



## Case of First Impression Addresses Wellbore Ownership

By: [Tom RuBane](#)

A recent decision from the Mississippi Court of Appeals addresses the issue of whether an abandoned wellbore reverts to the surface or mineral owners in a tract with a split estate. As important as it is to secondary and tertiary recovery, it's surprising this issue has not been addressed until now. In [Douglas v. Denbury Onshore, LLC](#) (Miss. App., 2011)<sup>1</sup> the Mississippi Court of Appeals ruled that an abandoned wellbore reverted to the mineral owners rather than the surface owners.

The background of the case begins in 1937, when Douglas's predecessor in interest – who owned fee title to lands located in the W/2 of a standard PLS Section in Lincoln County (the Tract) – executed an oil and gas lease that was acquired by Chevron. During the primary term of the lease, Chevron completed an oil well located on the Tract. The well produced for a number of years beginning in 1947, but in 1968 Chevron plugged and abandoned the well. The Court states that Chevron abandoned the conductor pipe, surface casing, and bottom 8,734 feet (out of 10,549 feet) of production casing in the well. The surface casing and conductor pipe were cut below ground level, and the plug was covered with dirt. Douglas acquired title to the surface, only, of the Tract in 1982.

In 2001, Denbury Onshore, LLC began taking leases covering the Tract and other lands in the section. At that point, the wellbore had been abandoned nearly 40 years. After obtaining appropriate orders from the Mississippi Oil and Gas Board, Denbury reentered the wellbore located on Douglas's lands in 2005 and completed a producing oil well. In 2009, Douglas sued Denbury for "illegally" entering the wellbore without his permission.

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<sup>1</sup> This judgment was entered on June 14, 2011 and has not yet been published by a national reporter; no additional citation is currently available.

Specifically, Douglas argued that the abandoned pipe and casing in the wellbore became a fixture to the surface estate after Chevron abandoned it. As authority for his position, Douglas cited an Oklahoma case<sup>2</sup> that held drilling equipment left on the surface of a tract for an unreasonable period after the expiration of a lease became the landowner's property. In the alternative, Douglas argued that the pipe and casing remained Chevron's personal property and that, because Chevron never assigned it to Denbury, Denbury did not have the right to reenter the wellbore.

Denbury Onshore, LLC, represented by the Mississippi Firm of Blair & Bondurant, prevailed at trial and on appeal. The Court of Appeals, following Mississippi precedent, ruled that the surface estate is subservient to the mineral estate and that a mineral owner or lessee has the absolute right to pick the surface location of a well. The Court also found that Denbury used no more of the surface than was necessary for purposes of developing the mineral estate.

Additionally, the Court ruled that because no part of the abandoned pipe or casing in the wellbore was above ground, it had no relation to the surface estate. In conclusion, the Court held that "the subsurface wellbore and its casing . . . is clearly a passageway to the mineral estate and can only be used to access and explore for minerals. Thus the [wellbore] is part of the mineral estate."

The ruling of the Mississippi Court of Appeals follows well-established principles of real property law. Although Douglas has the option of appealing to the Supreme Court of Mississippi, it seems likely – and we certainly hope – that the Supreme Court would affirm the decision of the Court of Appeals. If and when this issue is tried in other jurisdictions, *Douglas v. Denbury Onshore, LLC* would serve well as persuasive authority for the proposition that an abandoned wellbore reverts to the mineral owners of the tract where it is located.

For more information, please contact [Tom RuBane](#).

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<sup>2</sup> *Garr-Woolley v. Martin*, 579 P2d 206 (Okla. Civ. App. 1978).