Allocation Wells - Still No Guidance in Texas

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The law regarding allocation wells—horizontal wells that cross several tracts and/or leases without pooling such interests—remains an evolving area. While many other jurisdictions, including Pennsylvania and Oklahoma, have passed legislation permitting and regulating allocation wells, the Texas legislature has yet to provide the same guidance to the oil and gas industry in Texas. Operators in Texas primarily rely upon allocation well permits issued by the Railroad Commission of Texas (the "RRC") for evidence of the permissibility of allocation wells.

Klotzman v. EOG Resources, Inc., an administrative proceeding before the RRC, is frequently cited as an endorsement by the RRC of the allocation well regime in Texas, even though the case was settled prior to reaching the district court. In *Klotzman*, the permissibility of allocation wells was challenged in a dispute over the RRC's authority to issue permits for allocation wells in the absence of pooling.

In addition, there is currently a case pending in Texas state court in Karnes County, *Opelia v. EnerVest Operating, LLC*. In the *Opelia* case, EnerVest applied for an allocation well permit, and notwithstanding challenge by affected parties, the RRC granted the requested permit. The plaintiffs in the case have made several claims, all centered around the permissibility of drilling an allocation well in the absence of pooling under the lease terms.

Challenges to allocation wells in Texas will likely continue until final guidance is provided through either the court process or the legislative process.

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