

The Not So Good, the Bad and the Ugly: What Every Landman Needs to Know About Community Leases

West Coast Landmen's Institute



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September 5, 2013 • San Diego, California

Outline

- Creation
- Conveyance Problems
- Allocation of Royalties
- Partial Quitclaim Problem
- Pooling
- Foreclosure Issues

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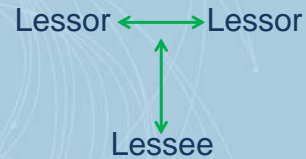
Creation

- Cross Conveyance Language

Traditional Lease



Community Lease



- Often says “Community Lease” but not required

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Creation (cont'd)

Explicit cross-conveyance language:

Lessors hereby pool their interest in this lease, and agree that during the continuance of this lease each Lessor shall share in all benefits under the lease in the ratio which the acreage owned by said Lessors bears to the entire acreage leased.

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Creation (cont'd)

If no explicit language, by interpretation of the lease:

- Contiguous parcels under separate ownership
- Multiple lessors execute one lease
- Right to produce from any parcel
- Right to hold non-producing parcels by operations on producing parcels

(*Higgins v. California Petroleum & Asphalt Co.* (1895) 109 Cal. 304)

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Creation (cont'd)

Almost a Community Lease, but Not Quite:

- One lessor, who subdivides into multiple parcels subject to the lease
- Lease continues to apply to the subdivided parcels
- No cross-conveyance of interests, but apportionment of royalties applies in the absence of contrary language in the lease or deed

(*Standard Oil Co. of Cal. v. John P. Mills Org.* (1935) 3 Cal.2d 128)

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Creation (cont'd)

Not a Community Lease:

- Multiple parcels, each under separate ownership
- Each owner executes separate leases, with pooling provision
- Lessees pool their interests with a pooling agreement

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Conveyance Problems

Conveying two interests:

- Mineral interest in parcel
 - An estate in real property that is appurtenant to the land
- Leasehold interest in community lease, i.e. an interest in the oil produced from co-lessors' land
 - An interest "in gross"

(*Tanner v. Title Insurance & Trust Co.* (1942) 20 Cal.2d 814)

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Conveyance Problems (cont'd)

Common conveyance language:

“All of my right, title and interest in and to the property...”

- Conveys only mineral rights, but not the leasehold interest in the community lease

(*Tanner v. Title Insurance & Trust Co.* (1942) 20 Cal.2d 814)

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Conveyance Problems (cont'd)

What about intent?

- Not used when document clear on its face
- Everyone involved in the conveyance is often dead
- Parties may not be aware that two interests exist

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Conveyance Problems (cont'd)

- Must specifically convey community lease interest:
 - E.g., convey minerals with language including all of “my interest in the community lease”
- Often conveyances only include minerals, not the community lease interest

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Allocation of Royalties

- X and Y execute a Community Lease with ABC Oil, royalty shared 50/50
- X conveys OGM to Z, but fails to include X's community lease interest

Parcel 1	Parcel 2
OGM – Z Community Lease – X	OGM – Y Community Lease – Y

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Allocation of Royalties (cont'd)

Parcel 1	Parcel 2
OGM – Z Community Lease – X 	OGM – Y Community Lease – Y


Z allocated 50% of royalties
Y allocated 50% of royalties
X allocated nothing

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Allocation of Royalties (cont'd)

Parcel 1	Parcel 2
OGM – Z Community Lease – X	OGM – Y Community Lease – Y 

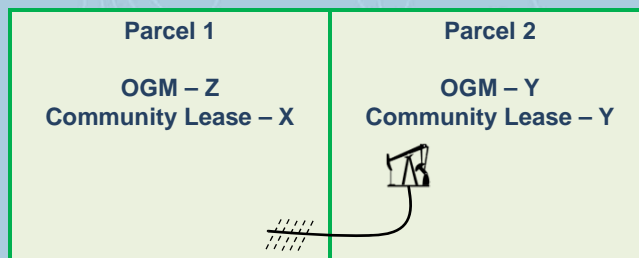
X allocated 50% of royalties
Y allocated 50% of royalties
Z allocated nothing

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Allocation of Royalties (cont'd)



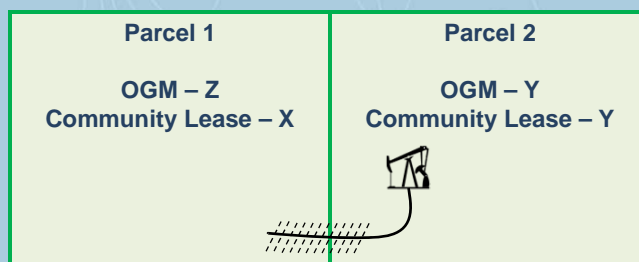
Y allocated 50% of royalties
Z allocated 50% of royalties
X allocated nothing?

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Allocation of Royalties (cont'd)



Y allocated 50% of royalties

Case law does not address how to allocate
between X and Z

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Partial Quitclaim Problem

Lessee quitclaims Community Lease as to Parcel 1

Parcel 1	Parcel 2	Parcel 3
OGM/Lease X	OGM/Lease Y	OGM/Lease Z

X still entitled to 1/3rd of royalties under the Community Lease, unless lease states otherwise

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Partial Quitclaim Problem (cont'd)




- Community leases typically include provision on partial surrender:
 - “This provision as to apportionment of benefits shall be operative notwithstanding the surrender by Lessee of any land described herein.”
- Absence of provision on partial surrender is not dispositive; court may infer apportionment
(*Clark v. Elsinore Oil Co.* (1934) 138 Cal.App. 6)

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Partial Quitclaim Problem (cont'd)

Parcel 1 OGM/Lease X 	Parcel 2 OGM/Lease Y 	Parcel 3 OGM/Lease Z 
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


X allocated all royalties from well on Tract 1
 X allocated 1/3rd royalties on well from Tract 3,
 unless lease states otherwise*

*Community lease may allocate royalties to Parcel 1
 even if QC, unless owner of Parcel 1 enters into a
 new lease for Parcel 1

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Pooling

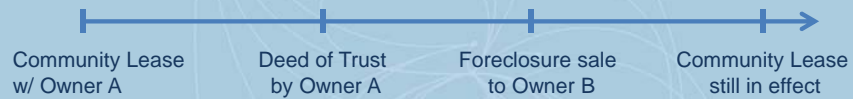
Pooling community leases with non-community leases

Parcel 1 Community Lease 	Parcel 2 Community Lease 	Parcel 3 Non-community lease 
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- Community lease may not provide for pooling
- Who to ask for amendments:
 - Mineral interest owner
 - Owner of community lease interest

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Foreclosure Issues



- What rights did Owner B obtain in foreclosure?
 - Royalties from production on his own land? Yes.
 - Royalties from production on co-lessor's land? No.
(See *Brown v. Copp* (1951) 105 Cal.App.2d 1)

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Foreclosure Issues (cont'd)



- Community lease terminated as to Owner B's parcel
- Owner A's interest in production from co-lessor's land also terminated
(*Gillis v. Royalty Service Corp.* (1949) 91 Cal.App.2d 365)

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Thank you

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Prior to joining Stoel Rives, Tom was a partner at Downey Brand LLP. Tom graduated from University of California, Davis, School of Law in 1998, and received his Bachelor of Business Administration from the University of Texas at Austin in Accounting in 1982. He is a former Captain in the U.S. Army and served on active duty from 1982-87.

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Prior to joining Stoel Rives, Mike was a partner at Downey Brand LLP in Sacramento and the former Chair of the Downey Brand's Energy, Land Use and Minerals Practice Group. He is a past President of both the Sacramento County Bar Association and the Sacramento Chapter of the Federal Bar Association. Mike graduated from the University of California, Davis, School of Law in 1997, Order of the Coif, and received his Bachelor of Science from U.C. Davis in Environmental Toxicology in 1994, *summa cum laude*.

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