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## "Profitable Mineral Management"

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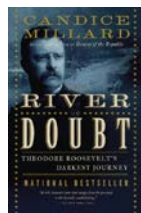
**TOPIC:** Top 10.5 Oil and Gas Cases

**LOCATION:** San Antonio Petroleum Club  
8620 N New Braunfels, Suite 700  
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**TIME:** 7:30 AM Breakfast - 8:00 AM Presenters - 8:50 AM Questions & Answers

**INTRODUCTIONS:** Trey Scott - Trinity Mineral Management President

**TIP:** "Keep The Plug In" by: Trey Scott



**BOOK:** **The River of Doubt: Theodore Roosevelt's Darkest Journey**  
by Candice Millard

**QUOTE:** "If I had to die anywhere, why not die in helping to open up to the knowledge of the world a great unknown land and so aid humanity in general and the people of Brazil in particular?" – Excerpt from The River of Doubt, by Candice Millard

**THIS MONTH:** Top 10.5 Oil and Gas Cases

**UPCOMING:**

Severance Tax	Wednesday, February 06, 2013
Ad Valorem Tax	Wednesday, March 06, 2013
Non Participating Royalty Interests	Wednesday, April 03, 2013

**PRESENTERS: Ricardo E. Morales – Person, Whitworth, Borchers & Morales, L.L.P.**

Ten and a Half Oil and Gas Cases You Should Know About

- Ten and a Half Seminal Texas Oil and Gas Cases

10. Exxon v. Middleton and the Failure to Pay Market Value

In Exxon Corp. v. Middleton, 613 S.W.2d 240, 249 (Tex. 1981), the Texas Supreme Court examined whether Exxon had sold gas from the Middleton lease at market value. The Middleton lease covered acreage in Chambers County and contained the following typical producers 88 royalty clause

9. Heritage v. Nationsbank and Market Value at the Well

In situations where comparable sales are either not available or cannot be established, Texas courts turn to a different method to determine market value. In Heritage Resources v. Nationsbank, the lessee was taking transportation costs from the wellhead to the point of sale and deducting them from royalty payments.

8. Amoco v. Alexander and the Duty to Protect Against Drainage

In Amoco Prod. Co. v. Alexander, 622 S.W.2d 563, 568 (Tex. 1981), the Court dealt with a lessor's claim that the lessee had breached its duty to protect against hydrocarbon drainage from the leasehold.

7. Sun v. Jackson and the Breach of the Duty to Develop

Lessees have a duty to develop the leasehold as would a reasonable prudent operator. Sun Exploration and Prod. Co. v. Jackson, 783 S.W.2d 202 (Tex. 1989). A lessee breaches its implied duty to develop by:

1. Failing to further explore or drill additional wells from producing strata or horizons or from non-producing strata or horizons that exist in reasonably probability,
2. Exercising reasonable diligence,
3. That provide a reasonable expectation of profit, not only to the lessor, but also the lessee as would a reasonably prudent operator.

6. Cabot v. Brown and the Duty Market

Cabot v. Brown, 754 S.W.2d 104 (Tex. 1987); Amoco Prod. Co. v. First Baptist Church of Pyote, 579 S.W.2d 280 (Tex. Civ. App--- El Paso 1979), writ ref'd n.r.e., 611 S.W. 2d 610 (Tex. 1980) (per curiam). A lessee satisfies the duty to market by 1) marketing the production with

due diligence and 2) obtaining the best price reasonably possible. Cabot, 754 S.W. 2d at 106. The applicable standard of care for the marketing covenant is that of a reasonably prudent operator under the same or similar circumstances. Id.

5. **Humble Oil v. West and the Commingling of Hydrocarbons**  
The Texas Supreme Court addresses this issue in Humble Oil & Refining Co. v. West, 508 S.W.2d 812 (Tex. 1974). The Wests were royalty owners seeking an injunction to prevent the lessee from storing gas in a reservoir on their lease until all of the native gas had been produced. Id. at 813. The Wests also plead in the alternative that, under the confusion of goods theory, they were entitled to their royalty interest in all gas produced from that reservoir, regardless of origin. Id.
4. **Clifton v. Koontz and Production in Paying Quantities**  
The habendum clauses in most leases require that, in order for a lease to continue in existence, it must have continuous production. The typical habendum clause states that the lease lasts for a relatively short fixed term of years (the primary term) and then “as long thereafter as oil, gas or other mineral is produced” (secondary term). Anadarko Petroleum Co. v. Thompson, 94 S.W.3d 550, 554 (Tex. 2002). However, Texas courts have made clear that the term “produced” is synonymous with the term “production in paying quantities”.
3. **Exxon v. Emerald and Waste**  
In Exxon b. Emerald, the Corpus Christi Court recognized a mineral or royalty owner’s common law cause of action for negligent waste or destruction of minerals.
2. **HECI Exploration v. Neel and the Discovery Rule**  
The Neel decision resulted from a suit brought by Russell Neel and his family against their lessee, HECI Exploration Company regarding an oil and gas lease in Fayette County. Since the mid 1980s HECI’s operations on the Neel Tract had been disrupted by a neighboring operator (AOP). AOP was producing from a reservoir common to the wells operated by HECI on the Neel Tract and, by 1985, was periodically failing to abide by production ceilings established by the Texas Railroad Commission.
1. **Natural Gas Pipeline Co. v. Pool and Adverse Possession**  
Pool involved two cases that were consolidated by the Texas Supreme Court. The first case, styled Natural

Gas Pipeline Co. of America v. Pool, 30 S.W.3d 639 (Tex. App.--- Amarillo 2000), rev'd by, 124 S.W.3d 188 (Tex. 2003) ("Pool I"), involved two oil and gas leases that were consolidated into one lease, while the second case, styled Natural Gas Pipeline Co. of America v. Pool, 30 S.W.3d 618 (Tex. App.---Amarillo 2000), rev'd on other grounds, 124 S.W.3d. 188 (Tex. 2003) ("Pool II"), involved one oil and gas lease. The leases at issue in Pool I were dated 1926 and 1936 and both contained a typical habendum clause that provided that the leases would be maintained after the expiration of the primary term by continuous production.

- How the ruling in each case governs the relationship between Lessors and Lessees
- What landowners need to look out for when dealing with their Lessees

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### **BACKGROUND, EDUCATION AND PRACTICE**

Ricardo E. Morales is a partner in the Laredo law firm of Person, Whitworth, Borchers & Morales, L.L.P. He is engaged in a broad civil litigation practice with a heavy emphasis in oil and gas litigation matters.

Before practicing law in Laredo, he earned his Bachelor of Arts in Political Science & Managerial Studies from Rice University and a J.D. from The University of Houston Law Center, where he served as a research editor for the Houston Journal of International Law. Following law school, Ricardo began working for the law firm of Person, Whitworth, Borchers & Morales, L.L.P.

Ricardo has served as President for both the Laredo Young Lawyers Association and the Laredo-Webb County Bar Association. He has been an active member of the District 12-A Grievance Committee of the State Bar of Texas, for which he also served as Panel Chair. He is Board Certified in Oil and Gas by the Texas Board of Legal Specialization.

Ricardo is currently a councilmember of the Oil, Gas and Energy Resources Law Section of the State Bar of Texas, and currently serves as the Section's Secretary. He also currently serves as the Chairman of the Oil and Gas Pattern Jury Charge Committee of the Oil, Gas and Energy Resources Law Section of the State Bar of Texas. He is also the former Editor of the Section Report of the Oil, Gas and Energy Resources Law Section of the State Bar of Texas.

Ricardo has presented, authored, co-authored and published several papers including:

“Cleaning Out The Skeletons In The Closet: Common Affirmative Defenses In Lessor/Lessee Litigation”, presented at the 33<sup>rd</sup> Annual Ernest E. Smith Oil, Gas & Mineral Law Institute on March 30, 2007, in Houston, Texas (presented and co-authored). This paper was published in the July 2007 Section Report of the Oil and Gas Section of the State Bar of Texas.

“Gammill’s Gaps And Robinson’s Requisites: Surviving Challenges To Oil And Gas Experts”, presented at the State Bar of Texas 25<sup>th</sup> Annual Advanced Oil, Gas & Energy Resources Law Course on October 4, 2007, in Houston, Texas (presented and authored).

“Navigating the Rapids: Common Claims and Defenses in Lessor/Lessee Litigation” presented at the University of Houston Law Foundation Advanced Oil and Gas Short Course in 2008 and 2009 (presented and authored).

“Challenging Vintage Oil and Gas Leases With Marginal Production” which was presented at the State Bar of Texas 26<sup>th</sup> Annual Advanced Oil, Gas & Energy Resources Law Course in 2008 (co-authored).

“Navigating the Rapids: Issues in Lessor/Lessee Litigation” published in the Section Report of the Oil, Gas and Energy Law Section of the State Bar of Texas, June 2009.

“Issues Arising From Recent Supreme Court Decisions, Including BP America v. Marshall, Shell v. Ross And Others”, presented along with Michael E. McElroy and Elizabeth “Becky” Miller at the 30<sup>th</sup> Annual Advanced Oil, Gas and Energy Resources Law course in October, 2012.