THE TAKEOFF

THE LATEST NEWS AND ANNOUNCEMENTS

FALL 2024 EDITION

INSIDE THIS ISSUE

2024 PBLA BOARD MEMBERS

UPCOMING EVENTS

LEGAL HIGHLIGHT

PBLA SPONSOR HIGHLIGHT

NOTE FROM PBLA

2024 PBLA BOARD MEMBERS

Randis M. Butts
President

Randis Butts is the Business Development Land Manager at Diamondback Energy, where she has worked since August of 2017. Prior to working at Diamondback, Randis was a Landman at Apache Corporation and Chesapeake Energy. Randis graduated from Oklahoma State University with Bachelor of Science degrees in Agricultural Economics and Accounting. Randis is an active member of PBLA and AAPL. Randis and her husband, Zack, have two children, Bodie and Quinn.

Joshua G. Anderson
First Vice President – Programs

Josh Anderson is a Petroleum Landman for Mewbourne Oil Company, a private exploration and production company primarily focused on operations in the Permian and Anadarko Basins. Josh is a graduate of The University of Oklahoma, where he earned a Bachelor of Business Administration in Energy Management and a minor in Finance, in 2010. After graduation, Josh went to work for Mewbourne Oil Company in their Oklahoma City office, then transferred to Mewbourne's Midland office, to work their Permian Basin Assets, primarily focusing on the Delaware Basin. Josh and his wife, Danielle, recently had their first daughter, Eleanor.

Sarah Hicks Midkiff
Second Vice President – Membership

Katie L. Jirasek (McBryde)
Treasurer

Riker Everett
Secretary

Eric C. Eves
Director – Fundraising, Charities, and Scholarships

Ty W. Parkison
Director – Clay Shoot

Dustin Rucker
Director – Clay Shoot

Scott Harper
Director – Golf Tournament

Andrew M. Lunceford
Director – Golf Tournament

Oliver Cho
Director - Newsletter

India Sterling Fender
Director – Education Seminar

Garreth Brewer
Director - Christmas Party and Shrimp Boil

Danielle Anderson
Director at Large

Ryan Ulam
Director at Large

Derek Whiting
AAPL Director – Region V Representative

Zachary T. Smith
Immediate Past President

Ariel Herrera
Executive Administrative Assistant

UPCOMING EVENTS

OCTOBER 2024

CLAY SHOOT PRE-PARTY

- October 2, 2024 at The Tailgate - 4401 N. Big Spring St., Midland, TX 79705
- 5 PM TO 8 PM CT
- NOTE: This event is free for all shooters in the clay shoot, non-shooters may attend but will need to purchase a ticket ($25) in advance to attend

ERIC HANSON MEMORIAL CLAY SHOOT

- October 3, 2024 at Windwalker Farms – 2551 County Rd. C2801, Stanton, TX 79782
- 8:00 AM to 5:00 PM CT
- Non-event shooters may purchase a lunch ticket ($25) for food, refreshments, music, and socializing - Lunch will begin at 11:00 AM CT
- NOTE: This event is SOLD OUT for shooting sporting clays

PBLA LUNCH MEETING

- October 8, 2024 at the Petroleum Club of Midland – 501 W. Wall St. Midland, TX 79701
- 11:30 AM to 1:00 PM CT

NOVEMBER 2024

PBLA LUNCH MEETING

- November 12, 2024 at the Petroleum Club of Midland – 501 W. Wall St. Midland, TX 79701
- 11:30 AM to 1:00 PM CT

DECEMBER 2023

PBLA CHRISTMAS PARTY

- December 10, 2024 at The Venue at Live Oak – 3201 Elkins Ed. Midland, TX 79705
- 5:00 PM CT

Eric Karl Hanson was born in 1956 and graduated from Midland High School in 1974. After graduation, Eric attended Southwestern University in Georgetown, Texas. He married wife, Janet on May 16, 1992. He and Janet have four children, Harris, Mary Lisbeth, Kathryn, and K.K. In 1985-1986, Eric was the director of the first Skeet Shoot Committee and held the event out at the Riflery Range near the Midland International Airport. In those days, it was a half day event before growing into two half days (Friday afternoon/Saturday morning), with a crawfish boil after the second day. Now, Eric's son, Harris, attends each year on the Hanson team in tow with his own son, Grandson Eric. This year, 2024, marks the 42nd year celebrating an annual Clay Shoot and Eric's efforts to improve PBLA during his years of involvement. Eric was the President of PBLA from 1988 to 1989.

LEGAL HIGHLIGHT

Prior to founding Holliday Energy Law Group, Ben entered the oil and gas industry as a landman in South Texas before moving in-house to join the Barnett Shale Asset Team of a Midland-based E&P. With the decline of the Barnett and the rise of the Eagle Ford, Ben became the project leader in charge of an approximate 30,000 acre Eagle Ford asset in Karnes and Atascosa Counties, leading all title, leasing, and curative efforts within the prospect area. Since 2010, Ben has focused on representing exploration and production companies in their operations across the United States.

Ben is Board Certified in Oil, Gas, and Mineral Law by the Texas Board of Legal Specialization. He is a member of the State Bar College, is the immediate past President of the San Antonio Association of Professional Landmen, is a founding board member of South Texas Landman & Lawyer Clays and is the current President of the Entrepreneur's Organization – San Antonio Chapter. He is licensed to practice law in Texas, Oklahoma, North Dakota, Ohio, and Illinois, and is a member of the local San Antonio, Houston, and Permian Basin Associations of Professional Landmen, as well as the AAPL.

- Board Certified in Oil, Gas, and Mineral Law by the Texas Board of Legal Specialization
- Member of the State Bar College
- Immediate Past President of the San Antonio Association of Professional Landmen
- Founding Board Member of South Texas Landman & Lawyer Clays
- Current President of the Entrepreneur's Organization – San Antonio Chapter.

Just Across the Fence: New Mexico and Texas' Separate Legal and Regulatory Approaches to Developing Multi-Tract Horizontals

I. Introduction

New Mexico and Texas make for interesting case study in the evolution of oil and gas law. They are geographically adjacent to one another and share a common history as part of the Spanish and then Mexican empires. Most important for our purposes, they both overlay the Delaware Basin; we're producing the same formation(s), but how we do so is very impacted by which side of the fence we find ourselves. New Mexico and Texas have very different approaches to dealing with the oil and gas industry, particularly as it relates to an

effort to handle oil and gas issues at the state level, but both states have thriving oil and gas industries.[1] Historically, New Mexico has handled its oil and gas industry through a statute-driven approach like that of Oklahoma, as opposed to a case law driven approach like Texas.[2] Since New Mexico's oil and gas law lacks the vast majority of case law present in other jurisdictions, practitioners in New Mexico typically turn to jurisdictions such as Texas for direction.[3] However, despite a lack of case law surrounding oil and gas issues, New Mexico oil and gas production has experienced great economic results stemming from its statute-driven approach.[4]

New Mexico's oil and gas industry has historically done well due to contributions by the Federal and State governments, which include their large mineral ownership, significant oversight, and regulatory involvement.[5] The Federal and State governments play a major role in the New Mexico oil and gas industry.[6] In New Mexico, the United States Federal Government is the most consequential mineral owner and controls the Bureau of Land Management ("BLM").[7] Similarly, the State of New Mexico owns minerals and controls both the State Land Office and the Oil, Gas, and Minerals Division.[8] Not all minerals are owned by the Federal and State government however, like Texas, private fee owners are also involved in the ownership of minerals in New Mexico.[9]

The Texas oil and gas industry, on the other hand, is governed by the Railroad Commission of Texas ("RRC"), which regulates the oil and gas industry, and the Texas Commission on Environmental Quality ("TCEQ"), which regulates air emissions and water pollution.[10] Beyond these two entities, oil and gas is guided by case law once issues arise and are brought to the court system.[11] With the presence of venue and jurisdictional statutes and rules, litigation surrounding oil and gas are typically handled in Texas state courts, which are often present in rural counties that hold general jurisdiction.[12] Despite a differing approach, it is

---

[1] *See generally* Carly Hewett, *A Comparative Analysis of Texas and New Mexico Oil and Gas Laws from a Title Examiner's Perspective*, 6 TEX. A&M J. OF PROP. LAW 397, 397 (2020) (comparing the two states).

[2] *See generally* Thomas C. Turner, Jr., *A Primer on New Mexico Oil and Gas Law: State, Federal, and Fee Lands*, 6 LSU J. OF ENERGY L. AND RES. 435 (2018) (showing how heavily New Mexico relies on statutes as opposed to case law).

[3] *See, e.g., Bd. of Cnty. Comm'rs of Roosevelt Cnty. v. Good*, 105 P.2d 470, 471 (N.M. 1940) (citing *Waugh v. Thompson Land & Coal Co.*, 137 S.E. 895, 897 (W. Va. 1927); *Northern Pac. Ry. Co. v. Soderberg*, 99 F. 506, 507 (C.C.D. Wash. 1900), *aff'd,* 104 F. 425 (9th Cir. 1900), *aff'd,* 188 U.S. 526 (1903)) (looking to Texas' case law for guidance on the "ordinary and natural meaning test").

[4] *See, e.g.,* Jerry Redfern, *New Mexico's Legislative Session, Funded by Oil and Gas, Promises Fireworks*, SOURCE NM (Jan. 24, 2023) https://sourcenm.com/2023/01/24/new-mexicos-legislative-session-funded-by-oil-and-gas-promises-fireworks/ (revealing that "[o]il production [in New Mexico] alone has grown tenfold" since 2010).

[5] *See, e.g.,* Roberts Montgomery, *Water to Wind: The Path Texas Groundwater Law Provides to Sever the Wind Estate and Prioritize Mutually Dominant Estates*, 50 TEX. ENV'T. L. J. 107, 118 (2020) (explaining that "the federal government owns more than 33% of the land within the State of New Mexico").

[6] *See* NEW MEXICO ROYALTIES AND STATE FINANCES, N.M. LEGIS. FIN. COMM. (July 13, 2023), *available at* https://www.nmlegis.gov/Entity/LFC/Documents/Money_Matters/New%20Mexico%20Royalties%20and%20State%20Finances%20FINAL.pdf (stating that companies obtain leases from the federal or state governments).

[7] *See* I. REGULATORY FRAMEWORK: TEXAS VS. NM, 2023 TXCLE-AOGERL 13-I (detailing that the federal government owns 34.72% of the 77.76 million acres located in New Mexico, which is estimated to be around twenty-seven million acres).

[8] *See* Carly Hewett, *A Comparative Analysis of Texas and New Mexico Oil and Gas Laws from a Title Examiner's Perspective*, 6 TEX. A&M J. OF PROP. LAW 397, 398 (2020) (revealing that "approximately nine million surface acres and thirteen million subsurface acres of land in thirty-two of New Mexico's thirty-three counties are owned by the State").

[9] *See* Thomas C. Turner, Jr., *A Primer on New Mexico Oil and Gas Law: State, Federal, and Fee Lands*, 6 LSU J. OF ENERGY L. AND RES. 435, 447 (2018) (detailing that the United States and New Mexico issued land patents to private landowners which included the rights to oil, gas, and other minerals absent a reservation).

[10] *See generally Common Environmental Requirements for Oil and Gas Activities in Texas,* TEXAS COMM'N ON ENVIRONMENTAL QUALITY (July 2023), https://www.tceq.texas.gov/downloads/assistance/publications/rg-482.pdf (explaining the regulatory bodies present in Texas).

[11] *See* Carly Hewett, *A Comparative Analysis of Texas and New Mexico Oil and Gas Laws from a Title Examiner's Perspective*, 6 TEX. A&M J. OF PROP. LAW 397, 397 (2020) (focusing on a benefit of not engaging in a statute-driven approach).

[12] *See* Emily A. Fitzgerald, *What Texas Business Court Could Mean for Oil, Gas Cases*, ALSTON & BIRD (Nov. 15, 2023), *extracted from* LAW360, https://www.alston.com/en/insights/publications/2023/11/what-tx-business-court-could-mean-for-oil-cases (referring to such dockets as "'cattle call' dockets").

estimated that over forty-three percent of the United States oil and over twenty-eight percent of the United States natural gas is produced in Texas, according to the Texas Oil & Gas Association.[13]

II. The Contributions of a Statute-Driven Approach in New Mexico

The New Mexico State Land Office oversees the Oil Conservation Division ("OCD"), which is the primary regulator of oil and gas development in the state.[14] The OCD "gathers well production data, permits new wells," enforces oil and gas laws and administrative rules, administers oil and gas portions of the Water Quality Act, and regulates the development and production of geothermal resources.[15] The purpose of the Land Office is to fund public schools as well as other public institutions.[16] Furthermore, money is raised through "leasing state trust land for a multitude of purposes including oil and gas[.]"[17] In addition, the New Mexico Environment Department Air Quality Bureau regulates air quality and maintains Emissions Databases that report emissions data from each active oil and gas facility in New Mexico.[18] There is also the New Mexico Energy, Minerals and Natural Resources Department ("EMNRD"), which is overseen by and receives its policy direction from the Office of the Secretary.[19] The mission of the EMNRD is to make New Mexico the "national leader in energy and natural resource management."[20]

a. Natural Gas Waste Reduction Rules

On March 25, 2021, the OCD voted unanimously to approve the EMNRD's Natural Gas Waste Reduction Rules.[21] These rules require 98% natural gas capture by December 31, 2026, which is, so far, the highest requirement in the nation.[22] The rules also require extensive reporting of natural gas losses from operations and midstream as well as prohibits routine flaring.[23] The OCD now has the ability to "deny drilling permits if gas capture targets are not achieved."[24] Additionally, Operators are required to select and implement alternative beneficial uses for natural gas if a gathering system is unavailable.[25]

---

[13] *See* Emily A. Fitzgerald, *What Texas Business Court Could Mean for Oil, Gas Cases*, ALSTON & BIRD (Nov. 15, 2023), *extracted from* LAW360, https://www.alston.com/en/insights/publications/2023/11/what-tx-business-court-could-mean-for-oil-cases (contributing to an industry that profited over four trillion dollars in the United States in 2022).

[14] *See OCD Home*, ENERGY, MINERALS AND NAT. RES. DEP'T, https://www.emnrd.nm.gov/ocd/ (explaining what the Oil Conservation division is).

[15] *See OCD Home*, ENERGY, MINERALS AND NAT. RES. DEP'T, https://www.emnrd.nm.gov/ocd/ (further explaining that it "makes certain abandoned wells are properly plugged[ ] and ensures the land is responsibly restored).

[16] *See Welcome to the New Mexico State Land Office*, N.M. STATE LAND OFFICE, https://www.nmstatelands.org (listing Commissioner Garcia as the individual who is tasked with overseeing surface and mineral acres).

[17] *See Welcome to the New Mexico State Land Office*, N.M. STATE LAND OFFICE, https://www.nmstatelands.org (listing producing a list of funding sources).

[18] *See Air Quality Bureau*, N.M. ENV'T DEP'T, https://www.env.nm.gov/air-quality/ (stating that its main purpose is to protect public health "and the natural beauty of the state by preventing the deterioration of air quality").

[19] *See Home*, EMNRD, https://www.emnrd.nm.gov (focusing on energy conservation, forestry, mining and minerals, oil conservation, and state parks).

[20] *See Home*, EMNRD, https://www.emnrd.nm.gov (striving to make New Mexico the "leader in developing reliable supplied of energy" and much more).

[21] *See* Adrian Hedden, *New Mexico Enacts Tougher Emissions Rules on Oil and Gas, Calls for 98 Percent Gas Capture*, CARLSBAD CURRENT ARGUS (Mar. 25, 2021), https://www.currentargus.com/story/news/local/2021/03/25/new-mexico-enacts-tougher-emissions-rules-oil-and-gas/6971937002/ (noting this came after "more than a year of public comments and debate").

[22] *See* Adrian Hedden, *New Mexico Enacts Tougher Emissions Rules on Oil and Gas, Calls for 98 Percent Gas Capture*, CARLSBAD CURRENT ARGUS (Mar. 25, 2021), https://www.currentargus.com/story/news/local/2021/03/25/new-mexico-enacts-tougher-emissions-rules-oil-and-gas/6971937002/ (barring "venting or flaring except for emergencies").

[23] *See* Adrian Hedden, *New Mexico Enacts Tougher Emissions Rules on Oil and Gas, Calls for 98 Percent Gas Capture*, CARLSBAD CURRENT ARGUS (Mar. 25, 2021), https://www.currentargus.com/story/news/local/2021/03/25/new-mexico-enacts-tougher-emissions-rules-oil-and-gas/6971937002/ (providing for "stricter restrictions on emissions of methane and volatile organic compounds").

[24] *See* NATURAL GAS WASTE REDUCTION RULES NOW IN EFFECT, ENERGY, MINERALS AND NAT. RES. DEP'T OIL CONSERVATION DIV. (May 25, 2021) (explaining that "[t]he rules follow two years of stakeholder outreach, technical research, and codify one of the strongest natural gas programs in the nation").

[25] *See Oil Conservation Commission Approves EMNRD's Final Natural Gas Waste Reduction Rules*, KRWG (Mar. 25, 2021), https://www.krwg.org/regional/2021-03-25/oil-conservation-commission-approves-emnrds-final-natural-gas-waste-reduction-rules (focusing on the environmental impact).

Phase 1 of the rules, which started in October 2021, required "robust data collection and reporting to identify natural gas loss at every stage of the process."[26] The information obtained from Phase one is imperative to Phase 2, which set out the requirement of "upstream and midstream operators, including pipelines, to attain a higher level of natural gas capture each year[.]"[27]

b. Oil and Gas Revenue

Coupled with its heavy involvement, New Mexico's State budget relies extensively on oil and gas revenue, resulting in just under thirty-five percent of the annual budget coming from the oil and gas industry.[28] In 2022 alone, New Mexico's oil and gas industry contributed roughly $5.8 billion dollars.[29] The oil and gas industry made contributions to several key sources of funding in New Mexico throughout 2022, including $418,100,000.00 in gross receipts tax, $525,700,000.00 in oil and gas school tax, $213,400,000.00 in severance tax, and $747,500,000.00 in federal mineral leasing.[30] Additionally, New Mexico receives, on average, a third of its total education funding from the oil and gas industry (around $1.4 billion dollars).[31] In 2019, the state received an estimated $38,179 per teacher and $2,472 per student from just the oil and gas industry alone.[32]

c. Oil and Gas Production

New Mexico's oil and gas production includes the San Juan Basin, which mainly produces gas and some oil, the Raton Basin, which produces only gas, the Bravo Dome, which produces CO2, the Tucumcari Basin, which produces both oil and gas, and the Permian Basin, which also produces both oil and gas.[33] It is the Delaware Basin portion of the Permian specifically that draws the lion's share of attention in New Mexico. The Delaware exhibits excellent stacked pay in both the Bones Spring and Wolfcamp formation, which overly one another.[34] Within the entire Permian Basin, the top two counties based on highest rig count are Eddy County, New Mexico (61), Lea County, New Mexico (47). These are followed by Martin County, Texas (34), Loving County, Texas (23), Midland County, Texas (20), Reeves County, Texas (20), and Upton County, Texas (20).[35]

d. Adapting to a Consistently Changing Industry

One of the interesting aspects of the United States' approach to state-based law is that a legal laboratory of sorts can develop. We as a nation can solve problems through legislation differently in different areas based on local custom and preference. The problem set we're focused on today is combining multiple

---

[26] *See* NATURAL GAS WASTE REDUCTION RULES NOW IN EFFECT, ENERGY, MINERALS AND NAT. RES. DEP'T OIL CONSERVATION DIV. (May 25, 2021) (setting up data to accurately execute Phase 2).

[27] *See* NATURAL GAS WASTE REDUCTION RULES NOW IN EFFECT, ENERGY, MINERALS AND NAT. RES. DEP'T OIL CONSERVATION DIV. (May 25, 2021) (resulting in reaching the goal of ninety-eight percent gas capture before the end of 2026).

[28] *See, e.g.,* Jerry Redfern, *New Mexico's Legislative Session, Funded by Oil and Gas, Promises Fireworks*, SOURCE NM (Jan. 24, 2023) https://sourcenm.com/2023/01/24/new-mexicos-legislative-session-funded-by-oil-and-gas-promises-fireworks/ (stating that thirty-five percent of a "record-busting $9.4 billion budget" is going to be funded by oil and gas revenues).

[29] NEW MEXICO OIL & GAS ASSOCIATION, FUELING NEW MEXICO: HOW NEW MEXICO'S OIL AND NATURAL GAS INDUSTRY BENEFITS ALL 6, 9 (2022).

[30] NEW MEXICO OIL & GAS ASSOCIATION, FUELING NEW MEXICO: HOW NEW MEXICO'S OIL AND NATURAL GAS INDUSTRY BENEFITS ALL 9 (2022).

[31] NEW MEXICO OIL & GAS ASSOCIATION, FUELING NEW MEXICO: HOW NEW MEXICO'S OIL AND NATURAL GAS INDUSTRY BENEFITS ALL 4, 9 (2022).

[32] *See* Adrian Hedden, *How Much Does Oil and Gas Give to Your Schools? Data Shows Boom Towns Get Less Than Metros*, CARLSBAD CURRENT ARGUS (April 19, 2019) https://www.currentargus.com/story/news/local/2019/04/19/new-mexico-oil-gas-industry-money-contributions-schools/3402056002/ (listing major production being located in the Permian and San Juan Basins).

[33] Ron Broadhead & Shari Kelley, *Frequently Asked Questions About Oil and Gas*, NEW MEXICO BUREAU OF GEOLOGY & MINERAL RESOURCES https://geoinfo.nmt.edu/faq/energy/petroleum/home.html#.

[34] *See generally* PERMIAN BASIN PART 1, U.S. ENERGY INFO. ADMIN. (Feb. 2020) (providing details and maps of the Delaware Basin). *See also* Ron Broadhead & Shari Kelley, *Frequently Asked Questions About Oil and Gas*, NEW MEXICO BUREAU OF GEOLOGY & MINERAL RESOURCES https://geoinfo.nmt.edu/faq/energy/petroleum/home.html#.

[35] *See* NORTH AMERICAN RIG COUNTY REPORT, BAKER HUGHES (March 28, 2024), *available at* https://rigcount.bakerhughes.com/na-rig-count (detailing the weekly rig counts by county and basin).

separately owned tracts into a sufficiently large acreage block to accommodate modern horizontal wellbores. Simply put, we used to pool, but the pooling laws were crafted in response to conventional vertical well drilling. This becomes a challenge in the modern era of exponential growth in unconventional horizontal drilling; the architecture for how we block up tracts for drilling no longer applies. In many cases, what is possible from a technological standpoint is outpacing what we are allowed to due under vintage lease clauses and regulations. A perfect example is an oil and gas lease that allows for 640-acre pooling plus a ten percent tolerance (704 acres).

Because we can now drill three section laterals, we either need more acreage in the unit, or we'll need to duplicate a lot of efforts in filing multiple units. Plus, as we've seen in Texas, this presents a situation where old rules – pooling restrictions – are used to constrict new technologies in an effort to gain concessions from the operator.

New Mexico and Texas make a great example: both have a long history of oil and gas production, they in fact both overlay a portion of the same formation, and yet they have evolved two completely different approaches to combining multiple tracts to accommodate larger well bores.[36] While Texas has taken the hands-off approach from a government perspective, and relies on essentially an industry-derived practice of allocation wells in the place of voluntary pooling. New Mexico, on the other hand, relies on a newly updated statutory compulsory pooling process.[37] Almost all horizontal wells in New Mexico are subject to a Compulsory Pooling Order, which further requires that every horizontal well be in a standard or non-standard Horizontal Spacing Unit.[38] So we have one state that is largely hands-off, and one state where the government is heavily involved, and yet thankfully both systems work really well.

e. Mineral Owners of Consequence in New Mexico

Whereas Texas largely exhibits private mineral ownership, in New Mexico the State and Federal government are the primary mineral owners.[39] Where the mineral interest is owned by the federal government, operators must use a federal lease form and comply with rules dictated by the Department of the Interior through the BLM.[40] This is due to the Mineral Leasing Act of 1920; federally owned energy minerals, which

[36] *See, e.g., 2018 Delaware Basin Assessment Unit Map*, U.S.G.S. (2018) https://www.usgs.gov/media/images/2018-delaware-basin-assessment-unit-map (providing a map of the Delaware Basin).

[37] *See* Thomas C. Turner, Jr., *A Primer on New Mexico Oil and Gas Law: State, Federal, and Fee Lands*, 6 LSU J. OF ENERGY L. AND RES. 435 (2018) (discussing compulsory pooling being utilized when a lease fails to include a pooling clause).

[38] *See Horizontal Well Development Pooling, Spacing, and Utilization: A Regulatory Toolbox for Key Policy, Regulatory, and Statutory Considerations*, INTERSTATE OIL AND GAS COMPACT COMM'N, 29 (2015), https://iogcc.ok.gov/sites/g/files/gmc836/f/pstoolboxfinal.pdf (citing 19 NMAC §15.13 to explain that an operator needs to own an interest in the proposed area to be eligible for compulsory pooling, but there is no listed minimum percentage of ownership).

[39] *See Oil and Gas Statistics*, U.S. DEPT. INTERIOR BUREAU LAND MGMT. (2023), https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics (providing that the federal government owns almost four million acres of land and has 6,758 leases); *see also About*, N.M. STATE LAND OFFICE, https://www.nmstatelands.org/about/#:~:text=The%20New%20Mexico%20State%20Land%20Office%2C%20under%20the%20direction%20of,mineral%20acres%20across%20every%20county. (showing that the New Mexico State Land Office owns "nine million surface and thirteen million mineral acres across" the state); New Mexico Oil and Gas Lease Interests, 1A SUMMERS OIL AND GAS § 9:24 (3d ed.) (considering oil and gas as real property in New Mexico); *Johnson v.* Gray. 75 N.M. 726, 728 (1966) (citing *Duvall v.* Stone, 54 N.M. 27 (1949); *Terry v. Humphreys*, 27 N.M. 564 (1922)) (explaining that the mineral estate can be severed from the surface to create a separate real property estate in land); Meredith A. Wegener, *Balancing Rights in a New Enegery Era: Will the Mineral Estate's Dominance Continue?*, 57 HOUS. L. REV. 1037, 1056 (2020) (internal citations omitted) (noting that New Mexico adopted the *Getty Oil Co. v. Jones* opinion to ensure the mineral estate is the dominant estate, while the surface estate is subject to their right of "ingress or egress" and "reasonable use" to explore, mine, drill, and produce); *Duvall v. Stone*, 54 N.M. 27, 33–34 (1949) (granting the mineral estate the right to develop, to execute a lease, to receive bonuses, to delay rentals, and to receive royalties).

[40] Bruce M. Pendery, *BLM's Retained Rights: How Requiring Environmental Protection Fulfills Oil and Gas Lease Obligations*, 40 ENV'T L. 599, 627 (2010) (detailing the rights of federal leases under the BLM).

include oil and gas, fall under the category of leasable minerals that can only be accessed via lease under MLA.[41]

f. Impact of the Enabling Act

When New Mexico converted from a territory to a state, it received vast swathes of land from the federal government.[42] To provide oversight for this large land transfer, the federal government promulgated the Enabling Act, which provides that all lands prior to patent are to be held in trust for New Mexico's school system and public institutions.[43] The New Mexico State Land Office was placed in charge of all land sales, with the specific directive that the state reserve "all minerals of whatsoever kind" when said land was to be sold.[44] Thus, where the mineral interest is owned by the State of New Mexico, the New Mexico Commissioner of Public Lands has the discretion to use one of three statutory lease forms.[45]

Before we dive into a discussion about pooling in New Mexico, let's quickly brush up on the law surrounding the oil and gas lease itself. An oil and gas lease is classified as a fee simple determinable conveyance.[46] The lessor grants the lessee ownership of the mineral estate for the primary term of the lease and so long thereafter as production or a negotiated substitute is maintained.[47] In addition, the lessor reserves and retains a stated royalty percentage which is specified in the lease.[48]

g. Compulsory Pooling

Whereas Texas maintains a relatively lighter regulatory touch, in New Mexico, the state is much more involved in oil and gas production. The primary vehicle for the state's oversight is the New Mexico Oil Conservation Division (the "Division"), which is the regulatory body that oversees oil and gas and has the authority to issue compulsory pooling orders. To the extent the record needs to be corrected, voluntary pooling exists in New Mexico. In fact, to be entitled to a compulsory pooling order that 'force pools' other parties, the applicant must demonstrate to the Division that it has made sufficient attempts to reach voluntary pooling agreements with each party to be pooled.

Before we get to the details, it is worth noting that whereas Texas proceeded along the allocation well route to resolve the issue of capabilities that exceeded pooling authority, which path was almost entirely

---

[41] *See New Mexico Mining and Minerals*, BUREAU OF LAND MANAGEMENT, https://www.blm.gov/programs/energy-and-minerals/mining-and-minerals/about/new-mexico (listing three categories of classifications of federal minerals, "locatable, leasable, and saleable minerals").

[42] *See Finance Facts: State Land*, N.M. LEGIS. (2023), https://www.nmlegis.gov/Entity/LFC/Documents/Finance_Facts/finance%20facts%20state%20trust%20land.pdf (discussing the Ferguson Act of 1898 and the Enabling Act of 1910, which gave New Mexico over thirteen million acres of land).

[43] *See* Act of June 20, 1910, ch. 310, §§ 10, 36, Stat. 557, 563 (creating the Enabling Act, which allowed for New Mexico to hold lands it acquired upon becoming a state).

[44] *See* Gabe Long. *When is a Rock a Rock? New Mexico's Abandonment of Property Rules in Mineral Conveyancing*, 45 N.M. L. REV. 343, 350 (2014) (pointing out the state also uses the more ambiguous phrase of "oil and gas, and other minerals); FERGUSON ACT OF 1898 (designating these lands to the New Mexico State Land Office); *Trust Beneficiaries*, N.M. STATE LAND OFFICE, https://www.nmstatelands.org/about/trust-beneficiaries/ (crediting the use of ninety-four percent of these lands for education support).

[45] *See* Oil and Gas Production on State Lands—New Mexico, 4 SUMMERS OIL AND GAS § 50:30 (3d ed.) (evaluating the different lease forms); N.M. STAT. ANN. § 19-10-3; N.M. STAT. ANN. § 19-10-4.1 (identifying the form of exploratory oil and gas leases); N.M. STAT. ANN. § 19-10-7 (setting the time limit as five years for exploratory form of lease); N.M. STAT. ANN. § 19-10-4.2 (identifying the form of discovery oil and gas leases; N.M. STAT. ANN. § 19-10-4 (limiting the royalty rate for tracts with less than ninety percentage points total to 3/16); N.M. STAT. ANN. § 19-10-4.3 (identifying the form of development oil and gas leases).

[46] George A. Snell, Gregory J. Nibert, & Timothy C. Dowd, *Crossing State Lines—Texas, Oklahoma, and New Mexico*, 25TH ANNUAL OIL, GAS, & MINERAL LAW INSTITUTE, Mar. 26, 1999, at 55 (citing *Terry v. Humphreys,* 27 N.M. 564 (1922).

[47] *See* George A. Snell, Gregory J. Nibert, & Timothy C. Dowd, *Crossing State Lines—Texas, Oklahoma, and New Mexico*, 25TH ANNUAL OIL, GAS, & MINERAL LAW INSTITUTE, Mar. 26, 1999, at 61.

[48] *See* George A. Snell, Gregory J. Nibert, & Timothy C. Dowd, *Crossing State Lines—Texas, Oklahoma, and New Mexico*, 25TH ANNUAL OIL, GAS, & MINERAL LAW INSTITUTE, Mar. 26, 1999, at 61.

devoid of any statutory or case law guidance, New Mexico took the opposite approach. In 2016, the New Mexico legislature overhauled the compulsory pooling rules to accommodate horizontal drilling.[49] That is, whereas Texas allowed industry to proceed organically, the New Mexico state government sought input from and worked alongside the industry to craft a workable and certain framework for drilling multi-tract wells.[50]

The story of multi-tract wells in New Mexico's portion of the Permian is a really a story about compulsory pooling. While voluntary pooling is still allowed, and in fact encouraged, ultimately compulsory pooling governs when pooling cannot be achieved by voluntary means.[51] Pursuant to the New Mexico Statutes, either way (voluntary or compulsory), pooling is required if separately owned tracts are to be developed together with a single wellbore.[52] Specific to horizontal wells, an operator seeking to form Horizontal Spacing Units ("HSU") is required to either voluntarily or compulsory pool all interest owners within any lands in the HSU before producing the well.[53] The purpose of compulsory pooling is to offer a path to development when an unleased mineral owner refuses to join drilling operations, or more than one working interest owner cannot agree on a developmental plan.[54]

In New Mexico, this compulsory pooling process is conducted by the Division, which holds regular hearings pursuant to which it issues pooling orders.[55] In order to have standing to seek a compulsory pooling order, the owner of a right to drill must establish the following required elements, which include (1) more than one separately owned tracts and/or more than one undivided interest in oil and gas minerals in the same tract; (2) these tracts are in a single spacing or proration unit; (3) there has not been any voluntary pooling despite a legitimate attempt to do so; (4) the person who possesses the right to drill has either already drilled or presents a proposition to drill a well on the unit to a common source of supply, a specific formation, for example; and (5) the Oil Conservation Division is required to pool any and all parts of the land or interests in the spacing unit to prevent waste as well as protect correlative rights.[56]

Most hearings regarding compulsory pooling are uncontested and move forward by affidavit, or at least end up that way due to trades, etc. Proceeding by affidavit means essentially that no party is contesting the pooling order, in which case the applicant is required to meet the threshold elements for pooling usually by the admission of exhibits.

---

[49] See N.M. STAT. ANN. § 19.2.100.52 (amending the New Mexico compulsory pooling statute in 2016); COMPULSORY FIELDWIDE UNITIZATION, RMMLF-INST 21 (2003) (emphasizing the benefit of compulsory pooling for horizontal wells on "prevent[ing] and protect[ing] correlative rights").

[50] *See generally* Nicholas J. Trost, *Compulsory Pooling Horizontal Well Project Areas: An Analysis of the New OCC Rules and Why The Legislature Needs To Act*, STATE BAR OF NEW MEXICO, 1–4 (2012) (highlighting early concerns within horizontal drilling and the legislature's collaboration with the OCC and OCD to address said concerns).

[51] *See Horizontal Well Development Pooling, Spacing, and Utilization: A Regulatory Toolbox for Key Policy, Regulatory, and Statutory Considerations*, INTERSTATE OIL AND GAS COMPACT COMM'N, 29 (2015), https://iogcc.ok.gov/sites/g/files/gmc836/f/pstoolboxfinal.pdf (revealing that an operator must attempt to obtain a voluntary agreement before filing for compulsory pooling).

[52] NM STAT. § 70-2-17(C) (2023) (specifying that compulsory pooling will be required "to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste").

[53] NMAC 19.15.16.15(b)(10). Whenever horizontal well operator shall dedicate lands to a standard or non-standard spacing unit in which there are (1) 2+ separately owned tracts, (2) 2+ separately owned royalty interests, or (3) 2+ separately owned undivided interests in oil and gas, and such interests have not be voluntarily or compulsory pooled, the operator must pool them before producing the well.

[54] *See generally Horizontal Well Development Pooling, Spacing, and Utilization: A Regulatory Toolbox for Key Policy, Regulatory, and Statutory Considerations*, INTERSTATE OIL AND GAS COMPACT COMM'N, 29 (2015), https://iogcc.ok.gov/sites/g/files/gmc836/f/pstoolboxfinal.pdf (notating that compulsory pooling is filed after voluntary pooling is already attempted).

[55] *See generally, e.g., Application of Mewbourne Oil Co., to Pool an Additional Working Interest Owner Under the Terms of Order No. R-22855, Lea County, N.M.*, OIL CONSERVATION DIVISION OF N.M. HEARINGS, Order No. R-22855-A, at 1–2, *available at* https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/ho/20240404/r-22855-a_04_04_2024_10_33_47.pdf (approving an order for compulsory pooling based on uncontested evidence).

[56] *See generally Horizontal Well Development Pooling, Spacing, and Utilization: A Regulatory Toolbox for Key Policy, Regulatory, and Statutory Considerations*, INTERSTATE OIL AND GAS COMPACT COMM'N, 29–30 (2015), https://iogcc.ok.gov/sites/g/files/gmc836/f/pstoolboxfinal.pdf (explaining the requirement of compulsory pooling in New Mexico); *see also* NMAC 19.15.16.15(B)(10) (specifying that either a voluntary agreement or an order to pool lands is required before production begins).

There are any number of reasons why a party may decline to lease, trade, or sign a joint operating agreement ("JOA") and participate, and instead essentially consent to being compulsory pooled. For one, the standard pooling order acts as a statutory JOA, and sets out the basic cash call requirements, timing, and non-consent penalties, etc. Some parties are either familiar with the terms and would rather participate under the pooling order rather than take the effort to negotiate a JOA. Some parties are truly unknown or unlocatable.

However, if a resolution cannot be reached, the matter will ultimately be set for a contested hearing, which is in effect an administrative trial. at which a hearing and technical examiner will allow each party to enter evidence, and both call and cross-examine the other side's witnesses. After each case-in-chief has been submitted, meaning after each side has had the opportunity to tell their story as to why a compulsory order should be issued or denied, or in some cases to tell why a certain development plan should be favored over another, the Division will take the matter under advisement, and issue a pooling order at a later time.

Whether the parties proceed by affidavit or contested hearing, the Division will eventually enter an order to pool all interests within the HSU on terms that it deems fair and reasonable, and which afford each owner the opportunity to recover or receive a fair and just share without unnecessary expense.[57] It is standard practice that the compulsory pooled unleased mineral owner obtains seven-eighths working interest and one-eighth royalty.[58] When there is pooling of Federal or State leases, there must be a Communization Agreement as well as approval of such agreement from the Bureau of Land Management (for Federal) or the State Land Commissioner (for the State of New Mexico).[59]

Such a statutory system allows New Mexico to keep pace with industry capabilities that routinely exceed existing regulatory and legal frameworks.[60] This top-down approach works well for most parties and ensures State involvement that results in predictability and stability for the parties involved.[61] Texas' own system of voluntary pooling and allocation wells is likewise a tested and very workable method allowing operators to employ the latest capability and technology, but unlike in New Mexico it offers no firm solution once an interest owner declines to join in drilling operations.[62]

[57] *See* N.M. STAT. §70-2-17(C) (2021) (referring to both oil and gas).

[58] *See* N.M. STAT. §70-2-17(C) (2021) (stating that such working interest owner "shall in all events be paid one-eighth of all production from the unit and creditable to his interest").

[59] *See What is a Communization Agreement (CA)?*, MINERAL & LAND RECS. SYS. (June 20, 2023) https://mlrs.blm.gov/s/article/What-is-a-Communitization-Agreement-CA (listing the requirements for a Communization Agreement).

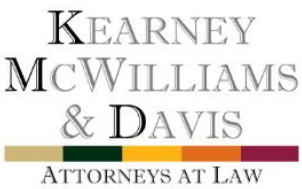
[60] *See generally* Thomas C. Turner, Jr., *A Primer on New Mexico Oil and Gas Law: State, Federal, and Fee Lands*, 6 LSU J. OF ENERGY L. AND RES. 435 (2018) (detailing multiple statutes that guided the oil and gas industry in New Mexico as it continued to change).

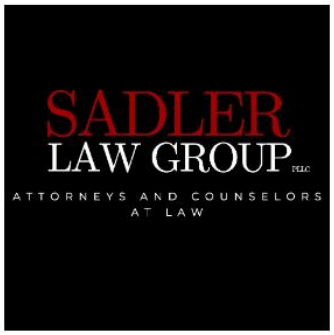
[61] *See, e.g., See* Brady Paul Behrens, *Rule 37 Exceptions and Small Mineral Tracts in Urban Areas: An Argument for Incorporating Compulsory Pooling into Special Field Rules in Texas*, 44 TEX. TECH L. REV. 1053, 1067 (2012) (internal citations omitted) (explaining that compulsory pooling provides predictability, while Rule 37 exceptions cause unpredictable results).

[62] *See* Brady Paul Behrens, *Rule 37 Exceptions and Small Mineral Tracts in Urban Areas: An Argument for Incorporating Compulsory Pooling into Special Field Rules in Texas*, 44 TEX. TECH L. REV. 1053, 1056 (2012) (requiring consent for voluntary pooling).

PBLA SPONSOR HIGHLIGHT

EXECUTIVE PBLA SPONSORS





PREMIUM PBLA SPONSORS


PBLA
PERMIAN BASIN LANDMEN'S ASSOCIATION
Farmers National Company
Energy
FASKEN
OIL AND RANCH
FORMENTERA
Griffith Land Services, Inc.
GULFTEX ENERGY
HAMILTON SHORES
HFB
HARRIS · FINLEY · BOGLE
HOLLAND
LAND RESOURCES
HOLLIDAY ENERGY LAW GROUP
KELLY HART
ATTORNEYS AT LAW
KUIPER
LAW FIRM
LANDPOINT
LC&A
LYNCH, CHAPPELL & ALSUP
A Professional Corporation
MARAUDER
LAND RESOURCES
MAZUREK
BELDEN &
BURKE PC
MCM
ENERGY PARTNERS
NUEVA
LAND MANAGEMENT
Ovintiv™
PERCHERON
PILOT WATER
SOLUTIONS
Purple Land
Management
PRONGHORN
LAND
RASHCHAPMAN
ATTORNEYS AT LAW
RL
REFINED LAND

PBLA would like to thank and recognize each of the Sponsors for their generous and thoughtful support!

NOTE FROM PBLA

If you're interested in:

- **Sponsoring in any our upcoming individual spring events or becoming an Executive/Premium Sponsor**
- **Have general announcements for publication**
- **Want to submit articles to be featured in our spring newsletter**
- **Have questions about memberships, dues, or renewals**
- **Would like to contribute to the PBLA Scholarship fund**
- **Would like to apply for PBLA charitable donations or scholarships**

Please reach out to Ariel Herrera at *admin@pbla.com* and we will be in touch!