



The Tenth Circuit Finds that Federal Unitization Enables Broad Surface Access to Promote Efficient Unit Development and to Reduce Unnecessary Surface Use

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On August 14, 2014, the Tenth Circuit Court of Appeals, in *Entek GRB, LLC v. Stull Ranches, LLC*, No. 13-1172 (10th Cir. filed August 14, 2014) (the "Decision"), appears to have laid to rest the debate regarding the extent of a federal oil and gas unit operator's surface access rights, and the principles that should guide federal unit development. The Court built upon prior federal case law and the purpose underlying federal unitization to conclude that a unit operator's ability to develop the unit should not be hindered by individual lease lines, but should instead be controlled by the realities of the geologic formation and engineering capabilities.

The Decision affirms the concept that the overriding purpose of a federal unit is to avoid waste of the underlying oil and gas resources, and to promote the efficient and economic extraction of those resources for the public benefit. The Court found that this objective was clearly set forth in Section 226 of the Mineral Leasing Act and the Bureau of Land Management's regulations.

Conversely, Stull Ranches asserted that irrespective of the unitization of the leased minerals underlying its ranch or surface estate, the unit operator, Entek GRB, may only access Stull Ranches' surface estate to engage in drilling operations aimed at extracting the minerals beneath its surface estate. Indeed, under Stull Ranches' interpretation of the unit operator's surface access rights, the operator is precluded from merely crossing Stull Ranches' surface estate to access a well site located on another entity's surface estate even if both surface estates are covered by the same lease.

The Court apparently recognized that limiting a unit operator's surface access rights in the manner sought by Stull Ranches would result in the waste and unnecessary development that Congress explicitly sought to eliminate through unitization. The Court found that under the unit agreement, the leases and their associated surface access rights are effectively combined to enable the unit operator to locate and conduct its drilling operations without regard to surface or leasehold boundaries.

The Court stated that rather than create a "checkerboard" of leasehold and surface tract boundaries carving up the federal unit, "the law seeks to permit geologists and engineers to arrange their assets on the surface efficiently in order to follow the underground boundary lines of mineral deposits that nature dictates." The plain impact of enabling unitization to function as Congress intended should be the reduction in the surface use needs of the unit operator.

Of course, the Decision does not mean that all surface owner rights are obliterated that are otherwise protected by state and federal law. However, now that development can proceed based upon the most efficient means for extracting the underlying oil and gas, the duplication of development generally required outside of the unit context will likely be reduced and the footprint upon federal and split estate lands minimized.

Stull Ranches, however, filed a petition for rehearing by the entire Tenth Circuit on August 28, 2014. Stull Ranches is asserting, among other things, that the Tenth Circuit panel has misinterpreted the Mineral Leasing Act and prior federal case law in concluding that surface access rights are altered by unitization. Entek GRB filed its response on September 12, 2014.

The Tenth Circuit's Decision can be found [here](#). If you have any questions, please contact [Bret Sumner](#), [Bill Sparks](#) or [Andrew Glenn](#).

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