

## **A Cattle Rancher v. An Oil Company - The Accommodation Doctrine**

A recent Texas Supreme Court decision pitted a cattle rancher against an oil company, and has shed additional light on the legal principal in oil and gas law known as the accommodation doctrine.

### **Background on *Merriman v. XTO*.**

Homer Merriman owns the surface estate of a 40 acre tract of land in Limestone County. On this land, he built his home, barn, and corrals, which he uses about once a year to work cattle. Mr. Merriman also leases several other tracts of land that he uses in his cattle operation. XTO Energy, Inc. has a lease for the property's mineral estate. XTO contacted Mr. Merriman about drilling a gas well on his property, but Mr. Merriman told XTO that the well would interfere with his cattle operation. XTO drilled the well despite Mr. Merriman's objections. Mr. Merriman filed suit seeking an injunction that would require XTO to remove the well. Mr. Merriman argued that XTO failed to accommodate his existing use of the surface estate to work cattle, which exceeded its rights as a mineral lessee and constituting trespass.

### **What is the accommodation doctrine?**

Generally, a party who holds a mineral right (like XTO in this case) also automatically has the implied right to use the surface of the land as reasonably necessary to extract minerals. The accommodation doctrine protects the right of surface owners by requiring a mineral owner to accommodate the surface owner's existing use of the land if possible to do so. So, for example, an oil company may be permitted to create a road in order to access a well on someone's property, but they likely are not permitted to make 5 roads through a corn field that would harm the surface owner's farming activity.

In order for a surface owner to claim that a lessee failed to accommodate an existing use of the surface, he must prove that: (1) The mineral owner's actions "precludes or substantially impairs the existing use"; (2) "There is no reasonable alternative method available to the surface owner by which the existing use can be continued"; and (3) There are reasonable alternatives available to the mineral lessee that will allow the discovery of minerals while also allowing the surface owner to continue his existing uses.

### **The Texas Supreme Court's Decision.**

The Texas Supreme Court sided with XTO and dismissed Mr. Merriman's case. Their reasoning, however, is important and may actually prove beneficial to landowners in future cases.

First, XTO argued that Mr. Merriman did not prove that there was no reasonable alternative for him to run his cattle operation, because he leased other properties. Essentially, XTO argued that the accommodation test required proof that no other alternatives were available anywhere, not just on the particular property at issue. The Court adopted the more confined test, and held that Mr. Merriman was not required to prove that he could not have run his existing cattle operation on other portions of his leased land.

**Why is this important for landowners?** It is much easier to prove that an oil company's drilling a well makes it impossible to run cattle on the particular property that the well is on, but would be much harder to ever prove that there was no alternative property on which the operation could be run. The standard adopted by the Court, which looks at the particular property at issue, is more favorable for landowners.

Second, XTO argued that even if Mr. Merriman could not run cattle on the property, he did not prove that he could conduct no alternative agricultural operation. Mr. Merriman argued that the test was not whether he could run another type of operation, but whether he could continue running his specific cattle operation. The Court agreed with Mr. Merriman. The court held that rather than looking at agricultural uses generally, the test requires that it look at whether the specific use (like Mr. Merriman's cattle operation) could be continued.

**Why is this important for landowners?** Again, this is a more favorable test for landowners. It would be much more difficult that one could not conduct *any* agricultural operation on the property where the well was drilled. Mr. Merriman would have to show that he could not run cattle, but also that he could not, for example, plant pecan trees or raise goats or plant cotton on the property before he could succeed on his claim. This would have been an onerous burden for a landowner to win a case against the oil company. The Court's decision on this item is favorable for agriculture.

Lastly, despite these two helpful interpretations by the Court, Mr. Merriman was unable to succeed on his claim against XTO based on the facts of his case. Mr. Merriman did not prove that there was no alternative method for working cattle elsewhere on the tract of land. He did not prove that he could not construct new pens or use temporary pens for working the cattle. In fact, when questioned about building new pens on the same land in a different area, Mr. Merriman testified that it would be "easier" not to have to build new pens and that using the existing corrals "works best for me." The mere fact that making an operational change is an inconvenience or would be expensive is not sufficient to meet the accommodation test requirements. Thus, Mr. Merriman's case was denied and XTO gets to keep its well.

**So what is the bottom line?** The accommodation doctrine looks narrowly at how a mineral owner's use of the surface estate impacts the surface owner's: (1) Use the same property at issue; and (2) Ability to conduct the specific agricultural activity in which he is engaged. Even with these favorable tests, however, a landowner must prove that the

mineral owner's intrusion on his land causes there to be no reasonable alternative for the surface owner to conduct his activity on the land, not just that it makes doing so more expensive or less convenient. This remains a difficult burden to meet, and one which Mr. Merriman could not overcome.

[Read the [full opinion here](#).]