

## **SECTION II: Division Order Creation and Maintenance**

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## CHAPTER 5: Analyze This, Calculate That

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## Introduction

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### Definition of Division Order / Division of Interest

Some use the term Division of Interest and Division Order interchangeably, however:

**Division of Interest** is the Complete Ownership / Payment Records for a property or a tract within a property. **Division Order** is the Actual Physical Document that sets out

- Property name
- Legal description
- Owner's name and address
- Owner's Decimal Interest for said property
- Owner's Interest Type for said property
- Covenants and provisions relative to the sale of Oil or Gas and/or Distribution of Proceeds.
- There are two (2) types of Division Orders
  - **Basic Division Order:** Issued to the individual interest owner setting out his interest as described above. The Basic Division Order Form may be:
    - Company In-House Form
    - NADOA Model Form
    - Texas Statutory Form
  - **Indemnifying Division Order:** Issued to a party who receives proceeds on behalf of another party(s) and then further distributes those proceeds

### Overview of Division Order Job Functions

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The responsibilities of the Division Order Analyst can be categorized into two major functions:

- **Set up the Ownership** on producing oil and gas properties to assure that production proceeds are paid timely and correctly: at the proper ownership decimal, in compliance with State

Statutes, and all applicable agreements. This includes: newly drilled wells, both operated and non-operated, acquisition property, and third party purchase property.

- **Maintain the ownership through the life of the well** (or, in the case of a Third Party Purchaser, for the life of the applicable Contract), based on receipt of: Assignments, conveyance documents; probate proceedings; judgments or Settlements rendered by a Court relative to litigation, etc.

### Traits and Skill Set of the Division Order Analyst

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The Division Order Analyst should – Be Detail Oriented; Possess Patience; Be a Good Communicator and Listener

- He/She will interact with the interest owners in producing properties via phone, emails, and correspondence, as well as In-house Landmen, Lease Analysts, Accountants, Marketers and Legal Counsel. Basically, Division Orders, Marketing, Accounting and Lease Records have to be “best friends”. One might say that we have a Co-Dependent Relationship. We must maintain Open Lines of Communication
- The Division Order Analyst will serve as a Liaison with Industry counterparts. He / She is in constant contact with Counterparts, at other companies, which include: Division Order Analysts, Landmen, Lease Analysts and Marketers.
- One might describe our role as a “Cross between an Accountant and a Paralegal”
  - As the ‘Accountant’ when the Analyst sets up the initial ownership and processes subsequent transfers of interest, he / she has to understand how it will impact

the money. The Analyst is basically “writing a check”.

- As a ‘Paralegal’ the Analyst must understand the legal requirements for ‘Clear and Marketable Title’ for each state in which his/her company does business

### Determining When Ownership Records Should Be Set Up For a New Property

The Division Order Analyst may receive and/or analyze one or more of the following documents described below as Notice of a New Property. The documentation received can be varied based on whether the property is Company Operated, Non-Operated, a Third Party Purchase Property or an Acquisition. The Analyst’s analysis of these documents will determine when Ownership Records should be established.

#### **Company Operated Properties:**

- **Authority for Expenditure (AFE)**
- **Internal Company Document, detailing information about the proposed well.** This document may be referred to as a Drill Site Report / Well Information Summary / Release of Well Location / Notice when Well has been Successfully Completed as a Producer. This document should contain Well Name; Location; GWI of Participants; Company Leases Held by Proposed and Completed Well; Applicable Agreements; Any Special Considerations
- **Drilling Title Opinion and/or Division Order Title Opinion.** These Opinions may cover the drill site *only*, not the entire proposed spacing.
- Company **Drilling Reports** that indicate the progress of the well.
- **Oil & Gas Leases** should be reviewed for any special provisions

relative to payment of production proceeds.

- **Applicable Agreements** should be reviewed to be assured Payment / Ownership Records will be set up accordingly. These agreements might include:
  - Pooling / Unit Agreement *Are all lands within Pooling / Unit Agreement covered on the Division Order Title Opinion?*
  - Joint Operating Agreement (JOA)
  - Farmin / Farmout Agreement
  - Internal Agreements  
*For example – are there internal interests that are not filed of record?*
  - Marketing Agreements  
*Are all parties marketing with the Operator? Are marketing arrangements the same for all products?*
- **State Statutes** - Review to be assured that proceeds are paid in accordance with the Statutory Requirements for applicable state

#### **Non-Operated Property**

- **Authority for Expenditure (AFE)**
- **Internal Company Document, advising that well has been proposed and your company has agreed to participate.** Upon completion, the Analyst should receive a Notice from the Internal Landman and/or Operator to confirm that the well has been successfully completed as a producer.
- **Drilling Title Opinion and/or Division Order Title Opinion,** provided by the Operator
- **Notice from Accounting** advising that you have received payment on a property / well that is not set up on the company DOI Records

- **Division Order from Purchaser / Payor**
- **Applicable Marketing Agreements** should be reviewed to be assured Payment / Ownership Records will be set up accordingly.
  - Will your Company be marketing under the JOA with the Operator?
  - Will your Company be marketing its full GWI under a separate contract and distribute its proportionate share to its burden interests?
  - Will your Company be marketing its NRI only under a separate contract and receive its NRI only
- **Internal Agreements**  
*For example – are there internal interests that are not filed of record?*

### Third Party Purchase Property

- **Contract Notice / Contract Summary**
- **In-House Notification from Marketing Group** that gives: Applicable Wells Subject to Contract and Market Percentage and Product that is being sold to your company
- **Applicable Marketing Agreements** should be reviewed to be assured Payment / Ownership Records will be set up accordingly.
  - How will disbursements be handled?
    - 100% to Operator / Marketing Party for Further Distribution
    - Who remits taxes?
    - Remit Proceeds on behalf of Operator / Marketing Party
  - Who will provide payment information?
    - Is this a Newly Completed Well and the Operator should provide a Division Order Title Opinion?
  - Is this a producing property that is now contracted with your Company?

- Will company and your pay records be set up based on the prior disbursers' paysheet?
- Are there any special circumstances of which your company should be aware?
  - Tax Exempt Entities
  - Special Lease Provisions for certain Royalty Owners.
    - *Please note that it is the responsibility of the Operator / Marketing Party to advise the Third Party Purchaser of any special terms stipulated in the applicable oil and gas leases or other pertinent agreements. Since the Purchaser is not a party to the Oil & Gas Lease, JOA, etc., they would not be aware of such special provisions unless notified.*

### Property Acquisition

- **Notice of Acquisition**
  - Copy of Purchase and Sale Agreement (PSA)
  - Copy of the Assignment
  - Internal Company Document, advising that Company is acquiring certain properties from 'Company X'
  - Listing of Properties from Company Business & Development Group
- **Establishing Division of Interest and Payment Notification**
  - After receipt of one or more of the above listed documents, the Analyst must review same to determine how and when Divisions of Interest should be established and payments disbursed. *When* is the Acquisition scheduled to close? *How soon after the closing will your company be responsible* for operations, marketing and payment of production proceeds? *Is there a Transition Agreement* that sets out the time frame for the responsibilities of the Assignor and the Assignee?
- **Review of Marketing Data / Agreements** to be assured Payment / Ownership Records will be set up

accordingly. Will this acquisition cause a change in payment arrangements? What percentage was previously marketed by Predecessor? If it was less than 100%, are you able to determine why? Who previously held the Basic Division Order (i.e. Predecessor in Title or Former Purchaser)?

- **How will you obtain the payment records?** Will it be Electronic Data that can be data mapped and downloaded into your existing system? Or, will it be “Hard Copies” of the predecessor’s DOI’s that will require Manual Input?
- **What procedures are in place to notify the Interest Owners?** Will Revenue Check serve as notice? Will there be an Insert that is mailed with the check? Will Division Orders be issued prior to checks being issued?

## Documents Affecting Division Order Calculations

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Once we have determined that a Division Of Interest (“DOI”) is needed for a property, let’s look at the documents / agreements that affect the calculations to establish the DOI. Many of the documents used in oil and gas negotiations or operations affect the net revenue interests of not only the mineral owners but working interest owners as well. The following will provide you with a sample guideline of what to look for in the most common forms of agreements that are listed below.

### Agreements

- Oil & Gas Leases
- Drilling and/or Division Order Title Opinions
- Curative Documents
- Joint Operating Agreements
- Assignments, Conveyances & Bills of Sale
- Pooling/Communitization Agreements
- Farmout/Farmin Agreements
- Unitization Agreements

## Types of Interests

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When setting up Ownership / Payment Records, the Division Order Analyst will encounter many different types of Interest or Ownership. These varied Interest Types are created in the Documents and Agreements discussed in this paper. These include:

### Mineral Interests

- **Leased** – subject to a valid oil & gas lease
- **Unleased** – not subject to an oil & gas lease; this interest may participate in the drilling of the well by executing the JOA; in some states this interest can be forced pooled

### Royalty Interests

- **Non-Participating Royalty Interests** (“NPRI”) – interest in the proceeds that is carved out of a leased mineral interest; this interest has no executive rights
- **Term Royalty Interests** – interest in the proceeds that is limited in time or as long as there is production. Although it is not as common, some Term Royalty Interests may be tied to a specific production volume amount.

### Overriding Royalty Interests

- The Override is usually created as a result of an assignment – either by outright assignment or by reservation in interests conveyed.
- Some oil & gas leases provide for an Override.
- The Override normally does not bear any of the costs of drilling or operating the well.

### Production Payments

- This is an Interest in the proceeds tied to a specific dollar amount or specific production volume
- The Production Payment is usually created by a Separate Agreement and is borne only by the Party(s) that conveyed this interest.

- The Production Payment terminates upon satisfaction of the stipulated requirements

### Net Profits Interests

- Interest in a specific percentage of the profits of a WI Party.
- This interest can only be paid by that WI Party and is usually handled through the Joint Interest Billing process.

### Working Interests

- **Participating Working Interest** – participates in the drilling and operations of the well
- **Non-Consenting Working Interest** – elects to *not participate* in the drilling and operations of a well. This party can usually back in for a full or proportionate share after certain obligations have been met. The back-in interest is determined by the Agreement under which the party went Non-Consent.
- **Carried Working Interest** – is borne and “*carried*” by the participating working interest parties. The length of time is determined by the Agreement relative to the Carried Working Interest.
- **Unleased Mineral Interest** – is not subject to an oil and gas lease and can join in the execution of the Joint Operating Agreement to participate in the drilling and operations of the well, as to his proportionate 8/8 mineral interest.

### Ownership Decimal Interests

As the Division Order Analyst analyzes the Title Documentation in order to set up the Ownership / Payment Records, the ownership shares may be expressed in fractions, percentages, and/or decimals. Of course, most Division Order Systems will require that the Ownership be entered in a decimal format. Some of the most frequently used numbers are indicated in the chart shown in the next column.

### *Numbers Frequently Used by the Division*

### *Order Analyst*

1/8 =	.12500000 or	12.50%
7/8 =	.87500000 or	87.50%
3/16 =	.18750000 or	18.75%
13/16 =	.81250000 or	81.25%
1/16 =	.06250000 or	6.25%
1/4 =	.25000000 or	25%
3/4 =	.75000000 or	75%
And our most favorite: 1.00000000 or 100%		

### Oil & Gas Leases

Oil and Gas leases are agreements by and between the Mineral Owner and the Lessee (i.e. the Working Interest Party). The Oil and Gas Lease is one of the many Agreements examined and analyzed by the Division Order Analyst. Common Provisions contained in an Oil and Gas Lease include the following:

**Acreage Covered** - Normally states total surface acres

**Royalty Provision** - States amount of negotiated royalty (fixed or sliding scale), products, pricing, when payment due

**Pooling Provision** - Authorization to pool acreage with other leases

**Take-in-Kind Provision** - Allows for Lessor to take oil in kind. Some lease forms allow the Lessor to take gas in kind

**Proportionate Reduction Provision** - Allows for any rental payments and/or royalty payments to be reduced if Lessor owns a lesser interest than stated in the lease

**Change of Ownership Provision** - Gives the Lessor and the Lessee the right to convey all, or a portion thereof, of its interest

**Entireties Clause** - Acreage included in lease that must be taken into consideration as lease applies to unit

**Depth Limitations** - Sets out any depth limitations or specific formations

**Pugh Clauses** - Allows for all non-producing acreage to be released at end of primary term

**Shut-In Royalty Clause** - Establishes procedures for maintaining lease when well has been temporarily shut-in

**Special Clauses / Addendum to the Lease** - Added Clauses may alter / supersede terms set forth in above form lease

The **Mineral Interest**, considered when reviewing and analyzing the Oil and Gas Lease, is usually found on the Broker's Report.

### Drilling Title Opinion and/or Division Order Title Opinions

Title Opinions are agreements by and between the Operator/ Non-Operator and the Title Attorney. A Drilling Title Opinion and/or Division Order Title Opinion is rendered by a licensed title attorney and sets out the record title ownership of the mineral interests in the lands examined. The Drilling Title Opinion is usually prepared prior to the drilling of the well, but may be used in setting up the Division of Interest. As a general practice, Division Order Title Opinions are rendered once a well has been completed as a producing property and the title set forth in the Opinion is usually limited to a specific well. However, there may be instances where a company will request the Opinion to be rendered for the entire section, etc. As previously stated, the Drilling Title Opinion and/or the Division Order Title Opinion may only include the drill site tract.

**A Division Order Title Opinion should contain the following:**

- **Date that Opinion is rendered.** *Note:* There may be multiple Opinions rendered on the same property, as Title Requirements are satisfied or New Title Issues are brought to light. Therefore, the Date is important to assure that the Analyst is reviewing the latest title data
- **Correct Legal Description of the lands examined, including any depth**

**limitations.** If the Acreage Examined does not match or cover all of the acreage of the subject well / unit, can this be explained?

- **The specific party for whom the Opinion is rendered, i.e. the operator and/or purchaser of production.** The Attorney usually limits who can rely on the specific Opinion. A Third Party Purchaser may need to obtain permission from Attorney to utilize Opinion for Ownership Records.
- **List of all abstracts and documents examined. Documents may, but not always, include various instruments, such as**
  - Prior Title Opinions
  - Abstracts
  - Probate Proceedings
  - Oil and Gas Leases
  - Assignments of Oil and Gas Leases
  - Farmout Agreements
  - Joint Operating Agreements
  - Unit Agreements
  - Letter Agreements
  - Correspondence by and between parties affiliated with the oil and gas leases to be included in said well/unit
  - Liens
  - Mortgages
  - Rental Receipts
  - Affidavit of Production or Non-production
- **Date of Certification of Title** There should be *no gaps* in dates of abstracts examined, and the title should be certified to the date of first production
- **Surface Ownership** If surface ownership is different from the mineral ownership, it is helpful to have that information, also.
- **Listing of Ownership, which includes:**
  - Complete **Legal Name** of the party and/or entity in which title to an interest is vested

- The **Capacity** in which title is vested, such as Trustee, Joint Tenancy, Executor, etc. should be indicated
  - **Decimal ownership** of each party, with a fractional calculation indicating how said decimal was derived. Calculation should equal the Decimal Interest set out for Owner. The Total of ALL RI, ORRI, PP, NWI, etc. should equal 100%. Do NOT assume that the Title Opinion equals 100% -- *Always verify!!*
  - Some Title Opinions also include the **Gross Working Interest** (GWI) for each Working Interest Participant. The Total of ALL GWI should equal 100%. If not, are there Unleased Mineral Interests? Reference to how the GWI is derived – such as contractual, JOA, etc. should also be included.
  - **Interest Type** of each decimal – Royalty, Non-Participating Royalty, Override, Net Working Interest, Production Payment, Carried Working Interest, etc.
  - Indications regarding **Interests that are Subject to Change and/or Terminate** based on certain criteria – e.g. payout, life estate, term mineral interest, etc.
  - Reference to the specific **Oil & Gas Lease** to which owner’s interest is subject
  - **Reference / Comment** by or under owner name **if owner is to be suspended** together with reference to Requirement #
  - **If the Opinion indicates ownership by tract, a summary listing indicating unit decimal ownership should be included.**
  - **Summary of Oil & Gas Leases examined and included within the producing property.** This summary should depict:
    - Date of Lease
    - Recordation Data
    - Lessor / Lessee
    - Lands Covered
    - Mineral Interest Covered
    - Royalty Reserved
    - Any other lease provisions that should be examined with more scrutiny to be assured that payment and/or ownership is in compliance with payment provisions contained therein.
- Said summary should also include each and every Assignment pertinent to said leases.
- **Summary of Applicable Agreements – JOA, Farmouts, etc.** While this summary cannot take the place of the Analyst’s review of the actual agreement, the attorney’s interpretation (whether correct or not) has had a bearing on his calculation of ownership. A Third Party Purchaser will rely on the Operator to review these documents and advise of any issues / resolutions as outlined in the Division Order Title Opinion.
  - **Comments / Requirements / Objections** Some Discussions under the Requirements Section may be advisory only. Other Discussions may outline specific Requirements or Documents required in order to remit proceeds to a specific Owner(s). The Listing of any and all requirements which must be met to properly disburse revenues, may include, but not be limited to:
    - Affidavits of Production
    - Unrecorded Documents, of which have been relied upon to calculate and set out Ownership
    - Unpaid Taxes
    - Verification of Name Changes
    - Mortgages, Liens or Litigation to which a particular interest is subject
    - Necessity for signature on division orders authorizing payment (e.g. Lien

Holder, Joint Owners, Life Estates, etc.)

- Probate Proceedings to be examined in order to determine rightful owners
- Unrecorded Probate Proceedings (or those filed in another state)
- Additional Assignments to complete chain of title
- Unreleased Oil and Gas Leases, pertinent to the same lands
- Unrecorded Oil and Gas Leases or Assignments
- Ratification(s) of Oil and Gas Lease needed
- Reference to any Unleased Interests
- Interests not subject to Pooling – i.e. interests that will be paid on a lease basis, rather than a unit basis
- Gas Purchase Agreements / Crude Oil Purchase Agreements affecting production from the same lands
- Any interests that should be suspended – including reason why and what it would take to release

### **Review Of Division Order Title Opinion To Set Up Ownership Records**

It is the responsibility of the Operator to determine which Title Requirements that can be waived or if an Owner must be kept in Suspense until certain Requirements are Satisfied. A Third Party Purchaser, who distributes proceeds on behalf of an Operator, will rely on the Operator to advise them when and if said Requirements will be waived or have been satisfied. The Third Party Purchaser may require either copies of the documentation evidencing satisfaction of the requirements or a Supplemental Division Order Title Opinion that sets out the additional documentation examined by the Title Attorney and the current Ownership, based on same. Although it is the responsibility of the Operator to notify the Third Party Purchaser of the status of any Requirements set out in the Opinion, if said

Purchaser has received a Division Order Title Opinion, the Purchaser has been put 'on notice' of any and all information in that Opinion, including applicable Title Requirements. Therefore, it is the Third Party Purchaser's responsibility to review and examine the Title Opinion very thoroughly to be sure that there are not any issues that may affect the payment of production proceeds. If issues are found, the Third Party Purchaser should coordinate with the Operator to be assured that all Requirements have been satisfied prior to distributing proceeds.

### **In Reviewing the Title Opinion, consider:**

- **Do the Interests set out on the Title Opinion equal 100%?**
  - If not, why?
  - Are there interests missing?
  - Is there a typo?
- **Does the Legal Description of Lands Examined match the Legal Description of the Well?**
  - If not, why?
  - Does the Title Opinion include an entire Section(s) and the well is producing from a portion of the Section?
  - Is there a distinction between Ownership in the *different sections*?
  - Are there lands missing from the Title Opinion?
- **Look for Gaps in Title Certification Date**
  - What is the Date of Abstracts Examined?
  - What is the Date that the Attorney has certified title?
  - When did the Well begin producing?
  - Title should be certified to the Date of First Production
  - If Date of Title Certification and Date of First Production is Greater than 60 days, get verification from Landman / Operator / Title Attorney that this Opinion is to be used for Ownership

Records and that there are no subsequent Opinions.

- **Review of the Ownership Detail**
  - As indicated above, do the Interests **equal 100%**?
  - Do the calculations set out for each Owner equal the Decimal Interest reflected for that Owner?
  - Are there any Owners who look **‘odd’**? For example: The Heirs of ...? Joint Ownership to multiple people that do not appear to be husband and wife? Joint Ownership to multiple entities that probably should be separate for disbursement purposes?
  - If Ownership is broken out by Section, be sure you are reviewing the correct Ownership to correspond with the Legal Description of the applicable well.
  - If Ownership is set out for Before Payout (BPO) and After Payout (APO), be sure you are reviewing and setting up the correct Ownership.
- **Review of Title Requirements / Comments / Objections**
  - Are there any interests that the Title Attorney specifically indicates – Do not pay ...?
  - Are there any interests that the Title Attorney specifically indicates must be paid pursuant to the terms of the oil and gas lease?
  - Is the Requirement or Comment ‘Advisory Only’?
  - Does the Requirement request that additional documents be provided in order that correct ownership may be determined?

**After Review:** Summarize Title Requirements for Review by Analyst with In-house Landman / Management / Operator / Title Attorney. Determine how the Division

Order Analyst will be notified and advised when and if Requirement has been satisfied.

- For Operated or Non-Operated Properties, the In-House Landman or Company Broker may be the One who is designated to ‘cure title’
- The Operator usually coordinates securing the appropriate documents. However, if the Oil & Gas Lease was originally granted to the Party (other than the Operator), that Non-Operating Party may coordinate ‘curing title’ on their specific leases. Some companies rely on the Division Order Analyst to coordinate securing the documents that will satisfy the specific Requirements outlined in the Division Order Title Opinion.
- The Third Party Purchaser will rely on the Operator to notify them of the resolution of any outstanding requirements.
- If appropriate, the Third Party Purchaser may need copies of the documents provided to the Attorney / Operator – For example, Probate Proceedings that set out Ownership of a Decedent on the Original Title Opinion.

#### **Set Up Ownership / Payment Records**

- Once the Division Order Title Opinion has been reviewed in accordance with the guidelines set out above, Ownership / Payment Records can be established according to the Title Opinion and any Additional Documentation provided to Satisfy Title Requirements.
  - State Statutes stipulate a specific time constraint of when Owners must be paid from the date of well completion
  - It may be necessary, however, to set up Ownership pending receipt of additional documentation for certain Owners – with their interest in Suspense – in order to comply with the payment statute.
  - Owners with ‘Clear and Marketable Title’ can be set up for payment based on the Division Order Title

Opinion. (See Addendum Example # 1 for an example of a DOI for a Lease Well)

## Curative Documents

These documents may be part of the materials examined by the Title Attorney to depict the Initial Ownership, as well as subsequent analysis for the satisfaction of outstanding Title Requirements. Additionally, these Curative Documents also play a large part in the ongoing maintenance / updates on a producing property and may include, but not be limited to:

- Wills
- Probate Proceedings
- Affidavits of Heirship
- Affidavits of Marital History
- Affidavits of Identity
- Affidavits of Non-Production
- Name Change Documents
- Merger Documents
- Stipulations of Interest
- Release of Liens
- Ratifications
- Quiet Title Suit Documents
- Disclaimers of Interest
- Deeds/Correction Deeds
- Assignments/Correction Assignments
- Trust Agreements
- Quit Claims
- Release of Lien
- Release of Oil & Gas Leases
- Release of Mortgages
- Subordination Agreements

## Pooling Agreements

Agreement to pool (i.e. bring together) separately owned interests - Pooling denotes the bringing together small tracts of land (usually adjacent) sufficient for the granting of a well permit under applicable spacing rules.

**The Pooling Agreement** –Defines Tracts,

including Tract Par Factors, within the Pooled Unit. It defines the number of acres in Pooled Unit and indicates the specific depths or formations included in Pooled Unit. It names operator of Pooled Unit, sets out the Parties to agreement, and lists the Oil & Gas Leases in Pooled Unit. *Note: The Oil & Gas Lease must contain a Pooling Clause in order to be included in a Pooled Unit.*

**The Pooling Agreement** should be approved by Governmental Agencies if state or federal leases are included in the unit. It should be ratified by Non-participating Royalty Owners, Unleased Mineral Owners (if participating as a working interest owner) and Working Interest Owners.

**Forced Pooling Orders** may contain language treating Unleased Mineral Interest Owners as Non-Consenting Working Interest Owners with a 7/8 Working Interest and burdening themselves with their own 1/8 Royalty Interest. (See Addendum Example # 5 for an example of a DOI for a Pooled Unit)

## Farmout Agreements

Agreement by and between Working Interest Parties - A Farmout Agreement is an agreement by and between the Working Interest Owners in which one Working Interest Party (“Farmor”) does not desire to participate in the drilling of a well. The Farmor agrees to assign the lease to the Drilling Party (“Farmee”) upon completion of a producing well.

- The Farmout Agreement sets out
  - Acreage covered by agreement
  - Test Well Information
  - Continued Drilling Obligations
  - Interests Reserved by Farmor, which could be one or more of the following:
    - Overriding Interest
    - Overriding Interest with option to increase at payout,
    - Overriding Interest with option to retain override AND convert to Working Interest at payout

- Overriding Interest with option to convert to working interest after payout
- The Assignment states whether or not right to proportionately reduce reserved interests
- Definition of Payout
  - When stated percentage of costs of drilling, testing and completion, as well as a percentage of operating costs, has been recovered from the revenue generated by the net interest farmed out (less payment of applicable taxes).
- Applicable Depths or Formations
- Form of Joint Operating Agreement to be used
- Which agreement prevails
- Marketing Information
  - Calls on Production
  - Right to Take in Kind

(See Addendum Example 7 for an example of a DOI affected by a Farmout Agreement)

### Joint Operation Agreements

Agreement by and between Working Interest Parties - The Joint Operating Agreement (“JOA”) is a document executed by all parties participating in the development of a particular field or geographical area. However, it may be limited to the drilling of a particular well. The JOA sets forth procedures for the development, drilling and operations of the field or well. Specific Provisions which may affect the Division Order Analyst are:

- **Article III.** Interests of Parties
  - Oil & Gas Interests
  - Interests of Parties in Costs & Production
  - Excess Royalties, Overriding Royalties & Other Payments
  - Subsequently Created Interests
- **Article IV.** Titles
  - Title Examination

- Loss of Title
- **Article V.** Operator
- **Article VI.** Drilling and Development
  - Initial Well
  - Subsequent Operations
  - Taking Production in Kind (When a participant markets their proportionate share of production under a different contract, how are the burdens to be paid?)
  - Operations by less than all parties
  - In case of a Re-work, what constitutes consent / non-consent (Do the consenting parties have the option to absorb the non-consent portion?)
- **Article VII.B** Operator’s Lien Provision
 

The JOA authorizes an Operator to collect revenues for a Non-Operator and apply said proceeds against delinquent joint interest billings.

“... To the extent that parties have a security interest under the Uniform Commercial Code of the state in which the Contract Area is situated, . . . upon default by any party in the payment of its share of expenses, interests or fees . . . the other parties shall have the right, without prejudice to other rights or remedies, to collect from the purchaser the proceeds from the sale of such defaulting party’s share of Oil and Gas until the amount owed by such party, plus interest as provided in “Exhibit C” has been received, and shall have the right to offset the amount owed against the proceeds from the sale of such defaulting party’s share of Oil and Gas. All purchasers of production may rely on a notification of default from the non-defaulting party or parties stating the amount due as a result of the default, and all parties waive any recourse available against purchasers for releasing production proceeds as provided in this paragraph. . .”

- **Exhibit A** - Describes the contract area and interests. It includes: Description of the contract area (acreage and legal description); depth restrictions; interests of parties to agreement; a list of the Oil & Gas Leases subject to agreement, and addresses of parties for notice purposes.
- **Exhibit E - Gas Balancing Agreement**
  - If a party’s separate disposition of its share of gas causes split stream deliveries to separate pipeline, what are the procedures to assure that all parties are credited with the proper amount of production?
- **Additional Considerations**
  - Does the JOA grant a Preferential Right to Purchase to the other participants?
  - Does the JOA provide that there must be Maintenance of Uniform Interest in the contract area?
    - “For the purpose of maintaining uniformity of ownership in the contract Area in the Oil and Gas Leases, Oil and Gas Interests, wells, equipment and production covered by this agreement no party shall sell, encumber, transfer or make other disposition of its interest in the Oil and Gas Leases and Oil and Gas Interests embraced within the Contract Area or in wells, equipment and production unless such disposition covers either:
      - the entire interest of the party in all Oil and Gas Leases, Oil and Gas Interests, wells, equipment and production;
      - or an equal undivided percent of the party’s present interest in all Oil and Gas Leases, Oil and Gas Interests, wells, equipment and production in the Contract Area”
- Does the JOA contain language that creates an **Area of Mutual Interest (AMI)**?
  - Area of Mutual Interest (“AMI”) clauses or agreements have evolved pursuant to the oil and gas industry’s desire to protect geographical areas in close proximity to geological prospects. The AMI stipulates that all parties to the agreement have a mutual interest in a certain geographic area and provides that if any one of them obtains an oil and gas interest in this area, the other parties have a right to participate in such interest. In essence, an AMI is a contract to convey interests in oil and gas leases.
  - The Area of Mutual Interest Clause is similar to the preferential right to purchase provision in the operating agreement, except that it deals with the acquisition of oil and gas interests rather than the divestiture of them.
  - It is designed to insure that every party subject to the agreement has an opportunity to acquire a proportionate share of any acquisition within the contract area, regardless of the state of development of the newly acquired acreage.
  - The AMI provision also protects one party to an agreement from another party’s use of information jointly obtained for competitive advantage.
- Are there any **Unleased Mineral Interests** subject to the JOA?
  - The 1989 AAPL model form Operating Agreement provides for a mineral interest owner to join in the execution of the JOA and participate in operations. Language contained therein states,

“If any party owns an Oil and Gas Interest in the Contract Area, the interest shall be treated for all purposes . . . as if it were covered by the form of oil and gas lease attached hereto as Exhibit “B”, and the owner thereof shall be deemed to own both the royalty therein reserved in such lease and the interest of the lessee thereunder . . .”

- If an unleased mineral owner joins in the execution of the JOA, he is then entitled to receive production proceeds, proportionately reduced, based on the royalty reservation set forth in the lease form to the JOA, as well as proceeds attributable to the leasehold net revenue interest. The unleased mineral owner is then considered a party to the JOA and is subject to all the provisions therein, including the non-consent provisions.

(See Addendum Example 8 for an example of a well/unit affected by a JOA)

assures that the Company meets all obligations of these Agreements and thereby, protecting the Company’s most valuable asset – the Oil and Gas Lease.

## Conclusion

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The Broker may negotiate the Oil & Gas Lease, the Landman may negotiate the Farmout, JOA, PSA, the Marketer may negotiate the Crude Oil or Gas Sales / Purchase Contract, however, it is the RESPONSIBILITY of the Division Order Analyst, Title Analyst, or Land Analyst to:

- Understand the terms and provisions of the Oil and Gas Lease(s) including Applicable Laws and Precedents of Court Rulings;
- Comprehend the terms and conditions of any agreements or purchase contracts;
- Understand how these Agreements affect the calculations of the Ownership of *every* Interest Owner in a Producing Property. With this Understanding, the Analyst

**CHAPTER 6: CALCULATIONS FROM YOUR TITLE OPINION TO YOUR COMPUTER**

**Luanne Johnson, CDOA**

## Introduction

More and more frequently Division Order Analysts are asked to create a spreadsheet setting out the ownership of a well/unit.

The purpose of this chapter is to assist the Division Order Analyst when setting up a Division Of Interest in Excel. The author of this paper will walk the analyst through a step by step process for creating a Division Of Interest spreadsheet. Certainly this is not the only method that an analyst could use to create a DOI but it is an effective one.

In order to demonstrate the steps used to create a DOI spreadsheet a Division Order Title Opinion has been created. This “example” Division Order Title Opinion appears on the next pages and will be used throughout this document. It is an example only and it is not to serve as an actual title document.

## How do I set up this well/unit?

When setting up a spreadsheet to go with your new division order title opinion or drilling opinion, you must first decide how to set it up. Some questions you should ask yourself are: Does your company’s land software program allow you to set up more than one tract? Did your lawyer break the unit into tracts? Or does your company’s system allow only one tract, and did your lawyer set up the title opinion in one tract?

Suppose, in this case, that your company allows only one tract, but the lawyer shows the unit as multi-tracts. The instructions that follow demonstrate how to show both.

**Example Title Opinion:**

*Posinski and Johnson Inc  
Attorneys at Law*

*May 9, 2007*

*Division Order Title Opinion*

*DEI Oil*

*RE: Block 29, BSL Survey, Freestone County, TX;*

*Section 39, A-962, containing 640 acres m/l*

---

**SURFACE:**

Martinsville Ranch	100%
--------------------	------

**MINERALS:**

Dale Earnhardt Jr.	L1	1/2*1/4-1/6*1/4	.08333333
Denny Hamlin	L2	1/6*3/16	.03125000
Tony Stewart	L3	1/12*3/16	.01562500
Carl Edwards	L4	1/12*3/16	.01562500
Ryan Newman	L5	1/6*3/16	.03125000

**NPR**

Kevin Harvick	L1	1/6*1/4	.04166667
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**Overriding Interest**

Nextel Oil	L2; L3	8.75%
------------	--------	-------

**WORKING**

	<b><u>GWI</u></b>	<b><u>Net</u></b>
DEI Oil	50%	.375
RCR Oil	28.262245%	.14824745
Joe Gibbs Oil	8.155625%	.06593125
Hendrick Racing Oil	13.58213%	.10457130

**Lease 1:**

Date: February 14, 2004  
Recorded: Volume 1, page 1, Official Public Records of Loving County  
Lessor: Dale Earnhardt Jr.  
Lessee: Darrell Waltrip  
Land Covered: NW of Section 39 containing 160 acres, M/L  
Interest Covered: Undivided 1/3 interest  
Primary Term: 3 years  
Royalties: ¼ on oil and gas

**Lease 2:**

Date: February 14, 2004  
Recorded: Volume 1, page 3, Official Public Records of Loving County  
Lessor: Denny Hamlin  
Lessee: Darrell Waltrip  
Land Covered: NE of Section 39 containing 160 acres, M/L  
Interest Covered: Undivided 1/6 interest  
Primary Term: 3 years  
Royalties: 3/16 on oil and gas

**Lease 3:**

Date: February 14, 2004  
Recorded: Volume 1, page 7, Official Public Records of Loving County  
Lessor: Tony Stewart  
Lessee: Darrell Waltrip  
Land Covered: NE of Section 39 containing 320 acres, MWL  
Interest Covered: Undivided 1/12 interest  
Primary Term: 3 years  
Royalties: 3/16 on oil and gas

**Lease 4:**

Date: February 14, 2004  
Recorded: Volume 1, page 10, Official Public Records of Loving County  
Lessor: Carl Edwards  
Lessee: Darrell Waltrip  
Land Covered: SW of Section 39 containing 320 acres, MWL  
Interest Covered: Undivided 1/12 interest  
Primary Term: 3 years  
Royalties: 3/16 on oil and gas

**Lease 5:**

Date: February 14, 2004

Recorded: Volume 1, page 14, Official Public Records of Loving  
County

Lessor: Ryan Newman

Lessee: Darrell Waltrip

Land Covered: SE of Section 39 containing 320 acres, M/L

Interest Covered: Undivided 1/6 interest

Primary Term: 3 years

Royalties: 3/16 on oil and gas

## Single tract DOI

If the lawyer has shown the unit as a single tract, put the total acres of the unit somewhere at the top of the spreadsheet. This not only shows how many total acres are in the unit, it also helps with the tract factor formula that you will do later.



**Tip 1:** Put the number in one cell and the word *acres* in another.

F	G
<b>Earnhardt #3</b>	
<b>Freestone Co, TX</b>	
	<b>640 Acres</b>

Next make a row for your tract acres. Since this is a single tract, it will be the same as the total acres. In the first cell, put *Tract acres =*, and then in the next cell, put the number of tract acres.

A	B
<b>Tract Acres =</b>	<b>640</b>

Information in the columns can vary according to individual need. One column could display owner numbers or lease numbers if all the owners have different lease numbers. Include in the columns whatever information is important for your set up.

However, these columns *must* be included: **Owner column.** You must show who owns in the well. This column could also be used to show the chain of title. If the lawyer did the Division Order Title Opinion (DOTO), and one of the owners is now deceased, you still must show how the lawyer wrote the title. However, under that owner's name, you can indent and write the new owner's name or change the colors. This will signal that this interest now belongs to the heirs.

Add rows to separate the royalty, override, and working interest owners. These rows will also allow you to sum up some of the important columns. Then under *Working Interest* total, add another row to total the data.

	A	B
1		
2		
3		
4		
5	<b>Martinsville Ranch</b>	
6	<b>Tract Acres =</b>	
7	<b>Addr ID</b>	<b>Name / Address</b>
8	88	Dale Earnhardt Jr
9	11	Denny Hamlin
10	20	Tony Stewart
11	99	Carl Edwards
12	12	Ryan Newman
13	29	Kevin Harvick
14	<b>Total NPR</b>	
15	2005	Nextel Oil
16	<b>Total ORRI</b>	
17	1983	DEI Oil
18	1968	Richard Childress Racing Oil
19	1991	Joe Gibbs Oil
20	1985	Hendrick Racing Oil
21	<b>Total WI</b>	
22	<b>Total for columns</b>	

**Royalty column.** Get this information from the title opinion or from the lease that belongs to the owner. You can write this as a fraction (how most DOTOs show it), or you can format the column so that when you enter a fraction, it is converted to a decimal.



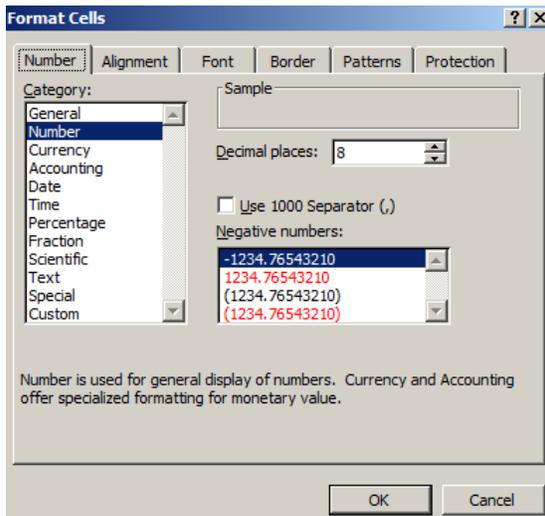
**Tip 2:** To format a column, click on the letter that corresponds to the column and highlight the whole column. Next, right click and choose *Format Cells*. Choose a number from *Category* and then change the decimal places to eight (8) or to whatever place your company's system takes out the decimal.

<u>Mineral/Royalty Interest</u>	<u>Mineral/Royalty Interest</u>
<u>Fractions</u>	<u>Decimal</u>
1/2-1/6	0.33333333
1/6	0.16666667
1/12	0.08333333
1/12	0.08333333
1/6	0.16666667
1/6	0.16666667

If you want to see a fraction, instead of choosing *Number*, choose *Fraction*, and then click on the type that best fits the fractions you will be dealing with.



**Tip 3:** If the formula has more than one fraction, the spreadsheet can calculate the formula for you. To set this up, start the formula with an equal sign (=). If the formula is more difficult, or if you want part of it calculated by itself, use parentheses around the part to be calculated by itself. For instance, if the owner owns  $1/3 * 1/3 * 7/8$ , type  $1/3 * 1/3 * 7/8$  and then press *Enter*.



**Mineral Column** . Depending on how complex the mineral interest is, you can either have one mineral column or two. If you want to see the fractions and there are several (ie.  $1/3 * 1/3 * 7/8$ ), you will need two columns. One will be for the fractions, and the other will show the decimal (what it adds up to).

Martinsville Ranch			Mineral/Royalty Interest	Mineral/Royalty Interest
Tract Acres =			Fractions	Decimal
Addr ID	Name / Address	Royalty	Fractions	Decimal
88	Dale Earnhardt Jr	0.25000000	1/3*1/3*7/8	=1/3*1/3*7/8

Once you click enter, you will see:

Martinsville Ranch			Mineral/Royalty Interest	Mineral/Royalty Interest
Tract Acres =			Fractions	Decimal
Addr ID	Name / Address	Royalty	Fractions	Decimal
88	Dale Earnhardt Jr	0.25000000	1/3*1/3*7/8	0.09722222

**Gross Working Interest.** This will display data about the working interest owners only. Put their gross working interest here. You will AutoSum this column; be sure that it equals 1.

mineral interest in this column. You can put this formula in once for this and all the other owners. To do this, first type the formula in the first owner's *Net Interest* cell. Then type in the formula (or copy and paste) to show the owner's royalty times their mineral interest decimal (for example: =C7\*E7).

**Net Interest.** Enter the formula to multiply the royalty interest and the

B	C	D	E	F	G	H
				<b>Earnhardt #3</b>		
				<b>Freestone Co, TX</b>		
				640 Acres		
Martinsville Ranch			Mineral/Royalty Interest	Mineral/Royalty Interest	(RPMI)	
Tract Acres =	640					
Addr ID	Name / Address	Royalty	Fractions	Decimal	Non-Consent	Net Interest
Dale Earnhardt Jr		0.25000000	1/2-1/6	0.33333333		=C7*E7

Once you click enter, you will see:

Martinsville Ranch			Mineral/Royalty Interest	Mineral/Royalty Interest	(RPMI)	
Tract Acres =	640					
Addr ID	Name / Address	Royalty	Fractions	Decimal	Non-Consent	Net Interest
8	Dale Earnhardt Jr	0.25000000	1/2-1/6	0.33333333		0.08333333

**Tract Factor.** At this point, you will use the total acres and the tract acres that you entered previously. The formula for the tract factor is the tract acres divided by the total acres (for example: =B5/F3)for a single tract). This may not seem useful, but when dealing with multiple tracts, this is very important in calculating the unit interest an owner has.

A	B	C	D	E	F	G	H	I
1					<b>Earnhardt #3</b>			
2					<b>Freestone Co, TX</b>			
3					640 Acres			
4								
Martinsville Ranch			Mineral/Royalty Interest	Mineral/Royalty Interest	(RPMI)		(Tract Acres/Unit Acres)	
Tract Acres =	640							
Addr ID	Name / Address	Royalty	Fractions	Decimal	Non-Consent	Net Interest	Tract Factor	
8	Dale Earnhardt Jr	0.25000000	1/2-1/6	0.33333333		0.08333333	=B5/F3	

Once you press *Enter*, you will see:

Martinsville Ranch		Mineral/Royalty Interest	Mineral/Royalty Interest	(R <sup>2</sup> M)	(Tract Acres/Unit Acres)		
Tract Acres =	640						
Addr ID	Name / Address	Royalty	Fractions	Decimal	Non-Consent	Net Interest	Tract Factor
8	Dale Earnhardt Jr	0.25000000	1/2-1/6	0.33333333		0.08333333	1.00000000

**Unit Interest.** When doing a single tract, this is the same as the net interest, because the tract factor will be 1. When you have several tracts (a unit), you will use this column to show the unit interest. Also, if the lawyer put the title opinion in tracts, but you are going to put it into your system as one tract, you will use this number to show the owner's interest. The formula for this is the owner's net interest multiplied by the tract factor (for example: =H7\*I7).

	A	B	C	D	E	F	G	H	I	J
1						<b>Earnhardt #3</b>				
2						<b>Freestone Co, TX</b>				
3							640 Acres			
4										
Martinsville Ranch		Mineral/Royalty Interest	Mineral/Royalty Interest	(R <sup>2</sup> M)	(Tract Acres/Unit Acres)	Net Interest	Tract Factor	Unit Interest		
Tract Acres =	640									
Addr ID	Name / Address	Royalty	Fractions	Decimal	Non-Consent	Net Interest	Tract Factor	Unit Interest		
8	Dale Earnhardt Jr	0.25000000	1/2-1/6	0.33333333		0.08333333	1.00000000	=H7*I7		

Once you press *Enter*, you will see:

Martinsville Ranch		Mineral/Royalty Interest	Mineral/Royalty Interest	(R <sup>2</sup> M)	(Tract Acres/Unit Acres)	Net Interest	Tract Factor	Unit Interest
Tract Acres =	640							
Addr ID	Name / Address	Royalty	Fractions	Decimal	Non-Consent	Net Interest	Tract Factor	Unit Interest
8	Dale Earnhardt Jr	0.25000000	1/2-1/6	0.33333333		0.08333333	1.00000000	0.08333333



**Tip 4:** When you want to use the same formula for more owners you can copy and paste the formula instead of retyping it each time you use it. To do this, select the cell by clicking on it. Then right click and choose *Copy*. Click in the new cell, right click, and select *Paste*. Since tract factor uses the same cells for all of the owners, click in the first owner's tract factor cell and add a dollar sign (\$) between the letter and number (for example: =B\$5/F\$3). This will tell it to continue to use these same cells.

When you enter the data for all of the royalty owners, overriding owners, and working interest owners, AutoSum all of

the important columns such as Mineral Interest, Net Interest, and Unit Interest.



**Tip 5:** To make this easy, use the AutoSum button at the top of the spreadsheet  $\Sigma$ . Click in the cell where you want the answer to be shown and then click the AutoSum button. A square around the numbers to be totaled will appear. If this is incorrect, select the correct cells by left clicking in the first cell and then hold it down as you drag the cursor over the cells you want to add up.

Your spreadsheet should end up looking like this:

Martinsville Ranch		Mineral/Royalty Interest		Mineral/Royalty Interest		(RPM)	(Tract Acres/Unit Acres)	(Net Interest*Tract Factor)	
Tract Acres =	640	Royalty	Fractions	Decimal	Non-Consent	GWJ	Net Interest	Tract Factor	
Addr ID	Name / Address							Unit Interest	
8	Dale Earnhardt Jr	0.2500000	1/2-1/6	0.3333333			0.0833333	1.0000000	0.0833333
11	Denny Hamlin	0.1875000	1/6	0.1666667			0.0312500	1.0000000	0.0312500
20	Tony Stewart	0.1875000	1/12	0.0833333			0.0156250	1.0000000	0.0156250
99	Carl Edwards	0.1875000	1/12	0.0833333			0.0156250	1.0000000	0.0156250
12	Ryan Newman	0.1875000	1/6	0.1666667			0.0312500	1.0000000	0.0312500
29	Kevin Harvick	0.2500000	1/6	0.1666667			0.0416667	1.0000000	0.0416667
<b>Total NPR</b>				<b>1.0000000</b>			<b>0.2187500</b>		<b>0.2187500</b>
2005	Nextel Oil		8.75%	0.0875000			0.0875000	1.0000000	0.0875000
<b>Total ORRI</b>				<b>0.0875000</b>			<b>0.0875000</b>		<b>0.0875000</b>
1983	DEI Oil			0.3750000		0.5000000	0.3750000	1.0000000	0.3750000
1968	Richard Childress Racing Oil			0.14824745		0.28262245	0.14824745	1.0000000	0.14824745
1991	Joe Gibbs Oil			0.06593125		0.08155625	0.06593125	1.0000000	0.06593125
1985	Hendrick Racing Oil			0.10457130		0.13582130	0.10457130	1.0000000	0.10457130
<b>Total WI</b>				<b>1.0000000</b>		<b>1.0000000</b>	<b>0.6937500</b>		<b>0.6937500</b>
<b>Total for columns</b>				<b>0.6937500</b>			<b>1.0000000</b>		<b>1.0000000</b>

## Burdens

[Burdens](#) are among the most important reasons why you should use a spreadsheet to show the ownership in a well. When you understand what burdens are, it will be easier to understand how to show them on a spreadsheet. Burdens are royalty and overriding interest that working interest owners are responsible for.

You will create a separate spreadsheet for the burdens using some of the information from the first spreadsheet.

The columns you will need are as follows:  
**Owner number** (BA#/Addr ID). Enter your company's number for the owner. You don't have to have this, but it can help if you have to put the burden information in your company's system.

**Owner name.** List royalty and override owners.

Burdens	
Addr ID	Owner
8	Dale Earnhardt Jr
11	Denny Hamlin
20	Tony Stewart
99	Carl Edwards
12	Ryan Newman
29	Kevin Harvick
<b>Total RI</b>	
2005	Nextel Oil
<b>Total ORRI</b>	

Be sure to separate the override owners from the royalty owners so that you can tell them apart. Name those rows *Total RI* for the royalty owners and *Total ORRI* for the overriding owners.

**Royalty.** – This column will be for the owner royalty interest.

Burdens		
Addr ID	Owner	Royalty
8	Dale Earnhardt Jr	0.08333333
11	Denny Hamlin	0.03125000
20	Tony Stewart	0.01562500
99	Carl Edwards	0.01562500
12	Ryan Newman	0.03125000
29	Kevin Harvick	0.04166667
<b>Total RI</b>		<b>0.21875000</b>
2005	Nextel Oil	0.08750000
<b>Total ORRI</b>		<b>0.08750000</b>

Make sure to AutoSum the royalty owners and the overriding owners. This total should be the same number that appears on the first spreadsheet.

The next columns will be the working interest owners. Again, AutoSum each of the columns on the total rows.

Addr ID	Owner	Royalty	DEI Oil	RCR	J Gibb Oil	H Racing Oil
8	Dale Earnhardt Jr	0.08333333				
11	Denny Hamlin	0.03125000				
20	Tony Stewart	0.01562500				
99	Carl Edwards	0.01562500				
12	Ryan Newman	0.03125000				
29	Kevin Harvick	0.04166667				
	<b>Total RI</b>	<b>0.21875000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>
2005	Nextel Oil	0.08750000				
	<b>Total ORRI</b>	<b>0.08750000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>

Next you will add a couple more rows:

**Total Royalty + ORRI.** In this row you total all of royalty and overrides (or the total burden) that the working interest owner is responsible for. The formula for each cell is Total Royalty + Total ORRI. Use this formula for each of the working interest owners. (For example, click in cell C37 and type =C34+C36.)

**GWI-(Royalty+ORRI) = WI.** This is net working interest, but naming it this way shows the formula that you have used. Use this formula under each of the working interest owners (for example: DEI =.50-D37).

	A	B	C	D	E	F	G
24	Burdens						
25							
26							
27	Addr ID	Owner	Royalty	DEI Oil	RCR	J Gibb Oil	H Racing Oil
28	8	Dale Earnhardt Jr	0.08333333				
29	11	Denny Hamlin	0.03125000				
30	20	Tony Stewart	0.01562500				
31	99	Carl Edwards	0.01562500				
32	12	Ryan Newman	0.03125000				
33	29	Kevin Harvick	0.04166667				
34		<b>Total RI</b>	<b>0.21875000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>
35	2005	Nextel Oil	0.08750000				
36		<b>Total ORRI</b>	<b>0.08750000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>
37		<b>Total Royalty + ORRI</b>	<b>0.30625000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>
38							
39		<b>GWI - (Royalty+ORRI) = WI</b>		<b>0.50000000</b>	<b>0.28262245</b>	<b>0.08155625</b>	<b>0.13582130</b>

Next, AutoSum each of the rows. Add one more row under the *GWI-(Royalty+ORRI) = WI* row. This row will add up the *Total Royalty + ORRI and GWI-(Royalty+ORRI) = WI* rows. Make sure with the sum of these rows is 1.0.

	A	B	C	D	E	F	G	H
24	Burdens							
25								
26								
27	Addr ID	Owner	Royalty	DEI Oil	RCR	J Gibb Oil	H Racing Oil	
28	8	Dale Earnhardt Jr	0.08333333					
29	11	Denny Hamlin	0.03125000					
30	20	Tony Stewart	0.01562500					
31	99	Carl Edwards	0.01562500					
32	12	Ryan Newman	0.03125000					
33	29	Kevin Harvick	0.04166667					
34		<b>Total RI</b>	<b>0.21875000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>
35	2005	Nextel Oil	0.08750000					
36		<b>Total ORRI</b>	<b>0.08750000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>
37		<b>Total Royalty + ORRI</b>	<b>0.30625000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>
38								
39		<b>GWI - (Royalty+ORRI) = WI</b>		<b>0.50000000</b>	<b>0.28262245</b>	<b>0.08155625</b>	<b>0.13582130</b>	<b>1.00000000</b>
40								<b>1.00000000</b>

In this example, DEI brought one lease in the unit, and Dale Earnhardt Jr and Kevin Harvick are both royalty owners. They are responsible at 100%. If they have decided to keep these owners as their burden and don't want to combine them with everyone else's, you would show that DEI got all of Dale Earnhardt Jr.'s royalty and all of Kevin Harvick's.



**Tip 6:** Instead of typing out the owner's interest, type =. Then click in the cell and press *Enter*. This will insert the interest in that cell.

	A	B	C	D	E	F	G	H
24	<b>Burdens</b>							
25								
26								
27	<b>Addr ID</b>	<b>Owner</b>	<b>Royalty</b>	<b>DEI Oil</b>	<b>RCR</b>	<b>J Gibb Oil</b>	<b>H Racing Oil</b>	
28	8	Dale Earnhardt Jr	0.08333333	0.08333333				
29	11	Denny Hamlin	0.03125000					
30	20	Tony Stewart	0.01562500					
31	99	Carl Edwards	0.01562500					
32	12	Ryan Newman	0.03125000					
33	29	Kevin Harvick	0.04166667	0.04166667				
34		<b>Total RI</b>	<b>0.21875000</b>	<b>0.12500000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.12500000</b>
35	2005	Nextel Oil	0.08750000					
36		<b>Total ORRI</b>	<b>0.08750000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>
37		<b>Total Royalty + ORRI</b>	<b>0.30625000</b>	<b>0.12500000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.12500000</b>
38								
39		<b>GWI - (Royalty+ORRI) = WI</b>		<b>0.37500000</b>	<b>0.28262245</b>	<b>0.08155625</b>	<b>0.13582130</b>	<b>0.87500000</b>
40								<b>1.00000000</b>

If DEI decides to put their lease with the others and share the burdens with everyone equally, multiply their gross by the royalty/override interest.

Finally, if DEI and RCR decide to bring their leases in the unit and share their burdens (that is, the royalty owners and ORRI owners that both companies are responsible for), DEI with 70% and RCR with 30%, multiply the Royalty owners' interest by 70% and 30% respectively. That is, for DEI, multiply the royalty

owners' interest by 70%, and for RCR, multiply the royalty owners' interest by 30%.

**Note:** When you subtract the royalty and overriding owners' interest from the working interest owners' gross working interest, it must equal their net working interest.

In the sample spreadsheet on the next page, all working interest owners are responsible for their own burdens at 100%.

**Working Interest Owner**

DEI  
RCR  
Gibbs  
H Racing

**Burdens**

Dale Earnhardt Jr and Kevin Harvick  
Denny Hamlin and Tony Stewart  
Carl Edwards  
Ryan Newman

Burdens						
Addr ID	Owner	Royalty	DEI Oil	RCR	J Gibb Oil	H Racing Oil
8	Dale Earnhardt Jr	0.08333333	0.08333333			
11	Denny Hamlin	0.03125000		0.03125000		
20	Tony Stewart	0.01562500		0.01562500		
99	Carl Edwards	0.01562500			0.01562500	
12	Ryan Newman	0.03125000				0.03125000
29	Kevin Harvick	0.04166667	0.04166667			
<b>Total RI</b>		<b>0.21875000</b>	<b>0.12500000</b>	<b>0.04687500</b>	<b>0.01562500</b>	<b>0.03125000</b>
2005	Nextel Oil	0.08750000		0.08750000		
<b>Total ORRI</b>		<b>0.08750000</b>	<b>0.00000000</b>	<b>0.08750000</b>	<b>0.00000000</b>	<b>0.00000000</b>
<b>Total Royalty + ORRI</b>		<b>0.30625000</b>	<b>0.12500000</b>	<b>0.13437500</b>	<b>0.01562500</b>	<b>0.03125000</b>
<b>GWI - (Royalty+ORRI) = WI</b>			<b>0.37500000</b>	<b>0.14824745</b>	<b>0.06593125</b>	<b>0.10457130</b>
<b>1.00000000</b>						

Your final spreadsheet with the first spreadsheet and burden spreadsheet should look like this:

Earnhardt #3 Freestone Co, TX 640 Acres									
Martinsville Ranch Tract Acres =	640	Mineral/Royalty Interest		Mineral/Royalty Interest	(RPMI)	(Tract Acres/Unit Acres)	(Net Interest*Tract Factor)		
Addr ID	Name / Address	Royalty	Fractions	Decimal	Non-Consent	GWl	Net Interest	Tract Factor	Unit Interest
8	Dale Earnhardt Jr	0.25000000	1/2-1/6	0.33333333			0.08333333	1.00000000	0.08333333
11	Denny Hamlin	0.18750000	1/6	0.16666667			0.03125000	1.00000000	0.03125000
20	Tony Stewart	0.18750000	1/12	0.08333333			0.01562500	1.00000000	0.01562500
99	Carl Edwards	0.18750000	1/12	0.08333333			0.01562500	1.00000000	0.01562500
12	Ryan Newman	0.18750000	1/6	0.16666667			0.03125000	1.00000000	0.03125000
29	Kevin Harvick	0.25000000	1/6	0.16666667			0.04166667	1.00000000	0.04166667
<b>Total NPR</b>				<b>1.00000000</b>			<b>0.21875000</b>		<b>0.21875000</b>
2005	Nextel Oil		8.75%	0.08750000			0.08750000	1.00000000	0.08750000
<b>Total ORRI</b>				<b>0.08750000</b>			<b>0.08750000</b>		<b>0.08750000</b>
1983	DEI Oil			0.37500000		0.50000000	0.37500000	1.00000000	0.37500000
1968	Richard Childress Racing Oil			0.14824745		0.28262245	0.14824745	1.00000000	0.14824745
1991	Joe Gibbs Oil			0.06593125		0.08155625	0.06593125	1.00000000	0.06593125
1985	Hendrick Racing Oil			0.10457130		0.13582130	0.10457130	1.00000000	0.10457130
<b>Total WI</b>						<b>1.00000000</b>	<b>0.69375000</b>		<b>0.69375000</b>
<b>Total for columns</b>				<b>0.69375000</b>			<b>1.00000000</b>		<b>1.00000000</b>
Burdens									
Addr ID	Owner	Royalty	DEI Oil	RCR	J Gibb Oil	H Racing Oil			
8	Dale Earnhardt Jr	0.08333333	0.08333333						
11	Denny Hamlin	0.03125000		0.03125000					
20	Tony Stewart	0.01562500		0.01562500					
99	Carl Edwards	0.01562500			0.01562500				
12	Ryan Newman	0.03125000				0.03125000			
29	Kevin Harvick	0.04166667	0.04166667						
<b>Total RI</b>		<b>0.21875000</b>	<b>0.12500000</b>	<b>0.04687500</b>	<b>0.01562500</b>	<b>0.03125000</b>	<b>0.21875000</b>		
2005	Nextel Oil	0.08750000		0.08750000					
<b>Total ORRI</b>		<b>0.08750000</b>	<b>0.00000000</b>	<b>0.08750000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.08750000</b>		
<b>Total Royalty + ORRI</b>		<b>0.30625000</b>	<b>0.12500000</b>	<b>0.13437500</b>	<b>0.01562500</b>	<b>0.03125000</b>	<b>0.30625000</b>		
<b>GWI - (Royalty+ORRI) = WI</b>			<b>0.37500000</b>	<b>0.14824745</b>	<b>0.06593125</b>	<b>0.10457130</b>	<b>0.69375000</b>		
							<b>1.00000000</b>		

The totals for royalty interest, overriding interest, and working interest should match on both spreadsheets. Also the row with the net working interest must match the *Net Interest* column under the working interest .

## Unit or Multi-tract DOI

When you need to make a spreadsheet for a unit, use the spreadsheet you have created, but instead of creating just one, make a copy of the spreadsheet for each tract in the unit. The tract factor will play a big part in the spreadsheet. Change the tract acres on each of the tracts and make sure the formula reflects the correct cells.

Earnhardt #3									
Freestone Co, TX									
640 Acres									
Tract Acres =	320	Mineral/Royalty Interest		Mineral/Royalty Interest		(R^MI)	(Tract Acres/Unit Acres)	(Net Interest*Tract Factor)	
Addr ID	Name / Address	Royalty	Fractions	Decimal	Non-Consent	GWl	Net Interest	Tract Factor	Unit Interest
8	Dale Earnhardt Jr	0.25000000	1.0-1/6	0.83333333			0.20833333	0.50000000	0.10416667
29	Kevin Harvick	0.25000000	1/6	0.16666667			0.04166667	0.50000000	0.02083333
<b>Total RI</b>				<b>1.00000000</b>			<b>.25000000</b>		<b>.12500000</b>
<b>Total ORRI</b>				<b>0.00000000</b>			<b>0.00000000</b>		<b>0.00000000</b>
1983	DEI Oil			0.75000000		1.00000000	0.75000000	0.50000000	0.37500000
<b>Total WI</b>						<b>1.00000000</b>	<b>0.75000000</b>		<b>0.37500000</b>
<b>Total for columns</b>							<b>1.00000000</b>		<b>0.50000000</b>
Tract Acres =	320	Mineral/Royalty Interest		Mineral/Royalty Interest		(R^MI)	(Tract Acres/Unit Acres)	(Net Interest*Tract Factor)	
Addr ID	Name / Address	Royalty	Fractions	Decimal	Non-Consent	GWl	Net Interest	Tract Factor	Unit Interest
11	Denny Hamlin	0.18750000	1/2*1/3	0.16666667			0.03125000	0.50000000	0.01562500
20	Tony Stewart	0.18750000	1/2*1/3	0.16666667			0.03125000	0.50000000	0.01562500
99	Carl Edwards	0.18750000	1/3	0.33333333			0.06250000	0.50000000	0.03125000
12	Ryan Newman	0.18750000	1/3	0.33333333			0.06250000	0.50000000	0.03125000
<b>Total RI</b>				<b>1.00000000</b>			<b>.18750000</b>		<b>.09375000</b>
2005	Nextel Oil		8.75%	0.08750000			0.08750000	0.50000000	0.04375000
<b>Total ORRI</b>				<b>0.08750000</b>			<b>.08750000</b>		<b>.04375000</b>
1968	Richard Childress Racing Oil			0.27750000		0.34000000	0.27750000	0.50000000	0.13875000
1991	Joe Gibbs Oil			0.18000000		0.33000000	0.18000000	0.50000000	0.09000000
1985	Hendrick Racing Oil			0.26750000		0.33000000	0.26750000	0.50000000	0.13375000
<b>Total WI</b>						<b>1.00000000</b>	<b>0.72500000</b>		<b>0.36250000</b>
<b>Total for columns</b>							<b>1.00000000</b>		<b>0.50000000</b>

You will also need to add rows to the bottom to total everything. Type = and then click in each of the totals. Make sure to only do the royalty for the total royalty line and the same for the rest. Remember that the total for columns in the end will equal the number of tracts in the *Net Interest* column. For example, if you have five tracts, your total will be five. The total in the columns under Unit Interest will equal 1.

Total RI							.43750000		.21875000
Total ORRI							.08750000		.04375000
Total WI							1.47500000		0.73750000
Total for columns							2.00000000		1.00000000

**Before and After Payout Situations**

When you have a non-consenting working interest owner, you must reflect this in the spreadsheet. First add a column labeled *Non-Consent Interest*. This will be where you put the non-consent owners' gross interest. Then you need to determine who is going to get this share of the non-consent and how they are going to split it.

In this example, one of the four working interest owners has decided to go non-consent. The three other owners have decided to pick up the share equally. You will create small spreadsheets under the burden spreadsheet that shows how you determined the decimals.

This spreadsheet will show the name(s) of the non-consenting owner(s) along with their gross working interest.

Non-Consent	
	gross
Joe Gibbs	0.08155625
Total	0.08155625

The spreadsheet will need to have four or five columns for the figures for the share of non-consent.

**Elected to take share.** List all of the owners who will be picking up a share of the non-consent.

**Gross.** This is the gross working interest

of the owners who will be picking up a share of the interest. AutoSum this column to get a total.

**Percentage.** Use this column to determine the amount of the non-consent each will get based on the gross amount they have. The formula for this column is the gross divided by the total of all of the gross amounts. (For example: =C46/B\$49. Add a \$ so that it will use the formula in that cell for the rest of the owners.) When you AutoSum this column, it should equal 1.

If the non-consent owner is 100% responsible for the burdens of a royalty/overriding owner, the percentage will be the number showing the share they are picking up. For example, DEI will be responsible for .54439915 of the royalty/overriding burdens.

	A	B	C
43			
44	Figures for Share of Non-Consent		
45	Elected to take share	Gross	%
46	DEI	0.50000000	0.54439915
47	RCR	0.28262245	0.30771885
48	H Racing	0.13582130	0.14788200
49	Total	0.91844375	1.00000000
50			
51	Non-Consent		
52		Gross	
53	Joe Gibbs	0.08155625	
54	Total	0.08155625	

**Non-Consent Amount.** This is the total non-consent, shown as a decimal. The formula is

the total gross multiplied by the percentage. Put the amount in the cell above so you have something to use for your formula. (For example: =D\$45\*C46. Add the \$ so that it will use the formula in that cell for the rest of the owners.) When you AutoSum this column, it will equal the total non-consent gross.

	A	B	C	D
43				
44	<b>Figures for Share of Non-Consent</b>			
45	<i>Elected to take share</i>	<i>Gross</i>	<i>%</i>	<b>0.08155625</b>
46	DEI	0.50000000	0.54439915	0.04439915
47	RCR	0.28262245	0.30771885	0.02509640
48	H Racing	0.13582130	0.14788200	0.01206070
49	<b>Total</b>	<b>0.91844375</b>	<b>1.00000000</b>	<b>0.08155625</b>
50				
51	<b>Non-Consent</b>			
52		<i>Gross</i>		
53	<b>Joe Gibbs</b>	0.08155625		
54	<b>Total</b>	<b>0.08155625</b>		

If the burdens are very complicated, you could have more than one of these spreadsheets. You may also add a column to the first spreadsheet to show the percentage that the non-consent owner is responsible for. (For example: If Joe Gibbs is responsible for 50% of the burdens, you will add an extra column to split the share out. The formula, 50% multiplied by the percentage, will produce their share of the 50%. For example, for DEI, the formula is =E\$45\*C46.

	A	B	C	D	E
43					
44	<b>Figures for Share of Non-Consent</b>				
45	<i>Elected to take share</i>	<i>Gross</i>	<i>%</i>	<b>0.08155625</b>	<b>0.50000000</b>
46	DEI	0.50000000	0.54439915	0.04439915	0.27219958
47	RCR	0.28262245	0.30771885	0.02509640	0.15385942
48	H Racing	0.13582130	0.14788200	0.01206070	0.07394100
49	<b>Total</b>	<b>0.91844375</b>	<b>1.00000000</b>	<b>0.08155625</b>	<b>0.50000000</b>

In this example, Joe Gibbs is the non-consenting owner. He is 100% responsible for his burdens.

To show this on your spreadsheet, first highlight the royalty owner(s) that the non-consent is responsible for. In this case it is Carl Edwards. Next, add more columns to show the owners who are picking up a share, making sure that you add something to the title indicating that this is the amount they have picked up.

Owner	Royalty	DEI Oil	DEI Share of N/C	RCR	RCR Share of N/C	H Racing Oil	H Racing Oil Share of N/C	
Dale Earnhardt Jr	0.08333333	0.08333333						
Denny Hamlin	0.03125000			0.03125000				
Tony Stewart	0.01562500			0.01562500				
Carl Edwards	0.01562500							
Ryan Newman	0.03125000					0.03125000		
Kevin Harvick	0.04166667	0.04166667						
<b>Total RI</b>	<b>0.21875000</b>	<b>0.12500000</b>	<b>0.00000000</b>	<b>0.04687500</b>	<b>0.00000000</b>	<b>0.03125000</b>	<b>0.00000000</b>	<b>0.20312500</b>
Nextel Oil	0.08750000			0.08750000				
<b>Total ORRI</b>	<b>0.08750000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.08750000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.08750000</b>
<b>Total Royalty + ORRI</b>	<b>0.30625000</b>	<b>0.12500000</b>	<b>0.00000000</b>	<b>0.13437500</b>	<b>0.00000000</b>	<b>0.03125000</b>	<b>0.00000000</b>	<b>0.29062500</b>
<b>GWI - (Royalty+ORRI) = WI</b>		<b>0.37500000</b>		<b>0.14824745</b>		<b>0.10457130</b>		<b>0.62781875</b>
								<b>0.91844375</b>

Fix the  $GWI - (Royalty + ORRI) = WI$  row next. This time, instead of using the original gross, use the amount in the *Non-Consent* column (because you have to make up this amount that has been taken out of the spreadsheet). So, for example, use .02509640 as the gross for RCR.

	A	B	C	D
43				
44	<b>Figures for Share of Non-Consent</b>			
45	<i>Elected to take share</i>	<i>Gross</i>	<b>%</b>	<b>0.08155625</b>
46	DEI	0.50000000	0.54439915	0.04439915
47	RCR	0.28262245	0.30771885	0.02509640
48	H Racing	0.13582130	0.14788200	0.01206070
49	<b>Total</b>	<b>0.91844375</b>	<b>1.00000000</b>	<b>0.08155625</b>
50				
51	<b>Non-Consent</b>			
52		<i>Gross</i>		
53	Joe Gibbs	0.08155625		
54	<b>Total</b>	<b>0.08155625</b>		

Owner	Royalty	DEI Oil	DEI Share of N/C	RCR	RCR Share of N/C	H Racing Oil	H Racing Oil Share of N/C	
Dale Earnhardt Jr	0.08333333	0.08333333						
Denny Hamlin	0.03125000			0.03125000				
Tony Stewart	0.01562500			0.01562500				
Carl Edwards	0.01562500							
Ryan Newman	0.03125000					0.03125000		
Kevin Harvick	0.04166667	0.04166667						
<b>Total RI</b>	<b>0.21875000</b>	<b>0.12500000</b>	<b>0.00000000</b>	<b>0.04687500</b>	<b>0.00000000</b>	<b>0.03125000</b>	<b>0.00000000</b>	<b>0.20312500</b>
Nextel Oil	0.08750000			0.08750000				
<b>Total ORRI</b>	<b>0.08750000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.08750000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.08750000</b>
<b>Total Royalty + ORRI</b>	<b>0.30625000</b>	<b>0.12500000</b>	<b>0.00000000</b>	<b>0.13437500</b>	<b>0.00000000</b>	<b>0.03125000</b>	<b>0.00000000</b>	<b>0.29062500</b>
<b>GWI - (Royalty+ORRI) = WI</b>		<b>0.37500000</b>	<b>0.04439915</b>	<b>0.14824745</b>	<b>0.02509640</b>	<b>0.10457130</b>	<b>0.01206070</b>	<b>0.70937500</b>
								<b>1.00000000</b>

Since Joe Gibbs is responsible at 100% for Carl Edwards, use the percentage to multiply by Carl Edwards' royalty. In the case of RCR, enter  $=.30771885*B31$  in *RCR Share of N/C* cell for Carl Edwards. If this had been where Joe Gibbs was responsible for 50%, you would have used the number under that column to multiply by  $=.15385942*B31$ .

	A	B	C	D	E	F
26				DEI		RCR
27	<b>Owner</b>	<b>Royalty</b>	<b>DEI Oil</b>	<b>Share of N/C</b>	<b>RCR</b>	<b>Share of N/C</b>
28	Dale Earnhardt Jr	0.08333333	0.08333333			
29	Denny Hamlin	0.03125000			0.03125000	
30	Tony Stewart	0.01562500			0.01562500	
31	Carl Edwards	0.01562500				=.30771885*B31
32	Ryan Newman	0.03125000				
33	Kevin Harvick	0.04166667	0.04166667			
34	<b>Total RI</b>	<b>0.21875000</b>	<b>0.12500000</b>	<b>0.00000000</b>	<b>0.04687500</b>	<b>0.00000000</b>
35	<b>Nextel Oil</b>	<b>0.08750000</b>			<b>0.08750000</b>	
36	<b>Total ORRI</b>	<b>0.08750000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.08750000</b>	<b>0.00000000</b>
37	<b>Total Royalty + ORRI</b>	<b>0.30625000</b>	<b>0.12500000</b>	<b>0.00000000</b>	<b>0.13437500</b>	<b>0.00000000</b>
38						
39	<b>GWl - (Royalty+ORRI) = Wl</b>		<b>0.37500000</b>	<b>0.04439915</b>	<b>0.14824745</b>	<b>0.02509640</b>
40						

Once you have this done for all of the owners who picked up a share, the spreadsheet will look like this:

Owner	Royalty	DEI Oil	DEI Share of N/C	RCR	RCR Share of N/C	H Racing Oil	H Racing Oil Share of N/C
Dale Earnhardt Jr	0.08333333	0.08333333					
Denny Hamlin	0.03125000			0.03125000			
Tony Stewart	0.01562500			0.01562500			
Carl Edwards	0.01562500		0.00850624		0.00480811		0.00231066
Ryan Newman	0.03125000					0.03125000	
Kevin Harvick	0.04166667	0.04166667					
<b>Total RI</b>	<b>0.21875000</b>	<b>0.12500000</b>	<b>0.00850624</b>	<b>0.04687500</b>	<b>0.00480811</b>	<b>0.03125000</b>	<b>0.00231066</b>
<b>Nextel Oil</b>	<b>0.08750000</b>			<b>0.08750000</b>			
<b>Total ORRI</b>	<b>0.08750000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.08750000</b>	<b>0.00000000</b>	<b>0.00000000</b>	<b>0.00000000</b>
<b>Total Royalty + ORRI</b>	<b>0.30625000</b>	<b>0.12500000</b>	<b>0.00850624</b>	<b>0.13437500</b>	<b>0.00480811</b>	<b>0.03125000</b>	<b>0.00231066</b>
<b>GWl - (Royalty+ORRI) = Wl</b>		<b>0.37500000</b>	<b>0.03589292</b>	<b>0.14824745</b>	<b>0.02028829</b>	<b>0.10457130</b>	<b>0.00975004</b>
							<b>1.00000000</b>

Then you will add this to your original spreadsheet by adding rows to show the shares along with a column that shows the non-consent interest.

This is shown better when it is in different colors.

Martinsville Ranch	Tract Acres =	Mineral/Royalty Interest	Mineral/Royalty Interest	(Gross)	(RPM)	(Tract Acres/Unit Acres)	(Net Interest/Tract Factor)
Addr ID	Name / Address	Royalty	Fractions	Decimal	Non-Consent	GWl	Net Interest
8	Dale Earnhardt Jr	0.25000000	1/2-1/6	0.33333333			0.08333333
11	Denny Hamlin	0.18750000	1/6	0.16666667			0.03125000
20	Tony Stewart	0.18750000	1/12	0.08333333			0.01562500
99	Carl Edwards	0.18750000	1/12	0.08333333			0.01562500
12	Ryan Newman	0.18750000	1/6	0.16666667			0.03125000
29	Kevin Harvick	0.25000000	1/6	0.16666667			0.04166667
	<b>Total NPR</b>			<b>1.00000000</b>			<b>0.21875000</b>
2005	<b>Nextel Oil</b>			<b>0.08750000</b>			<b>0.08750000</b>
	<b>Total ORRI</b>			<b>0.08750000</b>			<b>0.08750000</b>
1983	DEI Oil			0.37500000	0.50000000		0.37500000
1983	DEI Oil (Share of N/C)				0.04439915		0.03589292
1968	Richard Childress Racing Oil				0.28262245		0.14824745
1983	DEI Oil (Share of N/C)				0.02509640		0.02028829
1991	Joe Gibbs Oil (Went N/C)				0.08155625		
1985	Hendrick Racing Oil			0.10457130	0.13582130		0.10457130
1983	DEI Oil (Share of N/C)				0.01206070		0.00975004
	<b>Total Wl</b>				<b>0.08155625</b>	<b>1.00000000</b>	<b>0.69375000</b>
	<b>Total for columns</b>					<b>1.00000000</b>	<b>1.00000000</b>

### So where does this take us?

Spreadsheets are becoming more and more necessary to be able to do our work. We sometimes get no title opinions and have nothing to show us how people before us came up with the interest they have on the deck. Since Sarbanes-Oxley compliance requires that we show how

decimals were determined, the spreadsheet is a good way to show this clearly. While there are many different ways to set up a spreadsheet, make sure that you have one that not only you can understand and use, but one that someone else can understand also.

## CHAPTER 7: REVIEW OF POOLING AND UNITIZING

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Marvin L. Wigley  
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## Introduction

Pooling, unitization, and even communitization mean the combining or merging of leases or other interests to erase boundary lines between these leases. The preceding is, of course, general in scope and requires further definition to be descriptive of a particular project involving pooling and unitization. More specifically, pooling commonly refers to combining royalty interests in a proration unit (spacing set by governmental authority for allowable and conservation purposes). Unitization describes larger operations and may involve combining working and royalty interests for the entire area. Communitization generally describes pooling of federal, state or Indian leases into proration units.

## Reasons for pooling

There are four basic reasons for pooling or combining bases:

1. **Diversity of ownership.** Pooling brings together small tracts which otherwise would not be sufficient for drilling a well under applicable spacing rules. Proration units normally require forty (40) acres for an oil well and six-hundred and forty (640) acres for a gas well.
2. **Conservation.** Indiscriminate drilling of wells and uncontrolled production of oil and gas is wasteful. Pooling prevents unnecessary and uneconomic drilling. For this reason, regulatory agencies have been empowered to regulate the spacing of wells, set allowable days, and promote conservation of these resources.
3. **Economic considerations.** Combining small tracts or interests and drilling fewer wells lowers the exploratory, development, and production costs. This also permits the working interest and royalty owner to participate more equitably in the production from the reservoir.

4. **Secondary recovery and pressure maintenance operations.** Unitization makes it economically feasible to engage in cycling, pressure maintenance, or secondary recovery operations. These operations can add vast quantities to the producible reserves of a field that would not be recoverable without unitization.

Considering these four factors, the purposes of pooling or unitization are twofold: (1) to develop and operate a given reservoir to remove the greatest amount of hydrocarbons consistent with reasonable economic practice, and (2) to achieve equity among the various interest owners by permitting each to recover his or her fair share of the oil and/or gas, or the proceeds from it.

## Pooled units

A pooled unit is generally an area which conforms to the authorized spacing requirements and in which diverse royalty and/or working interests are combined. This type of pooled unit can be created two ways: by voluntary pooling in which any parties agree to pool, and involuntary pooling, or forced pooling, in which control is given by the state statute.

It is important to note that the principles and concepts developed in this chapter will be equally applicable to gas or oil units and will serve as a basis for further examination of larger units. Although procedures differ in the various states, the principles are generally the same.

## Voluntary pooling

The three most common ways to effect voluntary pooling are through pooling provisions in leases, pooling amendments, and royalty pooling agreements. This discussion of voluntary pooling will be limited to pooling leases and royalty interest within a proration unit.

All mineral and/or royalty interests, except royalty interests sold by the mined owner subsequent to the date of the lease, must agree to voluntary pooling. If the lease contains pooling provisions, the lessor's interest is effectively pooled. The owner of a royalty interest conveyed prior to the lease must ratify the lease and agree to similar terms. This is usually accomplished by securing a pooling amendment.

**Pooling provisions and amendments.** Many leases contain pooling powers, called *pooling provisions*. The exercise of these powers determines if pooling will take place, along with the type and extent of the pooling. This type of pooling authority generally provides one or more of the following powers:

1. The lessee is given the option to pool all or any part of the lease with other lands or leases in the immediate vicinity. Normally the size of the units are 40 acres for oil and 640 for gas, with a 10% tolerance for either. Larger units may be permitted or prescribed by governmental authority with the proper jurisdiction.
2. Operations on or production from any portion of the pooled unit is deemed to be operation on or production from each lease committed to the unit. This is the very heart of this type of pooling. Each lease is maintained for the life of the production from the pooled unit after the primary term. (An exception occurs when a lease contains a provision commonly known as a [Pugh clause](#) or *Freestone Ryder*. This provision is used in many forms, but generally it provides that only that portion of the lease included within the pooled unit will be maintained by unit production.)
3. Production from the pooled unit is usually allocated to and shared by the various pooled interests on a surface acre basis. Royalty is paid on the

production so allocated without regard to location of the unit well.

4. Units may be pooled as to any one or more strata; the units need not conform in size or shape with other units
5. Units do not have to be formed at any particular time. The lessee may exercise the power at any time and from time to time — before, during, or after the drilling of a well. This power may also be exercised after the expiration of the primary term if the lease has been otherwise maintained.

Pooling amendments are used when the lease does not contain pooling authority. In this case, the lessor is requested to join in the execution of such an instrument.

**Exercise of pooling authority.** The lessee(s) is usually required to execute an instrument called a *Designation of Pooled Unit*. This describes the unit area and the leases being committed to the unit, identifies the unitized formation or depth, states an effective date, and designates the unitized substances. This instrument is then filed on record in the county where the unit is located.

**Limitations of pooling authority.** The pooling authority granted in leases or in pooling amendments gives the lessee considerable discretion as to arrangement of units and amount of acreage from each lease to be included in the unit. Bearing this in mind, the courts have held that a lessee must exercise this power in good faith. For example, the lessee's judgment, as a reasonably prudent operator, must dictate that pooling is necessary or advisable in order to explore or to properly develop and operate the premises in compliance with the spacing rules of the appropriate regulatory body or to promote conservation.

The shape of the units must be reasonable under the circumstances and must be designed in such fashion that conservation motives take

precedence over lease maintenance motives, should there be a conflict between the two.

**Royalty pooling agreements.** Another type of voluntary pooling commonly used is the royalty pooling agreement. These are formal agreements specifically drawn and designed for one proration unit. These instruments vary considerably depending on the circumstances existing in the unit being formed. Generally they will describe the unit area, the specific formations covered, the unitized substance, the leases and/or interests being committed to the unit, and state the effective date and condition for termination. Although they are called royalty pooling agreements, they are signed by all interest owners, including working interest, royalty, production payment, and overriding royalty owners. Two reasons for using this type of agreement are (1) not all leases contain pooling provisions, and (2) some owners of mineral and/or royalty interest will not grant the broad pooling authority as normally contained in leases, but will agree to the pooling of a specific unit for a specific purpose.

### Involuntary Pooling

Approximately 32 of the 50 states have some type of forced pooling statute. Under these statutes, small tracts or uncommitted royalty and/or working interests can be included in a proration unit of the size authorized by the regulatory agency of the particular state. There is relatively little uniformity of provisions among the applicable statutes of the various states. Some of the most common provisions applicable in most cases are:

1. A statement as to what party or parties may invoke the provisions of the act.
2. Provisions for application to regulatory agency for hearing and information to be submitted in support of such application, and setting of hearing date.
3. Notice to all parties of application and hearing.

4. Required testimony to be presented at the hearing. This presentation will normally consist of technical testimony by either a geologist or engineer, or both, and testimony by a landman as to the ownership of interests, response voluntary efforts to pool, etc.
5. Enumeration of matters to be set forth in the order by the regulatory agency approving the unit.

Some cities or towns have ordinances relating to units that may be formed and drilling operations that may be conducted within their corporate limits. If any portion of the proposed unit is within the limits of a town, these matters must be investigated and complied with.

**Texas Involuntary Pooling.** In Texas involuntary or force pooling is accomplished under the provisions of the Texas Mineral Pooling Act,<sup>1</sup> which became effective August 30, 1965. This act covers only proration size units and does not provide for pooling on a fieldwide basis. Without going into detail, it can be stated that the Texas statute contains the same general provisions as described in the preceding discussion. A discussion of some of the specific provisions and application follows.

1. The act is administered by the [Railroad Commission of Texas](#).
2. The provisions of the act do not apply to any reservoir discovered and produced prior to March 8, 1961.
3. The provisions of the act cannot be invoked until after the Railroad Commission has established field rules for the reservoir.
4. The act applies only in situations where uncommitted interests exist in a separately owned tract within the proposed proration unit. It does not

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<sup>1</sup> Art. 6008c of the Revised Civil Statutes

apply to an uncommitted interest that is uniformly owned.

5. The party requesting pooling under the provisions of the act must show that it has made a fair and reasonable offer to all other parties to voluntarily pool, and that this offer has not been accepted by all parties.
6. The Railroad Commission has taken the position that the offer to pool and their order authorizing such pooling must be limited to productive formations.
7. The Commission may assess a penalty of up to 200% of the share of cost attributed to a forced pooled working interest. If the well results in a dry hole, the drilling parties pay all costs. The penalty can only be recovered out of production from the well drilled under the order.
8. State of Texas lands, or lands in which the state owns an interest, cannot be forced pooled without the State's consent.

**Oklahoma Involuntary Pooling.** The Oklahoma Force Pooling Law,<sup>2</sup> was first enacted in 1947, and has remained virtually unchanged since that date. Although this Act is couched in very general terms, its basic concepts follow the terms set forth at the beginning of this section. The administration of the Act is delegated to the Oklahoma Corporation Commission. The act states that where there are separately owned tracts, or undivided interests, or both, within an established spacing unit, the Commission may "require such owners to pool and develop their lands in the spacing unit as a unit." It goes on to say that the pooling order "shall be upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to

recover or receive without unnecessary expense his just and fair share of the oil and gas." The Oklahoma law and its implementation by the Corporation Commission results in procedures and practices quite different from the Texas procedures and practices. The principal features of the Oklahoma law are discussed below.

**Pooling Royalty Interests.** Prior to commencing the drilling of a well in an area that has not been spaced, the operator will usually request the Corporation Commission to issue a spacing order for the depths and formations expected to be productive. The issuance of this order effectively pools the one-eighth royalty within the spacing unit, and no further pooling efforts are necessary. Acreage contained in a spacing unit will vary according to a depth and hydrocarbon being unitized as follows:

- *Oil Spacing* — 40 acres for oil-producing formation lying less than 4,000 feet below the surface, 80-acre maximum at depths between 4,000 and 9,990 feet with 1150 acres being standard.
- *Gas Spacing* — Where oil spacing is 40 acres, gas is spaced on 160 acres with 320- or 640-acre spacing is imposed as the depth increases.

**Pooling Working Interests.** The Commission requires that an area be spaced prior to issuing an order to force pool the working interest. In practice, an operator can file an application for spacing and for force pooling at the same time. After notice to the parties and the presentation of evidence at the formal Commission hearing, an order will usually be issued, giving the non-joining parties the following options:

- The owner of an unleased mined interest can either put up its share of the estimated drilling costs and participate in the drilling of the well, or lease its interest to the drilling party for

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<sup>2</sup> 520.S1971 Sec. 87.1(e)

cash bonus and royalty as prescribed by the Commission in its order.

- The owner of a leasehold interest has the option to put up its share of the estimated drilling costs and participate in the drilling of the well, or sell its leasehold interest to the drilling party on terms fixed by the Commission, or farm out its interest to the drilling party on terms fixed by the Commission.

Lands owned by the State of Oklahoma are subject to the provisions of the act.

### Pooling of working interests

Drilling a well on a proration or spacing unit in which the working interest is owned by more than one party makes it necessary that the owners reach an agreement about the portion of cost each will bear and how the resulting production will be shared. This agreement is usually accomplished by negotiating an operating agreement. If the parties cannot reach an agreement, the working interest can be forced pooled as described above. If the area to be covered is greater than one proration unit, the force pooling statutes will not apply and the agreement must be made on a voluntary basis.

Agreements covering single proration units are often referred to as *drilling units*. Agreements covering multiple sections or proration units are often formed to provide for the equitable sharing of exploratory costs in a wildcat situation. These are referred to as *exploratory units*. This is an agreement between the working interest owners and does not affect the royalty owner. In this type of unit, the royalty will be pooled on a proration unit basis and leases must be maintained and offsets met as in competitive field operations.

An operating agreement is an agreement between the owners of operating rights in oil and gas properties, either leasehold or unleased minerals, providing for the concurrent operation of the properties for the drilling and production of oil and gas. A typical operating

agreement consists of the agreement itself and several exhibits which, when attached, become part of the agreement.

### Federal units

Federal and/or Indian lands may be included in any one of the three types of federal units, depending on the circumstances involved. Before examining the three types of federal units in detail, there are some common features to all three which should be pointed out.

1. All unit agreements and communitization agreements must be on forms prescribed by The Bureau of Land Management (BLM) or other federal governmental agency. Only minor changes can be made to the form if necessitated by circumstances.
2. After each agreement is executed by the parties, it must be approved by the BLM before it can become effective.
3. The various federal procedures and requirements must be observed when dealing with Indian lands.
4. The spacing of wells in federal units is governed by the rules of the applicable state regulatory agency.
5. Units become effective on the date of BLM approval.
6. State and privately owned lands are often included in federal units. These parties are required to agree to the inclusion of their lands and interests by ratifying the unit agreement.

**Communitization.** The pooling of federal or Indian lands into proration size units is usually accomplished by means of a *communitization agreement*. This pooling is authorized in instances where separate tracts under lease cannot be independently developed in accordance with the established spacing pattern. If a lease contains sufficient acreage to

comply with the spacing pattern, the BLM generally will not approve the communitization of a portion of that lease with other lands. Each communitization agreement is limited to the productive formation only and must comply with the state spacing order.

**Federal exploratory unit.** An *exploratory unit* is one that is formed prior to the drilling of the first well on the prospect. The size of the unit area is determined by the geologic features but is limited to

approximately 25,000 acres from one well commitment. If the prospect covers more than the 25,000 acres, an additional well will be required for each additional 10,000 to 15,000 acres included in the unit. If the unit area contains less than 10% federal acreage, it is not necessary to use the prescribed federal unit agreement form.

Under a federal exploratory unit, the obligation well must be commenced within six months after the unit is approved. If drilling is commenced before the unit is approved, the approval must be obtained before the objective formation is penetrated in order for that well to satisfy the drilling requirement of the unit agreement. If the initial well results in a dry hole, additional wells must be drilled with not more than six months between wells until a discovery is made. Failure to meet this drilling requirement will result in termination of the unit.

When a well capable of producing in commercial quantities is completed, the operator must submit a proposed participating area to the BLM for approval. The participating area is composed of lands that can reasonably be expected to be drained by the producing well. Royalty will be paid to the owners of royalty interests within the participating area. Royalty owners outside this area do not receive payment.

After commercial production has been established, the unit operator is required to file a Plan of Development with BLM for the

further development of the Unit Area. These plans are usually filed annually and must be approved by the BLM. The unit operator propose drilling one or more wells, or reworking or recompleting existing wells. If conditions warrant, the BLM will occasionally approve a plan of no development.

Working interest owners may participate in one of two ways in a federal exploratory unit, depending on the type of operating agreement negotiated.

*Undivided type units.* All operators participate in all operations and production from the entire unit area, similar to the provisions described above.

*Divided type units.* The operators owning interests within the participating area pay all costs and receive the working interest share of production. Owners of working interest outside the participating area pay no costs and do not participate in the income.

Five years from the date the first participating area becomes effective, all lands included in the area will automatically be eliminated from the unit. An exception would be if a continuous drilling program was maintained on lands outside the participating area. This continued drilling can maintain the original unit for a total of 10 years, at which time the automatic elimination will occur. In extremely rare circumstances, the area may be continued for an additional two years.

**Secondary Recovery Units.** This type of unit is formed after a field is fully developed in order to increase the ultimate recovery by the institution of an enhanced recovery method. The general observations above also apply to this unit. The purpose and function of the secondary recovery unit will be discussed below in more detail.

#### Fieldwide unitization or secondary recovery units

Fieldwide or secondary units may be formed either by voluntary agreement or under the

terms of an applicable state statute, if the state where the property is located has such a statute. The main purpose of this type of unit is to increase the ultimate quantity of hydrocarbons produced from the reservoir. This may be accomplished by the injection of various substances into the formation to move additional oil to the well bore, or by other procedures designed to maintain adequate pressure in the reservoir to extend the life of the production.

The general characteristics and features of the secondary recovery units are:

1. Unitization applies only to the unitized formation.
2. Both royalty and working interests are required to consent to the unitization.
3. The unit operator is usually the owner of the largest working interest within the unit area.
4. Owners of both royalty and working interest in each individual tract within the unit area must agree to exchange their interest in a specific tract for a functional interest in total production from the entire unit. Each month unit production is allocated to each tract within the unit area based on a participation formula negotiated and approved by the working interests owners without regard to the actual production from any specific tract during the month.
5. Unitization is usually proposed after the reservoir is essentially fully developed and after a pressure and/or production decline has been observed. The working interest owners are required to devise and adopt a plan of operation designed to increase the ultimate recovery from the unitized formation.
6. The plan of unitization must be approved by the applicable state

regulatory agency before it can be made effective.

7. If a mutually satisfactory plan of unitization cannot be negotiated on a voluntary basis, one or more of the parties owning an interest in it may invoke the provisions of compulsory or forced pooling statutes in states where these laws exist.

**Compulsory Unitization Statutes.** At least 22 states have statutes providing for force pooling both working and royalty interests in secondary recovery units. Although the laws in the various states differ greatly, the majority do have some provisions which are similar. The following reflect some of these common provisions.

1. Any interested party can apply for the formation of a unit. The application must describe the proposed unit area, designate the productive formation, describe contemplated operations, state proposed basis of participation, and be accompanied by a proposed plan of Unitization (Unit Agreement) and Plan of Operation (Unit Operating Agreement).
2. After notice and hearing, the regulatory body must find that the proposed plan is reasonably necessary to prevent waste, protect the correlative rights of the parties, and that ultimate recovery will be substantially increased. It must also be found that the value of the estimated additional recovery will exceed the cost of such operations.
3. All statutes require voluntary agreement from 63% to 80% of both working interest and royalty owners before an order to pool the remainder of the interests will be issued.

**Fieldwide or Secondary Recovery Units in Texas.** All pooled units in Texas are voluntarily formed under the provisions of

Article 6008b of the Revised Civil Statutes of Texas entitled "Agreement for Pooled Units and Cooperative Facilities in Secondary Recovery Operations." This act became effective October 5, 1949. The purpose of the act, as it was originally introduced, was to protect parties desiring to form units from prosecution under anti-trust laws. Numerous amendments were attached, and the version that became law was considerably wider in scope than the original bill.

In its present form, the Texas statute has provisions similar to the common provisions discussed above. The one very important exception is that the Railroad Commission of Texas is only authorized to approve proposed units; there are no provisions providing for compulsory unitization. The procedures for notice, hearing, testimony presented, and other matters are generally the same.

**Fieldwide or Secondary Recovery Units in Oklahoma.** Oklahoma passed the first comprehensive unitization statute in the nation in 1945. This statute provided for compulsory unitization of oil or gas from a common source of supply. It was amended in 1951 to satisfy certain objections that had been raised and has operated successfully since that time. The statute generally follows the common provisions set forth above. Administration of the act is delegated to the Corporation Commission. The Commission cannot force pool a unit until after 63% of the working interests and the one-eighth royalty interests have approved the unit in writing.

## Conclusion

This chapter has briefly examined some of the more common types of units. The purpose here has been to create awareness of the situations which make pooling desirable or necessary and to impart information about the purpose and function of the different type units. It must be noted that one chapter cannot provide all of the information needed in this area. Rather, it should serve as a basis for further study and education in pooling and unitization.

## **CHAPTER 8: ISSUES AFFECTING OWNERSHIP**

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**Linda Barry**

## Issues affecting ownership

In the United States, real property is transferred primarily in one of two ways: a **probate transfer** (transfer due to the death of the owner) or an **inter vivos transfer** (sale). The first consideration is the transfer of real property upon the death of a property owner.

## Probate transfers

It is important to realize that property transfers immediately upon the death of an individual. That is to say, as soon as the owner draws his or her last breath, his or her **real property** vests to the new owner(s). Division order analysts must determine who receives the property upon the death of the original owner.

When an owner dies, the ownership of the real property is determined in one of two ways: (1) will and probate, or (2) state statute (laws of descent and distribution).

As soon as notice is received that an owner is deceased, it is critical to suspend the payments or to immediately begin paying the new owner. (Important exception: In Kansas, a royalty interest may not be suspended for any reason including the death of an owner.)

- The first question the division order analyst should ask is: "Will there be probate in this estate?" If the answer is yes, the analyst should request the following:  
Copy of the death certificate;
- Copy of the will, if there is one  
**Note:** Probate proceedings can be held if there is no will. The correct term for the estate proceedings where there is no will

- to be probated is "Administration of the Estate");
- Copy of the Order Admitting the Will to Probate or Order of Administration;
- Copy of Letters Testamentary or Letters of Administration. This document will appoint an executor/executrix of the estate or an administrator of the estate (personal representative).

When the division order analyst receives these documents and has reviewed them for correctness, he or she can change the division of interest to pay the executor/executrix of the estate or an administrator of the estate until probate is closed.

When the estate closes, the division order analyst should receive a copy of:

- The final accounting of the estate
- The Decree of Distribution, sometimes also called a Final Decree
- Any deeds from the executor or administrator of the Estate.

Then the division order analyst can change the Division of Interest to pay the devisees/heirs.

If probate proceedings are held in a state other than the state where the well is located, Ancillary Probate Proceedings must be held in the state where the well is located. The exception is the state of Texas, where an interest will transfer if the probate proceedings from another state are recorded in the county where the well is located. Also, New Mexico now offers an option to Ancillary Probate. In New Mexico you can petition for a "Proof of Authority". This grants the Executor of

the Estate the authority to execute documents related to New Mexico property. The executor with a proof of authority can prepare and record an Executor's Deed for New Mexico Property. In every other oil and gas producing state, ancillary proceedings must be held. A copy of these ancillary proceedings, along with the death certificate, must be provided to the division order analyst before the Division of Interest is changed to reflect the new ownership. An analyst should not accept probate from a "foreign" state to transfer an interest in oil and gas. Probate must be held in the state where the well is located.

Some issues are specific to the state of Kansas. An application to probate a will in Kansas must be filed within six month of the decedent's death.<sup>1</sup>

If it has been longer than six (6) months since the death of an owner, the heirs/[devisees](#) may apply to the district court for a Decree of Descent.

The interest of a royalty owner may never be suspended under Kansas law, even if that owner is deceased or lost.

### Intestate Succession – Transfers of Interest

If there is no will to probate and/or no probate proceedings held in the estate, the division order analyst must consider his or her company's policy regarding changes of ownership based on the statutes of the state where the property is located. It is important to remember that when a will is

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<sup>1</sup> KS Statutes, Chapter 59 Probate Code, Article 6 Wills, Section 59-617 "Limitation on probate of written will" - petition for probate of the Will must be filed within 6 months after death of testator.

not probated in the state where the property is located, the division order analyst cannot transfer the property in accordance with the terms of the will. The transfer of ownership must conform to the laws of descent and distribution for the state where the property is located.

Always remember that this type of transfer is a business risk, because there will not be a document from the courts establishing record title ownership. Most companies will allow the change of the Division of Interest based on the laws of descent and distribution if the amount paid the deceased owner is minimal.

However, at some time heirs may surface who want to be paid by the division order analyst's company for funds that were disbursed based on documentation which was not presented to the probate courts. So analysts should be aware of the statues affecting descent and distribution in the state where the production occurs along with their company's internal policies before making this change.

In order to change the Division of Interest without formal probate, most companies require a copy of the death certificate, and an Affidavit of Heirship completed by a disinterested party, acknowledged and recorded in the county and state where the property is located.

It is critical for the division order analyst to understand the company's policy regarding changes of ownership based on the laws of descent and distribution.

(See [The Addendum – Examples 3 and 4 for the effect of a testate and intestate transfer on a DOI. Also see Checklist 1 for Probate Transfers in the Addendum](#))

## Specific Types of Probate Transfers

Real property ownership can take several forms, including joint tenancies, life estates, community property, and separate property. Transfer of ownership varies according to the type of ownership in effect. Each is discussed below.

**Joint Tenancies.** If interest in a property is owned in a joint tenancy, when a joint tenant dies, the interest immediately vests to the surviving joint tenant(s). So an analyst needs only a copy of the death certificate to change the ownership on the Division of Interest to the surviving joint tenant(s), assuming that the analyst has the tax identification number or social security number and address of the joint tenant(s). If the analyst does not have the address or tax information, this must also be obtained.

**Life Estates.** When a life tenant and dies, once again, the interest in the property immediately vests to the remainderman or remaindermen. And once again, all the analyst needs is a death certificate to change the records, along with the address and tax information.

**Community Property.** Seven states are community property states: Louisiana, Texas, Oklahoma, New Mexico, Arizona, California, and Nevada. In these states, real property is said to be held in *community* unless the deed or similar document states otherwise. This means the real property is owned by both husband and wife. Thus, the death of one spouse in a community property state does not transfer the entire interest in the property because title to one half of the interest is held by the surviving spouse. The half interest belonging to the deceased spouse is subject to probate.

**Separate Property.** In marriage, separate property means that the property is owned individually by the husband or the wife as opposed to their community property which is owned by both. The four sources of separate property are (1) acquisition prior to marriage, (2) devise under a will, (3) gift, or (4) inheritance. Title to separate property would be transferred by probate and the surviving spouse would not necessarily obtain an interest in the property unless the deceased spouse leaves an interest to the surviving spouse.

**Dower and Curtesy.** Dower and Curtesy is the provision the law makes for a widow or widower out of the personal property of a deceased spouse. That is to say that the surviving spouse is entitled to a dower or curtesy interest of 1/3 to 1/2 of the property of the deceased spouse. (For further explanation see Chapter 11 on Arkansas laws.

**Oklahoma Transfer-On-Death Deeds.** Since 2008 in Oklahoma an owner is allowed the mineral owner to name a beneficiary to the property in a Transfer-On-Death Deed. The mineral owner retains control of his property during his life time, and at the time of his death the property is will transfer directly to the designated grantee without going through probate. (See Chapter 14 on Oklahoma property for further information)

## Inter vivos transfers of interest

The second way property can be transferred is from one living (viable) person or entity to another person or entity. This is called an *inter vivos* transfer. It can be accomplished through a sale between individuals, a sale involving a corporation, or bankruptcy.

**Sale of the royalty or mineral interest in a property from one individual owner to another individual owner or owners.** A royalty owner sells his or her interest using a deed. This deed, a type of [conveyance](#), may be a *warranty deed*, a *mineral deed*, a *royalty deed*, etc. All deeds must contain certain elements in order to be a valid conveyance.

- A deed must name a [grantor](#), the person conveying the interest in the property. The grantor should be the record title owner and, in some states, the grantor should be joined by the spouse or the marital status should be stated.
- A deed must name a [grantee](#), the person receiving the interest in the property.
- The conveyance must be dated.
- The deed must have a statement of consideration.
- The deed must contain a *granting clause* in which specific rights are granted from the grantor to the grantee. This clause will contain words of grant like *bargain, sell, grant, convey*, or the like or other words that indicate a transfer of property has taken place.
- Description of the rights granted must be present in the deed. (Is the interest divided or undivided? What fractional interest was conveyed? What type interest was conveyed, mineral, royalty, or surface?)
- Deed must express a legal description of the property conveyed must be expressed. (Is the description clear and does it match the description of the property owned by the grantor?)

Also, in order for the deed to be valid, it must be executed and acknowledged properly. And finally, the conveyance

must be recorded in the county and state where the property is located soon after the date on the deed.

The division order analyst should review the elements of the conveyance to determine what property is conveyed and whether it conveyed properly. If any of the above elements is missing, the deed is not valid. Generally, the division order analyst should not accept the change of ownership until the conveyance is corrected.

**Sale of an overriding royalty or working interest in a property from an individual owner to another individual owner:** The sale of an [overriding royalty](#) or [working interest](#) is similar to the sale of a royalty or mineral interest. However, this type of sale is accomplished by the use of a conveyance called an *assignment*. The terms *assignor* and *assignee* are used instead of *grantor* and *grantee*, but otherwise the elements of the assignment are the same as the elements of a deed, and the same rules of validity apply. The division order analyst should not accept an assignment of interest if all of the elements are not present or if the elements are not correctly stated.

Often one company will merge with another company and/or change its name. In this case, the division order analyst should be furnished with the documents evidencing the merger or name change. The division of interest should be changed based on the information contained in the merger documentation.

(See [The Addendum – Example 2 for the effect of an Inter Vivos transfer on a DOI](#) and see [Checklist 2 in the Addendum for a conveyance checklist](#).)

## [Transfers Involving Partnerships or Corporations](#)

Transfers might also involve a partnership or a corporation. These are discussed below.

**Definition of a Partnership.** A partnership is a contractual business relationship when two or more persons join together as co-owners in a business for profit. There are ordinary partnerships and [limited partnerships](#).

It is important that the division order analyst be familiar with the laws of the state concerning the rights of partnerships. In some states, such as Texas and Oklahoma, any partner may execute an instrument. However, in many other states, all partners should be requested to execute an instrument including division orders and transfer orders. An exception to this is when one partner is given [power of attorney](#) by the other partners, or when one partner is named as managing partner in a limited partnership, and the partnership document gives that partner the authority to act for all of the partners. In some states, such as Louisiana, the partnership must be registered with the Louisiana Secretary of State prior to obtaining real property. Otherwise, the property is owned by the individual partners rather than as a partnership.

**Definition of a Corporation.** Created under state corporate acts, a corporation is a legally chartered business entity that acts similarly to a person in conducting business and owning property.

Corporations may hold real property just as an individual can.

Division orders must be executed by the corporate president or vice president and be attested by the corporate secretary or assistant secretary., They may also be executed by a duly authorized officer or

other person under a power of attorney. However, it is important to be familiar with the law concerning corporations in the state where the property is located, because there are some important differences in the laws of each state. For example, some states, such as Texas, do not require the corporate seal be affixed to the signature of the officer. However, in Oklahoma and other states , the corporate seal must be attached. If the instrument is executed by an agent and attorney-in-fact, the power of attorney must be recorded in the state where the property is located. In some states, such as Louisiana, it is preferable to attach a copy of the corporate resolution authorizing the sale. In other states, Wyoming, for example, a corporation must be incorporated in the state of Wyoming in order to own real property in that state.

### Transfers involving bankruptcy

Special considerations pertain when a transfer of a property involves bankruptcy. In order to understand those consideration, those issues, it is important to first understand the basic bankruptcy process and terms associated with it.

There are two purposes of bankruptcy. First, it reorganizes the entity because it is worth more as a going concern than it would be if liquidated. Second, It, ensures the equal distribution of the assets of the entity by selling everything of value) of value and paying a share of the income from the assets to the creditors.

A division order analyst needs to understand the different types of bankruptcy, including Chapter 7 and Chapters 11 and 13.

**Chapter 7: Liquidation.** Under this chapter, the debtor (whether an individual or a business) files a petition with the federal bankruptcy courts declaring bankruptcy, and asking the court to appoint a trustee. The trustee is appointed by the court. On the day of filing the bankruptcy petition, the “bankruptcy estate” is created. All of the assets and liabilities of the debtor are turned over to the trustee.

After the date of the first creditor’s hearings, the creditor has 90 days to file a claim against the bankruptcy estate.

All “non-exempt” assets are liquidated by the Trustee and used to pay all claims according to the Bankruptcy Code (An example of an exempt asset is a retirement account).

Primary benefits to a debtor under Chapter 7 are (1) individuals can obtain a discharge, (2) it voids all judgments to the extent the judgment is a personal liability of the debtor, and (3) it operates as an injunction (an automatic stay) against any action to collect a debt as a personal liability of the debtor.

**Chapters 11 and 13: Reorganization.** In Chapter 11 bankruptcy, a business reorganizes; in Chapter 13 bankruptcy, an individual reorganizes his or her debt. Once again, the debtor files a petition declaring bankruptcy in the federal bankruptcy courts.

**Chapter 11: Business reorganization.**

The debtor usually remains in possession of the company’s property, and acts as fiduciary to all creditors. The debtor has 120 days to file a plan of reorganization with the federal bankruptcy court.

Hearings are held with the creditors, and once the court is satisfied with the reorganization plan and has confirmed it, all debts are discharged in return for payment under the plan. **Note:** A

creditor sometimes receives cents on the dollar.

**Chapter 13: Personal reorganization.**

The debtor must be an individual and have a source of income. His or her unsecured debts must not exceed \$100,000 and secured debts must not exceed \$350,000. The debtor has 120 days to file a plan of reorganization with the federal bankruptcy court that restructures all past-due debts. A [trustee](#) administers the plan. The debtor is required to be current on all post-petition obligations. Once payments are made, the debtor, obtains a *discharge* that dismisses the obligations of the debt.

The trustee or the debtor has several avoidance powers under the bankruptcy code. These include the power to recover preferences, fraudulent transfers, avoid statutory liens and other avoidance actions and post-petition transfers. The purpose of these powers is to bring assets back into the bankruptcy estate which may have been transferred while the debtor was in a precarious financial condition.

A *preference* is the transfer of an interest of the debtor to or for the benefit of a creditor; made while the debtor was insolvent and/or made within 90 days prior to the filing of the petition. If a transfer is seen as preferential or is made to an insider, the trustee can recover the property that was transferred up to one year prior to the filing of the petition.

With all of this information in mind, the analyst should consider several factors when a bankruptcy is involved in a transfer.

When a property is conveyed to a new owner and later the analyst is advised that the transferor is in Chapter 11 or 13 bankruptcy, the analyst should determine

the date of the filing of the petition. If the transfer took place less than one year prior to the filing of the petition, the analyst should suspend the interest and contact the trustee (or debtor under chapter 11) to determine if the property will be brought back into the bankruptcy estate.

Another consideration is whether working interest owners who are in bankruptcy can be [set-off](#). The automatic stay forbids a party from setting off its debts. The creditor must have the stay lifted to set-off. **Note:** A creditor may have to return funds set-off within 90 days of bankruptcy.

Case law is divided about whether a creditor can place funds in a [suspense](#) account without having the stay lifted. So the analyst should seek the advice of the legal department prior to suspending an owner in bankruptcy.

In order to have a stay lifted, the creditor must prove:

- the debt arose prior to the bankruptcy;
- the creditor has a claim that arose prior to the bankruptcy;
- the debt and claim are mutual obligations.

Who should the division order analyst pay when notice is received that an owner is in bankruptcy? If the owner is in Chapter 7, the trustee receives all proceeds. If the owner is in Chapter 11 or 13, the debtor is paid unless there is notice from the trustee to pay the trustee instead of the debtor.

**Transfers involving a sheriff sale.** When real property is foreclosed for nonpayment of taxes, the division order analyst must be careful to obtain proper

documentation. The process and procedures for the sale of property due to nonpayment of taxes varies from state to state. However, some general statements can be made.

When a taxing authority determines that taxes are delinquent on real property, a rendition of judgment is issued by the clerk of the district court (or tax court) to the sheriff of the county where the property is located. This judgment describes the property and the amount of the lien charged to the property, interest, penalties, costs and fees associated with the property.

The judgment contains an order to advertise and sell the real estate described in it. When the sheriff receives this order of sale, a notice is published according to the laws of the state. For example, in Kansas the notice, stating the location of the sale, must be published once each week for three consecutive weeks in a newspaper of general circulation in the county.

On the date of the sheriff sale, the property is offered for sale at public auction for the highest bid.

The sheriff will make a return to the clerk of court as soon as practical. If the court accepts the bid, the sheriff is ordered to execute to the purchaser a good and sufficient deed to the property. This deed is executed by the sheriff and shows the date of the sale, and the date of the sale is confirmed by the tax court. The deed is filed of record. When the deed is recorded, the property will vest in the purchaser or grantee [fee simple](#). The analyst should obtain a copy of the recorded Sheriff's Deed before making a transfer of interest. **Note:** It is not wise to make payment to the purchaser of an interest until the recorded copy of the

Sheriff's Deed is provided since the property could be redeemed by payment of taxes before the Sheriff's Deed is issued.

### Transfer of real property to trusts

In order to understand the special issues surrounding transfers to and from trusts, it is important first to understand the nature of trusts.

**Simple definition of a trust.** Any written arrangement whereby property is transferred with the intention that it is administered by a **trustee** for another's benefit is called a *trust*. A trust is a distinct legal and tax entity. Trusts are used to dispose of property while retaining some control over the manner and timing of its disposition.

Although there are many types of trusts, the most important to the division order analyst is the *express* (declared) trust. This trust agreement must be in writing from the owner of the property. Other trusts, different from the express trust, may be inferred by law or from conduct and dealings of the parties.

The trust relationship is among three parties:

- The **settlor**, the person who owns the property and places it in the trust (similar to the grantor on a deed)
- The **trustee**, the person who administers the trust
- The **beneficiary**, the person who receives the benefit of the Trust.

The settlor may transfer the property during his or her lifetime (living or inter vivos trust). An inter vivos trust may be revocable (alterable or amendable) or irrevocable (cannot be changed or

terminated).

The transfer may be by the will of the owner of the property to another person or persons (testamentary trust). These trusts are always irrevocable.

The trust exists for a fixed period of time, even if it is a vague period of time such as a lifetime.

The beneficiary of a trust may be a trustee/co-trustee without legal or equitable title to the trust estate merging with his/her individual title.

The trustee has a fiduciary responsibility. This means the trustee owes the beneficiary the highest duty of loyalty and must use care in dealing with the property held in trust. If the trustee breaches the fiduciary duties, the beneficiary may sue to enforce the terms of the trust. (The grantor may not sue trustee unless he or she retained the right to revoke the trust.) If the trustee is not sure whether he or she can perform a certain act, he or she may seek instructions from the courts, called a *declaratory judgment*. This sometimes occurs when a question arises about whether the trustee can execute an oil and gas lease or other similar document.

The trust document should include the following:

- a list of the assets/properties conveyed to the trust (corpus)
- statement of the powers, duties and responsibilities of the Trustee and his or her power to act, sell, invest, employ others and various other duties
- the names of the beneficiary or beneficiaries of the trust
- apportionment of the income and principal
- termination date for distribution

of assets to the beneficiaries.  
**Note:** When the trust is silent on this point, the applicable portion of the trust code prevails.

### Transfer of interest

In order for oil and gas interests to be held in a trust there must be (1) a conveyance into the trust, or the assents must be set out as part of the corpus of the trust, or (2) probate of an estate placing the properties into the trust.

A transfer of ownership to the trust is not valid unless the property is either listed in the assets of the trust, or it is conveyed into the trust or trustee. **Note:** It is preferable to transfer the property with the transfer of record in the county records.

The first item to consider when in an interest in an oil and gas property is being transferred into the corpus of the trust is, "Who can hold title to the property?" In many states, real property must be transferred into the trustee, while in other states, the property may be conveyed to the trust itself. The analyst should be familiar with the state statutes where the property is located to be certain that the conveyance transferred the interest properly. Currently Texas, Oklahoma and Kansas allow the interest to be conveyed into either the trust or the trustee. Other states may also allow either entity to hold title, but the analyst should be certain.

So if an analyst receives a deed conveying an interest into a trust, the next items of concern are:

- Is the trust named on the deed a valid trust and is the name of the trust or trustee correctly stated?
- Does the trustee have the powers necessary to administer the

property?

- Is the trust in effect?

To obtain the answers to these questions, the analyst should request a copy of the trust agreement since this is the document that will set out this information.

However, many trustees and trust departments feel that their loyalty to the trust, settlor and beneficiaries includes the duty to administer the trust and keep the terms of the trust private. Thus they have policies and procedures restricting access trust information including the basic trust agreement. If an analyst cannot obtain a copy of the trust agreement, the trustee will usually agree to supply the analyst with a copy of the pages of the Trust Agreement that set out the Name of the Trust, the name of the Trustee and his or her duties, and verify that the trust is in effect.

**Note:** In January, 2004 Kansas passed KS Statute No 58a-1013. This statute states in part that "Instead of furnishing a copy of the Trust instrument to a person other than a qualified beneficiary, the Trustee may furnish to the person an acknowledged Certification of Trust."

This Certification of Trust contains the following information:

- that the trust exists and the date the trust instrument was executed;
- the identity of the settlor; (should this be settler, or is it correct as settlor?)
- the identity and address of the currently acting trustee;
- the powers of the trustee;
- the revocability or irrevocability of the trust and the identity of any person who can revoke the trust;
- the authority of co-trustees to sign or otherwise authenticate and

- whether all or less than all are required in order to exercise powers of the trustee;
- the trust's tax identification number;
  - the manner of taking title to trust property

A Certification of Trust may be signed or otherwise authenticated by any trustee. A certification must state that the trust has not been revoked, modified or amended in any manner that would cause the representation contained in the Certification of Trust to be incorrect.

The recipient of a Certification of Trust who acts in reliance upon a Certification of Trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. A person who in good faith enters into a transaction in reliance upon a Certification of Trust may enforce the transaction against the trust property as if the representations contained in the certification were correct. A person making a demand for the Trust Agreement in addition to a Certification of Trust and/or excerpts from the Trust Agreement is liable for damages if the court determines that the person did not act in good faith in demanding the Trust Agreement.

So in summary, when an analyst is working with a transfer of interest into a trust, the analyst should request: 1) a copy of the Trust Agreement (although a Certificate of Trust can be accepted for Kansas properties and copies of critical excerpts of the Trust Agreement can also be accepted) and 2) a copy of the deed or probate proceedings that placed the property in the trust. The analyst should

be familiar with the statutes of the state where the property is located to be certain that the deed conveys the property into the entity that can hold the title.

In conclusion, there are inter vivos transfers (sale) or transfers due of the death of the owner which affect the division order analyst. A certified division order analyst will be called upon to review and understand both kinds of transfers of real property. However, he or she should always seek advice of the legal department or company title attorney if there is a question about the interpretation of the transfer.

**(See The Addendum – Checklist 1 for the critical items to consider when reviewing of an Inter Vivos transfer)**