

An Introduction to Compulsory (Forced) Pooling

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- Who is this guy?
- What will we talk about?
 - What is pooling?
 - Who benefits?
 - What does it mean to be forced?
- Disclaimers (I am a lawyer, after all):
 - 1. This is not legal advice and I am not giving legal advice in answering any questions
 - 2. I am not advocating for a particular law

Basic Concepts

Rule of capture: the person who captures the “wild” natural resource becomes the owner (e.g., water, oil, natural gas, animals). This can encourage over drilling and waste.

Correlative right: the right a landowner has to produce oil and gas from his or her own property as long as he or she is not negligent during the production.

Basic Concepts

Fee Simple

Surface Estate

Mineral Estate:

- (1) Coal
- (2) Oil
- (3) Natural Gas

Mineral Reservation

Owner sells Surface Estate

Retains Mineral Estate:

- (1) Coal
- (2) Oil
- (3) Natural Gas

This is called a severed estate

Mineral Deed (or lease)

Owner Keeps Surface Estate

Sells Mineral Estate (or portion):

- (1) Coal
- (2) Oil
- (3) Natural Gas

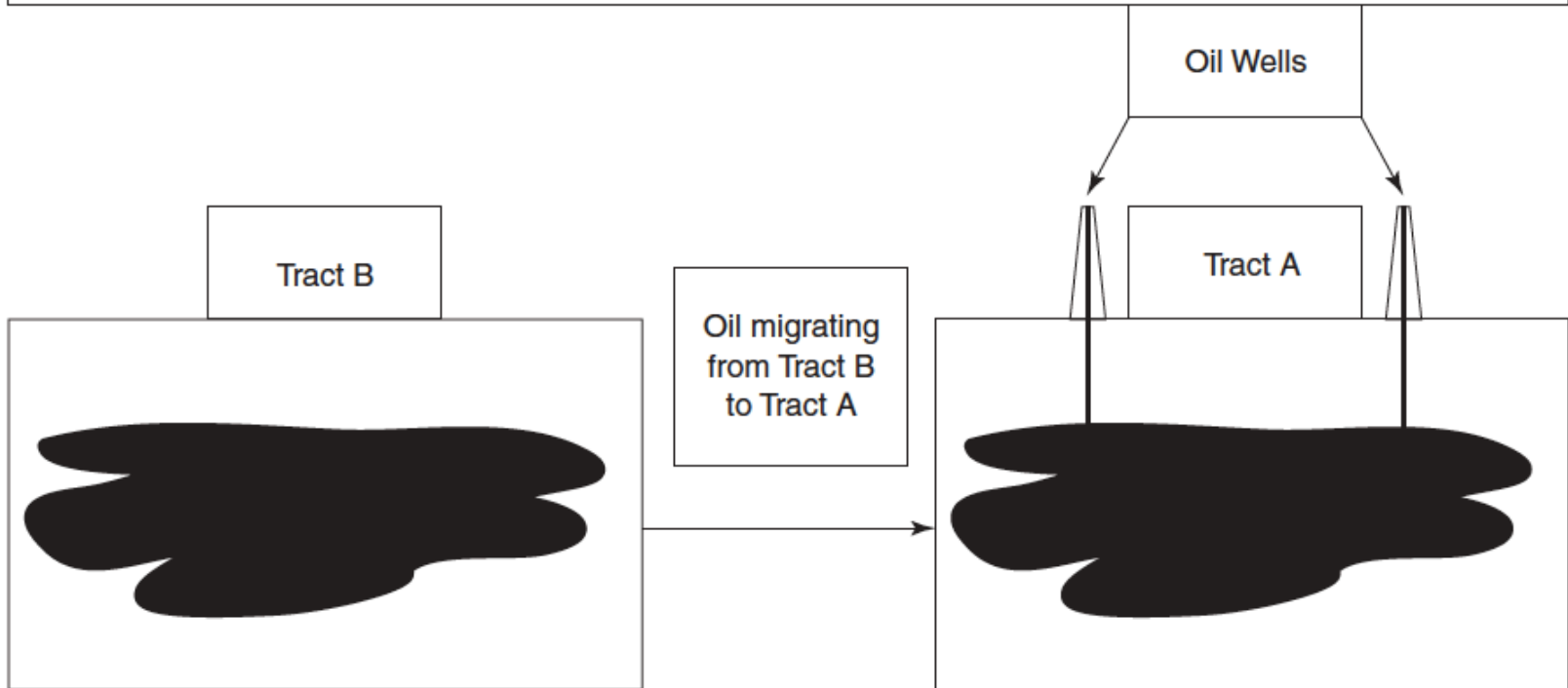
This is a severed estate

Basic Concepts

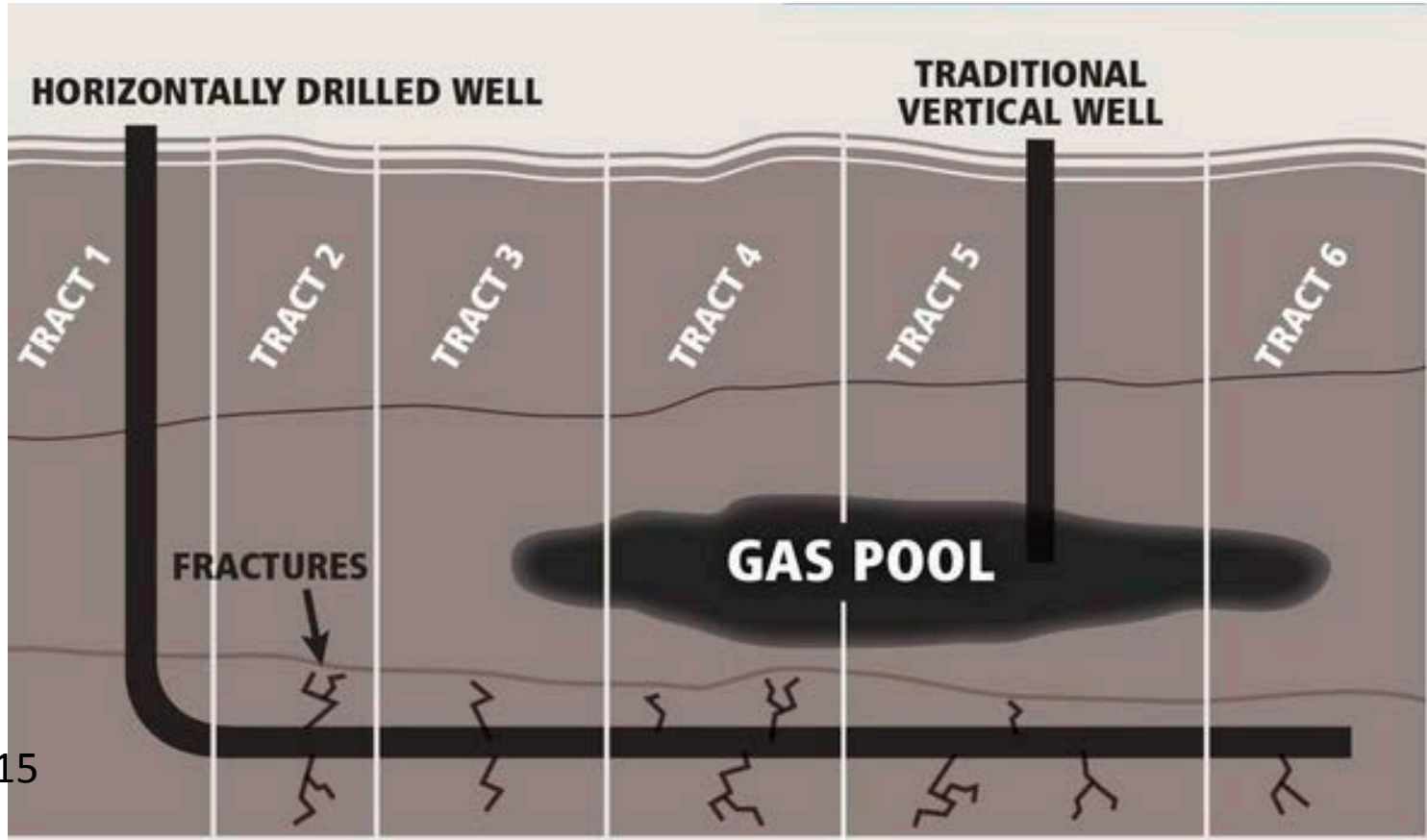
EXHIBIT 1-3 THE RULE OF CAPTURE

RULE OF CAPTURE

The owner of Tract A will gain ownership of any oil or gas that is produced from the wells on his or her property even though the resources may have come from the reserve located on Tract B.



What is Pooling?



Gas extracted through horizontal drilling and hydraulic fracturing

Source:
Charleston
Gazette,
June 21, 2015

What is Pooling?

“[T]he bringing together of small tracts sufficient for the granting of a well permit under applicable spacing rules, as distinguished from unitization, which term is used to describe the joint operation of all or some portion of a producing reservoir.”

“Pooling is important in the prevention of drilling of unnecessary and uneconomic wells, which result in physical and economic waste.”

Source: Williams & Meyers, Manual of Oil & Gas Terms 783 (15th ed.)

What is Forced Pooling?

Also known as “compulsory pooling”

“The bringing together, as required by law or valid order or regulation, of separately owned (or separate interests in) small tracts sufficient for the granting of a well permit under applicable spacing rules. “

“Compulsory pooling is now available in nearly all producing states.”

Source: Williams & Meyers, Manual of Oil & Gas Terms 179 (15th ed.)

- 39 states have some version of forced pooling laws or regulations
 - Source: <http://projects.propublica.org/tables/forced-pooling>
- West Virginia has compulsory pooling in deep wells, such as the Utica formation, but not for shallower wells, like the Marcellus
- Percentage needed varies widely:
 - North Dakota: No minimum other than “some”
 - Virginia: 25%
 - New York: 60%
 - Ohio: must have assembled the majority (90 percent or higher is recommended)
- Process varies widely. Debate tends to be not if forced pooling, but how to do it

- It depends. Generally, though, it benefits companies holding mineral lease and mineral owners who want to produce
- Classic balancing test. There is a huge potential tension here between mineral owners who want to develop and those who don't. (E.g., family squabble).
- Challenge: Partition suits have in WV used to force sales in absence of pooling
- Surface owners who don't have any mineral rights don't have a say
- May serve to protect mineral owners against rule of capture concerns

What Does It Mean to be Forced?

- It means that mineral holders will be compelled to accept production. (Again, the mineral holder may or may not be a surface owner.)
- Statute *can* provide surface owner protections, if desired
- Typically, an order can be issued by the state or regulatory body to determine the royalty rate and cost formula for sharing costs and revenues in the pooled area. Statute *can* provide for reasonable or comparable payments.

Thank you!



Questions/Contact

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