

# The End of the Tour

Gerald Walrath

Kirby, Mathews & Walrath, PLLC

Drill Baby Drill!



# The beginning of your project



# The middle of your project



# RETAINED ACREAGE PROVISIONS

Or how I was Wilson Phillipsed into Submission

# Hold On



# Retained Acreage Clause - Example

- ▶ Notwithstanding anything in this lease to the contrary, at the end of the primary term or
- ▶ upon cessation of continuous development, as hereafter defined, whichever is later, this
- ▶ lease shall terminate and be of no further force and effect as to all of said land except
- ▶ those portions within the drilling, spacing or proration unit (the "production unit")
- ▶ assigned by Lessee according to applicable rules of the Texas Railroad Commission (or
- ▶ successor governmental authority having jurisdiction) to a well then capable of producing
- ▶ oil or gas in paying quantities, each such unit containing the minimum amount of acreage
- ▶ necessary for the well to be assigned the maximum allowable production (if allowable
- ▶ production is assigned on the basis of acreage per well) or otherwise prescribed as the
- ▶ minimum area for a proration unit, and necessary for the well to be operated at a regular
- ▶ location in compliance with applicable well spacing and density rules.

# Retained Acreage Clause - Horizontal Example

- ▶ [T]his lease shall likewise terminate as to all depths and horizons in each such production unit lying more than 100 feet below the stratigraphic equivalent of the deepest depth from which production in paying quantities is then being had (or at which a well capable of producing gas in paying quantities has been completed). At such time Lessee shall release this lease as to all lands and depths as to which it has thus terminated and shall file such release for record and furnish a copy of same to Lessor.

The background features abstract, overlapping green geometric shapes, primarily triangles and polygons, in various shades of green, creating a modern and dynamic visual effect.

# RECENT CASES ON RETAINED ACREAGE

# ConocoPhillips Company v. Vaquillas Unproven Minerals, Ltd.

- ▶ The actual language of the retained acreage clause:
- ▶ Lessee covenants and agrees to execute and deliver to Lessor a written release of any and all portions of this lease which have not been drilled to a density of at least 40 acres for each producing oil well and 640 acres for each producing or shut-in gas well, except that in case any rule adopted by the Railroad Commission of Texas or other regulating authority for any field on this lease provides for a spacing or proration establishing different units of acreage per well, then such established different units shall be held under this lease by such production, in lieu of the 40 and 640-acre units above mentioned.

# Arguments of ConocoPhillips

- ▶ The field rule did not establish a maximum acreage that could be assigned to a well, and Rule 38 only establishes the minimum acreage required to drill a well.
- ▶ Under the court's holding the exception would swallow the general rule because if the minimum required acreage under Rule 38 is applied, the 640-acre general rule would never apply.
- ▶ The holding would be adverse to the pooling clause.
- ▶ The language within the retained acreage clause that each unit shall contain "at least" one well would be rendered superfluous.
- ▶ The retained acreage clause provided a different number of acres to be retained for oil wells and gas wells, while there is no difference under the court's construction.

# More arguments of ConocoPhillips

- ▶ The court should not interpret the retained acreage clause to impose a limitation on the grant unless the language is clear.
- ▶ “Oh, come on, your honor!”
- ▶ “Please?”

# Argument of Vaquillas

- ▶ The field rules did not provide for the size of proration units.
- ▶ The wells drilled by ConocoPhillips are subject to a 467/1200 spacing rule.
- ▶ Rule 38 of the RRC statewide rules provides that, if the field rules for a gas field do not provide for proration unit sizes but only for well spacing rules, the standard proration size for a field with a spacing rule of 467-1200 is 40 acres per well.
- ▶ “Neener neener neener.”

# Judgment of Appellate Court



# Aftermath

- ▶ Subsequent Procedural History - currently with SCOTEX

# Endeavor Energy Resources v. Discovery Operating

- ▶ The actual retained acreage clause:
- ▶ 18. At the end of the Primary Term or upon the cessation of the continuous development of the Leased premises required above, whichever is later, this lease shall automatically terminate as to all lands and depths covered herein, save and except those lands and depths located within a governmental proration unit assigned to a well producing oil or gas in paying quantities and the depths down to and including one hundred feet (100') below the deepest productive perforation(s), with each such governmental proration unit to contain the number of acres required to comply with the applicable rules and regulations of the Railroad Commission of Texas for obtaining the maximum producing allowable for the particular well.

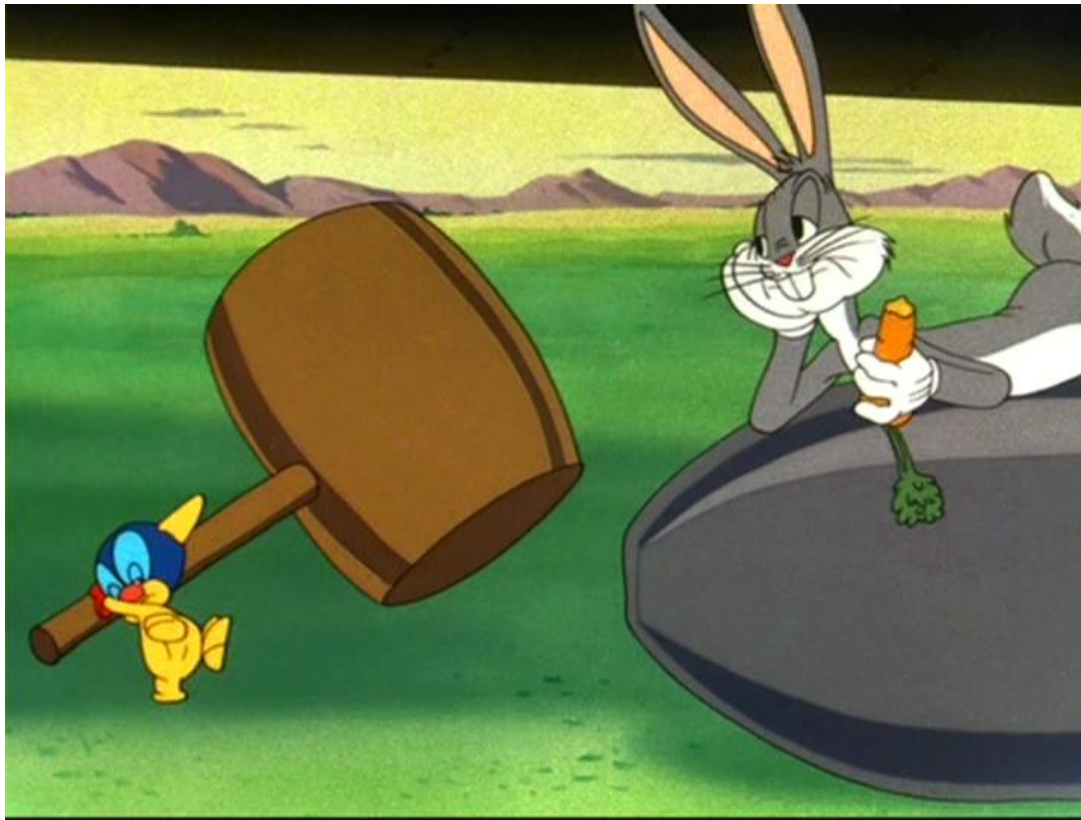
# More Endeavor

- ▶ What Rule 3 says:
- ▶ The acreage assigned to an individual well shall be known as a proration unit. The standard drilling and proration units are established hereby to be EIGHTY (80) acres. No proration unit shall [\*\*7] consist of more than EIGHTY (80) acres except as hereinafter provided. The two farthestmost points in any proration unit shall not be in excess of THREE THOUSAND (3,000) feet removed from each other; provided however, that in the case of long and narrow leases or in cases where because of the shape of the lease such is necessary to permit the utilization of tolerance acreage, the Commission may after proper showing grant exceptions to the limitations as to the shape of proration units as herein contained. All proration units shall consist of continuous and contiguous acreage which can reasonably be considered to be productive of oil. No double assignment of acreage will be accepted.

# Still more Endeavor

- ▶ Notwithstanding the above, operators may elect to assign a tolerance of not more than EIGHTY (80) acres of additional unassigned lease acreage to a well on an EIGHTY (80) acre unit and shall in such event receive allowable credit for not more than ONE HUNDRED SIXTY (160) acres.
- ▶ Operators shall file with the Commission certified plats of their properties in said field, which plats shall set out distinctly all of those things pertinent to the determination of the acreage credit claimed for each well.
- ▶ Endeavor files plats with the RRC of its proration, as required, and designates 80-acre proration units for each well.

So what's the hubbub, bub?



# Endeavor yet again

- ▶ Prescribed vs. Permitted, e.g. construing “required to comply with”
- ▶ “We conclude that Section 18 unambiguously required *Endeavor* to file, before the automatic termination date, a certified *proration plat* with the RRC that assigned *acreage* to a governmental *proration unit* in order to avoid having its mineral interests in that *acreage* revert back to the lessors. Because *Endeavor* did not file certified *proration plats* with the RRC that assigned the *acreage* in the disputed quarter sections by the automatic termination dates, the quantity of *acreage* that terminated under the lease includes the *acreage* in the disputed quarter sections. This case is similar to cases cited by *Discovery* and *Patriot* in which the courts held that the leases terminated because the [\*\*23] lessee failed to comply with a requirement in the [\*179] lease for maintaining it. <sup>2</sup> *Discovery* and *Patriot* established their right to summary judgment on their trespass to try title claim. The trial court did not err when it granted Appellees' motions for summary judgment and when it denied *Endeavor's* motion for summary judgment. *Endeavor's* issue is overruled.”

# Aftermath of Endeavor

- ▶ Currently with SCOTEX
- ▶ RRC aftermath - Final Order in Consolidated Oil and Gas Docket Nos. 7C-029-1169 and 7C-0291171 - requirement to file proration plats with P-15 is nullified.

# Restoration of Premises



What your lessor thinks it looks like



What you think it looks like

Warren Petroleum Corp. V. Monzingo, 304 S.W. 2d 362  
(Tex. 1957)

Landowner seeks recovery from the lessee for failing to restore the surface after abandonment of operations, including unfilled slush pits, ruts, and a gravel road.

Holding?



## No Soup For You!

No recovery for plaintiff, either.

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# JOINT OPERATING AGREEMENT CONSIDERATIONS

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What is the lifespan of a  
Joint Operating  
Agreement?



Is it infinite?



Do we measure it a quarter mile at a time?

# Well no, it's actually given in Article XIII

## ► ARTICLE XIII.

### ► TERM OF AGREEMENT

- This agreement shall remain in full force and effect as to the Oil and Gas Leases and/or Oil and Gas Interests subject hereto for the period of time selected below; provided, however, no party hereto shall ever be construed as having any right, title or interest in or to any Lease or Oil and Gas Interest contributed by any other party beyond the term of this agreement.
- ☐ Option No. 1: So long as any of the Oil and Gas Leases subject to this agreement remain or are continued in force as to any part of the Contract Area, whether by production, extension, renewal or otherwise.
- ☐ Option No. 2: In the event the well described in Article VI.A., or any subsequent well drilled under any provision of this agreement, results in the Completion of a well as a well capable of production of Oil and/or Gas in paying quantities, this agreement shall continue in force so long as any such well is capable of production, and for an additional period of \_\_\_\_\_ days thereafter; provided, however, if, prior to the expiration of such additional period of additional period, one or more of the parties hereto are engaged in drilling, Reworking, Deepening, Sidetracking, Plugging Back, testing or attempting to Complete or Re-complete a well or wells hereunder, this agreement shall continue in force until such operations have been completed and if production results therefrom, this agreement shall continue in force as provided herein. In the event the well described in Article VI.A., or any subsequent well drilled hereunder, results in a dry hole, and no other well is capable of producing Oil and/or Gas from the Contract Area, this agreement shall terminate unless drilling, Deepening, Sidetracking, Completing, Re-completing, Plugging Back or Reworking operations are commenced within \_\_\_\_\_ days from the date of abandonment of said well. "Abandonment" for such purposes shall mean either (i) a decision by all parties not to conduct any further operations on the well or (ii) the elapse of 180 days from the conduct of any operations on the well, whichever first occurs.
- The termination of this agreement shall not relieve any party hereto from any expense, liability or other obligation or any remedy therefor which has accrued or attached prior to the date of such termination.
- Upon termination of this agreement and the satisfaction of all obligations hereunder, in the event a memorandum of this Operating Agreement has been filed of record, Operator is authorized to file of record in all necessary recording offices a notice of termination, and each party hereto agrees to execute such a notice of termination as to Operator's interest, upon request of Operator, if Operator has satisfied all its financial obligations.

# Wagner & Brown, Ltd v. Sheppard

AKA “bad facts make bad law”



Proper attire when considering the implications of the case.

Seriously - there is even a law review article entitled *What Hath Sheppard Wrought?* It really spun a lot of people around.



An actual Joint Operating Agreement under Wagner & Brown,  
Ltd.V. Sheppard



In conclusion - when considering how to wrap up a lease or unit, keep it real, think slow, and we should get through it just fine.



# KIRBY, MATHEWS & WALRATH

Gerald Walrath

Partner

Tel: (713) 489-4620

Fax: (713) 489-4619

Cel: (281) 703-6669

[jwalrath@kmwenergylaw.com](mailto:jwalrath@kmwenergylaw.com)

[www.kmwenergylaw.com](http://www.kmwenergylaw.com)