Oil and Gas Companies Are Allowed to Take Privately Owned Mineral Interests Without Compensation

Texas Rule 37, Statewide Spacing Rule, Prevents the Well Bore of a Producing Oil or Gas Well from Being Located within 330 Feet of an Unleased Track of Land throughout the Barnett Shale (the 330 feet distance is pursuant to a Barnett Field Rule).

For the Barnett Shale, the Railroad Commission determined that wellbores should be no closer than 330 feet from unleased tracts due to the risk of draining the unleased properties. If, however an Oil or Gas operator wishes to drill a wellbore within 330 feet of an unleased tract of land they may request an exception to Rule 37. With an exception to this rule, an operator can place the wellbore right along the property line, recovering minerals from property that is not under lease. There is no compensation for the draining of this mineral interest.

*Rule 37 exceptions were adopted to prevent waste at the end of a well when the mineral owner is reluctant to sign a lease, or could not be found. Exceptions are permitted to provide a wellbore path to develop the larger pool of minerals. Supporters of this measure claim that it is needed to prevent one party from preventing others from benefitting from their mineral interests. However, it is being used by oil and gas operators as a negotiating tool.*

The operators are required to submit a written exception request to the Railroad Commission of Texas. And currently affected property owners are notified in writing on the Rule 37 Exception Request; however, the notices do not advise the property owners that their minerals are at risk of being taken. The mineral owners must travel to Austin to dispute the taking of their mineral property before the Railroad Commission of Texas. The property owner is never given royalty payments for their mineral interests if the Rule 37 exception is approved. The minerals are produced and retained by the operators.

The utilization of the Rule 37 exception takes away the mineral owner’s right to negotiate a fair and equitable lease. Furthermore, it is being used to intimidate property owners into signing leases that solely benefits the production company. This abuse of governmental power produces the following property rights issues:

- A Rule 37 exception violates the private mineral owners’ rights under the 5th Amendment to the U.S. Constitution and the Texas Constitution by taking your personal and private property (minerals) without just compensation.
A Rule 37 exception is BOTH against the mineral owners’ will, AND without compensation which makes it worse than Eminent Domain. Eminent Domain is against private property owners’ will, but you have a mandated hearing not to determine if your property will be taken from you, as it is in a Rule 37, but HOW MUCH compensation you will receive. People who are the subject of eminent domain can fight and argue for higher compensation for various reasons and many times get that higher compensation. **Rule 37 exception victims receive NO compensation.**

Rule 37 exceptions does not respect a minerals owners individual right to NOT have their minerals produced for whatever reason.

Rule 37 do not encourage a free market, with a competitive bid process. A natural gas production company has no incentive to pay what minerals are really worth, because mineral owners are constantly threatened with "If you don't sign for x dollars, we will take your minerals for free". How are you supposed to negotiate a “fair market price” under those conditions?

*From Jan 1 2005 to Feb 2011 there were 4733 drilling permits utilizing the Rule 37 exception. Therefore, on 4733 occasions, private property was transferred to a corporation without compensation, through abuse of government powers. Each Rule 37 exception represents one or more property owners, so the number of people affected is much higher than 4733. In Texas, it is getting to the point that you can own and peacefully enjoy your property as long as someone with more money doesn’t want it.*

The State of Texas has allowed this abuse for far too long, and therefore it must stop. When you first hear of a story such as this, you think that things like this happen in third world dictatorships not in the United States, and certainly not in the State of Texas. The three Railroad Commissioners take large amounts of campaign contributions from the very companies they are transferring this property to. Therefore, this gives the distinct impression of crony capitalism, not the free market system we expect in Texas. Demand that our elected officials respect private property rights.

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