



Who Owns the Empty Space? Key Takeaways from *Myers-Woodward* for Surface and Mineral Rights in Texas

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In Texas, legal battles over the subsurface have typically focused on what comes out of the ground: oil, gas, and minerals. But as subsurface use evolves, it raises a new question: Who owns the empty space left once minerals are removed? In *Myers-Woodward LLC v. Underground Services Markham LLC*, the Texas Supreme Court confronted that question head-on, holding that absent contrary agreement, the surface estate, not the mineral estate, owns caverns created by salt mining.

This decision carries significant implications for property owners, operators, and infrastructure developers. In-house counsel for companies managing surface access, storage rights, or mineral leases should take note—post-extraction voids are no longer a gray area. *Myers-Woodward* clarifies ownership and narrows mineral estate rights. But it also opens the door to new litigation and regulatory risks.

Case Background

Myers-Woodward arose from a dispute over the ownership and use of underground caverns created by a salt mining operation in Matagorda County.¹ *Myers-Woodward*, the surface owner and holder of a one-eighth royalty interest, challenged the rights asserted by Underground Services Markham LLC (USM), which held salt mining rights under a severed mineral estate conveyed in a 1947 deed.²

From 2015 to 2019, USM mined over 2.6 million tons of salt from underground formations, leaving behind sizable cavern space.³ In 2013, USM brought a declaratory judgment action against the royalty owners (including Myers), seeking to clarify its royalty obligations.⁴ USM argued it had satisfied its royalty obligations by tendering one-eighth of the salt brine, and that it owned the cavern it created by its mining operations.⁵ Myers countersued, arguing it owned the caverns as the surface owner and that USM did not deliver the in-kind royalty the deed required.⁶

After a bench trial, the district court ruled that USM owned the underground caverns created by its salt mining.⁷ The court also found that Myers, the surface estate owner, was entitled to a royalty based on the market value of the salt at the point of production and awarded \$258,850 in royalties.⁸ The court based its valuation on fixed-price royalty contracts from other leases.⁹ On appeal, the court of appeals reversed the trial court's ruling on cavern ownership, holding that Myers, the surface estate owner, kept ownership of the empty subsurface space, including the salt caverns, and that USM had no right to use them for off-site storage.¹⁰ But the court affirmed the royalty valuation method. Both parties appealed.¹¹

The Court's Decision

The court's opinion shifts leverage to surface owners, limits post-mining rights of mineral lessees, and enforces royalty terms as written.

The court resolved the parties' dispute by drawing clear lines between surface and mineral estates, and by emphasizing the importance of precise drafting in deeds and leases. Its opinion addressed three key questions: (1) who owns the caverns created by salt mining; (2) whether mineral lessees can use those caverns for other commercial purposes; and (3) how to value royalties under a deed that calls for in-kind payments.

Caverns created by mining belong to the surface owner.

The court held that, unless the deed says otherwise, the surface estate owns the subsurface voids left behind after minerals are extracted. This is because, as the court put it, "empty space is not salt."¹² USM did not keep ownership of the caverns simply because it created them.¹³ The court overruled earlier lower court precedent suggesting otherwise and clarified that post-mining space is not a mineral interest.¹⁴

Mineral lessees cannot use post-extraction space however they want.

USM also argued that it had the right to use the caverns for storage of hydrocarbons produced elsewhere, but the court rejected this.¹⁵ A mineral lease gives the lessee the right to use as much of the surface as is reasonably necessary to extract the minerals.¹⁶ But that right doesn't include using the property for a different commercial purpose, especially one that takes place after mining ends.¹⁷

In other words, the mineral estate does not come with a blank check to repurpose subsurface space. Using that space for unrelated storage without permission from the surface owner goes beyond the scope of what Texas law allows.¹⁸

Royalty clauses will be enforced as written.

Finally, the court addressed how it will value royalties. It held that the 1947 correction deed reserved an in-kind royalty, entitling the surface owner to a share of the actual minerals produced or the net proceeds from their sale, not a cash equivalent based on market value.¹⁹

USM paid royalties based on fixed-price contracts from other salt leases, arguing that the royalty obligation was satisfied by paying 1/8 of the market value of the salt produced.²⁰ However, the deed required that USM deliver one-eighth of the minerals in kind “at the wells or to the credit of” the royalty owner. The court found this language indicative of an in-kind royalty and emphasized that it must enforce such provisions as written: “We hold that [Myers’ royalty] is [an in-kind royalty] . . . The oil royalty is clearly an in-kind royalty, and the parties, by their correction deed, sought to add gas and other minerals to their pre-existing in-kind oil royalty.”²¹

The court reversed the lower courts’ royalty valuation and remanded the case for valuation consistent with that in-kind requirement.²²

Legal and Commercial Implications

For counsel managing mineral interests, lease agreements, or energy infrastructure, *Myers-Woodward* clarifies the boundaries between surface and mineral estates. This clarification gives an important opportunity for stakeholders to assess their plans.

Surface owners gain negotiating power.

Because surface owners control cavern space post-mining, they now hold an asset in areas where they can use caverns for storage, disposal, or infrastructure. This creates new potential for leasing revenue, as well as for litigation. In practical terms, this means surface owners may be able to lease cavern space for unrelated commercial purposes (such as hydrocarbon storage, industrial gas injection, or future hydrogen storage). Companies that assumed they retained rights to post-mining use may now find themselves trespassers, triggering litigation risk and settlement costs.

Mineral rights are not a blank check.

Operators cannot assume that implied surface-use rights extend to post-production commercial uses. Mineral lessees should not build business models or infrastructure plans around the idea that they control the voids their operations leave behind, unless they expressly negotiate for those rights. For example, a company might design a project with the intent of repurposing a mined cavern for storage. Under *Myers-Woodward*, that use may be barred unless the surface owner consents or the deed allows it. Counsel will need to revisit assumptions baked into older leases and ensure that newer agreements expressly define the limits of use, both during and after mineral production.

Deeds and leases need to do more work.

The ruling underscores that courts will stick to the text. Deeds that do not clearly allocate cavern ownership or specify post-extraction uses will default in favor of the surface owner. Likewise, in-kind royalty clauses will be enforced unless expressly waived or modified. Counsel must now treat cavern use as a distinct right which they should carve out or preserve through explicit drafting, not assumed under general surface-use doctrines.

Next Steps for Legal Counsel

Myers-Woodward offers practical lessons for in-house counsel, particularly those managing property portfolios, lease terms, or infrastructure projects involving the subsurface.

Prioritize deed and lease reviews.

Review mineral deeds, surface-use agreements, and related instruments for language addressing post-extraction uses. Confirm whether these agreements expressly define cavern ownership and usage rights. If not, consider amendments or supplemental agreements. An early review could avoid mid-project disputes or unexpected barriers to monetizing cavern space.

Use plain language and cover the edge cases.

Agreements should clearly state whether the lessee keeps post-mining rights, whether royalties are paid in-kind or in cash, and how ownership of voids is allocated. Avoid assumptions, as Texas courts will apply a strict textual reading. Do not rely on industry customs and practices or assumed intent to fill in contractual gaps.

Prepare for regulatory scrutiny.

If your company operates or funds infrastructure relying on cavern storage, ensure the necessary permissions are backed by actual ownership or negotiated surface rights rather than relying solely on mineral leases. Even minor oversights in surface rights can lead to challenges from adjacent landowners, competing operators, or regulators.

Build contingencies into project design.

In-house counsel should collaborate with business teams to identify potential use cases that may rely on cavern space, even years after extraction has concluded. Where ownership is unclear, consider alternative project layouts, staged agreements, or escrow structures to de-risk long-term development.

Conclusion

For in-house counsel, *Myers-Woodward* reinforces the importance of textual clarity, due diligence, and strategic foresight. Agreements need to do more, and sooner. Regulatory filings must reflect ownership reality. Project models must stress-test assumptions about cavern use and royalty valuation.

As Texas's energy and infrastructure landscape evolves, legal teams must adapt their approach to risk management, permitting, and dealmaking. The empty space beneath your land—or someone else's—just became a lot more valuable.



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Endnotes

- 1 *Myers-Woodward, LLC v. Underground Services Markham, LLC*, 716 S.W.3d 461, 464 (Tex. 2025).
- 2 *Id.*
- 3 *Id.*
- 4 *Id.*
- 5 *Id.*
- 6 *Id.* at 465.
- 7 *Id.*
- 8 *Id.*
- 9 *Id.*
- 10 *Id.*
- 11 *Id.* at 466.
- 12 *Id.* at 469.
- 13 *Id.*
- 14 *Id.* at 468.
- 15 *Id.* at 470.
- 16 *Id.*
- 17 *Id.*
- 18 *Id.*
- 19 *Id.* at 473.
- 20 *Id.* at 474.
- 21 *Id.* at 474.
- 22 *Id.* at 475.