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THE CONTINUED CONFLICT BETWEEN THE MINERAL DEVELOPER AND THE SURFACE OWNER



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Surface Owner

- Rancher
- Homeowner
- Developer



Mineral Ownership

- Negotiating while owning of all minerals
- Negotiating while owning less than all the minerals
- Negotiating while owning none of the minerals



Timing of the negotiation

- Negotiation at time of mineral severance
- Negotiation at time of lease negotiation
- Negotiation at time of development
- Surface use vs. non-surface use



Dominance of Mineral Estate

- Historical Meyer v. Cox 1952
- Accommodation Doctrine Getty v. Jones 1971
- Expansion to future use Haupt v. Tarrant County 1994
- Cases expanding and contracting damage theories



Regulatory Impact

- Railroad Commission Rules and Regulations
- Effect of Railroad Commission Statewide Rule 76
- Zoning



Conflicts with Municipalities

- Attempts to restrict drilling, pipelines, activities
- Potential risk of inverse condemnation claim
- Conflicting power of Municipalities and condemnation authority of Utilities
- Practical applications and revenue generation



Condemnation

- Negotiation
- Timing
- Ingress and Egress
- Damages



Geophysical Issues

- Rights
- Trespass
- Provisions



Future Developments

- Municipal Ordinances and Zoning
- Blogs, cases and legislation
- Railroad Commission regulation Railroad Commission Statewide Rule 76
- Zoning





John B. Holden, Jr.
Partner
Transactions,
Energy

John Holden has more than 34 years experience representing clients in the natural resources area. Mr. Holden has advised clients with respect to projects in all aspects of exploration, production, transportation, processing, sale and marketing of oil and gas and other natural resources. This includes the formation of and use of various entities, both public and private, and the financing of the acquisition and development of hydrocarbons and related assets.

He advises clients with respect to the preparation and use of merger and acquisition agreements, joint exploration agreements, lease acquisition agreements, seismic option agreements, leases, operating agreements, farmouts, oil and gas sales contracts, transportation agreements, processing agreements, pipeline construction and operating agreements, as well as other related documents. In addition, he advises and prepares surface use agreements to provide for the protection and use of both surface and mineral owners with respect to their respective interests.

Mr. Holden also has significant experience in energy lending and debt and equity financing. He has represented borrowers and financial and financing institutions with respect to the preparation and negotiation of documentation for financing transactions. His experience includes transactions involving hydrocarbon and other mineral reserves, drilling rigs, service companies, landfill gas recovery projects, wind projects and other forms of natural resources and fixed site power generation projects. He has worked with financial institutions in the foreclosure on and the subsequent sale of various energy assets. Mr. Holden has also negotiated and documented equity participation in the foregoing.

In addition, Mr. Holden has considerable experience representing clients on projects in Latin America. He directed the privatization of \$750 million worth of assets of YPF, the national oil company of Argentina. That process required the analysis of the applicable laws, rules, decrees and regulations of that country and the creation of appropriate entities to accomplish the country's objectives. Mr. Holden has participated in transactions in other foreign venues and has represented foreign entities doing business in the United States.

Mr. Holden is Board Certified in Oil, Gas and Mineral Law by the Texas Board of Legal Specialization and is admitted to practice in Texas and the District of Columbia.

Mr. Holden received his A.B. from Ohio University in 1965 and his J.D. from the George Washington School of Law in 1968. In 1976, he completed his L.L.M. in oil and gas and taxation from Southern Methodist University School of Law.





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