PRESENTED AT

51st Annual Ernest E. Smith Oil, Gas and Mineral Law Institute

April 3-4, 2025
Houston, Texas

The Mineral Interest Pooling Act: Historical Context and Current Usage

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I. INTRODUCTION

Texas is not a force-pooling state. Texas is a rule of capture state. Operators may drill their wells where they want, subject only to Railroad Commission regulations governing spacing[1] and density.[2] If a well is drilled in a legal location, the operator is not liable to its neighbors for uncompensated drainage, even if the well is producing neighbor's oil. Neighbor's remedy is to drill its own well. If neighbor's tract is too small to support a well at a legal location, historically neighbor will have been entitled to an exception to Railroad Commission spacing and density rules, so that neighbor's reserves are not confiscated.

Operators and neighbors in Texas are creative, and by the mid-1960s a "small tract" problem had arisen, whereby small tracts had become coveted, as they were allowed to produce vastly disproportionate reserves from common reservoirs. The Texas Supreme Court re-leveled the playing field with its *Normanna* case, reining in small tract wells. In direct response, and as something of a compromise, the Legislature passed the Mineral Interest Pooling Act (or the "MIPA"),[3] in 1965. The MIPA empowered the Railroad Commission, in certain circumstances, to force-pool.

For the first forty-ish years of its life the MIPA was infrequently used, with somewhat unpredictable results. Commentators warned of its pitfalls.[4]

But in 2008, Finley Resources, the operator of a proposed horizontal well in the Barnett Shale, applied for and obtained a MIPA order, force-pooling 26 unleased townsite lot "window"

[1] 16 TEX. ADMIN. CODE §3.37 (Rule 37)
[2] 16 TEX. ADMIN. CODE §3.38 (Rule 38)
[3] Currently codified as Chapter 102 of the Natural Resources Code.
[4] *See, for example,* Brian R. Sullivan, THE MINERAL INTEREST POOLING ACT, State Bar of Texas Advanced Oil, Gas, and Mineral Law Conference, September 1986 ("Most regular practitioners before the Railroad Commission believe that the Mineral Interest Pooling Act (MIPA) should contain the equivalent of a 'Surgeon General's Warning.' The Act is complicated, Commission decisions are more often overturned on appeal than not and the whole process is extremely time consuming.").

tracts that would have otherwise stymied development into its unit.[5] This marked a sea-change in MIPA jurisprudence. Previously, MIPA orders had been sought by small tract owners seeking to be included in an adjacent operator's unit; this is known colloquially as "muscling-in." Operators typically opposed such relief and, generally, opposed an expansive interpretation of the statute. But the *Finley* case, which was brought as a response to the new realities of horizontal shale drilling, opened the door to a completely different sort of MIPA application, which sought to grab the small tracts. The early *Finley*-style applications were even originally referred to as "reverse-MIPAs," even though they were brought under the same 1965 statute as before.

In the almost 20 years since *Finley*, these so-called "reverse-MIPA" cases have come to predominate. The traditional "muscle-in" MIPA case remains rare and hard to predict, while the Commission approves dozens of "reverse-MIPA" applications a year, as operators encounter thorny title issues while drilling ever longer laterals in unconventional plays around the state.

The most common (by far) traditional, or "muscle-in" MIPA cases in the last decade have involved lands owned by the State of Texas, normally riverbeds, and leased to a company called Ammonite Oil & Gas Company.[6] Ammonite has prosecuted dozens of muscle-in MIPA applications on behalf of its lessor, the State. On June 28, 2024, the Texas Supreme Court issued a 7-2 opinion affirming a Commission decision to deny a set of Ammonite applications which were protested by the operator of the wells, EOG Resources. *Ammonite Oil & Gas Corporation v. Railroad Commission of Texas*, 698 S.W.3d 198 (Tex. 2024).

[5] Oil and Gas Docket No. 09-0252373, *Application of Finley Resources, Inc. for the Formation of a Unit Pursuant to the Mineral Interest Pooling Act for the Proposed East Side Unit, Newark East (Barnett Shale) Field, Tarrant County, Texas*, Final Order dated August 25, 2008.

[6] The author is aware of a single non-Ammonite muscle-in MIPA order since 2006. Oil & Gas Docket No. OG-21-00006266; *Application of Caliber Oil & Gas, LLC*, Final Order denying application dated XXX.

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First appeared as part of the conference materials for the
51st Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session
"Mineral Interest Pooling Act"