

Just Passing Through, Nothing to See Here: Pass-Through and Pore Space Rights

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Outline

- Introduction and Overview
- Basic Principles – Mineral Estate v. Surface Estate
- Is it okay? Pass-Through and Pore Space Examples
- Conclusion

The Basics - Disclaimer

Basic, common law principles for mineral and surface estates can be changed by agreement, such as:

- Severance deed
- Lease
- Surface use agreement



Critical to review chain of title when mineral v. surface right issues arise.

But property rights are not the only consideration (e.g., lease obligations, business interests).

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The Basics – Mineral Estate

Three Basic Principles in California:

1. Exclusive right to drill for oil and gas, and to retain all substances brought to the surface.
2. Right to use the surface estate “as is [reasonably] necessary and convenient” to extract minerals and (if necessary) may preclude other surface uses.
3. Rights are specific only to the mineral parcel.

(Callahan v. Martin (1935) 3 Cal.2d 110)

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The Basics – Surface Estate

Two Basic Principles in California:

1. Surface (non-mineral) owner retains all rights not held by the mineral owner.
 - Pore space ownership? Not yet decided in California but likely the surface owner.
2. Surface owner's use of the surface and subsurface cannot unreasonably interfere with the operation of the mineral estate.

(Cassinis v. Union Oil Co. of Cal. (1993) 14 Cal.App.4th 1770)

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The Basics – Surface Estate

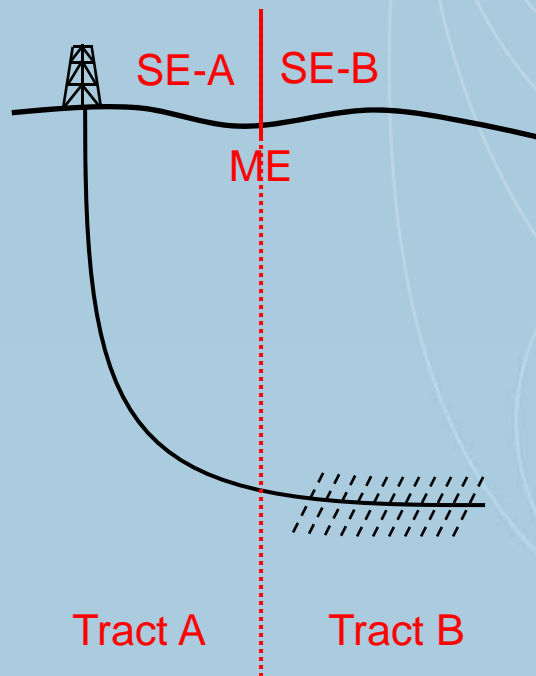
- **Example of Non-Interference with Mineral Estate:**

- Allowing a third-party to construct a pipeline to transport oil across a property subject to an oil and gas lease. (*Brookshire Oil Co. v. Casmalia Ranch Oil and Dev. Co.* (1909) 156 Cal. 211)

- **Example of Interference with Mineral Estate:**

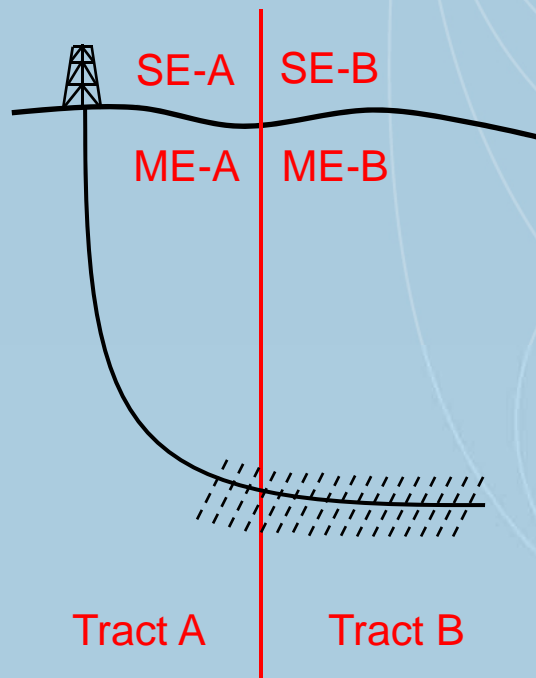
- Allowing wastewater injection that causes a reduction in oil production. *Cassinis v. Union Oil Co. of Cal.* (1993) 14 Cal.App.4th 1770)

Example #1



- Mineral Estate (“ME”) severed from Surface Estate (“SE”). Then SE subdivided into Tract A and Tract B.
- Oil & Gas Co. (“OGC”) owns ME and well drilled from Tract A is perforated in Tract B.
- Okay? Yes.
(*Wall v. Shell Oil Co.* (1962) 209 Cal.App.2d 504)

Example #3

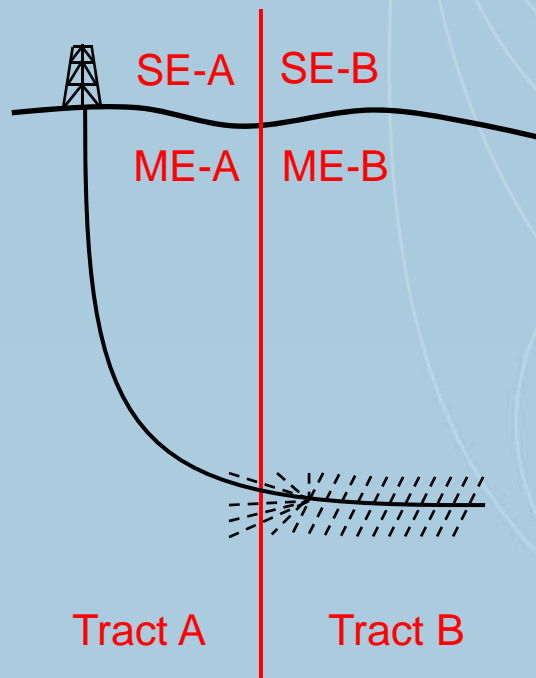


- OGC leases ME-A and ME-B. Well drilled from Tract A is perforated in Tracts A and B.
- Okay? Yes, as the well is producing from both tracts.
- Issue: Excessive use of surface on Tract A.

Example #3 (continued)

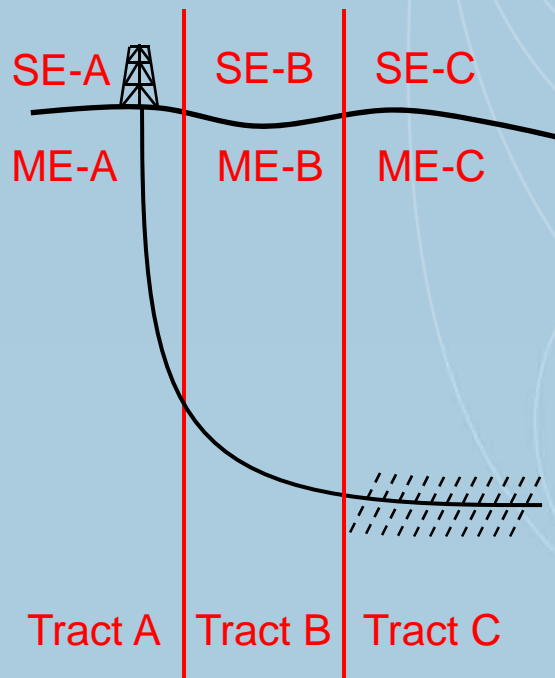
- Examples of excessive use:
 - Large storage or facilities supporting operations on other tracts.
 - Wastewater disposal well used to inject wastewater from production on other tracts.
- Solution: Agreement with surface owner

Example #4



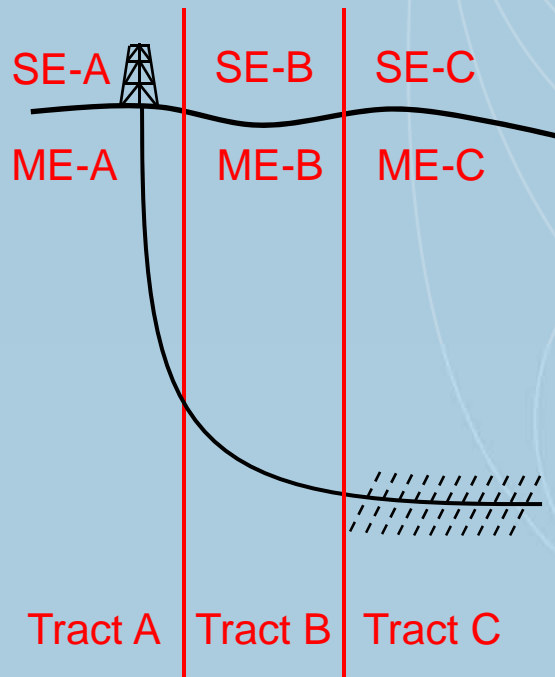
- OGC leases ME-A and ME-B. Well drilled from Tract A is perforated in Tract B, and OGC reasonably believes that well drains Tract A and Tract B.
- Okay? Yes, producing from Tract A (the leases should be pooled).
- Issue: What if not draining Tract A?

Example #5



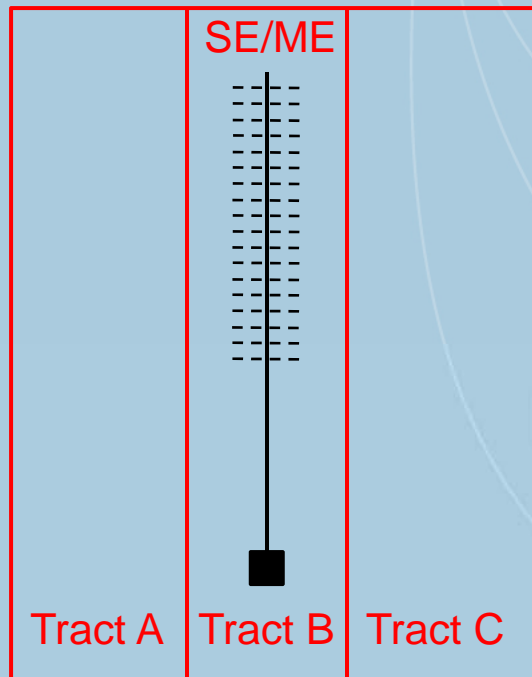
- OGC leases ME-C and has surface use agreements with owners of SE-A and SE-B. Well drilled from Tract A is perforated in Tract C.
- Okay? Yes, unless interfering with ME-A or ME-B.

Example #5 (continued)



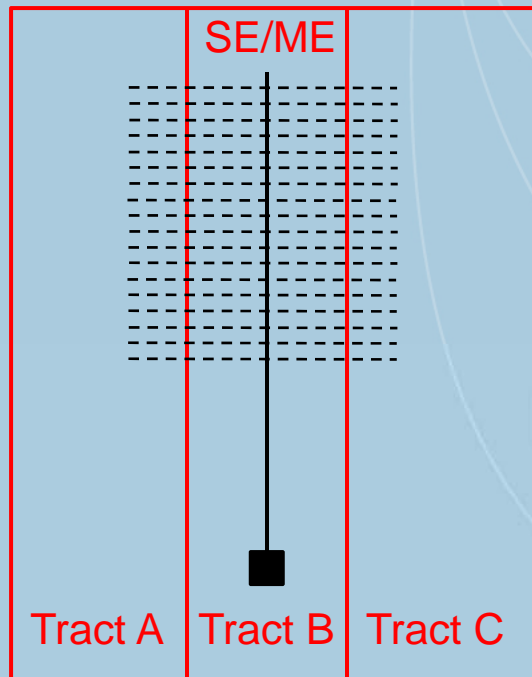
- Potential claims of interference:
 - Drainage of oil/gas from ME-B?
 - Entering the producing formation on ME-B?
 - Geophysical trespass?

Example #6



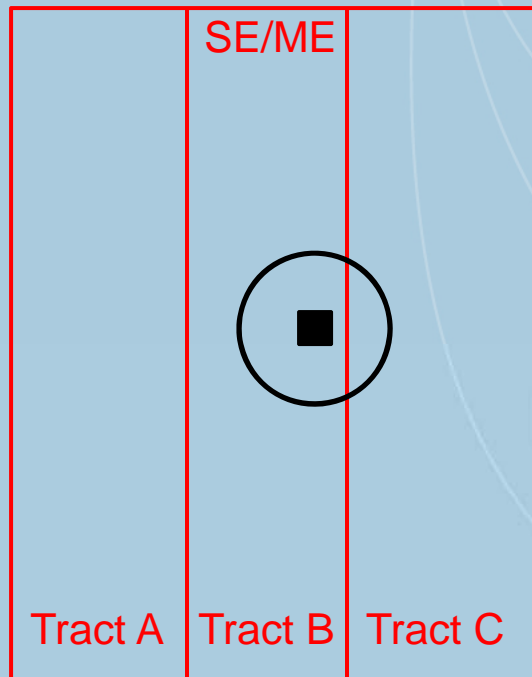
- OGC leases ME in Tract B. Well drilled on Tract B and hydraulically fractured.
- Okay? Yes, due to dominance of the ME over the SE of Tract B.
- Issue: Groundwater contamination.

Example #7



- OGC leases ME in Tract B but has no rights on Tracts A and C. Well is drilled on Tract B and hydraulically fractured. Fluids and fractures extend into Tracts A and C.
- Okay? Undecided in California. Questionable Texas case holding it is okay if adjacent property not damaged.

Example #8



- OGC owns ME in Tract B but has no rights on Tracts A and C. Waste-water from production on Tract B is injected in Tract B and migrates into Tract C.
- Okay? Most likely, provided injection does not damage, or interfere with use of, Tract C. (*Starrh & Starrh Cotton Growers v. Aera Energy LLC* (2007) 153 Cal.App.4th 583; *Cassinis v. Union Oil Co. of Cal.* (1993) 14 Cal.App.4th 1770)

Conclusion

Horizontal drilling – go back to the basics:

- Mineral estate dominant over surface estate
 - Includes reasonable use of the surface
 - Key question: what is your source of pass-through rights?
 - Production from tract with well location?
 - Severance deed
 - Surface owner permission
- Surface (non-mineral) owner may allow third-party uses that do not interfere with the mineral estate

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Thank you

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