
- Divides land into 6-mile by 6-mile “**townships**” that include 36 1-mile square sections of land
 - Townships are measured north/south from a defined latitudinal baseline
- Each township is also assigned a “**range**” that is measured east/west from a principal meridian
 - “Section 19-T156N-R97W”

6	5	4	3	2	1
7	8	9	10	11	12
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19	20	21	22	23	24
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31	32	33	34	35	36

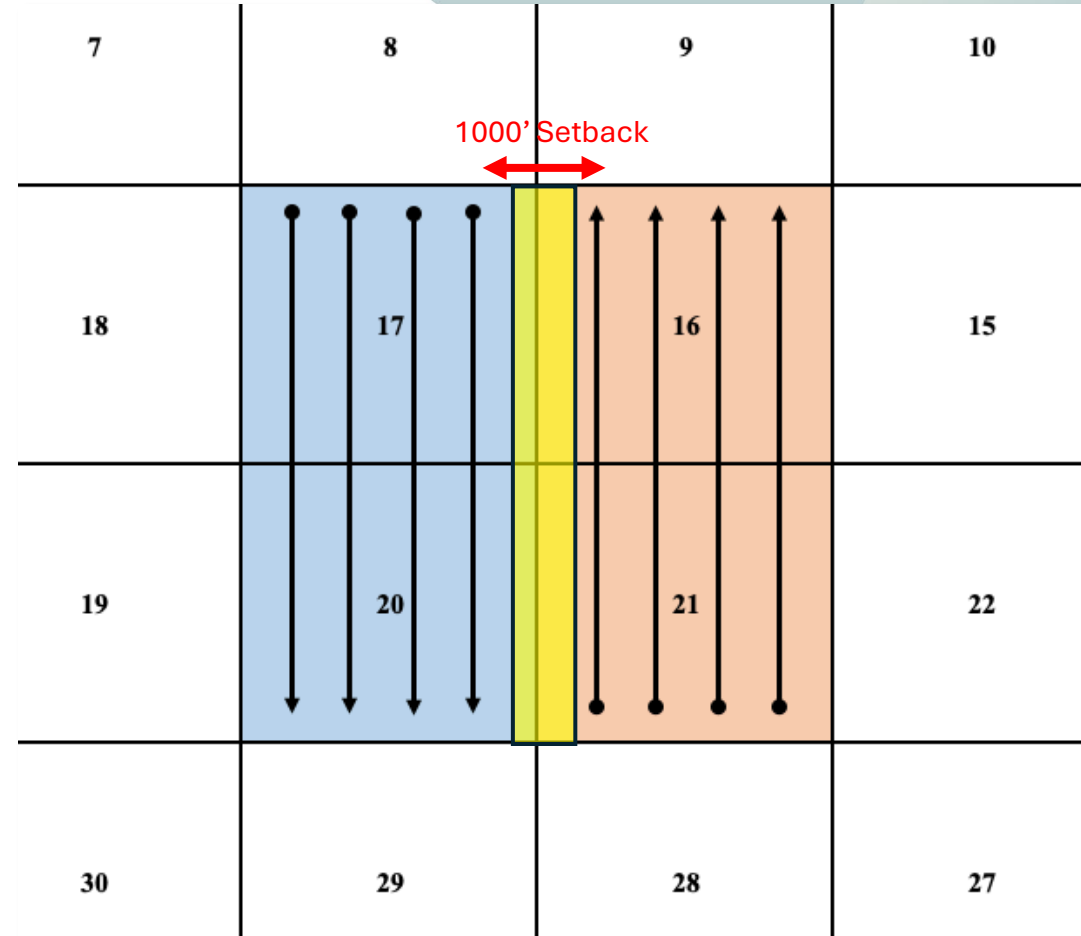
North Dakota – Royalty Allocation in Overlapping Spacing Units

- The North Dakota Industrial Commissions (NDIC) commonly permits 1,280-acre drilling and spacing units consisting of two 640-acre sections (**“1280 DSUs”**)
- Four to eight wells per section
- The wells are generally required to be at least 500 feet from each section/unit line to avoid drainage on the adjacent lands
- Closest wells as-between units are thus 1,000 feet apart



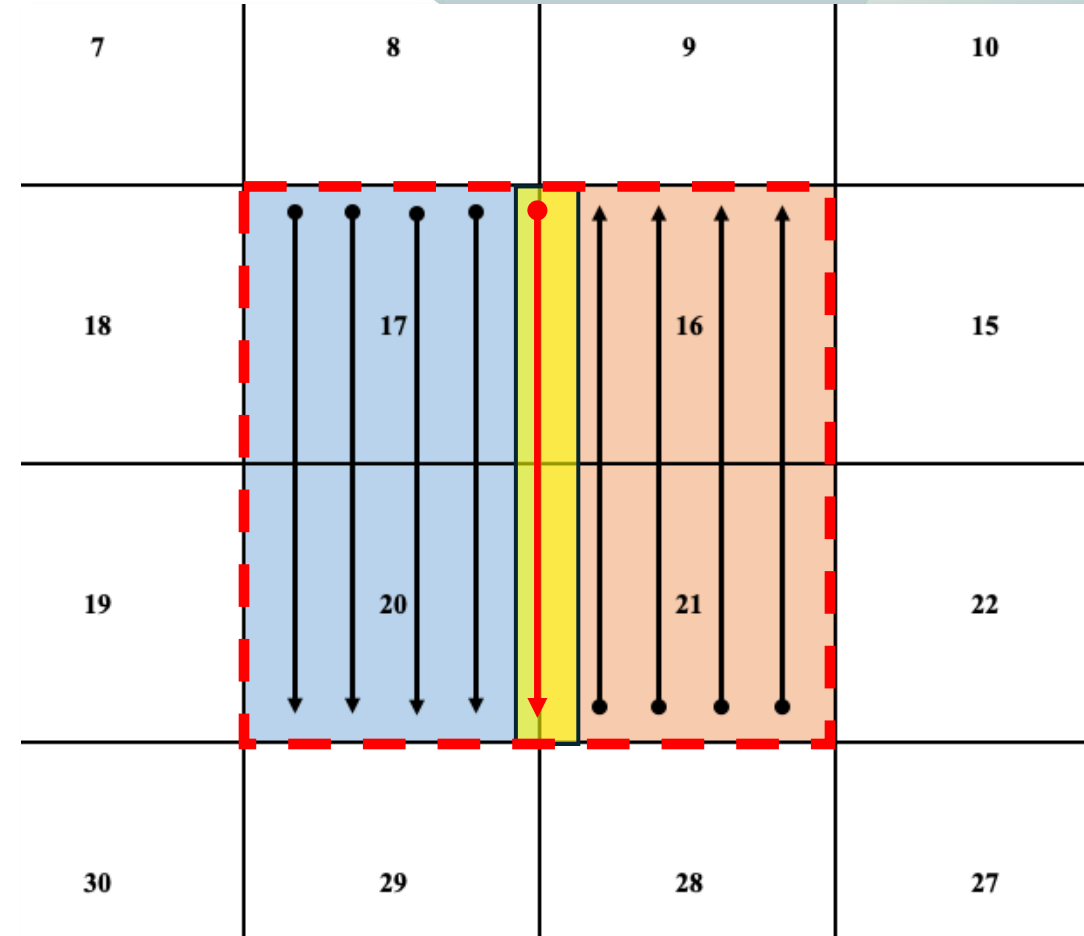
North Dakota – Royalty Allocation in Overlapping Spacing Units

- Because of these spacing and setback requirements, you generally cannot drill a well in the **1,000-foot setback corridor** (**actual corridor width may vary**)
- This creates **stranded minerals** that cannot be produced, which is against the public policy to “prevent waste and maximize oil and gas recovery”
- So, the NDIC came up with a solution...



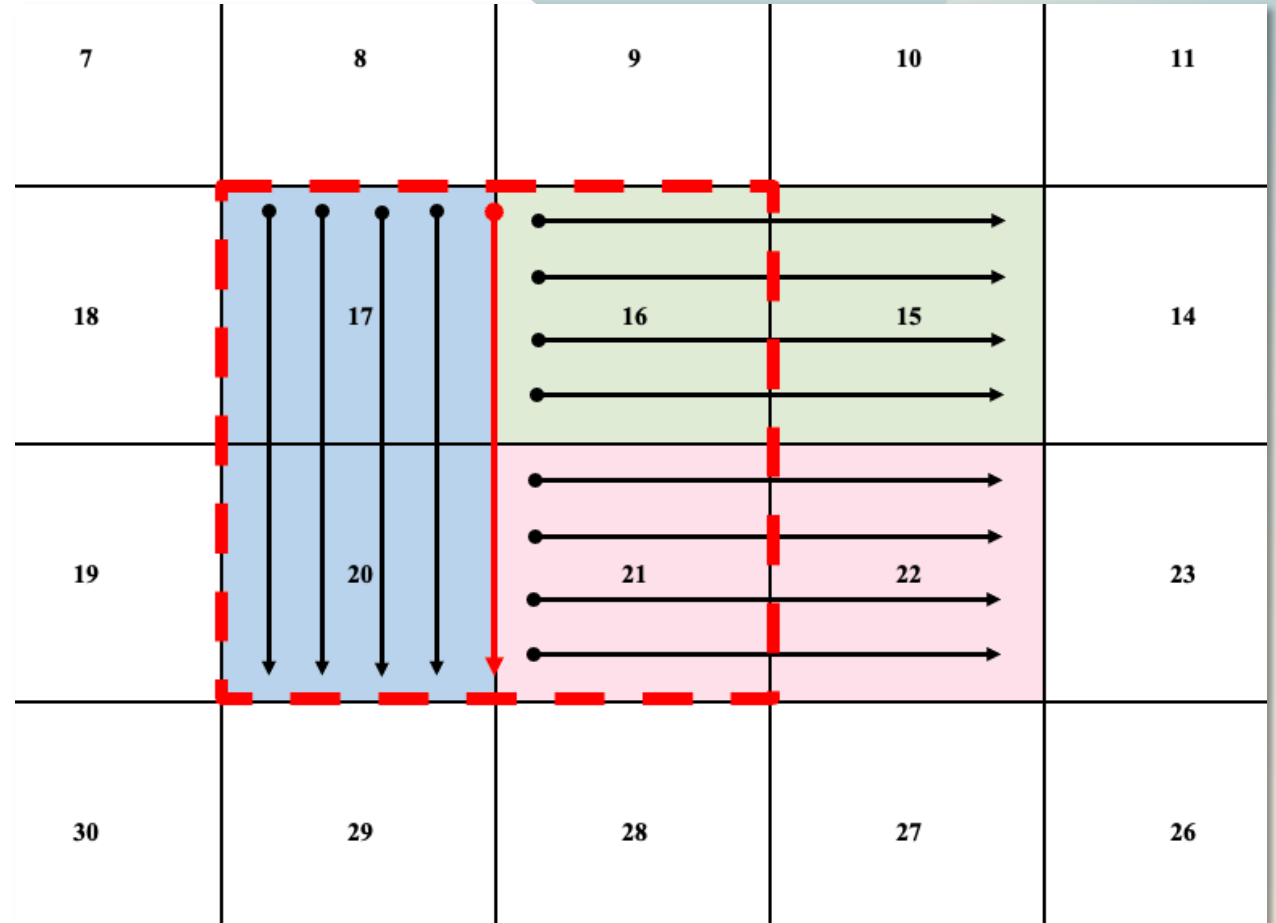
North Dakota – Royalty Allocation in Overlapping Spacing Units

- The 2,560-acre “**overlapping DSU**” allows a well to be drilled in the 1,000-foot setback corridor
- The accesses the stranded minerals that cannot be produced
- Allows one to two wells to be drilled in the setback corridor, within 250 feet of the “**base DSU**” lines
- All owners in each of the base unit sections share in production from the “**lease line wells**”
 - Simple...right?



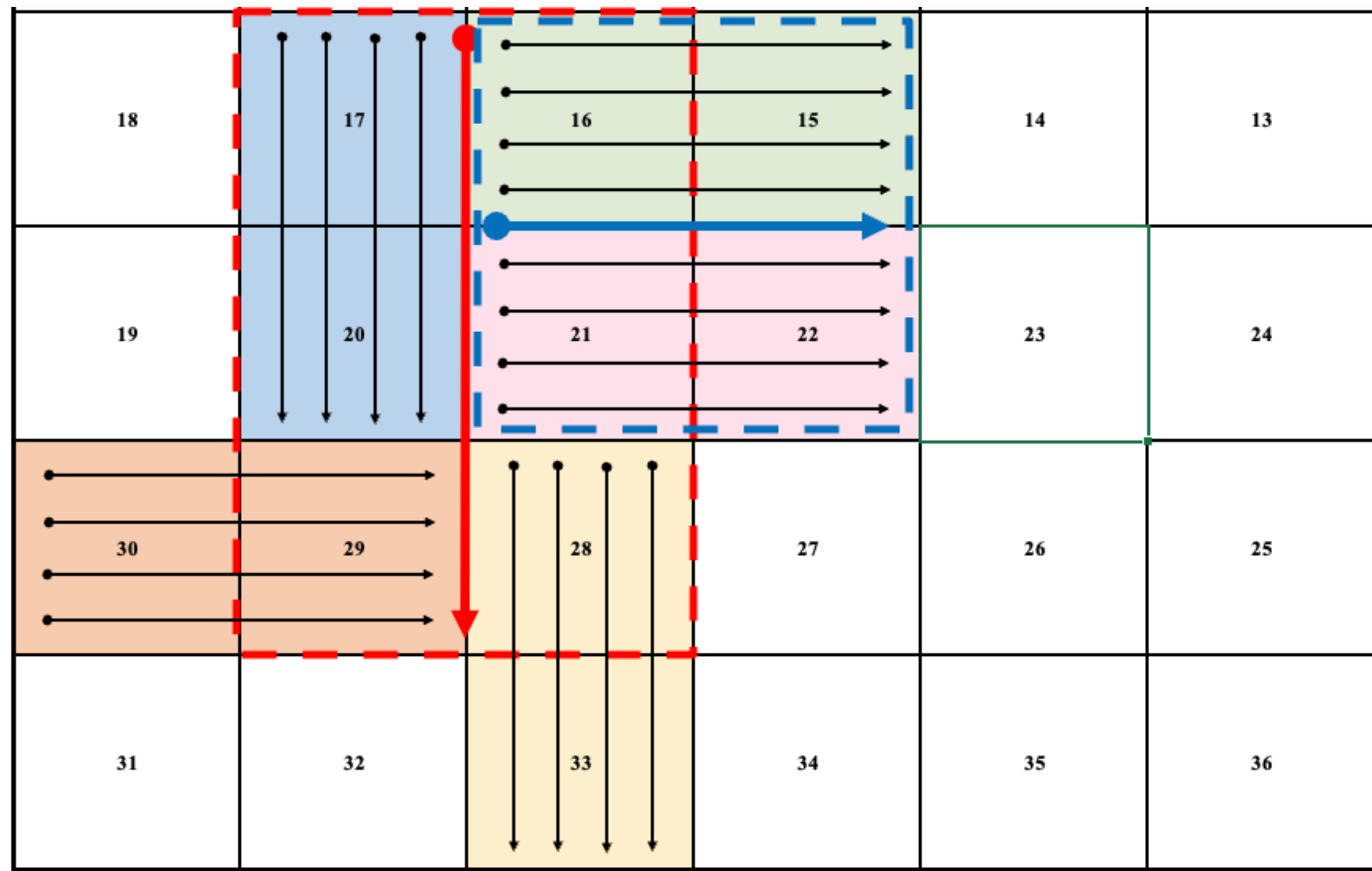
North Dakota – The Problem of Partially Overlapped DSUs

- What happens if the underlying base DSUs do not fit neatly into the overlapping box?
- **The issue:** Do owners in the outside sections (15 and 22) share in production from the lease line wells?
 - Some of them may be up to 2 miles from actual production
 - Sections 17 and 20 share in **1280/2560**
 - Sections 16 and 21 each either share in **640/2560** or **640/1280 x 640/2560** (**1/4** or **1/8**)
- Major operators lined up on both sides of the issue and did things differently for years; the NDIC and BLM also picked sides
- Inside owners don't want to be diluted but outside owners want to be included





This can get quite complicated with longer laterals



Dominek v. Equinor Energy LP (2023)

- Filed in the Federal District Court of North Dakota and certified to the ND Supreme Court.
- The Domineks owned acreage inside the overlapping DSU boundaries and did not want to share allocated production with the outside owners in their base DSU.
- Equinor argued that production should be allocated to the sections outside an overlapping DSU.
- The Supreme Court said that the NDIC was not required to allocated production based on the statutory and regulatory scheme. This scenario simply is not contemplated.
- The federal district court then dismissed the case under the “**exhaustion doctrine**.” In other words, they said this matter should be decided by the **NDIC**.

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26	25	30	29	28

Illustrative only.

After *Dominek*, two sides began to come into focus

Pro-allocation



Outside mineral owners get to share.

Anti-allocation



Outside mineral owners do not get to share.

Garaas v. Petro-Hunt (2024) – “Garaas I”

- Another case brought under facts similar to Dominek. Petro-Hunt was paying the Garaas Family Trust royalties calculated on a diluted basis by lands outside an overlapping DSU.
- The Supreme Court echoed the federal district court in Dominek, holding that the suit should be dismissed for lack of subject matter jurisdiction under the exhaustion doctrine.
- **The emerging tension:** Does the NDIC have the authority to determine how royalties should be allocated? Normally an administrative agency is barred from making a determination as to private contractual rights (or ownership) of private parties.

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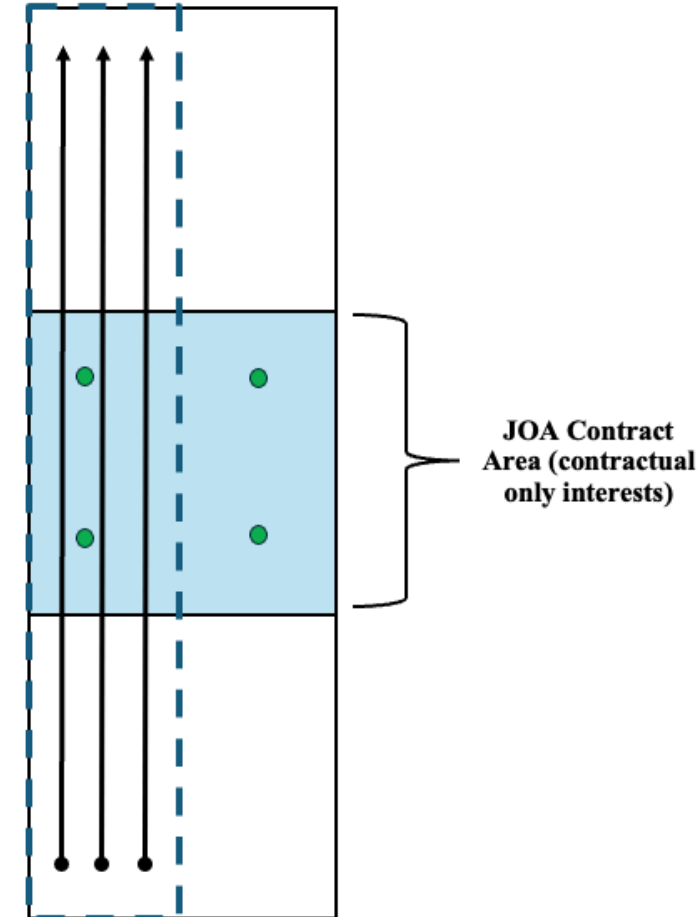
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Garaas v. ND. Indus. Comm'n (2026) – “Garaas II”

- **The central question (again):** Do base DSU owners whose lands fall outside the overlapping spacing unit share in production?
- This time, the court could not remand for failure to exhaust administrative remedies. Had to address whether (i) the NDIC has **authority** to allocate, and (ii) whether the current regulatory scheme is a **lawful exercise of that authority**.
- The court held that the NDIC **does have statutory authority** to direct allocation, but the existing regs are **not a lawful exercise** (an imperfect victory for team pro-allocation). At this time, it appears the ball remains in the NDIC's court.
- Compare to the *Opiela* case in Texas recognizing that allocation/PSA wells are *permissible*, while requiring a meaningful regulatory overhaul.
 - ...and this is where we stand today!
 - Note that the NDIC has said that if the Garaas method were to prevail, the Commission would be “reluctant to approve such lease-line spacing units...”

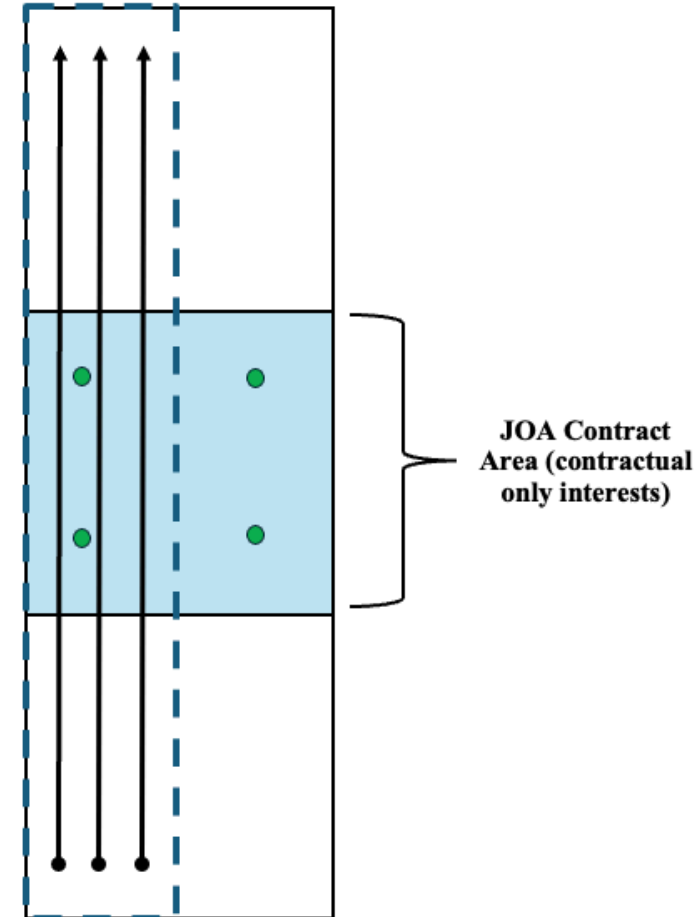
Allocation Issues in New Mexico – Rise of the “Chevron Washout”?

- There have been several cases out of New Mexico that look at the effect **forced pooling** has on **legacy JOAs**
- These cases are mostly related to “**contractual working interests**” – working interests that are carved out of (and do not exist outside of) a JOA
 - Contractual interest owners often do not own an interest in the underlying lease
- **Issue:** What happens when you create a force pooled unit covering all or a portion of the legacy JOA (blue dashed outline)?
 - Are the contractual interests under the JOA pooled or are they effectively “**washed out**”?
 - Several of these cases have included Chevron...



New Mexico – When will we get an answer? Who knows!

- **Anti-washout argument** – the OCD does not have authority to alter or extinguish contractual rights
 - The JOA remains in effect
 - No principle of law provides that compulsory pooling is a magic wand to extinguish contractual rights
- **Pro-washout argument**- contractual working interest owners are not “owners” as defined in the pooling statute
 - Instead, parties to a JOA have contributed their leasehold interests only to a specified contract area
 - This does not extend to an area that overlaps, but is larger than, the JOA contract area
 - Not my JOA, not my problem?



North Dakota – Interest on Suspended ORRIs and WIs



The Kings in the North

- Based on a recent series of federal district court decisions North Dakota operators are kings, for now, when it comes to statutory interest on suspended overrides
- **Question:** Do North Dakota operators have to pay suspense penalties on all types of late-paid interests?
- **Spoiler:** Not necessarily on overrides and working interests
- But proceed with caution...



Every state approaches division orders a little differently

- In Texas and New Mexico, signed division orders are generally a prerequisite to the obligation to make royalty payments or accrue statutory interest.

Tex. Nat. Res. Code § 91.402; N.M. Stat. Ann. § 70-10-5

- Montana law merely states that “a division order does not relieve a lessee of any liability or obligations under the terms of the underlying oil and gas lease.”

Mont. Code Ann. 82-10-110(2).

- North Dakota asserts that “royalty payments may not be withheld because an interest owner has not executed a division order.”

N.D. Cent. Code 47-16-39.3.



Many states apply division order and suspense statutes to more than just unleased mineral and royalty owners

- The **New Mexico** suspense statute applies to “all persons” legally entitled to the payment of “oil and gas proceeds.” **N.M. Stat. Ann. 70-10-3.**
 - Royalty interests
 - Overriding royalty interests
 - Working interests
- The **Texas** suspense statute defines a “payee” as “any persons legally entitled to payment from the proceeds derived from the sale of oil or gas...” **Tex. Nat. Res. Code 91.401(1)**
- **North Dakota**, on the other hand, states that it only applies to a “**mineral owner** or [a] mineral owner’s **assignee**.” **N.D. Cent. Code 47-16-39.1**
 - So, what exactly does “mineral owner” and assignee” mean?

SunBehm Gas (2020)

- In ***SunBehm Gas, Inc. v. Equinor Energy, LP***, the North Dakota federal district court held that the **ND Suspense Statute does not apply to ORRIs**.
- In a case of first impression, the court first noted that there was no statute or case law addressing whether the suspense statute applies to overrides.
- Equinor argued that SunBehm was not entitled to statutory 18% interest on an allegedly wrongly-suspended ORRI because it was not a “mineral owner or mineral owner’s assignee.”
- SunBehm argued that an override is ultimately a carveout of the mineral estate after a lease has been taken and that an override owner *is* a “mineral owner’s assignee.”
 - The court called this a “tortured construction of the language.”
 - The suspense statute applies to RI/NPRIs only and not leasehold interests.

Positive Treatment of *SunBehm* – A Federal Line in the Sand

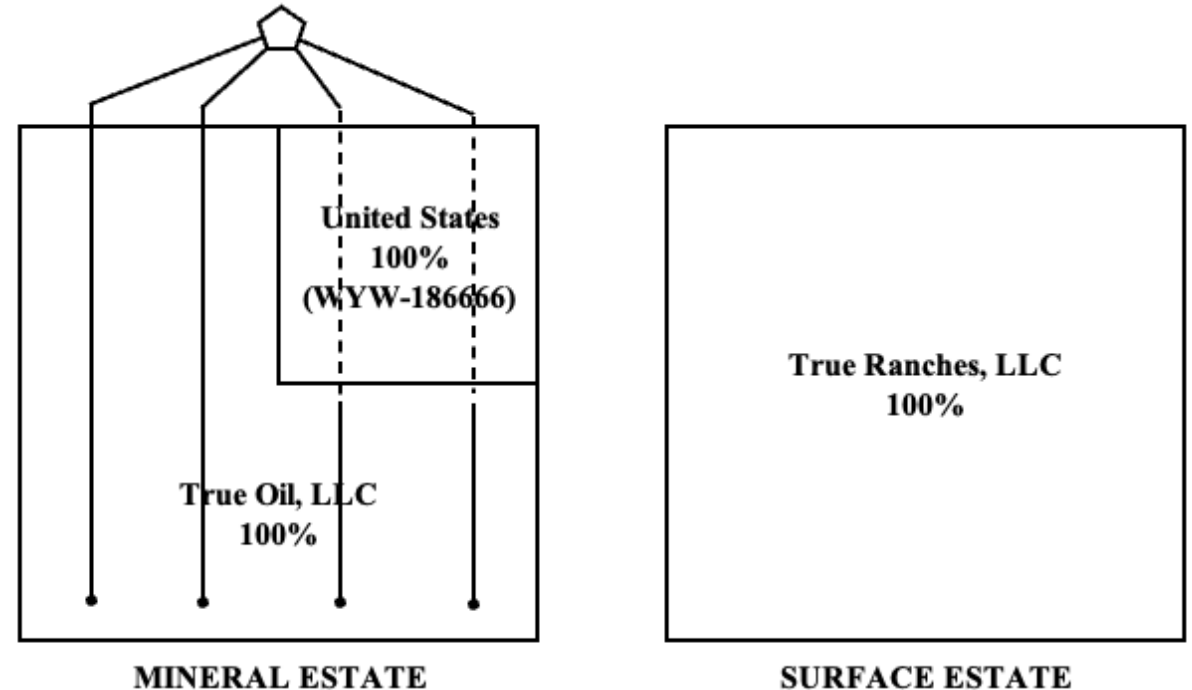
- ***Cont'l Res., Inc. v. Northland Royalty Corp. (2022)*** – We “doubt that the Suspense Statute extends to the untimely payments owed to **working interests**.” Expands *SunBehm*?
- ***Sandy River Res., LLC v. Hess Bakken Invs. II, LLC (2023)*** – Sandy River argued that *SunBehm* had been incorrectly decided. The district court doubled down on its view that an ORRI is carved out of the WI and is not an interest in the minerals themselves.
- ***MG Expl., LLC v. XTO Energy Inc. (2024)*** – Courts have previously ruled that the Suspense Statute does not apply to ORRIs.
 - Interestingly, by “courts,” the district court could only be referring to itself as the sole judicial body that has applied the “*SunBehm* Rule.”
 - MG tied to argue the legislative history of the Suspense Statute, but the court rejected this argument.

So, where do we stand in 2026?

- In North Dakota, the obligation to pay landowner royalties is of the essence in the lease contract (a condition and not a mere covenant).
- However, the question of whether operators have to pay interest on late-paid overrides and working interests is an open question.
- Because all of these decisions are at the federal trial court level, they are of little precedential value.
 - No North Dakota Supreme Court decisions
 - Court or legislature will ultimately have to rule
 - For now, the phrase “mineral owner” in the Suspense Statute appears to mean exactly that!

A Few More Recent Cases of Interest

- **True Oil LLC v. BLM** (Wyoming)
- Split estate: private surface overlying federal minerals
- Operator wanted to drill wells that traversed the federal tract but due to permitting delays and environmental lawsuits, they decided to drill through but not produce
- They obtained consent in the form of a subsurface easement from the private surface owner only
- They ignore the BLM's threat of legal action if they did not obtain a BLM permit
- Question: Is BLM approval (an APD) required?



True Oil v. BLM

- **General rule:** Only the surface owner's permission is needed for a subsurface easement.
 - See...*Lightning v. Anadarko* (but this is a Texas case, not Wyoming, and does not involve federal minerals).
- District court holds that under the Stock Raising Homestead Act (under which the patent was granted,) the surface owner likely has authority, but the BLM retains some inherent authority to regulate federal minerals.
- Therefore, the BLM can require an APD when it comes to federal lands specifically, and surface consent alone is not enough.
- On appeal, the case was dismissed on jurisdictional grounds.
 - It should have been brought under the Federal Quiet Title Act (28 U.S.C.S. § 2409a).
 - **No ruling on the merits.**
 - Future disputes will need to be brought as title claims.
 - **Expect the BLM to be involved if you are drilling through federal minerals.**



Richard v. Marathon Petro Corp. (NM) – Legacy Liability

- New Mexico Court of Appeals (2025)
- **State lease assignments** included a boilerplate release of “**all obligations**” owed by the assignor
- Dispute: What is actually released? Does the release eliminate liability for past environmental damage?
- Context: P&A, spills, abandoned infrastructure on state trust lands
- Key tension: Contract language vs. broader legal duties

What the Court of Appeals Said

- “All obligations” deemed ambiguous
- Interpreted to cover **only** contractual lease obligations
- Does not waive:
 - Tort liability (damages, negligence)
 - Statutory/regulatory duties
- Assignor (and successor) can still be liable for past conduct
- Policy: State should not subsidize cleanup via broad releases

Supreme Court of New Mexico

- The NM Supreme Court granted a cert on **November 7, 2025**, in S-1-SC-40983, *Richard v. Marathon Petroleum Corporation*, a 12-502 civil cert case, from Court of Appeals No. A-1-CA-40747. It appears on the Court's Issues list for the 2026-2027 Term, published in July 2026.
- No disposition has issued. Issues include:
 - Whether this undermines years of operator certainty
 - New Mexico already has a robust framework for P&A without spending taxpayer dollars
 - Does this ruling grant the commission unprecedented power?
 - Is this legislating from the bench?
 - Will this decision dampen energy investment in New Mexico?
- Joint amicus curiae brief filed by:
 - The New Mexico Oil & Gas Association (NMOGA)
 - The Permian Basin Petroleum Association (PBPA)
 - The Independent Petroleum Association of New Mexico (IPANM)



Implications for Ownership and Liability

- Lease assignment ≠ full liability shield
- Liability can follow the chain of title
- Successors may inherit exposure through acquisition/merger
- Older wells = higher risk (multiple operators over time)
- Court may favor holding financially viable parties accountable

Legacy Lawsuits, Generally

- The “**legacy lawsuits**” in Louisiana had a chilling effect on operations and capital investment in Southern Louisiana for decades—a growing concern in every state.
- Owners, operators, and all predecessor companies are liable for environmental activities.
- Many states are wrestling with unplugged or improperly plugged orphan or zombie wells.
- Difficult balance—who should pay? The options are basically the state (taxpayers) or the operators.
- Recent Louisiana legislation (Act 458) will take effect on 9/1/2027. This is leading to a current wave of litigation.

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