



MASSIVE MINERALS

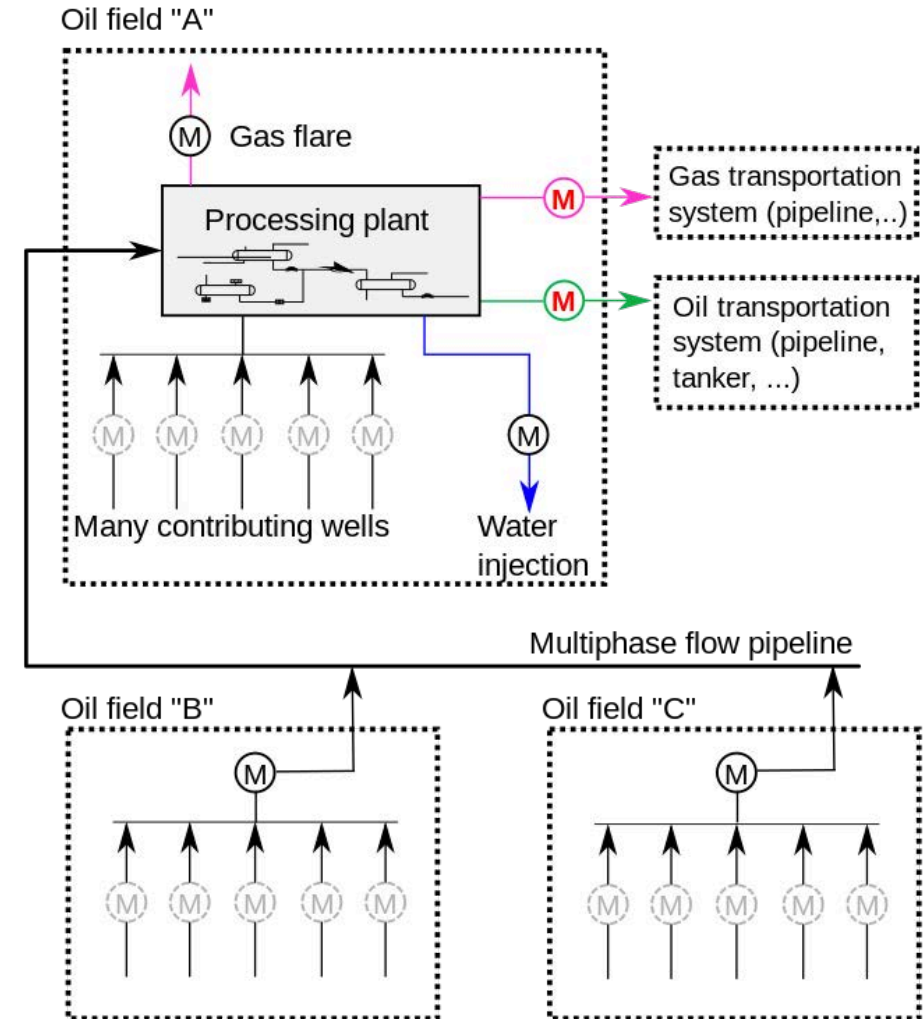
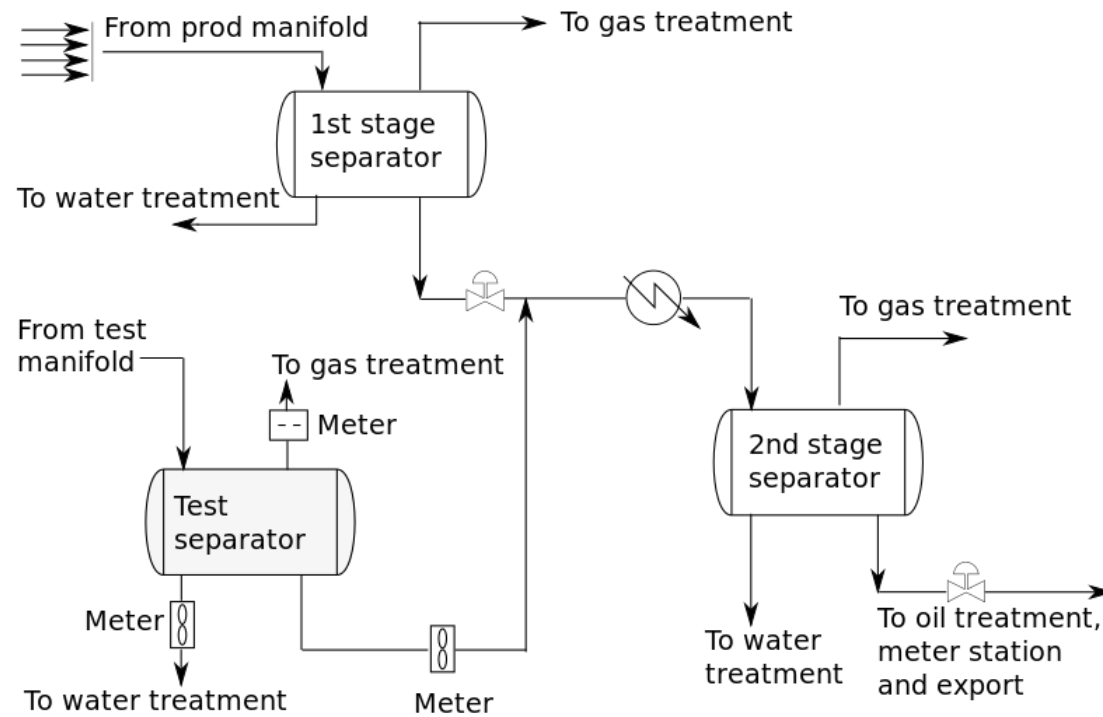
Commingling

Presentation Overview

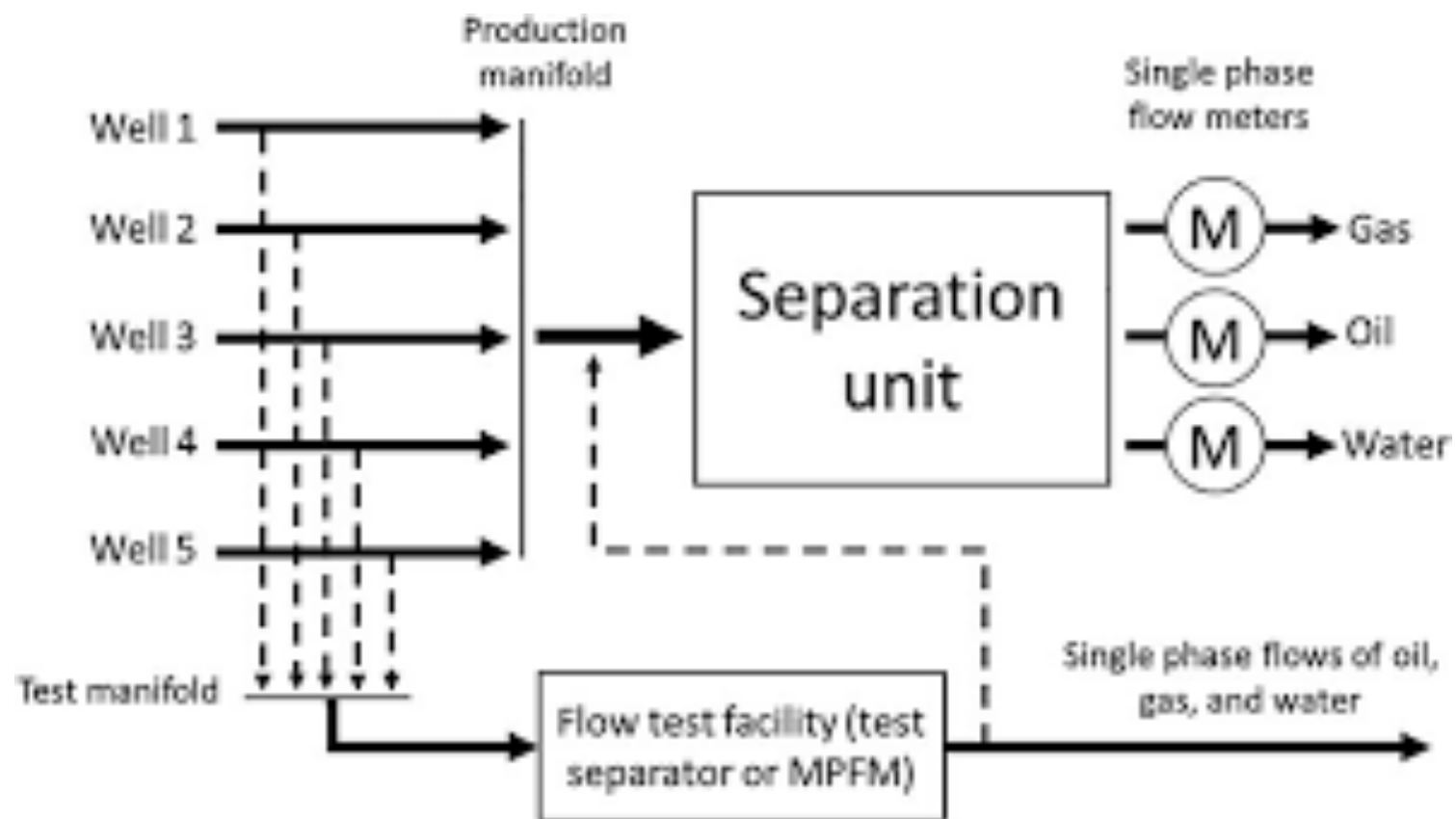
- Upstream Process
- What is commingling?
 - Case Law
 - Confusion of Goods Doctrine
 - Regulations

Metering/Measurement

- Produced hydrocarbons are measured prior to leaving the well site and the gross volume from which the royalty is calculated is based on this oil and gas measurement.
- **Tex. Nat. Res. Code §88.052:** No person owning leasing, operating, or controlling an oil property in this state may permit the oil or gas produced to pass beyond the possession or control of that person to the possession or control of any other person without first accurately measuring the amount of the oil or gas and making and preserving an accurate record of the amount.



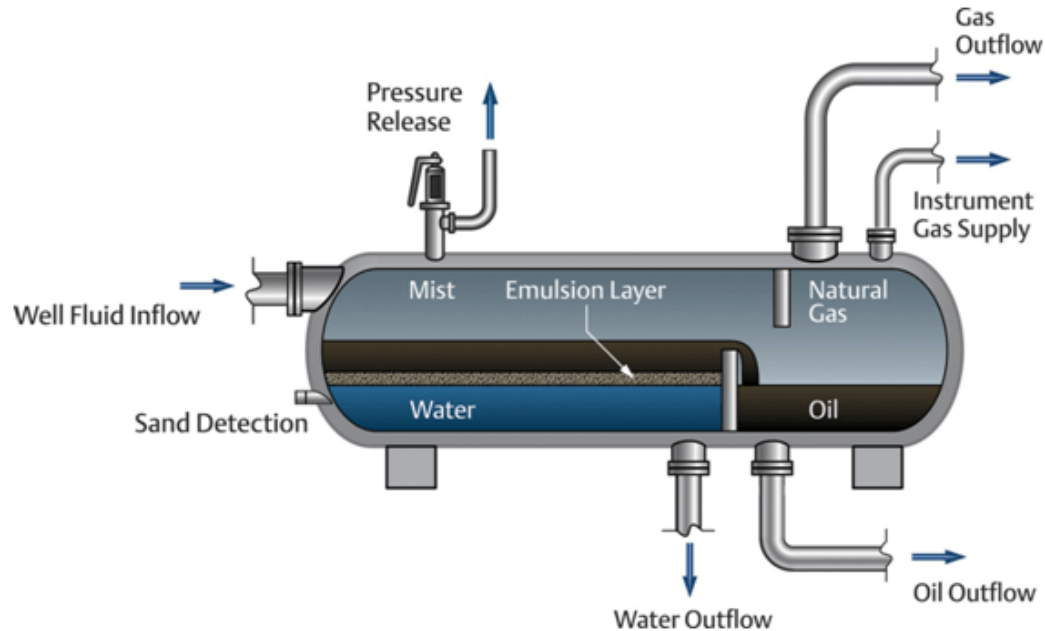
YOUR PARTNER IN CREATING MASSIVE, OUTSIZED VALUE



YOUR PARTNER IN CREATING MASSIVE, OUTSIZED VALUE

Separation

- Separators are used to separate oil, gas and water along with other impurities produced from the well.



What is commingling?

Merriam-Webster:

- To blend thoroughly into a harmonious whole
- To combine funds or properties into a common fund or stock

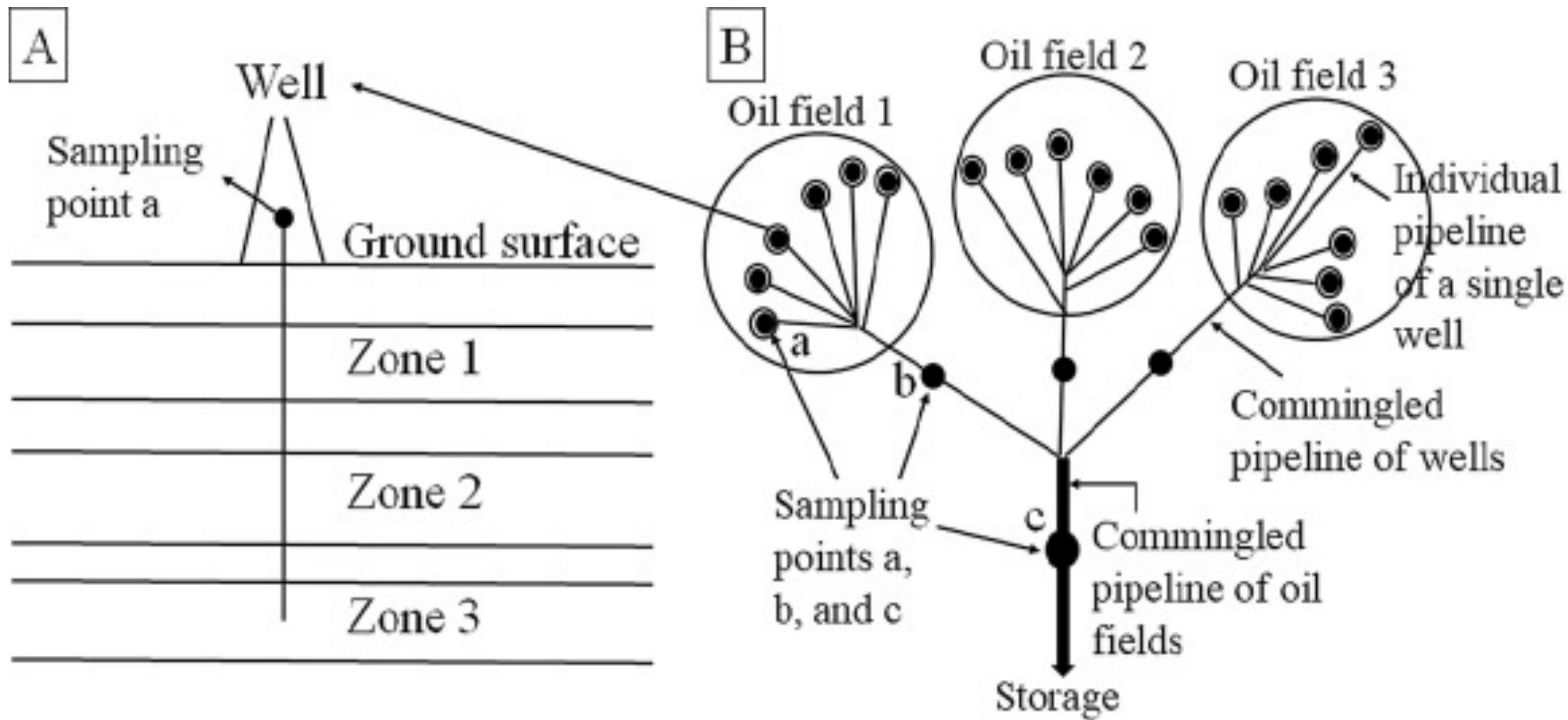
Downhole Commingling vs. Surface Commingling

Downhole Commingling

- The simultaneous production of hydrocarbons from multiple reservoirs through a single production conduit.
- Contrast with multiple zone completion in which a single wellbore has multiple tubulars and equipment that enable production from two or more reservoirs or zones.

Surface Commingling

- The surface mixing of the production from two or more lease tracts and/or unit participating areas into a common manifold, separator, tank and/or gathering system.
- Generally involves the surface commingling of two or more Texas RRC lease numbers and/or RRC Gas ID numbers.



Tex. Nat. Res. Code §85.046(b)

Waste

Notwithstanding the provisions contained in this section or elsewhere in this code or in other statutes or laws, the commission may permit production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas where the commission, after notice and opportunity for hearing, has found that producing oil or gas or oil and gas in a commingled state will prevent waste, promote conservation, or protect correlative rights.

Lenticular

- In geology, a lens or lentil is a body of ore or rock that is thick in the middle and thin at the edges, resembling a convex lens in cross-section.
- The adjectives "lenticular" and "lenticiform" are used to describe lens-like formations.



Tex. Nat. Res. Code §85.046(c)

Waste

The commission, after notice and opportunity for hearing, may permit surface commingling of production of oil or gas or oil and gas from two or more tracts of land producing from the same reservoir or from one or more tracts of land producing from different reservoirs if the commission finds that the commingling will prevent waste, promote conservation, or protect correlative rights. The commission may permit the commingling regardless of whether the tracts or commission designated reservoirs have the same working or royalty interest ownership. The amount of production attributable to each tract or commission designated reservoir shall be determined in a manner consistent with this title.

Mooers v. Richardson Petroleum Co.

146 Tex. 174 (1947)



YOUR PARTNER IN CREATING MASSIVE, OUTSIZED VALUE

Mooers v. Richardson Petroleum Co.

- November 1935: Shasta Drilling Co. assigned an undivided $\frac{1}{2}$ interest in the adjoining Erigan and Quiros Leases to Richardson and McCarrick. The owners later became Richardson Petroleum Co.
- Mooers succeeded to all rights of Shasta Drilling Co., being:
 - Oil payment of \$30,000.00 out of $\frac{1}{8}$ of $\frac{7}{8}$ oil produced from the Leases
 - $\frac{1}{16}$ royalty on the Erigan Lease; no interest in the Quiros Lease
- At time of Assignment there were two oil wells: Erigan #1 and Quiros #2
 - Assignment required reworking of both wells
 - Erigan #1 made into an excellent oil well
 - Quiros #2 not successful and was completed as a gas well
 - Gas was not saved and marketed, but released into the air

Mooers v. Richardson Petroleum Co.

- Richardson began systematically stealing oil from the Erigan #1
 - Laid a pipe from the Erigan #1 to the Quiros #2 and it was made to appear that the Quiros #2 was a producing well. Hot oil from the Erigan #1 was also piped to other leases.
 - Theft went on for 5 years before discovery by federal agents
- Mooers had no knowledge of the hot oil running from the Erigan Lease and was not paid his 1/16 royalty on this oil.
 - Side Note: There was an individual named Erigan who also owned a 1/16 royalty and did know about the illegal oil and did receive royalty payments.
- No accurate or complete record to show how much hot oil was run from the Erigan Lease to the other leases.

Mooers v. Richardson Petroleum Co.

- Supreme Court affirmed the finding that Richardson Petroleum Company fraudulently commingled and confused the oil from the Ergan Lease with oil from other leases and was unable to establish clearly and distinctly the amount of oil which was run from the Ergan lease.
- Mooers was entitled to recover his 1/16 royalty from all oil produced from wells connected by secret pipes with the Ergan lease during the entire period of the commingling.

Humble Oil & Refining Co. v. West **508 S.W.2d 812 (Tex. 1974)**



Humble Oil & Refining Co. v. West

- 1938: Wests conveyed all lands owned by them in the West Clear Lake gas field to Humble and retained a royalty "equal to the market value at the well of 1/6 of the dry gas sold or used...the royalties shall be 1/6 of the amount realized from such sale."
- 1969: reservoir was approaching depletion and on January 20, 1970, RRC authorized the reservoir for the storage of gas.
- Wests filed suit for injunction and for declaratory judgment that if Humble was to use the reservoir for storage, it would have to account to the Wests their royalties for all gas produced, regardless of whether it was native or stored gas.
- Humble began injecting extraneous gas into the underground reservoir for storage on September 1, 1970.

Humble Oil & Refining Co. v. West

- Humble argued that 89% of the recoverable gas had been produced and that further production would damage the reservoir.
- Trial court denied injunctive relief but decreed that Humble must account to the Wests for their royalty interests in all gas produced from the tracts in which they owned royalties irrespective of whether the gas was native or stored.
- Court of Appeals reversed and remanded with instruction for injunction from further injection of gas into the reservoir until all native gas was produced.
- Supreme Court reverses and remands. The issue is whether the 'confusion' of the two bodies of gas should result in the forfeiture of the exclusive rights to the extraneous gas.

Humble Oil & Refining Co. v. West

- As a general rule, the confusion of goods theory attaches only when the commingled goods of different parties are so confused that the property of each cannot be distinguished. Where the mixture is homogeneous, the goods being similar in nature and value, and if the portion of each may be properly shown, each party may claim his aliquot share of the mass.
- Since Humble injected the gas, they have the burden of establishing the aliquot shares with reasonable certainty.
- The threshold question for determination is whether the requisite computation of reserves is capable of establishment with reasonable certainty; and, if so, the further question to be resolved is whether the burden defined above is discharged by Humble under the evidence.

Aliquot

- A portion of a larger whole
- A definite fractional share

Confusion of Goods Doctrine

- The confusion of goods theory attaches only when the commingled goods of different parties are so confused that the property of each cannot be distinguished.
- Where the mixture is similar in nature and value, and if the portion of each can be shown, each party may claim his or her share of the mass, but...
- If the goods are so confused that they cannot be properly divided, the loss will fall on the one who commingled them.

Confusion of Good Doctrine

- *Humble* Court defined homogenous goods as goods “being similar in nature and value.”
- Did not use the word “identical.”
- How similar must the goods be under the Doctrine?

Confusion of Good Doctrine

- *Humble* established a standard of reasonable certainty.
 - On remand, the Company (now Exxon Corp.) was to establish by a preponderance of the evidence the maximum total volume of gas reserves in the reservoir at the time gas storage operations were commenced. That burden was met by presenting clear, positive and unimpeached testimony of experts who, upon sufficient factual bases, stated their estimates of such volume.

16 Tex. Admin. Code §3.25(a)

Use of Common Storage

(a) Where oil and/or other liquid hydrocarbons are produced from two or more separate reservoirs or zones and separate proration schedules are published by the Commission for each reservoir or zone, the use of common storage is authorized as long as the requirements of §3.26 and §3.27 of this title (relating to Separating Devices, Tanks, and Surface Commingling of Oil, and Gas to be Measured and Surface Commingling of Gas, respectively) are met...

16 Tex. Admin. Code §3.26

Separating Devices, Tanks & Surface Commingling of Oil

(b) In order to prevent waste, to promote conservation or to protect correlative rights, the commission may approve surface commingling of oil, gas, or oil and gas production from two or more tracts of land producing from the same commission designated reservoir or from one or more tracts of land producing from different commission designated reservoirs...

16 Tex. Admin. Code §3.27

Gas to be Measured and Surface Commingling of Gas

- (a) All natural gas, except casinghead gas, produced from wells shall be measured, with each completion being measured separately, before the gas leaves the lease...
- (b) All casinghead gas sold, processed for its gasoline content, used in a field other than that in which it is produced, or used in cycling or repressuring operations, shall be measured before the gas leaves the lease...
- (c) All casinghead gas produced in this state which is not covered by the provisions of subsection (b) of this section, shall be measured before the gas leaves the lease, is used as fuel, or is released into the air, based on its use or on periodic tests...

16 Tex. Admin. Code §3.27

(e) The Commission may approve surface commingling of gas or oil and gas described in subsections (a), (b) or (c) of this section and produced from two or more tracts of land producing from the same Commission-designated reservoir or from one or more tracts of land producing from different Commission-designated reservoirs in accordance with §3.26 of this title (relating to Separating Devices, Tanks, and Surface Commingling of Oil).

Ortiz Oil v. Luttes
141 S.W.2d 1050 (Tex.Civ.App.–Texarkana
1940, writ dism'd by agr.)

Ortiz Oil v. Luttes

- Luttes owned 1/8 royalty interest in the Shiloh Church lot
- Ortiz owned and operated the 7/8 leasehold interest
- Luttes sued Ortiz alleging wrongful, unlawful and fraudulent conversion, by use of hidden and secret pipes, valves, devices and schemes, and the appropriation to the defendant's own use and benefit with intent to deprive plaintiffs of the value thereof of plaintiffs' 1/8 interest in more than 300,000 barrels of oil produced on the land in excess of that accounted for by defendant.
- Jury found in favor of Luttes, among other things, that the defendant caused the oil produced from the Shiloh Church lot well and oil produced by defendant from the Carlisle School lot well (owned by defendant and in which plaintiffs have no interest) to be intermingled (wells on both tracts were connected by one separator).

Ortiz Oil v. Luttes

- The exact amount of oil produced and converted by Ortiz could not be determined, but the jury was able to estimate the amount of loss or damage with reasonable certainty.
- Takeaway: An owner or lessor may sue for conversion of his or her royalty interest, where he or she has title to the minerals produced, and such interest is misapplied, as where he or she sues for conversion of his or her royalty interest in oil produced on certain lands in excess of that accounted for by the defendant.
- Takeaway: A recovery according to the plaintiff's evidence as to amount and value, which is not disproved by the defendant's evidence, is not improper (Reasonable Certainty)

***Seagull Energy E & P Inc. v. Railroad
Commission of Texas
226 S.W.3d 383 (Tex. 2007)***

Seagull Energy E & P Inc. v. Railroad Commission of Texas

- Seagull owned a lease in the Waskom (Cotton Valley) Field which is comprised of several gas sands. RRC regulates field as a single common reservoir.
- Seagull completed a well in the C Sand and was subsequently granted a permit to complete a new well in the Stroud Sand, C Sand and Taylor Sand. Since concurrent production violated field rules, Seagull shut in its first well in the C Sand before producing from the new well.
- The new well was not completed in the C Sand and Seagull sought an exception to reopen the first well so it could produce from the C Sand.
- RRC denied the permit.

Seagull Energy E & P Inc. v. Railroad Commission of Texas

- Issue: Whether the statute that grants the Railroad Commission authority to regulate production of commingled oil and/or gas deposits includes the authority to regulate drilling, and if so, whether the Railroad Commission may consider the commingled deposits as though they were one reservoir when regulating drilling and production in the commingled field.
- Holding: The Railroad Commission has authority to regulate both drilling and production in a commingled field. The Railroad Commission's treatment of the commingled gas as a common reservoir does not violate vested property rights.

Seagull Energy E & P Inc. v. Railroad Commission of Texas

Reasoning:

- Section 86.081(b) gives broad authority over gas production from commingled deposits. The RRC had authority to deny the permit.
- Although a mineral owner has a right to its fair share of the minerals on and under its property, this right does not extend to specific oil and gas beneath the property.
- The Commission adopted special field rules allowing operators to produce as many of the commingled sands as possible in one well bore and further designated the optimal well spacing requirements for draining the commingled reservoir and maximizing the recovery of hydrocarbons. These rules have been in place for the Waskom (Cotton Valley) Field for over twenty years and apply equally to all operators in the field.

Tex. Nat. Res. Code §86.081(b)

Regulation of Production

- When the commission has permitted production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas, the commission may regulate all activities that are under its jurisdiction and associated with such commingled, separate multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas as if the accumulations were a single common reservoir...

Tex. Nat. Res. Code §86.081(b)

Provided that:

- i. Such commingling shall not cause the allocation of allowable production from a well producing from any separate accumulation or accumulations to be less than that which would result from the commission applying the provisions of Section 86.095 to such accumulation or accumulations; and
- ii. The allocation of the allowable for such commingled production shall be based on not less than two factors which the Railroad Commission shall take into account as directed by Section 86.089.

16 Tex. Admin. Code §3.10

Restriction of Production of Oil & Gas From Different Strata

- a) Oil or gas shall not be produced from different strata through the same string of tubulars except as provided in this section. As used in this section, “different strata” means two or more different commission designated fields, or one or more commission designated fields and any other hydrocarbon reservoir.
- b) Exception.
- c) Notice of Application for Exception.
- d) Commingled production of gas from different strata pursuant to subsection (b) of this section shall be considered production from a common source of supply for purposes of proration and allocation.

Tex. Nat. Res. Code §85.053(b)

Distributions, Proration & Apportionment of Allowable Production

When, as provided in Subsection (b) of Section 85.046 or Subsection (b) of Section 86.012 of this code, as amended, the commission has permitted production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas, the commission may distributed, prorate, apportion, or allocate the production of such commingled separate multiple stratigraphic or lenticular accumulations of oil or has of oil and gas as if they were a single pool...

Tex. Nat. Res. Code §85.053(b)

provided, however, that:

- (i) such commingling shall not cause the allocation of allowable production from a well producing from any separate accumulation or accumulations to be less than that which would result from the commission applying the provisions of Section 86.095 of this code to such accumulation or accumulations; and
- (ii) the allocation of the allowable for such commingled production shall be based on not less than two factors which the Railroad Commission shall take into account as directed by Section 86.089 of this code.

Tex. Nat. Res. Code §85.055(d)

Allowable Production of Gas

- (d) When, as provided in Subsection (b) of Section 85.046 or Subsection (b) of Section 86.012 of this code, as amended, the commission has permitted production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas, the commission may allocate, distribute, or apportion the production of such commingled separate multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas as if they were a single common source of supply; provided, however, that:
 - (i) such commingling shall not cause the allocation of allowable production from a well producing from any separate accumulation or accumulations to be less than that which would result from the commission applying the provisions of Section 86.095 of this code to such accumulation or accumulations; and
 - (ii) the allocation of the allowable for such commingled production shall be based on not less than two factors which the Railroad Commission shall take into account as directed by Section 86.089 of this code.

P-17 Commingling Reports

- The Form P-17 is used when oil and gas operators want to “mix” or commingle the production from more than one lease into the same tank or holding facility.
 - [Form P-17 Instructions](#)
 - [Searching for P-17 Commingling Reports on RRC](#)

Commingling on State Leases

- Lessee shall obtain written permission from GLO before surface commingling state lease or state pooled-unit production with private lease production or before surface commingling oil and/or gas from two separate state leases and/or pooled state units. Lessee shall obtain written permission from GLO staff before down-hole commingling production from two or more intervals where the state's royalty interests differ between the proposed commingled intervals.
- 31 TAC §9.35(a)(3)



QUESTIONS?

YOUR PARTNER IN CREATING MASSIVE, OUTSIZED VALUE