

## Lessor's Acceptance of Royalty Payments Did Not Waive Anti-Pooling Clause

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The San Antonio Court of Appeals recently determined that the acceptance of royalty payments will not necessarily operate as a waiver of a mineral lease's anti-pooling provision. The decision, *Strickhausen v. Petrohawk Operating Company*, is available [here](#).

The essential facts are as follows:

- The mineral owner, Margaret Strickhausen, signed an oil-and-gas lease with Escondido Resources.
- The lease explicitly forbade pooling without the lessor's written consent.
- Another lessor in the same tract had no similar anti-pooling clause in their lease.
- BHP acquired the leases from Escondido.
- BHP pooled the leased tract with other properties and commenced drilling.

BHP subsequently asked Strickhausen to ratify the pooled unit. She refused to consent, citing her lease's no-pooling provision. Strickhausen nevertheless cashed a \$270,000 royalty check from BHP, and she proceeded to cash several additional royalty checks.

Strickhausen sued BHP in 2014. The trial court in La Salle County concluded, on a motion for summary judgment, that Strickhausen had ratified the pooled unit through her acceptance of BHP's royalty payments.

Writing for the undivided San Antonio appellate panel, Justice Marion reversed the lower court's finding based on the Texas Supreme Court's 2014 opinion in *Hooks v. Samson Lone Star, LP*. There, the royalty owners had advanced allegations of wrongful pooling after accepting royalty payments from the operator. The *Hooks* Court held that the plaintiffs had thereby ratified the pooled unit. Unlike Strickhausen, however, the plaintiffs in *Hooks* never lodged any pooling objections until after they filed suit. Because Strickhausen first registered her objection to the pooling of her interest, *before accepting any royalty payments*, Justice Marion explained that *Hooks* compels the conclusion that Strickhausen never relinquished the protections of the anti-pooling clause in her lease.

The hard lesson learned is that a lessor's (or royalty owner's) acceptance of royalty payments will not, in all circumstances, serve as a ratification of a pooled unit.

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