CASE LAW UPDATE

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AAPL West Texas Energy Institute 2026
August 26, 2026
Midland, Texas

I. FIXED-VERSUS-FLOATING ROYALTY

Clifton v. Johnson,
733 S.W.3d 16 (Tex. 2026)

1. Royalty deed on several thousand acres in Reeves County

   a. Granting clause: an undivided 1/128 interest in the oil, gas, and other minerals

   b. Under existing 1/8-royalty lease, grantees would receive 1/16 of royalty; under future leases a 1/128 (1/16 of the usual 1/8 royalty)

2. Deed conveyed fixed 1/128 interest in production

   a. *Van Dyke* presumption overcome

      (1) Must *begin* with presumption that 1/8 means all

(cont.)

(2) But must apply express provisions that can't be harmonized with 1/8 meaning all

(3) Use of single fraction 1/128 in two places distinguishes

b. Presumed-grant doctrine not applied but discussed

(1) Does not turn on interpretation of text of document

(2) If requirements met (such as seven decades of consistent understanding), parsing a complicated text may end up being unnecessary

Boren Descendants v. Fasken Oil & Ranch, Ltd.
No. 25-00100, 2026 WL 1108688 (Tex. Apr. 24, 2026)

1. 1933 deed from Midland Farms Co. (predecessor in interest of Fasken) conveyed 90 sections in Midland and Andrews Counties, reserving "an undivided 1/4 of the usual 1/8 royalty" in oil, gas, and other minerals.

2. Fasken sued in 2019 claiming royalties were underpaid, should have been 1/4 of the current 1/4 lease royalty, not just 1/32 of total production

3. Court of Appeals held Fasken entitled to "floating" 1/4 of royalty

   a. Under Van Dyke, court confronted with "double fraction" of 1/8 must begin with presumption that 1/8 reflects entire mineral estate

(cont.)

b. Nothing in deed overcame presumption: court found Mabee argument that “usual” should overcome presumption unpersuasive, but with no explanation of why

4. Supreme court reversed

    a. *Clifton* clarified both scope of double-fraction presumption and need to consider text and presumed-grant doctrine

    b. Emphasized that a court could dispense with deed construction altogether if presumed-grant applies

    c. Observed parties had treated reservation as fixed 1/32 for 85 years

Hoffman v. Thomson,

No. 04-19-007710-CV 2026 WL 758737
(Tex. App.—San Antonio Mar. 18, 2026 no pet. h.)

1. 3/4 of usual 1/8 royalty held floating 3/4 of royalty

2. Even though expressed as single fraction of 3/32 of production twice

3. Hard to square with *Clifton*

B.H.C.H. Mineral, Ltd. v. Needmore Minerals, LLP,

No. 04-24-00382-CV, 2026 WL1430702 (Tex. App.— San Antonio May 20, 2026, no. pet. h.)

1. 1937 deed from Esperanza Livestock & Land to Sinclair
   a. 23,000 + acres in Webb County
   b. Reserved undivided 1/32 mineral interest
      (1) Grantee to have the right to lease without grantor's joining
      (2) Grantee to have all bonuses and rentals
      (3) Must retain at least 1/8 royalty in any lease

2. Held 1/32 of lease royalty, not 1/32 of production
   a. Stripping of rights results in non-executive mineral interest
   b. 1/8-royalty requirement confirmed grantor's share tied to lease royalty

(cont.)

3. Presumed – grant doctrine

    a. Esperanza had been paid fixed royalty for years
    b. Argued that established its right
    c. Doctrine doesn't apply

        (1) Doctrine fits poorly with passive receipt of royalty
        (2) No court has extended it to a royalty interest

Shorter v. Coffield Family Properties,
No. 11-25-00251-CV, 2026 WL 2117288
(Tex. App.—Eastland July 23, 2026, no pet. h.)

1. 1944 deed on land in Borden County
    a. Reserved as a royalty 1/2 of the usual and customary 1/8 royalty
    b. Sole and only right being to receive 1/16 of all oil and gas and other minerals produced as a royalty interest
2. Held floating 1/2 of lease royalty
    a. *Van Dyke* presumption is that in double fraction of 1/8, the 1/8 means all
    b. *Clifton* distinguished *less* on basis that in that case the single fraction was within the reservation, here it's in the future-lease clause

II. OIL AND GAS TITLE AND CONVEYANCING

Thagard Mineral Partnership, LP v. Cass,
726 S.W.3d 871 (Tex. App.—Eastland 2025, pet. denied)

1. Assignment from Greg Thagard to Michael Cass
   a. Did it include ORI assignment by Cass to Thagard?
      (1) All of assignor's interest in "the lands, tracts, oil and gas and/or mineral leases and leasehold interests in and to the subject lands" described on Exhibit A
      (2) Exhibit A only described sections of land
      (3) Exhibit A included heading "Subject to that certain Assignment, Bill of Sale and Conveyance" dated July 5, 1990 (date of the assignment)
   b. ORI was conveyed
      (1) "Subject to" referred to assignment itself in absence of evidence of another

(cont.)

(2) ORI conveyed

(a) Assigned all his interest in the land

(b) Assignment of ORI doesn't require a description of burdened lease

2. Assignment from Cass to Plains Petroleum—depth limited?

a. Assigned all of assignor's interest in "all of the oil, gas, and other mineral leases and properties, rights and undivided interests" listed on Exhibit A, including leasehold, mineral, royalty, etc.

b. Exhibit A

(1) Columnar form: Lease names, land description, decimal WI and NRI

(2) Then listing of leases with lessor, lessee, date, recording information

(3) Lease description section included land description "from the surface to 8700 feet subsurface"

c. Assignment held not depth limited

(1) Granting clause was all his interest in the leases

(2) First land description in Exhibit A had no depth limitation

Alcott v. 1893 Oil & Gas, Ltd.,
No. 13-23-00492-CV, 2025 WL 2858113
(Tex. App.—Corpus Christi-Edinburg Oct. 9, 2025, pet. denied) (mem. op.)

1. 1922 Deed for Cosgrove to Alcott

    a. Acre Eight (8) in Tract 69
    b. "An undivided interest in an undivided 1/2 of any and all oil, gas or minerals" in 2,092.08 acres

2. Cosgrove owned minerals in some parts of the 2,092.08 acres

(cont.)

3. Held invalid under statute of frauds

   a. No expression of intention to transfer only the interest, if any, in land grantor owned

   b. No location of general area of land in which minerals conveyed

   c. No identification of “Acre 8” of “Tract 69”

Moore v. 1789 Minerals Fund I, LP,
No. 06-24-00080-CV, 2026 WL 437794 (Tex. App.—Texarkana Feb. 17, 2026, no pet.) (mem. op.)

1. Tax foreclosure sale of Moore royalty interest
2. Property descriptions in sheriff's deed very cursory—not much more than well names, operator, and account number
3. Buyer then conveyed with detailed land descriptions
4. Summary judgment for buyer base on one-year statute of limitations reversed
   a. Counterclaim to operator's interpleader avoided limitations
   b. Unclear why limitations would apply anyway if issue was title, i.e., what sheriff's deed conveyed

***Griffin Energy Law, PLLC v. Billingsley*,**
732 S.W.3d 304 (Tex. App.—Eastland 2026, pet. filed)

1. Brothers Larry and Robert Billingsley acquired quarters of Section 19 in 1978
    a. Larry (married to Nickie) acquired SW/4 as separate property, Robert acquired SE/4
    b. Then each conveyed 1/2 of his minerals in this quarter-section to the other, so each owned half the minerals in both quarter-sections—consideration recited.
2. Larry died in 1986
    a. Left his estate to his brothers and sisters

(cont.)

b. All conveyed their minerals in the SE/4 to Robert

c. Robert (and his buyer) leased the SE/4 and were paid the royalty

3. Griffin bought any mineral interests owned in Martin County from son of Nickie by prior marriage

   a. Claimed mineral interest Larry acquired from Robert in SE/4 was community property

   b. Deed did not recite separate property, did recite consideration

4. Summary judgment for Robert affirmed

   a. Character of property can be established by evidence outside document

(cont.)

b. Robert testified only consideration from Larry was his deed to Robert for his quarter-section

c. Since the consideration given by Larry was separate property, the minerals he acquired from Robert were separate property and all passed under his will

d. Opinion doesn’t discuss possible bona fide purchaser claim

Brown v. Endeavor Energy Resources, No. 11-24-00320-CV, 2026 WL 1593646 (Tex. App.—Eastland June 4, 2026, no pet. h.) (mem. op.)

1. Brown to Arco assignment of ORI

   a. Assigned ORI and described leases

   b. Subject to unrecorded letter agreement

2. But Endeavor paid Browns

   a. Division orders with customary clause that payee will refund any amount attributable to the described interest the payee does not own

(cont.)

b. Paid $2.3 million 2018-2022

c. Then discovered Arco assignment and requested refund

d. Sued for breach of division order when Browns declined

3. Summary judgment reversed

   a. Title not established absent letter agreement
   b. If lost or destroyed, Endeavor must provide evidence of that and its contents
   c. Circumstantial evidence (including payments to Browns) existed for Brown’s ownership

SRO Land & Minerals, LP v. BNSF Ry. Co.,

No. 08-24-00347-CV, 2026 WL 1776724 (Tex. App.—El Paso June 19, 2026, no pet. h.) (mem. op.)

1. 1901 deed to railroad

   a. Conveyed strip in Reeves County

   b. Conveyed grantor's interest in "those certain pieces and parcels land"

      (1) for purpose of maintaining and operating the line of railroad

      (2) a way and right of way 100 feet in width

2. Fee conveyance, not just easement

   a. "Right of way" can be used either to describe right of passage or the land itself

(cont.)

b. Look to granting clause

(1) If it grants a “right of way,” only an easement

(2) If it grants the strip of land, it is fee conveyance even if later referred to as a right of way

c. Placement of purpose after grant important in this deed

(1) Not intended to limit conveyance of fee

(2) Just to describe intended use

Ovintiv USA, Inc. v. High Noon Resources, LLC,
No. 11-21-00103-CV, 2026 WL 1992100 (Tex. App.—Eastland July 15, 2026, no pet. h.)

1. 1958 deed from Chandler and Childress to High Crest Royalty – over 25,000 acres in Martin County
   a. Deed conveyed (i) 1/4 of minerals and (ii) executive right over grantors' retained 1/4
   b. Grantors to receive 1/4 of the usual 1/8 royalty irrespective of the amount of royalty actually provided for in any lease

2. In 1961 High Crest conveyed 1/2 of that interest back to Chandler and Childress so they owned:
   a. 1/4 of executive rights
   b. 1/8 of remaining mineral rights

3. They and successors then conveyed General Crude 1/8 mineral interest

(cont.)

a. Element leased from Chandler and Childress successors
b. General Crude (now XTO) lessees claimed deed for 1/8 carried grantors' additional 1/8 of executive rights

5. Executive rights held not conveyed
   a. Grant did not include additional executive rights; no need to reserve
   b. No prohibition against retention of "naked" executive rights

6. 1958 deed reserved fixed 1/32 royalty interest in production
   a. Description of royalty interest must be construed to ascertain its nature
   b. "Irrespective" wording overcomes *Van Dyke* presumption

III. Oil and Gas Contract Law

Endeavor Natural Gas III, LLC v. Comanche Maverick Ranch Investments, LP, No. 14-24-00639-CV, 2025 WL 3072934 (Tex. App.—Houston [14th Dist.] Nov. 4, 2025, no pet.) (mem. op.)

1. Oil and gas lease and surface agreement between landowner Comanche and lessee Endeavor

2. Surface use agreement gave Endeavor right to conduct seismic "only after entering into a mutually agreed-upon seismic use permit with" Comanche

   a. Endeavor counsel requested Comanche to discuss seismic permit
   b. Comanche counsel responded it had no obligation

3. Summary judgment declaring Endeavor had no right to conduct seismic operations affirmed

   a. Requirement for permit was unambiguous condition precedent
   b. Right accrued "only after" the parties "mutually agreed" on a permit
   c. No obligation to negotiate—each party had right to agree or not

SM Energy Co. v. Buzzard Roost Farms, Inc.,
727 S.W.3d 525 (Tex. App.—Eastland 2025, no pet.)

1. Surface use agreement on 80-acre tract in Howard County
   a. Operator required to remove all salt water unless otherwise authorized
   b. However, should Operator choose to drill a SWD well within 5 miles, Operator will give Surface owner a first right of refusal to have SWD well placed on surface lands or adjacent lands owned by surface owner
2. Operator SM acquired 2 tracts within 5 miles drilled 2 SWD wells
3. Surface owners awarded more than $10 million for breach of right of first refusal and attorneys' fees

(cont.)

4. Holding of breach affirmed
    a. Self-development strategy did not change obligation
    b. Surface owners were entitled to an offer, but none made
    c. Offer to buy the land was beyond the scope of the right of refusal

5. But damages award based on value of the wells reversed
    a. No evidence value of land would have been enhanced
    b. Revenue generated by wells was benefit of bargain

IV. Oil and Gas Leases and Leasing

Fasken Oil & Ranch v. Puig,
733 S.W.3d 25 (Tex. 2026)

1. 1960 deed from Puigs to Palafox Exploration reserved 1/16 of minerals, "free of cost forever"

2. Fasken deducted post-production costs from Puig royalty

3. Summary judgment declaring that deed did not allow deduction of post-production costs reversed

4. NPRI is subject to downstream costs unless there is an agreement

   a. Setting valuation point downstream of well

(cont.)

b. Explicit terms adding some or all costs

5. Deed described location: “produced” from the above described acreage

   a. Just “produced” is royalty valued at the wellhead

   b. “Free of cost forever” did not change the valuation point or formally relieve the royalty of costs; merely restated the rule that royalty is free of exploration and production costs

MRC Permian Co. v. Point Energy Partners Permian LLC, 734 S.W.3d 35 (Tex. App.—El Paso 2025, no pet.)

1. Leases terminated after failure of continuous development except as to “Production Units” for each well

2. Not to exceed 160 acres (+10% tolerance) if less than 5000 feet of wellbore extends horizontally in the producing formation or 320 acres (+10%) if more than 5000 feet

3. Requirement that lessee file a designation within 90 days of well completion held covenant, not a special limitation

4. Footage measured from point at which wellbore entered producing formation—not limited to producing segments

5. “Horizontally” means point where wellbore is kicked off and begins to curve

Devon Energy Production v. Oliver,

No. 13-25-00131-CV, 2026, WL 545190 (Tex. App.—Corpus Christi-Edinburg Feb. 26, 2026, no pet. h.) (mem. op.)

1. Royalty provisions of leases on 3700 acres in DeWitt County

    a. 1/5 part of all oil produced and saved, delivered in the pipeline to which lessee may connect its wells

    b. Addendum

        (1) Royalty shall never bear any costs or expenses to treat, transport, market, etc.

        (2) Lessor could take royalty in kind or lessee to purchase or market at cash price equal to market value

(cont.)

2. Trial court judgment that royalty valued free of post-production costs at point where all had been incurred, i.e., Houston Ship Channel

3. No valuation point specified, so royalty valued at the well

   a. Addendum did not make place of valuation ambiguous

   b. Per *Heritage* valuation point at well means other provisions are surplusage

Zarvona Energy LLC v. Black Stone Minerals Co., L.P., No. 09-25-00012-CV, 2026, WL 696915 (Tex. App.—Beaumont Mar. 12, 2026, pet. filed) (mem. op.)

1. Leases had customary habendum clause and provisions for additional drilling and reworking on cessation

2. Partial termination
   a. After continuous development, lease terminates except as to spacing or pooled units surrounding each well, and "at the end of the primary term and at all times thereafter, as to each spacing unit," the lessee must release depths below 100 feet below deepest producing reservoir

(cont.)

b. Unless maintained by other provisions, cessation after primary term for period of 90 days shall cause lease to terminate

c. On cessation lease will terminate “as to such acreage” unless production restored within 80 days after cessation by drilling or reworking or otherwise maintained in force

3. Paying quantities not limited to 90-day period

4. “At all times thereafter” in the depth-limitation clause did not make the partial termination “rolling”

***Storey Minerals, Ltd. v. EP Energy E&P Company, L.P.* (*In re EP Energy E&P Co., L.P.*), 169 F.4th 609 (5th Cir. 2026)**

1. Three leases to EP Energy

   a. Most favored nations clause: If lessee acquires a lease on a portion of the leased premises on such terms that bonus is greater than paid to lessor, lessee will execute amendment effective the date of third party lease to provide for lessor thereafter to receive same bonus per acre as subsequent lessor

   b. EP leased for $5,200 per acre, $4,700 more than the $500 per acre paid the three lessors

2. Summary judgment for lessors affirmed

(cont.)

a. EP argued clause applied only prospectively to payments to be made after higher-bonus lease

b. Court held intent was to apply retroactively

c. Provision for deferred bonus payments unrelated—executed 2 years after lease

In re State Land Office Oil and Gas Lease No. L00423, No. A-1-CA-42387, 2026 WL 1602323 (N.M. Ct. App. June 4, 2026) (mem. op.)

1. State of New Mexico lease held by Snow Oil & Gas
   a. Term was for stated number of years and as long thereafter as oil or gas is produced in paying quantities
   b. Will not terminate if there is a shut-in gas well on the land *provided* annual shut-in royalty is paid
2. Two gas wells on land communitized with lease acreage
   a. At least one completed within lease's primary term
   b. Both shut-in 2015

(cont.)

c. Shut-in payments made 2015-17

d. No shut-in royalty payment in 2018

e. State Land Office notified Snow lease had expired

3. Commissioner’s decision upheld

a. Shut-in clause perpetuates lease if there is a producible shut-in well *and* shut-in payment is timely made

b. Lease automatically expired

c. Not a cancellation, requiring notice and opportunity to cure

V. Operating Agreements

Roane-Williams Texas Minerals, LLC v. EOG Resources, Inc., No. 13-23-00569-CV, 2025 WL 3101349 (Tex. App.—Corpus Christi-Edinburg Nov. 6, 2025, pet. denied) (mem. op.)

1. JOA between EOG, as operator, and Roane et al. covering 823.15 acres
   a. Roane 1/36 MI in 125-acre tract
   b. JOA also included 120.91-acre "Ranch" lease
   c. Pooled unit formed for all except Ranch lease
   d. Dispute over allocation of lease burdens

(cont.)

2. Per JOA

   a. If the drilling unit for a well is identical to the Contract Area, each party bears burdens solely for its own interest

   b. If drilling unit is not identical, each bears all burdens on its share

   c. Drilling unit is area fixed for the drilling of one well, either by a pattern of drilling or by express agreement (unless defined by state or federal authority – NA)

(cont.)

3. Court agrees with EOG that drilling unit is only pooled unit, not identical to contract area

    a. Pooling agreement stated it “unitized” parties’ interests, creating a “unit” for drilling and production

    b. Well proposal set out area as pooled unit (although it depicted the unpooled tract, calling it “not pooled”

VI. Regulatory Update

A. Texas

1. Disposal wells

   a. Earthquake activity

   b. Overpressuring

   c. Unplugged wells

      (1) Funding for orphan wells

      (2) Relief from future liability

      (3) Stricter conditions for plugging extensions

(cont.)

2. Good-faith claims to title to severed depths

3. Environmental Protection

    a. Waste management

    b. Commercial recycling

    c. TCEQ authority over use of treated and recycled water

4. Carbon sequestration

B. New Mexico

1. Bonding requirements

   a. NMOCC

   b. State Land Office

2. Gas venting and flaring

3. Seismicity mitigation

The End