



Reagan Marble

April 22, 2022

PRODUCED WATER: THE NEXT “TITLE” WAVE OF LITIGATION

48th Annual Ernest E. Smith Oil, Gas and
Mineral Law Institute and Fundamentals
Houston, Texas

© Jackson Walker L.L.P. 2015

1

What is Produced Water?

- Generally speaking, produced water is **water that comes out of the well with other production** and can include:
 - water existing in the shale formation;
 - water injected into the wellbore during production that is now flowing back up the wellbore (“flowback water”);
 - production chemicals;
 - trace amounts of oil; and
 - sand and other deposits.

2

What is Produced Water?



Texas Monthly: Briny water spews high into the air from a former oil well in Crane County on January 4, 2022.

Austin | Dallas | Fort Worth | Houston | San Angelo | San Antonio | Texarkana

How much produced water is there?

- Changes from well to well and over the life of the well but generally:
 - 3 parts water to 1 part oil;
 - can be as high as 20:1; and
 - estimated that the U.S. produces 20 to 25 billion barrels per year.
- Big Issue = amount of produced water is increasing in highly developed plays such as the Permian Basin.

Austin | Dallas | Fort Worth | Houston | San Angelo | San Antonio | Texarkana

How Did We Get Here?

The law of unintended consequences:

1/2 of the usual 1/8

Waste v. Groundwater?

Liability v. Asset?

Austin | Dallas | Fort Worth | Houston | San Angelo | San Antonio | Texarkana

How Did We Get Here?

- Up until a few years ago, the fight over produced water was not over who “wanted” to take it, but rather over who “had” to take it.
- Traditionally, produced water was a waste.
- Historically, operators were tasked with disposal.
- These common practices were codified in 2013 and amended in 2019.

Austin | Dallas | Fort Worth | Houston | San Angelo | San Antonio | Texarkana

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Produced Water: The Next “Title” Wave of Litigation

Also available as part of the eCourse

[Current Litigation Issues in Oil and Gas](#)

First appeared as part of the conference materials for the
48th Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session
"Produced Water: The Next “Title” Wave of Oil and Gas Litigation"