



Oil and Gas Development Obligations Under the Oil, Gas, and Gas Storage Lease

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Synopsis

Table listing sections 15.01 through 15.06 with their respective page numbers, including sub-sections like 'Introduction', 'Protecting Gas Storage Rights...', 'The Implied Covenant Theory...', and 'Conclusion: A Suggested Analysis...'.

§ 15.01. Introduction.

In the past, gas companies have acquired gas storage rights from landowners and, as part of the same or a contemporaneous transaction, acquired oil and gas development rights to the lands encompassed by the storage rights. Although the oil and gas development rights are typically acquired to protect the storage rights, the gas storage lessee confronts the dilemma of either having too many rights, or not enough rights.

1 See, e.g., Oliver v. Louisville Gas and Elec. Co., 732 S.W.2d 509, 510 (Ky. Ct. App. 1987)(landowner entered into "oil, gas and gas storage" leases); Thomas Well Service, Inc. v. Williams Natural Gas Co., 873 F. Supp. 474, 479 (D. Kan. 1994)(landowner entered into oil and gas leases at approximately the same time they entered into gas storage leases), aff'd, 64 F.3d 670 (10th Cir. 1995).

However, since they do not own the oil and gas rights in fee, but merely a leasehold interest, they may not have enough rights to refrain from oil and gas development while storage is taking place. This chapter examines the oil and gas development obligations of the oil, gas, and gas storage lessee in situations where the leased acreage is being held beyond the primary term through a gas storage activity.

### **§ 15.02. Protecting Gas Storage Rights by Controlling Oil and Gas Development Rights.**

Typically the motivating force for a gas storage company to acquire oil and gas development rights has been to avoid development activities that could interfere with gas storage operations. Although the same protection could be obtained by restricting the grantor's ability to use the storage areas for oil and gas development,<sup>2</sup> this has not been the industry practice. Perhaps gas storage companies view the oil and gas development rights as a valuable additional asset which can be maintained indefinitely through gas storage operations. However, ownership of the development rights may include an obligation to do something with them.<sup>3</sup>

When the oil and gas development rights are not necessary to protect storage rights, the equities are fundamentally different. If development of oil and gas rights can proceed without interference with storage rights, the failure to develop will be subject to closer scrutiny. This will often be the case when the development concerns depths above or below the storage reservoir,<sup>4</sup> or beyond the areal boundaries of the storage reservoir.<sup>5</sup> It could even include pockets of oil located within the storage reservoir when the oil can be produced without jeopardizing gas storage activities.<sup>6</sup>

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<sup>2</sup> For example, the grantor could convey the storage rights to the gas storage company and also agree to restrictive covenants limiting the grantor's use of the balance of its mineral interests while the gas storage rights are in existence. If the grantor retained the oil and gas development rights, they could not complain about their nonuse. Similarly, if the grantor conveyed all its rights in the oil and gas mineral interest, they could not complain about their nonuse.

<sup>3</sup> See discussion *infra* § 15.05.

<sup>4</sup> Vertically distinct areas.

<sup>5</sup> Horizontally distinct areas.

<sup>6</sup> *Thomas Well Service, Inc. v. Williams Natural Gas Co.*, 873 F. Supp. 474, 483 (D. Kan. 1994)(top lessee sued gas storage operator seeking right to explore for oil within the gas