

The Meaning of “Other Minerals” and Other Incidents of Mineral Ownership

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OIL, GAS AND MINERAL LEASE

THIS AGREEMENT made this 28th day of August 1980, between

Nellie Cummings

lessor (whether one or more), whose address is: 917 N. Pecan, Palestine, Texas 75801
and Oxy Petroleum, Inc., lessee, WITNESSETH:

--Ten and no/100--

1. Lessor, in consideration of _____ Dollars, receipt of which is hereby acknowledged, and of the covenants and agreements of lessee hereinafter contained, does hereby grant, lease and let unto lessee the land covered hereby for the purposes and with the exclusive right of exploring, drilling, mining and operating for, producing and owning oil, gas, sulphur and all other minerals (whether or not similar to those mentioned), together with the right to make surveys on said land, lay pipe lines, establish and utilize facilities for surface or subsurface disposal of salt water, construct roads and bridges, dig canals, build tanks, power stations, telephone lines, employee houses and other structures on said land, necessary or useful in lessee's operations in exploring, drilling for, producing, treating, storing and transporting minerals produced from the land covered hereby or any other land adjacent thereto. The land covered hereby, herein called "said land", is located in the County of Anderson, State of Texas, and is described as follows:

First Tract: 6 acres of land, more or less, a part of the Peter Hinds Survey A-367, and being the same property described in a deed dated September 18, 1940, from F. B. Price et ux to Nellie Cummings, recorded in Vol. 313, page 172, Deed Records of Anderson County, Texas.

Second Tract: 2 acres of land, more or less, a part of the Peter Hinds Survey, A-367, and being the same property described in a deed dated August 16, 1948 from B. F. Price to Nellie Cummings, recorded in Vol. 404, page 441, Deed records of Anderson County, Texas.

It is understood and agreed that lessor's royalty interest shall be one-sixth (1/6) rather than the one-eighth (1/8) as set out in paragraph three (3) herein.

Granting clause

- Granting clauses in leases and deeds include consideration, rights of use, property description, lands and interest subject to the lease. **Substances are also covered**
- Many conveyances contains grants of oil, gas, and “other minerals”. Other substances include casinghead gas, sulphur, and coal

Granting clause

- Meaning of “other minerals” can create disputes between the surface estate owner and the mineral estate owner over who owns what substances
- Does a grant of “oil, gas and other other minerals” include lithium, produced water, or porous space?

The problem as stated in *Moser*

“We have previously attempted to create a rule to effect the intent of the parties to convey valuable minerals to the mineral estate owner, while protecting the surface estate owner from destruction of the surface estate by the mineral owner's extraction of minerals.”

Moser v. United States Steel Corp., 676 S.W.2d 99, 101 (Tex. 1984)

Texas rule to classify “other minerals”

- If estate severed before June 8, 1983, the **Surface Destruction Test** applies
- If estate severed after June 8, 1983, the **Ordinary and Natural Meaning Test** applies
- As a matter of law, certain substances belong to surface: fresh water, gravel, sand, building stone, limestone, caliche, surface shale, water, near surface lignite, iron & coal

Texas rule to classify “other minerals”

If estate severed before June 8, 1983, the **Surface Destruction Test** applies:

“Unless the contrary intention is affirmatively and fairly expressed, therefore, a grant or reservation of “minerals” or “mineral rights” should not be construed to include a substance that must be removed by methods that will, in effect, consume or deplete the surface estate.”

Acker v. Guinn, 464 S.W.2d 348, 352 (Tex. 1971)

Texas rule to classify “other minerals”

If estate severed after June 8, 1983, the **Ordinary and Natural Meaning Test** applies:

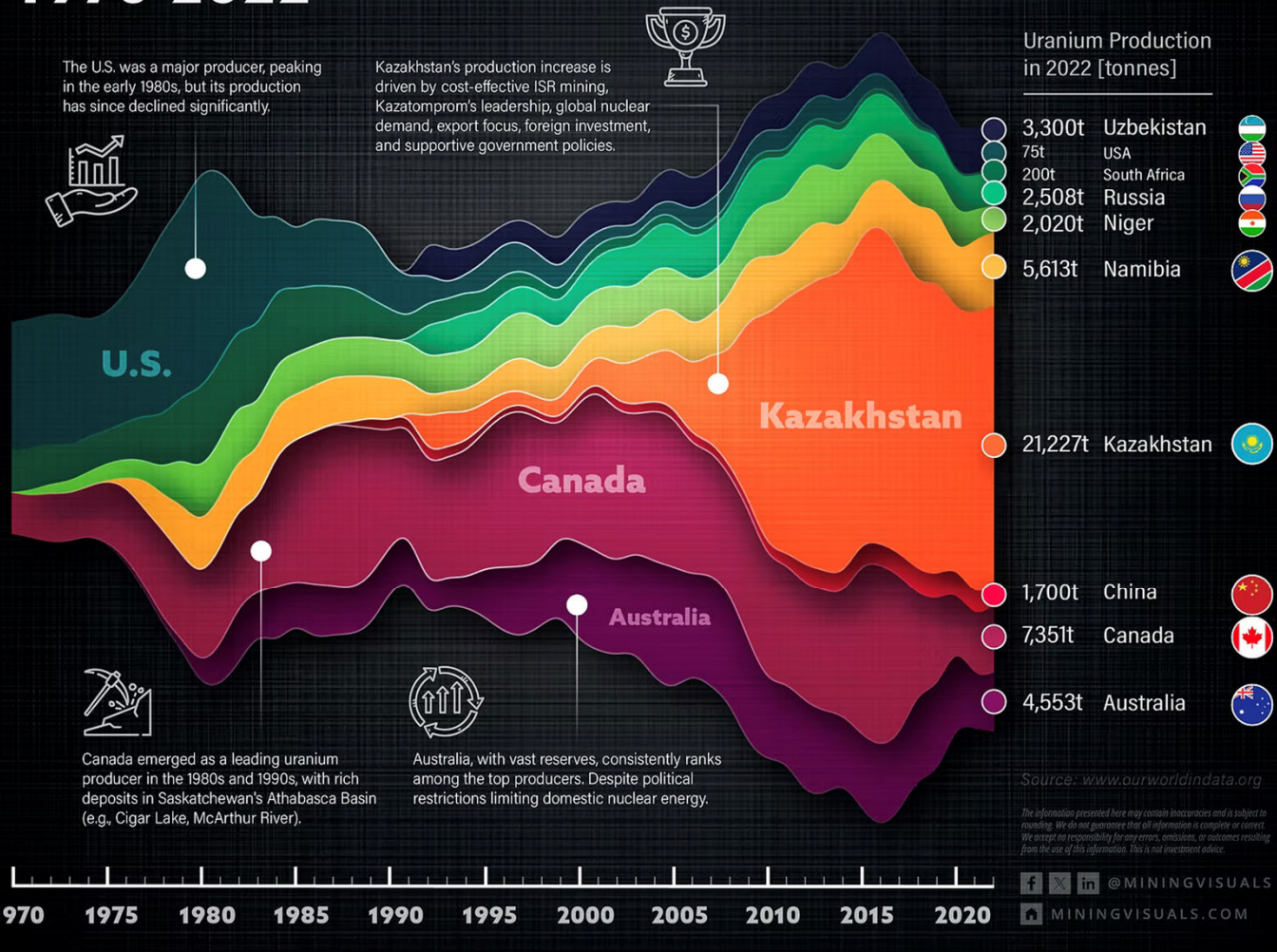
“We now hold a severance of minerals in an oil, gas and other minerals clause includes all substances within the ordinary and natural meaning of that word, whether their presence or value is known at the time of severance.”

Moser v. United States Steel Corp., 676 S.W.2d 99, 102 (Tex. 1984)

URANIUM PRODUCTION

1970-2022

By Country



The tests (uranium case)

Reed v. Wylie, 554 S.W.2d 169 (Tex. 1977):

“If substantial quantities of the mineral lie so near the surface that extraction, as of the date of the severance of the surface and mineral estates, would necessarily have destroyed the surface, the surface owner has title to the mineral.”

The tests (uranium case)

Reed v. Wylie, 597 S.W.2d 743 (Tex. 1980):

A substance "near the surface" is part of the surface estate if it is shown that any reasonable method of production, at the time of conveyance or thereafter, would consume, deplete, or destroy the surface. A deposit within 200 feet of the surface was held to be "near the surface" as a matter of law.

The tests (uranium case)

Wylie II:

If a surface owner establishes ownership of a substance at or near the surface, the surface owner owns the substance beneath the tract at whatever depth it may be found. *Id.* at 748.

The Extralateral right

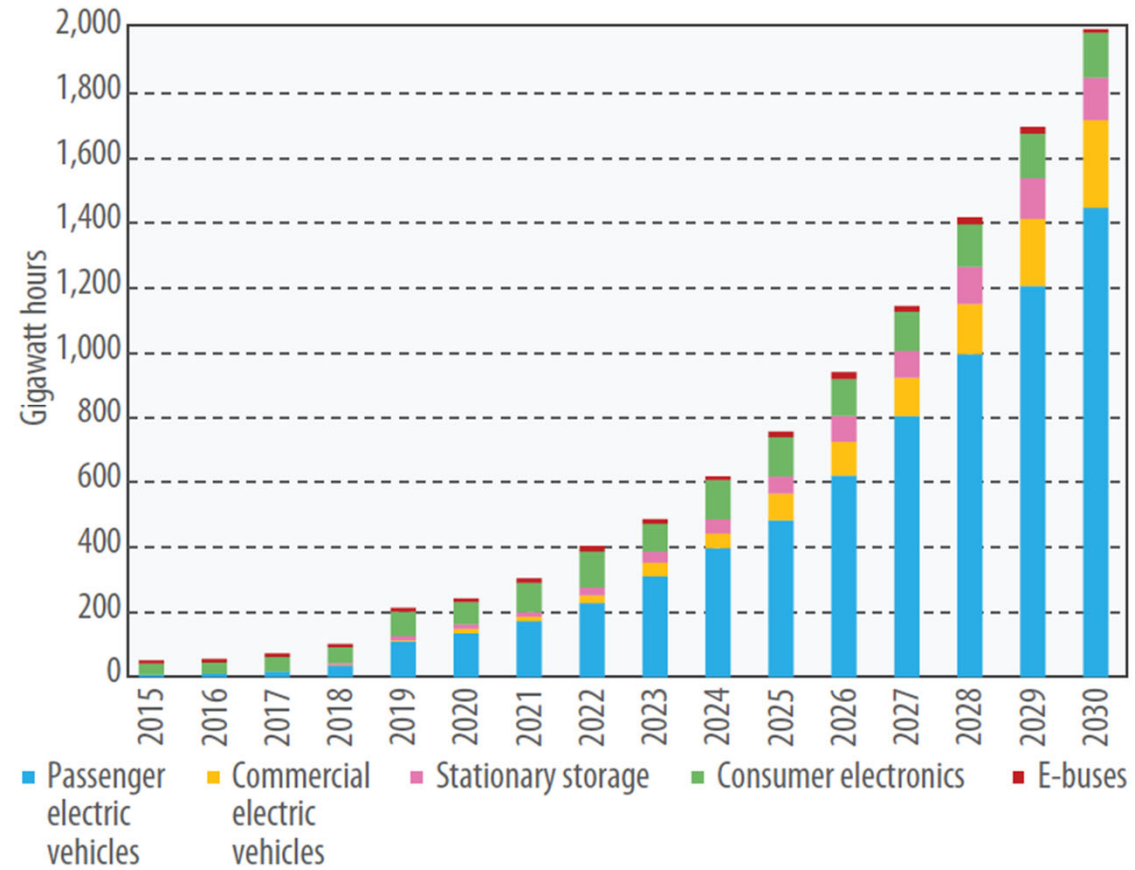


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Figure 2

Uses of lithium-ion batteries in the world, 2015–2030



Source: Wang (2020).

Source: UN

Lithium & produced water

- No caselaw on lithium, but following *Moser's* determination that uranium belongs to the mineral estate, it is likely that lithium would be classified the same
- Difference is that lithium is extracted from brine or produced water
- Ownership may be associated then with produced water

Lithium & produced water

“This case decides who owns produced water arising from a hydraulic fracturing operation: COG Operating, LLC (the existing mineral lessee) or Cactus Water Services, LLC (who later entered a produced water lease agreement with the surface owners).”

Cactus Water Servs., LLC v. COG Operating, LLC, 676 S.W.3d 733, 734 (Tex. App.—El Paso 2023, pet. granted)

Produced water

COG argued:

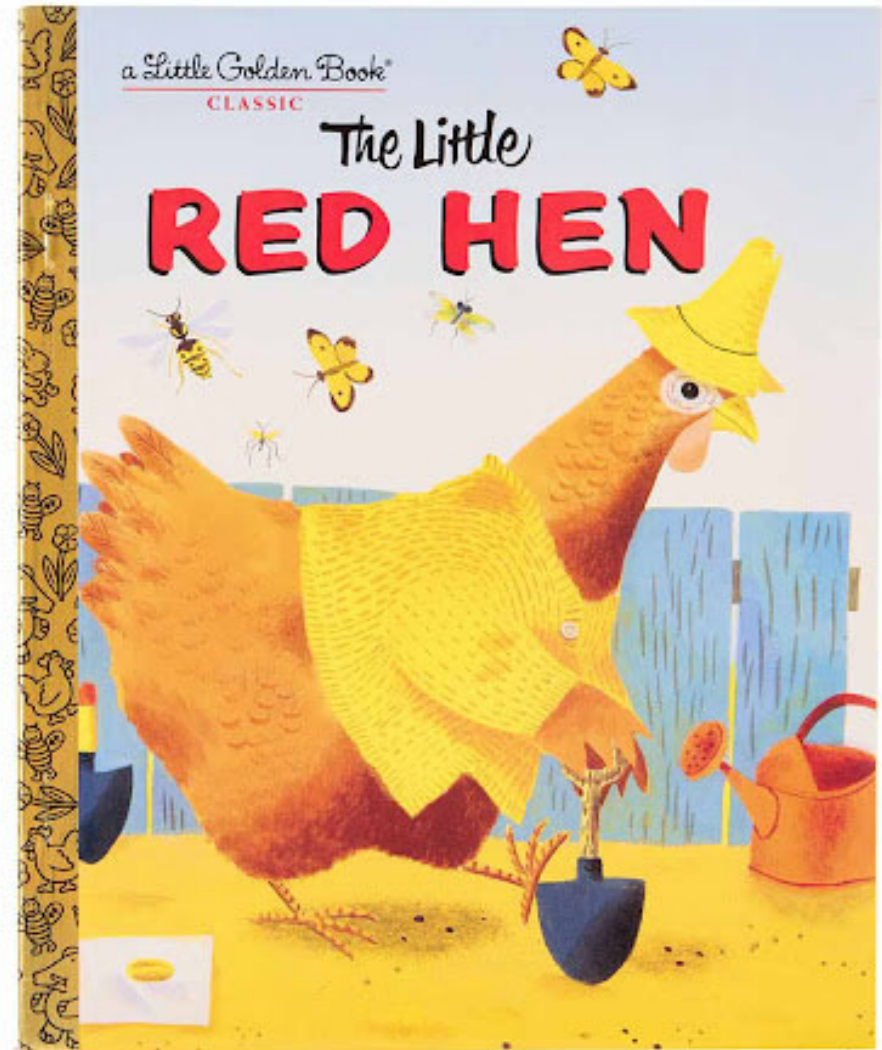
- (1) leases must be construed to effectuate parties' general intent to convey oil and gas in their natural form and produced water is part of single, combined product stream that arises from its well;
- (2) owned produced water as waste byproduct. COG also claims ownership through its development rights under its mineral leases, which include the right to dispose of the waste generated by its wells.

Produced water

- Court examined whether produced water was “waste” or water and looked to Tex. Nat. Res. Code, Tex. Water Code & RRC Rules (Tex. Admin. Code)
- “The relevant legal definitions of oil and gas waste include produced water. And because the Legislature defines produced water as oil and gas waste, it cannot also be groundwater.” *Id.* at 739

Produced water

- Can't have it both ways:
Waste **Resource**
- Need to reconcile the liabilities of produced water with the revenue potential when the waste is also a resource



Takeaways

“The knowledge of the parties of the value, or even the existence of the substance at the time the conveyance was executed” is ‘irrelevant to its inclusion or exclusion from a grant of minerals.’ Moser v. U.S. Steel Corp., 676 S.W.2d 99, 102 (Tex. 1984).”

Cactus Water Servs. v. COG Operating, at 740.

Takeaways

“To read the mineral leases as reserving produced water—something that exists separate from oil and gas only after processing and treatment—for the surface estate would give the surface estate (and thus Cactus) “the benefit of costs and risks [COG] voluntarily undertook.”

Cactus Water Servs. v. COG Operating, at 740.

Back to the grant

“... [T]he grant of ‘oil, gas and other hydrocarbons’ or ‘oil and gas’ includes the rights and duties associated with disposing of its waste, including produced water, which cannot be extracted separate from the oil and gas. . . .

Nothing in the mineral leases indicates that the parties intended to upend the definitions of these terms or common practices. Indeed, they could have—through an express reservation.

Cactus Water Servs. v. COG Operating, at 741.



Source: AONG

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