

# Texas Supreme Court Declines to Establish Bright-Line Rule that Accepting Royalty Checks Ratifies Unauthorized Pooling

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OCTOBER 27, 2021

In *BPX Operating Co. v. Strickhausen*, the Texas Supreme Court considered whether a lessor's acceptance of royalty checks constitutes ratification of an unauthorized pooled unit. The Court's answer in a vote of 5 to 4? It depends.

Margaret Strickhausen owned fifty percent of the mineral interest in a tract of land in La Salle County, Texas. Delphine Crouch owned the other fifty percent. In 2009, each leased her mineral rights to Escondido Resources II, LLC. After multiple assignments, BPX eventually acquired both leases. Crouch's lease permitted pooling, whereas Strickhausen's lease prohibited pooling without her express written consent. Strickhausen's lease further prohibited commingling of production.

Despite these prohibitions, BPX pooled several tracts—including the tract where Strickhausen and Crouch co-owned the mineral interests—to create a 320-acre pooled unit. After drilling a horizontal well partially located under their tract, BPX asked Strickhausen to ratify the pooled unit. Following initial attempts by Strickhausen's attorney to negotiate terms under which she would ratify the pooled unit, BPX threatened to put her royalties in suspense if she did not agree to the ratification.

Strickhausen did not agree to the ratification. While settlement negotiations related to the wrongful pooling claim progressed, Strickhausen continued to receive and deposit royalty checks. Unknown to her, the royalty checks were based on the pooling unit allocations. She mistakenly believed the royalty checks were for the amount she was entitled to under the lease without pooling.

After several months of failed negotiations, Strickhausen sued BPX for breach of the lease based on the unauthorized pooling. BPX argued that her acceptance of royalty checks automatically established that she had ratified the pooling unit. A 5-to-4 majority of the Texas Supreme Court ultimately disagreed, stating that “whether Strickhausen impliedly ratified the pooling depends on whether she exhibited an objective intent to do so.”

In determining whether Strickhausen had an objective intent to ratify the pooling unit, the Court looked to the relevant circumstances surrounding the facts of the case. The Court stated that while it was undeniable Strickhausen received and deposited the royalty checks calculated on a pooled unit, there were “many other objective manifestations of her rejection of the pooling and her intention to assert her contractual anti-pooling rights.” The Court held that she could have held a reasonable belief that the royalties were due her and were paid on a non-pooled basis, especially because of the strict anti-pooling language in her lease. The Court further held that BPX could not have reasonably inferred her consent to pooling merely by her acceptance of the royalty checks, especially in light of her numerous, continued objections.

Although the decision in *BPX Operating Co. v. Strickhausen* clearly favored the lessor, many other Texas cases have favored lessees by holding that their lessors’ acceptance of royalty checks amounted to ratification or waiver of unauthorized activity by the lessees, including pooling. The Court left this issue open to future litigation by failing to adopt a bright-line rule that a lessor’s acceptance of royalties calculated on a pooled basis always amounts to ratification of a pooled unit as a matter of law.

Because the Court has left open the issue of ratification on a case-by-case basis and continues to require a fact-specific analysis of the issue, it is important that both lessors and lessees consult legal counsel to determine whether the cashing of royalty checks ratifies otherwise prohibited pooling or related activities under the terms and conditions of the subject lease and the underlying activity of the parties.