

CHAPTER XV

MINERAL INTERESTS



STANDARD 15.1

CREATION OF MINERAL INTEREST

STANDARD: A MINERAL INTEREST MAY BE CREATED BY GRANT OR BY RESERVATION. THE MINERAL INTEREST MAY BE THE ENTIRE MINERAL INTEREST IN THE REAL PROPERTY OR AN UNDIVIDED INTEREST IN THE MINERALS.

Problem A: John Doe and Jane Doe owned Blackacre as tenants by the entirety. The Does deeded an undivided one-half interest in all the oil, gas and other minerals in and under Blackacre to Simon Grant. Did Grant acquire an undivided one-half interest in all the oil, gas and other minerals in and under Blackacre?

Answer: Yes.

Problem B: John Doe and Jane Doe owned Blackacre as tenants by the entirety. The Does deeded Blackacre to Simon Grant, reserving all the oil, gas and other minerals in and under Blackacre for a term of 10 years and so long thereafter as oil, gas and other minerals might be produced. Did the Does retain title to the oil, gas and other minerals in and under Blackacre for a term of 10 years and so long thereafter as oil, gas and other minerals might be produced?

Answer: Yes.

Problem C: Same facts as in Problem B, except that the Does deeded Blackacre to Simon Grant, reserving a life estate in all oil, gas and other minerals in and under Blackacre. Later, the Does deeded all their interest in the oil, gas and other minerals in and under Blackacre to Richard

Roe. Did Roe acquire any interest in the oil, gas and other minerals in and under Blackacre?

Answer: Yes. Roe acquired an estate for the lives of the Does in all the oil, gas and other minerals in and under Blackacre.

Authorities: *Krench v Mich*, 277 Mich 168, 269 NW 131 (1936); *Rathbun v Mich*, 284 Mich 521, 280 NW 35 (1938); *Stevens Mineral Co v Mich*, 164 Mich App 692, 418 NW2d 130 (1987); *Cleary Trust v Edward-Marlah Muzyl Trust*, 262 Mich App 485, 686 NW2d 770 (2004).

STANDARD 15.2

OIL AND GAS LEASE – PRIMARY TERM

STANDARD: IF, WITHIN THE PRIMARY TERM OF AN OIL AND GAS LEASE, A WELL HAS NOT BEEN COMMENCED ON LAND COVERED BY THE LEASE OR UPON A DRILLING UNIT THAT INCLUDES ALL OR A PART OF THE LAND, THE LEASE EXPIRES UNLESS ITS PROVISIONS STATE OTHERWISE.

Problem A: On January 2, 1988, Jane Farmer, the owner of Blackacre, executed an oil and gas lease covering Blackacre to State Oil Company. The lease contained the following provision:

“It is agreed that this lease shall remain in force for a primary term of five years after this date and, if lessee shall commence operations for the drilling of a well within the primary term or any extension, the lessee shall have the right to continue drilling to completion with reasonable diligence, and the primary term shall extend as long thereafter as oil and gas, or either of them, is produced from the above-described land or from a communitized unit as provided in this lease.

“For the purpose of oil and/or gas development and production under this lease, lessor grants to lessee the right to pool or communitize the above-described land, or any part of the land, with other land to comprise an oil development unit of not more than approximately forty (40) acres and/or a gas development unit of not more than approximately one hundred sixty (160) acres, but lessee shall not be required to drill more than one well on the unit. If an oil or gas well shall not be drilled on the land described in this lease, it shall nevertheless be deemed to be upon the leased land within the meaning of all the covenants, expressed or implied, in this lease, and lessor shall participate in the royalty from such oil and/or gas development unit only in the proportion that the number of acres owned by the lessor within the development unit bears to the total number of acres included in the unit.”

State Oil Company did not commence operations for the drilling of a well on Blackacre during the five-year term. Blackacre, in whole or in part, was not pooled or unitized with any other land.

Does Jane Farmer hold title to Blackacre free of the lease on January 3, 1993?

Answer: Yes. If operations for the drilling of a well have not been commenced within the primary term, the lease ends, not by forfeiture, but by its own terms.

Problem B: Same facts as in Problem A, except that on December 1, 1992, State Oil Company commenced operations for the drilling of a well on Blackacre which was completed as a producing oil well on January 31, 1993. Is the lease to State Oil Company in effect on February 3, 1993?

Answer: Yes. The commencement of operations for the drilling of a well within the primary term continues the term of the lease so long as the well is producing, even though the well was completed after the primary term would otherwise have expired.

Problem C: Same facts as in Problem A, except that on December 1, 1992, State Oil Company pooled 20 acres from Blackacre with 20 acres from adjoining Whiteacre to create a 40-acre oil development unit. State Oil Company was the lessee of an oil and gas lease covering Whiteacre, and the lease had a pooling clause identical to that in the lease of Blackacre. State Oil Company commenced a well within the unit on December 30, 1992; it was completed as a producing oil well on January 31, 1993. The well was located on Whiteacre. Is the lease of Blackacre to State Oil Company in effect on February 3, 1993?

Answer: Yes. By the terms of the lease, if a development unit includes land covered by two or more leases, operations for the drilling of a well on the unit or a well producing from any part of the unit are deemed occurring on or producing from land covered by each of the leases.

Authorities: Problems A and B: *McClanahan Oil Co. v Perkins*, 303 Mich 448, 6 NW2d 742 (1942); *Leonard Crude Oil Co. v Walton*, 39 Mich App 293, 197 NW2d 503 (1972); *Michigan Wisconsin Pipeline Co. v Michigan Nat'l Bank*, 118 Mich App 74, 324 NW2d 541 (1982), leave to appeal denied, 418 Mich 957, 343 NW2d 495 (1984).

Problem C: *Manufacturers Nat'l Bank v DNR*, 420 Mich 128, 362 NW2d 572 (1984); *West Bay Exploration Co. v Amoco Production Co.* 148 Mich App 197, 384 NW2d 407 (1986).

- Comment A:** Most oil and gas leases are for a stated duration, called the primary term, but with the provision that the term continues for so long thereafter as oil or gas is produced. Leases usually contain a provision for continuation of the primary term when operations for the drilling of a well are commenced within the primary term, and production results, even though the well is not completed until after the stated expiration date of the primary term. Leases typically authorize the pooling of all or part of the leased land with other land to form a development unit, so that commencement of a well within the unit and production from the well are deemed to occur on or from all of the leased land comprising the unit, irrespective of the actual location of the well within the unit.
- Comment B:** A well may be “commenced” even though actual drilling has not occurred. Preparatory work such as digging pits, assembling equipment at the drill-site, delivering supplies and similar activities have been held to constitute commencement of a well. *Robinson v Gordon Oil Co*, 258 Mich 643, 242 NW 795 (1932); *Walton v Zatkoff*, 372 Mich 491, 127 NW2d 365 (1964).
- Comment C:** MCL 319.23 provides that no person shall begin the drilling of a well without first having received a permit from the supervisor of wells. In *Leonard Crude Oil Co. v Walton*, *supra*, and *Walton v Zatkoff*, *supra*, the receiving of a drilling permit by the lessee was one of the actions, among others, held to constitute “operations for the drilling of a well” before expiration of the primary term. But see *Goble v Goff*, 327 Mich 549, 42 NW2d 845 (1950), in which an equally divided court affirmed the circuit court’s decision that the lessee had failed timely to commence a well because he had not received a drilling permit, though he had moved a drilling rig to the well-site, dug pits and commenced actual drilling before the expiration of the primary term.
- Comment D:** If there is no recorded discharge of an oil and gas lease, there may be no evidence of record that the lease has expired, even though the stated duration of the primary term has ended. In such a case, a recorded affidavit attesting that no drilling permit has been issued and that drilling or preparations for drilling have not occurred on the leased land or on any land pooled or unitized with the leased land, is usually considered sufficient recorded evidence that the lease has expired.

STANDARD 15.3

OIL AND GAS LEASE FORFEITURE BY STATUTORY PROCEDURE

STANDARD: IF THE LESSEE OF AN OIL AND GAS LEASE FAILS TO PERFORM IN ACCORDANCE WITH THE TERMS OF THE LEASE, THE LESSOR MAY SERVE A NOTICE OF FORFEITURE UPON THE LESSEE AND, AT LEAST 30 DAYS AFTER THE NOTICE IS SERVED, FILE AN AFFIDAVIT OF FORFEITURE, WITH THE NOTICE AND PROOF OF SERVICE IN THE OFFICE OF THE REGISTER OF DEEDS. UNLESS WITHIN 30 DAYS AFTER THE FILING OF THE AFFIDAVIT THE LESSEE GIVES NOTICE TO THE REGISTER OF DEEDS THAT THE LEASE HAS NOT BEEN FORFEITED AND THAT THE LESSEE CLAIMS THAT THE LEASE IS IN FULL FORCE AND EFFECT, THE REGISTER OF DEEDS SHALL RECORD THE AFFIDAVIT. THE LEASE IS THEN NULL AND VOID, AND THE RECORD OF THE LEASE DOES NOT CONSTITUTE NOTICE OF THE LEASE OR ANY INTEREST IN IT.

Problem: On January 2, 1989, John Farmer leased Blackacre to State Oil Company for oil and gas purposes for a primary term of 10 years. The oil and gas lease required that the lessee commence a well on the leased land on or before the first annual anniversary date of the lease. On January 2, 1994, State Oil Company had neither commenced the drilling of a well nor surrendered the lease. Farmer served upon State Oil Company, by registered mail, at its last known address, a notice stating that he was the owner of Blackacre, describing the land and giving notice that the terms of the lease had not been complied with by the lessee and declaring the lease forfeited and void. The notice demanded that State Oil Company execute a discharge of the lease and stated that Farmer would file an affidavit of forfeiture with the register of deeds unless State Oil Company notified the register of deeds that the lease had not been forfeited. More than 30 days after the date of the mailing of the notice of forfeiture to State Oil Company, Farmer filed with the register of deeds of the county in which the Blackacre was located an affidavit stating that he was the owner of Blackacre, that the lessee had failed and neglected to comply with the terms of the lease and that the lease had been forfeited and was

void. A copy of the notice served on State Oil Company was attached to the affidavit, as was proof of the manner and time of the mailing of the notice. State Oil Company did not, within 30 days after the filing of the affidavit, give notice in writing to the register of deeds regarding the forfeiture or the lack of forfeiture of the oil and gas lease. More than 30 days after the filing of the affidavit the register of deeds recorded the affidavit. Does Farmer hold title to Blackacre free of the oil and gas lease?

Answer: Yes.

Authorities: MCL 554.281 and 554.282. *Toles v Maneikis*, 162 Mich App 158, 412 NW2d 263 (1987); *Erickson v Dart Oil & Gas Corp.*, 189 Mich App 679, 474 NW2d 150 (1991), leave to appeal denied, 439 Mich 970, 483 NW2d 366 (1992).

Comment A: Under MCL 554.282, if an oil and gas lessee neglects or refuses to execute a release of the oil and gas lease after the lease has become forfeited, the owner of the leased land may, after giving the notice of forfeiture described in MCL 554.281, bring an action against the lessee in order to obtain the release, instead of the procedures specified in the Standard.

Comment B: Instead of the mailing of a notice of forfeiture under MCL 554.281, the notice may be published for three consecutive weeks in a newspaper of general circulation in the county in which the leased land is located.

Comment C: The Committee expresses no opinion concerning what facts, if any, other than those stated in the Problem, would be sufficient to cause an oil and gas lease to become forfeited.

STANDARD 15.4

ABANDONMENT OF DORMANT OIL AND GAS INTEREST

STANDARD: TITLE TO AN INTEREST IN OIL AND GAS OWNED BY A PARTY OTHER THAN THE OWNER OF THE SURFACE IS DEEMED ABANDONED AND VESTS IN THE OWNER OF THE SURFACE IF, FOR A PERIOD OF 20 YEARS:

- (A) THE INTEREST HAS NOT BEEN SOLD, LEASED, MORTGAGED OR TRANSFERRED BY INSTRUMENT RECORDED IN THE COUNTY WHERE THE INTEREST IS LOCATED;**
- (B) NO OIL OR GAS DRILLING PERMIT HAS BEEN ISSUED AS TO THE INTEREST;**
- (C) THERE HAS BEEN NO ACTUAL PRODUCTION OR WITHDRAWAL OF OIL OR GAS FROM THE LAND IN WHICH THE INTEREST IS HELD OR FROM LANDS COVERED BY A LEASE TO WHICH THE INTEREST IS SUBJECT OR FROM LAND POOLED OR UNITIZED THEREWITH; AND**
- (D) THE INTEREST HAS NOT BEEN USED IN UNDERGROUND GAS STORAGE OPERATIONS;**

UNLESS:

- (A) THE OWNER OF THE INTEREST HAS RECORDED A NOTICE OF INTENT TO PRESERVE THE INTEREST:**
 - (1) WITHIN THREE YEARS AFTER SEPTEMBER 6, 1963;**
 - (2) WITHIN 20 YEARS AFTER THE LAST RECORDED SALE, LEASE, MORTGAGE OR TRANSFER OF THE INTEREST;**

- (3) WITHIN 20 YEARS AFTER THE LAST ISSUANCE OF A DRILLING PERMIT AS TO THE INTEREST;
- (4) WITHIN 20 YEARS AFTER ACTUAL PRODUCTION OR WITHDRAWAL OF OIL OR GAS FROM LAND IN WHICH THE INTEREST IS HELD, OR FROM LAND COVERED BY A LEASE TO WHICH THE INTEREST IS SUBJECT OR FROM LAND POOLED, UNITIZED OR INCLUDED IN UNIT OPERATIONS THEREWITH; OR
- (5) WITHIN 20 YEARS AFTER THE USE OF THE INTEREST IN UNDERGROUND GAS STORAGE OPERATIONS;

WHICHEVER IS LATER; OR

(B) THE OWNER OF THE OIL AND GAS INTEREST IS A GOVERNMENTAL BODY OR AGENCY THEREOF.

Problem A: On January 2, 1960, John Farmer, the owner of Blackacre, conveyed an undivided one-half interest in oil and gas in Blackacre to Mineral Investment Company. The deed was recorded on January 2, 1960. On January 10, 1980, Farmer was still the owner of the surface of Blackacre. On January 10, 1980, does Farmer own the oil and gas interest conveyed to Mineral Investment Company on January 2, 1960?

Answer: Yes.

Problem B: Same facts as in Problem A, except that on January 2, 1978, Mineral Investment Company gave an oil and gas lease covering its interest in Blackacre to Gusher Oil Company. The lease was recorded on January 2, 1978. On January 10, 1980, does John Farmer own the oil and gas interest conveyed to Mineral Investment Company on January 2, 1960?

Answer: No. The recorded lease to Gusher Oil Company tolled the period of dormancy of Mineral Investment Company's one-half oil and gas interest. A new 20-year period as to that interest was commenced on January 2, 1978.

Problem C: Same facts as in Problem A, except that on January 2, 1978, Mineral Investment Company gave an oil and gas lease covering Blackacre to Gusher Oil Company. The lease was recorded on January 2, 1978 and had a primary term of 10 years. The lease provided for its termination after the first year or during any later year in which drilling or production operations were not undertaken unless annual delay rental payments were made by the lessee. There were no drilling or production operations, but the lessee timely paid all annual delay rental payments during the 10-year primary term, which ended on January 2, 1988. On January 10, 1998, does John Farmer own the one-half oil and gas interest conveyed to Mineral Investment Company in 1978?

Answer: No. Although more than 20 years elapsed following the recorded lease of the one-half oil and gas interest of Mineral Investment Company, the termination of the 10-year primary term of the lease on January 2, 1988, commenced a new 20-year period of dormancy as to the one-half interest, because the termination of the lease was a transfer of the oil and gas interest from Gusher Oil Company, the lessee, to Mineral Investment Company.

Problem D: Same facts as in Problem A, except that the deed of an undivided one-half interest in oil and gas in Blackacre was given by Farmer to Mineral Investment Company, and was recorded, on January 2, 1940, and except that on September 1, 1966, Mineral Investment Company recorded a verified notice in the office of the register of deeds for the county in which Blackacre was located, giving its name and address, describing Blackacre, stating the nature and extent of its oil and gas interest and stating that Mineral Investment Company desired to preserve its oil and gas interest and did not intend to abandon it. In 1980, is Mineral Investment Company still the owner of the oil and gas interest conveyed to it in 1940?

Answer: Yes. The recording of the notice of intent to preserve the oil and gas interest preserved the interest of Mineral Investment Company for the ensuing 20 years, because the recording of the notice occurred within three years after the effective date of the Dormant Minerals Act.

Problem E: Same facts as in Problem A, except that the deed of an undivided one-half interest in oil and gas in Blackacre was given by Farmer to Mineral Investment Company, and was recorded, on January 2, 1940, and

except that on August 15, 1966, by a mineral deed recorded on that date, Mineral Investment Company conveyed its one-half interest in the oil and gas in Blackacre to Gusher Oil Company. On September 7, 1966, does Gusher Oil Company own the one-half interest in oil and gas in and under Blackacre conveyed to it by Mineral Investment Company?

Answer: Yes. The recording of the mineral deed from Mineral Investment Company to Gusher Oil Company preserved the one-half oil and gas interest because the recording of the deed occurred within three years after the effective date of the Dormant Minerals Act.

Problem F: Same facts as in Problem A, except that the recorded conveyance of the oil and gas interest from Farmer to Mineral Investment Company occurred on January 2, 1970. On December 1, 1989, Mineral Investment Company recorded the notice described in Problem D. On January 3, 1990, does Farmer own the oil and gas interest conveyed to Mineral Investment Company on January 2, 1970?

Answer: No. The notice of intent to preserve the oil and gas interest was recorded within 20 years after the conveyance of the interest to Mineral Investment Company. The recorded notice commenced a new 20-year period which would end December 1, 2009, and as of that date the oil and gas interest of Mineral Investment Company would be deemed abandoned and vest in the surface owner.

Authorities: Generally: MCL 554.291 through 554.294. *Texaco, Inc v Short*, 454 US 516, 102 S Ct 781, 70 L Ed 2d 738 (1982); *Van Slooten v Larsen*, 410 Mich 21, 299 NW2d 704 (1980), app dismissed, 455 US 901, 102 S Ct 1242, 71 L Ed 2d 440 (1982); *Energetics v Whitmill*, 442 Mich 38, 497 NW2d 497 (1993); *Mask v Shell Oil Co*, 77 Mich App 25, 257 NW2d 256 (1977), leave to appeal denied, 402 Mich 835 (1977); *Wagner v Dooley*, 90 Mich App 759, 282 NW2d 469 (1979), leave to appeal denied, 410 Mich 896 (1981); *Walch v Crandall*, 164 Mich App 181, 416 NW2d 375 (1987); *Bates v Keso*, 187 Mich App 402, 468 NW2d 265 (1991); and, *Gibbs v Smock*, 195 Mich App 450, 491 NW2d 614 (1992).

Problems A and B: MCL 554.291 through 554.294. *Texaco, Inc v Short*, 454 US 516, 102 S Ct 781, 70 L Ed 2d 738 (1982); *Van Slooten*

v Larsen, 410 Mich 21, 299 NW2d 704 (1980), app dismissed, 455 US 901, 102 S Ct 1242, 71 L Ed 2d 440 (1982); *Wagner v Dooley*, 90 Mich App 759, 282 NW2d 469 (1979), leave to appeal denied, 410 Mich 896 (1981); *Walch v Crandall*, 164 Mich App 181, 416 NW2d 375 (1987); *Bates v Keso*, 187 Mich App 402, 458 NW2d 265 (1991); and *Gibbs v Smock*, 195 Mich App 450, 491 NW2d 614 (1992).

Problem C: MCL 554.291. *Energetics v Whitmill*, 442 Mich 38, 497 NW2d 497 (1993).

Problems D, E and F: *Van Slooten v Larsen*, 410 Mich 21, 299 NW2d 704 (1980), app dismissed, 455 US 901, 102 S Ct 1242, 71 L Ed 2d 440 (1982); *Energetics v Whitmill*, 442 Mich 38, 497 NW2d, 497 (1993); *Mask v Shell Oil Co*, 77 Mich App 25, 257 NW2d 256 (1977), leave to appeal denied, 402 Mich 835 (1977); *Oberlin v Wolverine Gas & Oil Co*, 181 Mich App 506, 450 NW2d 68 (1989).

- Comment A:** The Committee expresses no opinion as to what type of recorded instrument or what unrecorded facts, other than those stated in MCL 554.291, would be sufficient to accomplish a “transfer” within the meaning of the Dormant Minerals Act. See, *Energetics v Whitmill*, 442 Mich 38, 497 NW2d, 497 (1993) and *Mask v Shell Oil Co*, 77 Mich App 25, 257 NW2d 256 (1977), leave to appeal denied, 402 Mich 835 (1977).
- Comment B:** The term “drilling permit” as used in the Dormant Minerals Act means a permit to drill an oil or gas well issued by the Department of Natural Resources. MCL 554.291.
- Comment C:** In *Energetics v Whitmill*, 442 Mich 38, 497 NW2d 497 (1993), the court held that “where a severed oil and gas interest in land is leased by recorded instrument for a primary term of less than twenty years, a new twenty-year dormancy period commences when the reversionary interest is transferred at the termination of the lease,” even though there is no recorded instrument evidencing the termination. The court reasoned that “the reversion that occurs at the termination of a recorded lease” constitutes a ‘transfer’ by recorded instrument within the meaning of the Dormant Minerals Act.
- Comment D:** A person holding an oil and gas interest for use in underground gas storage operations may preserve the interest by recording a notice,

defining the boundaries of the underground gas storage field or pool and the formations included, without the necessity of describing each separate mineral interest used in the gas storage field operations. MCL 554.292. A person using an oil and gas interest in underground gas storage operations may record a good faith affidavit in the office of the register of deeds for the county in which the pertinent land is located, defining the boundaries of the underground gas storage field or pool and the geological formations included. The affidavit is *prima facie* evidence of the use of oil and gas interests in underground gas storage operations. MCL 554.293. See, *Southwestern Oil Company v Wolverine Gas & Oil Co, Ltd*, 181 Mich App 589, 450 NW2d 1 (1989).