

Mineral owner sues Marathon Oil Corp. over royalty payments

As clock winds down, mineral owners want payment calculation verified

By Jennifer Hiller

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A Karnes County mineral owner has sued Marathon Oil Corp. to figure out whether the company is paying royalties correctly — a common lawsuit in South Texas's 400-mile Eagle Ford Shale oil field, and one that's on the rise.

Oil prices are slumping, causing landowners to scrutinize their royalty statements, and there's a four-year statute of limitations in Texas for making a legal claim for breach of contract.

The Karnes County suit was filed Wednesday by the Ira Hailey and Mary Ruth Hailey Trust, which doesn't actually know if it was paid improperly or not. The suit seeks detail about how its royalty payments were calculated and accurate measurements of oil and gas production on the trust's 613 acres.

Their lease stipulates that the trust receive a 20 percent royalty — that is, for every 100 barrels of oil produced, the money from 20 of those barrels flows to the royalty owner — and it stipulates that the royalty owners not be charged the costs to "save, store, gather, dehydrate, compress, pipe, truck, transport, treat, separate, process, refine, manufacture or market" any oil or gas, according to the lawsuit.

So-called post-production costs are often a point of contention between mineral owners and energy producers, though the details of what can and can't be charged to royalty owners are listed in mineral leases that can vary widely across the region.

Houston-based Marathon, which holds around 180,000 acres in the Eagle Ford field, did not respond to a request for comment.

Austin-based oil and gas attorney John McFarland, who's not involved in the Marathon case, said there's been an



Photo: William Luther /San Antonio Express-News

File photo of drilling rigs in the Eagle Ford shale oil play. Lawsuits between royalty owners and oil companies are on the rise. Oil prices are slumping — causing landowners to scrutinize their royalty statements — and there's a four-year statute of limitations in Texas for making a legal claim for breach of contract.

increase in such suits across South Texas.

"The dance that royalty owners play with the companies is they want to know if they're getting paid right," McFarland said. "Often that's not a simple question."

Not all companies are willing to share that information, and not all leases have an audit provision that allows royalty owners to see the books that show how

their royalties were calculated, McFarland said.

"In Karnes County, it doesn't take a very big tract to make a large amount of royalty," McFarland said. "People talk. They hear, 'My Marathon check has this deduction on it but yours didn't.'"

Houston attorney Richard Mithoff, who represents the Hailey Trust, said the lawsuit is a way to check Marathon's accounting.

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"I'm not going to prejudge them," Mithoff said. "What we've concluded is the best way to protect everyone's legal rights is to request an accounting, a full accounting that allows both sides to have access to records before any decisions are made about underpayment."

San Antonio oil and gas attorney David Roth of the firm Elder Bray said that before the Eagle Ford boom, there was a "steady diet" of royalty litigation in South Texas over legacy gas production.

But the nature of shale wells, which pump the bulk of their oil or gas in the first years of production, and the fact that oil spent several years hovering at historically high prices around \$100 per barrel, mean royalty owners have a reason to at least check the accounting.

While mineral owners often assume their royalty payments are correct, Texas courts have made clear that they have the burden of discovering any

problems and taking legal action. The Texas Supreme Court has made clear that it does not like "stale claims" — people have four years to make a contract complaint or that opportunity is gone for good, Roth said.

The clock is ticking.

"Your claims are constantly rolling off the back end," Roth said. "The Eagle Ford is six years into heavy production. Some of those big \$100 days are rolling off the back end."

Mineral owners who have been through booms before often have leases with "an enormous amount of detail on accounting, expenses and obligations to provide information," Roth said. Other mineral owners with less complex leases may have to go to court to get that detail.

A wave of royalty lawsuits against Chesapeake Energy Corp. started earlier

this year in South Texas' Eagle Ford Shale oil field, with mineral owners accusing the company of underpaying them and charging expenses that breached their contracts. There were at least four such suits filed in McMullen, Dimmit and La Salle counties by long-time ranching families.

Those cases echoed previous lawsuits filed by mineral owners against Chesapeake in the Barnett Shale, a natural gas field in the Fort Worth area.

The Texas Supreme Court last year ruled in Chesapeake vs. Hyder, a Barnett Shale case, that Chesapeake could not deduct post-production costs from a lease that had language that shifted those costs to the company. The Hyder family won nearly \$1 million.

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